

Legal Status and Force of Memorandum of Understanding as Valid Agreement in Indonesia

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ABSTRACT

Memorandum of Understanding (MoU) is often misunderstood as only a moral agreement without binding force. The absence of specific regulations in positive law caused legal uncertainty that countered the spirit of Sustainable Development Goal (SDG) 16 (Peace, Justice, and Strong Institutions) in achieving accountable economic governance. Purpose: Therefore, this study aimed to analyze the legal status and force of MoU as valid agreement in Indonesian contract law. Methods: A normative-descriptive legal study was conducted to examine the problem through doctrinal interpretation and analysis of court decisions. Results: The results referred to Supreme Court Decision No. 174/Pdt/2018/PT.Bdg and Supreme Court Jurisprudence No. 1788/K/Pdt/2014, which recognized that MoU had the legal force of valid agreement, provided its substantive provisions satisfied the requirements of Article 1320 of the Civil Code. In a situation where a clause violation resulted in material losses and carried strict sanctions, MoU had the same status as a formal contract and was binding under the principle of freedom of contract (Article 1338 of the Civil Code). Conclusion: In conclusion, MoU that satisfied the essential requirements for contract validity, had a valid and binding legal status equivalent to that of a contract between the parties. It served not only as a pre-contractual document but an agreement with legally enforceable consequences. Suggestion: Based on these results, lawmakers were recommended to codify specific MoU rules when updating national contract law to ensure sustainable legal certainty. Legal practitioners were also advised to draft explicit rights, obligations, and sanctions clauses in the lease MoU to ensure its executory power. Contribution: This study contributed to literature by providing a basis for legal practitioners to consider when drafting a protective and accountable MoU.



Introduction

Agreement is a common occurrence in daily life¹, particularly in the business sector, both nationally and internationally. Cooperation among business actors has become commonplace and is certainly inseparable from an agreement, which is often listed in a written contract². In general, an agreement or contract commences with two or more parties who have the same interests. Before entering into an agreement, the parties generally engaged in negotiations to discuss and reconcile the respective interests. After reaching a mutual understanding, the pre-contractual process was formalized through the preparation of Memorandum of Understanding (MoU). This document is a written record of the results of initial negotiations,

¹ Renata Grossi, "What Can Contract Law Learn from #MeToo?," *Journal of Law and Society* 49, no. 2 (2022): 263–276.

² Shera Tri Ambarini and Arief Rachman Hakim, "Settlement of Disputes in Unwritten Agreements in Trade Cooperation Relations Based on Civil Law Perspectiv," *Rawang Rencang : Jurnal Hukum Lex Generalis* 6, no. 4 (2025): 1–16.

which often resembles a contract due to several common characteristics.³ MoU is a preliminary agreement in a contract under the Common Law legal system.⁴ However, because Indonesia follows a Civil Law legal system, under which members of society are bound by higher legal provisions, the legal status of MoU required careful consideration. This is due to the lack of explicit provisions in Article 1320 of the Civil Code. MoU is virtually unknown in conventional Indonesian law, particularly in Indonesian contract law.⁵

Due to the lack of specific provisions in Indonesian legislation, MoU can cause problems and remain a matter of debate among legal experts regarding its legal status and force. Under Article 1320 of the Civil Code, MoU has the same legal force as other agreements.⁶ Although Article 1320 of the Civil Code does not specifically address this issue, an important legal question is concerned with the consequences of a breach of MoU. In particular, it examined the legal position and liability of the parties when a violation occurred under a document characterized as MoU. A clear example is Supreme Court Decision No. 174/Pdt/2018/PT.Bdg, where both parties disputed the validity of MoU as valid agreement or only MoU that cannot be equated with a valid contract. The plaintiff, PT Lingkar Cipta Selaras, argued that MoU, agreed to and signed by both parties, did not constitute valid agreement but was only a memorandum of understanding intended to fulfill a provision of the previous lease agreement. However, the defendant, PT Hero Supermarket, maintains that MoU is a valid agreement signed by both parties knowingly and in good faith. The defendant considers that MoU meets the requirements of an agreement under Article 1320 of the Civil Code and both parties should fulfill the agreement terms in good faith.

Previous studies have addressed the issue of Legal Status and Force of MoU as Valid Agreement in Indonesian Contract Law System. These included (1) Fuad Luthfi, whose study was titled "Juridical Implementation of the Status of a Memorandum of Understanding (MoU) in the Indonesian Contract Law System." (2) Gita Nanda Pratama, whose study was titled "The Legal Force of a Memorandum of Understanding (MoU) in the Indonesian Contract Law System." (3) Rio R. Wawointana, whose study was titled "The Status of MoU and the Consequences of Violating MoU Clauses from a Contract Law Perspective." Therefore, this study aimed to analyze legal status and force of MoU as valid agreement in Indonesian contract law based on the Supreme Court Decision Number 174/Pdt/2018/PT.Bdg.

Research Methods

A descriptive-analytical study was conducted using conceptual and statute methods. The process included descriptions, explanations, and analyses of the problems, followed by conclusions to identify the correct answers as solutions to the problems analyzed. The analysis used primary, secondary, and tertiary legal records to resolve legal issues and identify the relevant legal provisions.

³ Ronald Fadly Sopamena, "Kekuatan Hukum MoU Dari Segi Hukum Perjanjian," *Batulis Civil Law Review* 2, no. 1 (2021): p.1-15, <https://doi.org/10.47268/ballrev.v2i1.451>.

⁴ Ari Wahyudi and Dewi Lestari, "Memorandum of Understanding Dan Letter of Intent Aplikasi Dan Kontroversinya Dalam Praktek Hukum Bisnis Nasional," *Jurnal Hukum & Pembangunan* 37, no. 2 (2026): 221-245.

⁵ Fuad Luthfi, "Implementasi Yuridis Tentang Kedudukan Memorandum of Understanding (MoU) Dalam Sistem Hukum Perjanjian Di Indonesia," *Jurnal Syariah : Jurnal Ilmu Hukum* 17, no. 2 (2017): p.179-202.

⁶ Muhammad Trian Hikman, Dachran Busthami, and Asriati Asriati, "Kekuatan Hukum Nota Kesepakatan Para Pihak (Memorandum of Understanding) Sebagai Suatu Akta Kesepakatan Ditinjau Dari Kitab Undang-Undang Hukum," *Legal Dialogica* 1, no. 1 (2025): 1-15.

Results and Discussion

1. *The Status of Memorandum of Understanding (MoU) as Valid Agreement Under Indonesian Contract Law*

The term MoU was derived from the two words "Memorandum" and "Understanding".⁷ Understanding referred to a mutual consensus implied by the express terms of a written or oral arrangement.⁸ Munir Fuady argued that MoU served as a preliminary arrangement that was subsequently elaborated in a more detailed contract. The subsequent contract set out the specific terms and requirements, while MoU addressed only the principal or fundamental matters.⁹ In Black's Law Dictionary, the term "memorandum" was defined as "a basis for commencing the formal drafting of a future contract." Understanding was explained as "an indirect statement of agreement regarding a relationship with another agreement, whether written or oral."¹⁰ According to I Nyoman Sudana et al., MoU constituted a preliminary arrangement that preceded the execution of a more comprehensive agreement¹¹.

Agreements and MoU reflected the principle of freedom of contract as stipulated in the Civil Code. Accordingly, both instruments shared similar essential elements and validity requirements.¹² If MoU was followed by the execution of an authentic deed that expressly regulated its contents and established clear legal sanctions, a party's failure to fulfill its contractual obligations constituted a breach of contract. In this circumstance, the aggrieved party was entitled to obtain compensation from the defaulting party.¹³ Parties to an agreement, whether a contract or MoU, were obligated to fulfill the obligations mutually agreed upon in the agreement. Failure by either party to properly perform its contractual obligations constituted a breach of contract.

MoU was a pre-contractual document that recorded the parties' initial understanding or intentions before formalization into a contract. It was commonly used to establish the fundamental principles that guide subsequent negotiations and served as a preliminary arrangement leading to the execution of a more formal contract.¹⁴ MoU became legally binding when it was followed by the execution of an agreement that satisfied the requirements of the Civil Code.¹⁵ Based on experts' definitions, this study concluded that MoU

⁷ Muhammad Syaban Husein, "Kedudukan Memorandum Of Understanding Dalam Joint Venture Agreement Sebagai Bentuk Kerja Sama Penanaman Modal Asing," *Eksekusi: Jurnal Ilmu Hukum dan Administrasi Negara* 1, no. 4 (2023): 218-233.

⁸ Husnaini, "Akibat Hukum Terhadap Pihak Melakukan Pengingkaran Terhadap Memorandum of Understanding (MoU)," *Jurnal Hukum Tri Pantang* 4, no. 2 (2018): p.17-22.

⁹ Muhammad Ali Mabhan, "Kedudukan Dan Kekuatan Hukum Memorandum of Understanding (MoU) Ditinjau Dari Segi Hukum Perikatan Dalam Kitab Undang-Undang Hukum Perdata," *Meraja Journal* 2, no. 2 (2019): p.19-56.

¹⁰ Gita Nanda Pratama, "Kekuatan Hukum Memorandum of Understanding (MoU) Dalam Hukum Perjanjian Indonesia," *Veritas Et Justitia* 2, no. 2 (2016): p.36-45.

¹¹ Ni Nyoman Putri Purnama Santhi, "Tinjauan Yuridis Dan Konseptual Terhadap Dituangkannya Substansi Perjanjian Atau Kontrak Ke Dalam Memorandum of Understanding (MoU)," *J-CEKI: Jurnal Cendekia Ilmiah* 4, no. 2 (2025): 750-758.

¹² Ni Nyoman Putri Purnama Santhi, "Tinjauan Yuridis Dan Konseptual Terhadap Dituangkannya Substansi Perjanjian Atau Kontrak Ke Dalam Memorandum of Understanding (MoU)," *J-CEKI: Jurnal Cendekia Ilmiah* 4, no. 2 (2025): p.750-58.

¹³ Mashuri Mahmur Andi Dadi, Andi Wira Saputra Yustiana, and Besse Muqita Dewi, "Amatan Hukum Perikatan Mengenai Otoritas Memorandum of Understanding (MoU) Sebagai Tahapan Pra Kontrak," *LEGAL: Journal of Law* 2, no. 2 (2023).

¹⁴ Noor Azizah, Iwan Riswandie, and Istiana Heriani, "Analisis Kekuatan Memorandum of Understanding (MoU) Sebagai Perjanjian Pendahuluan Dalam Hukum Perdata Indonesia," *Cangkal: Jurnal Ilmu Sosial Dan Humaniora* 1, no. 1 (2025): p.38-45.

¹⁵ Hikman, Busthami, and Asriati, "Kekuatan Hukum Nota Kesepakatan Para Pihak (Memorandum of Understanding) Sebagai Suatu Akta Kesepakatan Ditinjau Dari Kitab Undang-Undang Hukum."

was a preliminary agreement serving as the basis for drafting a future contract and reflected the parties' consensus decision. The characteristics of MoU included:¹⁶

- a. It is concise, usually only one page.
- b. It consists of only the main points.
- c. It is preliminary in nature, to be followed by more detailed agreement.
- d. It has a time limit, such as 1 month, 6 months, or 1 year. When there is no follow-up in the form of a more detailed agreement within that period, the agreement will be considered void, unless there is an agreement for extension by the parties.
- e. It is generally made in the form of a private agreement.
- f. Generally, neither party is obligated to draft a more detailed agreement after signing MoU. This is understandable, considering that both parties may encounter various obstacles during the drafting and signing of the agreement. Furthermore, each party may have its own unique reasons for doing so.

In Indonesia, legal basis for the use of MoU depends on the principle of freedom of contract, as set out in Article 1320 in conjunction with Article 1338 paragraph (1) of the Civil Code. MoU became legally binding when it was followed by the execution of an agreement that satisfied the requirements of the Civil Code. MoU aimed to protect parties entering into an agreement, specifically to ascertain the other party's good faith.¹⁷ For business actors, the use of MoU was considered to simplify the contracting process and provide the legal certainty required by entrepreneurs, particularly in the business sector. In theory, MoU did not create legally enforceable rights and obligations because it contained only the fundamental terms of a future agreement. It could serve as evidence in court when the provisions expressly regulated the parties' relationship.

According to Article 1313 of the Civil Code, an agreement was defined as a legal act through which one or more parties assumed obligations toward another party or parties. Agreement and contract were distinct terms, used interchangeably in daily practice. It referred to a legal relationship between two or more parties that produce enforceable rights and obligations.¹⁸ An agreement was a consensus between two or more parties who mutually bind themselves to carry out an activity in the realm of property, consistent with Abdulkadir Muhammad's definition. According to Prof. R. Subekti, S.H., an agreement was an event in which a party promised to perform a particular act. However, Peter Mahmud Marzuki distinguished the concepts of "contract" and "agreement" by referring to the Anglo-American legal tradition.¹⁹ In this case, an agreement had a broader scope than a contract because it included both commercial and non-commercial matters. Wirjono Prodjodikoro viewed an agreement as a legal relationship in the field of property law that established reciprocal rights

¹⁶ Dewi Septiana, "Kedudukan Memorandum of Understanding (MoU) Ditinjau Dari Hukum Perjanjian," *Jurnal Leglita* XIV, no. 1 (2016): p.11–20.

¹⁷ Margaretha Donda Daniella, William Tandy Putra, and Erich Widjaja Kurniawan, "Asas Itiklad Baik Dalam Memorandum of Understanding Sebagai Dasar Pembuatan Kontrak," *Notaire* 2, no. 2 (2019): p231–53.

¹⁸ Santhi, "Tinjauan Yuridis Dan Konseptual Terhadap Dituangkannya Substansi Perjanjian Atau Kontrak Ke Dalam Memorandum of Understanding (MoU)."

¹⁹ Hartana Hartana, "Hukum Perjanjian (Dalam Perspektif Perjanjian Karya Pengusahaan Pertambangan Batubara)," *Jurnal Komunikasi Hukum* 2, no. 2 (2016): 147–182.

and obligations, enabling one party to require the other to fulfill a promised performance or abstain from a specified act.²⁰

Various legal traditions that have developed and served as models for legal systems in various countries were principally based on the concept of reciprocity between "agreements" (often termed *overeenkomsten*) and "obligations" (often referred to as *verbintenissen*). The public generally understood that the law of contracts (*overeenkomstenrecht*) was part of the law of obligations (*verbintenissenrecht*). Certain legal-scientific efforts were required to determine clear boundaries between the law of contracts and other elements in the law of obligations.²¹ Based on the opinions of the, an agreement can be defined as an event or legal act founded upon the mutual consent of two or more parties who mutually bind themselves to perform an obligation. According to M. Isnaeni, the binding force of an agreement had enforceability (*strekkings*) and applied only to the parties. This showed that the rights created were personal (*persoonlijk*) and relative.²² The contract had to function, namely (1) to provide legal certainty for the parties and (2) to move (ownership rights) of resources from a lower to a higher use value.²³ An examination of an agreement showed several essential elements that could be classified as follows:

- a. Esensialia is an element that should be present in every agreement. Without these elements, an agreement cannot be realized.
- b. Naturalia is an element of an agreement regulated by law, but are replaceable or removable by the parties. In this case, these elements are regulated by complementary or supplementary law (*regelend/aanvullend recht*). For example, the seller's obligation to bear delivery costs (Article 1476) and to provide a guarantee (Article 1491) can be modified by mutual agreement.
- c. Accidentalialia is an element of an agreement added by the parties and not regulated by law. In a sales and purchase agreement, this provides the opportunity to exclude certain complementary items as agreed.

The case arose from a building lease agreement between PT Lingkar Cipta Selaras, as the property owner, and PT Hero Supermarket. Under the agreement, PT Hero Supermarket leased the building for a period of 10 years, from 2006 to 2016. The agreement showed the parties' obligations and rights. On November 4, 2011, PT Hero Supermarket submitted MoU to PT Lingkar Cipta Selaras for a lease extension, intended as both a notice and an agreement to extend the lease. Both parties executed MoU in good faith during the lease extension process. However, PT Lingkar Cipta Selaras regarded the document solely as a memorandum of understanding and signed it only to comply with a provision in the previous lease agreement requiring notification to PT Hero Supermarket of its intention to extend the lease before the existing agreement expired.

²⁰ Sudaryati, "Aspek Hukum Memorandum of Understanding Dari Segi Hukum Perikatan Dalam Kitab Undang-Undang Hukum Perdata," *Jurnal Rechts* 11, no. 1 (2022): p.53–66.

²¹ Mochamad Moro Asih and Tunjung Fitria Wijanarko, "Fungsi Hukum Nota Kesepahaman Sebagai Perikatan Perjanjian Menurut Kitab Undang-Undang Hukum Perdata (KUH Perdata)," *Supremasi Hukum* 17, no. 1 (2021): p.78–93.

²² Musdalifah Darise, Roosje H. Lasut, and Roy Ronny Lembong, "Kedudukan Dan Kekuatan Hukum Memorandum of Understanding Ditinjau Dari Segi Hukum Kontrak," *Lex Crimen* 11, no. 4 (2022): p.1–18.

²³ Ari Kurniawati, "Kekuatan Mengikatnya Memorandum of Understanding (MoU) Menurut Hukum Kontrak Di Indonesia (Studi MoU Antara UD Arie Sukses Dengan APPH Banyuwangi)" (Tesis, Universitas Islam Indonesia, 2010).

On March 31, 2017, PT Lingkar Cipta Selaras submitted a 24-hour vacancy request to PT Hero Supermarket, claiming that PT Hero Supermarket had occupied the building without a lease due to the expired lease agreement. Subsequently, on April 2, 2017, PT Lingkar Cipta Selaras arbitrarily terminated the use of the building, causing PT Hero Supermarket to suffer losses on its merchandise. Consequently, PT Lingkar Cipta Selaras also filed a lawsuit against PT Hero Supermarket for occupying a building owned by PT Lingkar Cipta Selaras without a lease. In this incident, PT Lingkar Cipta Selaras demanded material damages and a penalty fine of IDR 452,995,360, as well as immaterial damages of IDR 100 billion. This included a 1.5% interest and the seizure of collateral from PT Hero Supermarket. In defense of the lawsuit, PT Hero Supermarket explained that PT Lingkar Cipta Selaras was in breach of the agreement. PT Hero Supermarket maintained that its continued occupation of the building was not without legal basis. The company argued that MoU signed by both parties on November 4, 2011, constituted the basis for its occupancy. PT Hero Supermarket explained that the MoU was legally valid as an agreement because it was signed by both parties. MoU included a clause stating that both parties agreed to extend the lease for 10 years, from December 1, 2016, to November 30, 2026, and stipulated changes to the rent and service charges without changing any other clauses in the previous lease agreement, namely Lease Agreement No. 01/LS-PSM/06 dated November 4, 2011.

PT Hero Supermarket paid the December 2016 rent, and PT Lingkar Cipta Selaras issued an invoice, thereby indirectly acknowledging that MoU constituted a lease extension agreement. In accordance with Indonesian Supreme Court Jurisprudence No. 1788/K/Pdt/2014, MoU, which listed the obligations and rights of each party, complied with Article 1320 of the Civil Code. Therefore, the parties were obligated to implement MoU in good faith, thereby making it a valid and binding agreement. In response to a lawsuit from PT Lingkar Cipta Selaras, PT Hero Supermarket filed a counterclaim against PT Lingkar Cipta Selaras for allegations they considered unreasonable. This counterclaim was filed because PT Lingkar Cipta Selaras breached MoU dated November 4, 2011. The evidence showed that the losses were incurred by PT Hero Supermarket rather than PT Lingkar Cipta Selaras. As a result of the arbitrary termination of electricity facilities, PT Hero Supermarket incurred several losses, including perishable goods, such as ice cream, meat, fish, vegetables, and fruit being destroyed, damaged, or left stale. Under the lease agreement, PT Hero Supermarket was entitled to assign its lease rights and permit another tenant to occupy part of the leased premises. The arbitrary termination of electricity services consequently caused losses not only to PT Hero Supermarket but also to one of its tenants, Baskin-Robbins. PT Hero Supermarket also sent a warning letter to PT Lingkar Cipta Selaras, alleging intent and negligence on the part of PT Lingkar Cipta Selaras.

Regarding PT Lingkar Cipta Selaras lawsuit, the judge dismissed all claims against PT Hero Supermarket and found PT Hero Supermarket not guilty. Subsequently, in the counterclaim filed by PT Hero Supermarket against PT Lingkar Cipta Selaras, the judge granted the lawsuit and declared MoU dated November 4, 2011, legally binding on both PT Lingkar Cipta Selaras and PT Hero Supermarket. The judge also declared that PT Lingkar Cipta Selaras had been proven in breach of contract and was required to pay material and immaterial damages to PT Hero Supermarket and ordered the seizure of collateral against PT Lingkar Cipta Selaras assets.

2. Legal Entity of a Memorandum of Understanding (MoU) as a Valid Agreement Under Indonesian Contract Law

The validity of MoU in Indonesia was based on the principle of freedom of contract. Furthermore, the principle of custom served as the foundation for implementing MoU. This principle showed that an agreement was binding not only on matters explicitly stipulated but also on matters commonly accepted and followed in practice. The absence of specific regulations governing MoU under Indonesian law often caused confusion in its application, considering that MoU was essentially a memorandum of understanding. According to Hikmahanto Juwana, there was a need to distinguish between the use of the term MoU from theoretical and practical perspectives. In theory, MoU did not have binding legal force and required subsequent formalization through the execution of a contract to become legally enforceable. According to Alma Sanmowa Roida and Diana Tantri Cahyaningsih in the journal, MoU had two distinct legal characteristics. Two legal perspectives existed regarding the status of MoU. The first viewed MoU as non-binding because it did not establish enforceable rights and obligations between the parties. The second recognized MoU as legally binding when it contained the essential elements required under Article 1320 of the Civil Code.²⁴ In simple terms, MoU was a mutual understanding between parties who wish to enter into an agreement. However, when MoU satisfied the requirements set out in Article 1320 of the Civil Code, it possessed the same legal force as a contract under Indonesian civil law system.

MoU that clearly set out the parties' rights and obligations had legal status equivalent to a contract because its legal effect depended on the substance rather than the title. Accordingly, the rights and obligations contained in MoU were binding on the parties. MoU could also serve as evidence in court due to the formal evidentiary elements, including the date, place, identities of the parties, and signatures, as well as substantive elements showing the existence of a valid legal relationship. Its binding force remained subject to the principle that the agreement was formed on a fair balance between the interests of the parties and the broader public interest. Referring to Supreme Court Decision No. 174/Pdt/2018/PT.Bdg, the decision states that MoU may constitute a valid agreement. This refers to the statement of Indonesian Supreme Court Jurisprudence No. 1788/K/Pdt/2014 that MoU that sets out the obligations and rights of each party is in accordance with Article 1320 of the Civil Code. The parties are obliged to implement MoU in good faith. MoU is valid and binding agreement that both parties should implement. The agreement clauses and substances detail the rights and obligations of both parties. Although no specific statutory provisions expressly govern MoU, the binding legal effect and enforceability are equivalent to those of a contract when the contents satisfy the applicable legal requirements. In this circumstance, the parties remain free to determine the substance of MoU in accordance with the principle of freedom of contract. The most fundamental difference between MoU and an agreement is the legal force and substance. MoU regulates only the main points, while an agreement is written in greater detail. The status of MoU remains a matter of debate, even among legal experts. Among the many opinions regarding the status of MoU, two types are more well-known than the others, namely:

²⁴ Alma Sanmowa Roida and Diana Tantri Cahyaningsih, "Tanggung Jawab Hukum Dalam Tahap Pra-Kontrak: Studi Atas Memorandum of Understanding (MoU) Menurut Sistem Hukum Perdata Indonesia," *Indonesia Journal of Social Sciences and Humanities* 5, no. 2 (2025): p.257-63.

- a. Gentlemen's Agreement, the view states that MoU is nothing more than a just Gentlemen's Agreement. Its legal force remained distinct from that of a formal contract, even when executed in the strongest documentary form, such as a notarial deed, although MoU was rarely notarized in practice. This view is upheld by some, arguing that MoU is only a moral recognition, with no legal binding force.
- b. An Agreement is an Agreement, some scholars maintained that once mutual consent had been achieved, the legal character of the instrument remained that of an agreement, regardless of whether it was oral or written, concise or comprehensive, or limited to the principal terms. Therefore, MoU is considered to have the same legal force as a contract and is subject to all provisions of contract law. All provisions of laws and regulations governing contract law can be applied to the MoU.

Based on this opinion, the appropriate legal basis for the use of MoU is Article 1338 paragraph 1 of the Civil Code, which provides that everything done with the agreement of the parties becomes applicable law and binds both parties. Under the principle of freedom of contract and consent, an agreement is considered valid when it is entered voluntarily and in accordance with the law, while a written agreement can be recognized as a contract. MoU is also limited by judges' authority to assess the contents of each agreement. In a situation where the parties' positions in MoU are unbalanced, one party is deemed unable to express its will in determining the agreement. The judge may interpret MoU in good faith, as reported by a previous study.²⁵ A judge's decision issued by a judicial body (jurisprudence) is also a main source of law. Therefore, it is essentially centered on the case and the judge's view of the legal events.²⁶

As a preliminary agreement, MoU is legally binding on the parties, but it contains only the points discussed and agreed upon.²⁷ Even when MoU was not considered legally binding, sanctions could arise through the application of the theory of ratification. Under this theory, a subsequent acknowledgment or confirmation reinforced an earlier legal act, thereby strengthening the legal effect of the existing agreement. In a situation where there is a breach of the substance or material contained in MoU that functions as a contract, the relevant party is obligated to fulfill the breached obligations or risk being subject to sanctions in accordance with applicable laws and regulations.

The legal status of MoU could be determined by its substantive provisions. MoU could be recognized as a contract when its provisions established binding rights and obligations, specified legal consequences for breach, and reflected the parties' intention to be legally bound in accordance with the principle of freedom of contract embodied in Article 1338 of the Civil Code. Although the document was not expressly identified as a contract, the legal effect was consistent with the doctrine of an implied-in-fact contract. The parties' conduct and the substance of the mutual commitments established a valid and enforceable contractual relationship. The law of contracts and Sustainable Development Goal (SDG) have a close functional relationship. This law serves as the legal infrastructure that underpins the achievement of contractual justice, transparency, and legal certainty in socio-economic

²⁵ Yuli Heriyanti, "Kekuatan Berlakunya MoU Ditinjau Dari Hukum Positif Indonesia (Studi Kasus MoU Antara PT. SLI Technology Dengan Dragon Kee. Pte. Ltd.," *Jurnal Pahlawan* 1, no. 1 (2018): p.1-7.

²⁶ Azamta Besnata Mutiara and Arief Suryono, "Analisis Yuridis Kedudukan Hukum Nota Kesepahaman Dalam Pranata Hukum Kontrak Di Indonesia," *Amandemen* 1, no. 2 (2024): p.95-106.

²⁷ Rio R Wawointana, "Kedudukan MoU Dan Akibat Pengingkaran Terhadap Klausula MoU Ditinjau Dari Hukum Kontrak," *Lex Privatum* 4, no. 1 (2016): p.5-13.

governance. The relationship is deeply rooted in SDG 16 (Peace, Justice, and Strong Institutions), particularly the targets of equitable law enforcement and accountable institutional development²⁸. By guaranteeing the validity and binding force of agreements, including clarifying the legal status of transitional instruments such as MoU, the national legal system fosters a reliable business environment and reduces opportunities for legal uncertainty and opportunistic conduct. Accountable contracts prevent unilateral exploitation due to information asymmetry or unequal bargaining power, thereby providing inclusive legal protection for all levels of business actors. On a broader scale, strengthening the legal foundation of a contractual relationship supports the achievement of SDGs 8 (Decent Work and Economic Growth) and 17 (Partnerships to Achieve the Goals). A transaction environment grounded in legal certainty will stimulate healthy investment, minimize destructive disputes, and increase sustainable cross-sector collaboration.

Conclusion

In conclusion, the legal validity of MoU as a valid agreement in Indonesian contract law system, based on Supreme Court Decision No. 174/Pdt/2018/PT.Bdg shows that MoU can be considered a valid agreement. This conclusion is supported by Indonesian Supreme Court Jurisprudence No. 1788/K/Pdt/2014, which recognizes that MoU setting out the parties' respective rights and obligations satisfies the requirements of Article 1320 of the Civil Code. MoU legal status can be analyzed through its substance. An MoU that gives rise to material losses in the event of breach and prescribes clear sanctions for non-compliance may be recognized as having legal force equivalent to that of a contract. Such recognition is consistent with Article 1338 of the Civil Code, which embodies the principle of freedom of contract. However, the legal framework governing MoUs remains incomplete because Indonesian positive law does not contain specific provisions regulating these instruments. Because Indonesian positive law does not specifically regulate MoU, judges generally confine the assessment to the substance of each instrument. Where the parties occupy unequal bargaining positions and one party is not free to express its intention during the formation of MoU, the judge may interpret the instrument in light of the principle of good faith. This requires the legislator to regulate MoU as having the same status as an agreement. An MoU satisfying the requirements of Article 1320 of the Civil Code may have binding legal force.

Suggestion

Based on the above conclusions, given the absence of specific provisions regarding MoU in Indonesian positive or contract law, this often creates uncertainty in its application. This requires the legislator to regulate MoU as having the same status as an agreement. If MoU meets the elements of an agreement as stipulated in Article 1320 of the Civil Code, it can have binding legal force. The legislator should also draft new statutory provisions specifically regarding the position of MoU in Indonesian Contract Law.

References

Ambarini, Shera Tri, and Arief Rachman Hakim. "Settlement of Disputes in Unwritten Agreements in Trade Cooperation Relations Based on Civil Law Perspectiv." *Rawang*

²⁸ Oriola O. Oyewole, *Unveiling the Powers of the Icc Prosecutor: Promoting Access To Justice and Accountability Through Sustainable Development Goal 16*, *Journal of Sustainable Development Law and Policy*, vol. 15, 2024.

- Rencang : Jurnal Hukum Lex Generalis* 6, no. 4 (2025): 1-16.
- Asih, Mochamad Moro, and Tunjung Fitria Wijanarko. "Fungsi Hukum Nota Kesepahaman Sebagai Perikatan Perjanjian Menurut Kitab Undang-Undang Hukum Perdata (KUH Perdata)." *Supremasi Hukum* 17, no. 1 (2021): 78-93.
- Azizah, Noor, Iwan Riswandie, and Istiana Heriani. "Analisis Kekuatan Memorandum of Understanding (MoU) Sebagai Perjanjian Pendahuluan Dalam Hukum Perdata Indonesia." *Cangkal : Jurnal Ilmu Sosial dan Humaniora* 1, no. 1 (2025): 38-45.
- Dadi, Mashuri Mahmur Andi, Andi Wira Saputra Yustiana, and Besse Muqita Dewi. "Amatan Hukum Perikatan Mengenai Otoritas Memorandum of Understanding (MoU) Sebagai Tahapan Pra Kontrak." *LEGAL : Journal of Law* 2, no. 2 (2023).
- Daniella, Margaretha Donda, William Tandya Putra, and Erich Widjaja Kurniawan. "Asas Itiklad Baik Dalam Memorandum of Understanding Sebagai Dasar Pembuatan Kontrak." *Notaire* 2, no. 2 (2019): 231-253.
- Darise, Musdalifah, Roosje H. Lasut, and Roy Ronny Lembong. "Kedudukan Dan Kekuatan Hukum Memorandum of Understanding Ditinjau Dari Segi Hukum Kontrak." *Lex Crimen* 11, no. 4 (2022): 1-18.
- Grossi, Renata. "What Can Contract Law Learn from #MeToo?" *Journal of Law and Society* 49, no. 2 (2022): 263-276.
- Hartana, Hartana. "Hukum Perjanjian (Dalam Perspektif Perjanjian Karya Pengusahaan Pertambangan Batubara)." *Jurnal Komunikasi Hukum* 2, no. 2 (2016): 147-182.
- Heriyanti, Yuli. "Kekuatan Berlakunya MoU Ditinjau Dari Hukum Positif Indonesia (Studi Kasus MoU Antara PT. SLI Technology Dengan Dragon Kee. Pte. Ltd)." *Jurnal Pahlawan* 1, no. 1 (2018): 1-7.
- Hikman, Muhammad Trian, Dachran Busthami, and Asriati Asriati. "Kekuatan Hukum Nota Kesepakatan Para Pihak (Memorandum of Understanding) Sebagai Suatu Akta Kesepakatan Ditinjau Dari Kitab Undang-Undang Hukum." *Legal Dialogica* 1, no. 1 (2025): 1-15.
- Husein, Muhammad Syaban. "Kedudukan Memorandum Of Understanding Dalam Joint Venture Agreement Sebagai Bentuk Kerja Sama Penanaman Modal Asing." *Eksekusi : Jurnal Ilmu Hukum dan Administrasi Negara* 1, no. 4 (2023): 218-233.
- Husnaini. "Akibat Hukum Terhadap Pihak Melakukan Pengingkaran Terhadap Memorandum of Understanding (MoU)." *Jurnal Hukum Tri Pantang* 4, no. 2 (2018): 17-22.
- Kurniawati, Ari. "Kekuatan Mengikatnya Memorandum of Understanding (MoU) Menurut Hukum Kontrak Di Indonesia (Studi MoU Antara UD Arie Sukses Dengan APPH Banyuwangi)." Tesis, Universitas Islam Indonesia, 2010.
- Luthfi, Fuad. "Implementasi Yuridis Tentang Kedudukan Memorandum of Understanding (MoU) Dalam Sistem Hukum Perjanjian Di Indonesia." *Jurnal Syariah : Jurnal Ilmu Hukum* 17, no. 2 (2017): 179-202.
- Mabhan, Muhammad Ali. "Kedudukan Dan Kekuatan Hukum Memorandum of Understanding (MoU) Ditinjau Dari Segi Hukum Perikatan Dalam Kitab Undang-Undang Hukum Perdata." *Meraja Journal* 2, no. 2 (2019): 19-56.
- Mutiara, Azamta Besnata, and Arief Suryono. "Analisis Yuridis Kedudukan Hukum Nota Kesepahaman Dalam Pranata Hukum Kontrak Di Indonesia." *Amandemen* 1, no. 2 (2024): 95-106.
- Oyewole, Oriola O. *Unveiling the Powers of the Icc Prosecutor: Promoting Access To Justice*

and Accountability Through Sustainable Development Goal 16. Journal of Sustainable Development Law and Policy. Vol. 15, 2024.

- Pratama, Gita Nanda. "Kekuatan Hukum Memorandum of Understanding (MoU) Dalam Hukum Perjanjian Indonesia." *Veritas Et Justitia* 2, no. 2 (2016): 36–45.
- Roida, Alma Sanmowa, and Diana Tantri Cahyaningsih. "Tanggung Jawab Hukum Dalam Tahap Pra-Kontrak : Studi Atas Memorandum of Understanding (MoU) Menurut Sistem Hukum Perdata Indonesia." *Indonesia Journal of Social Sciences and Humanities* 5, no. 2 (2025): 257–263.
- Santhi, Ni Nyoman Putri Purnama. "Tinjauan Yuridis Dan Konseptual Terhadap Dituangkannya Substansi Perjanjian Atau Kontrak Ke Dalam Memorandum of Understanding (MoU)." *J-CEKI : Jurnal Cendekia Ilmiah* 4, no. 2 (2025): 750–758.
- Septiana, Dewi. "Kedudukan Memorandum of Understanding (MoU) Ditinjau Dari Hukum Perjanjian." *Jurnal Leglita* XIV, no. 1 (2016): 11–20.
- Sopamena, Ronald Fadly. "Kekuatan Hukum MoU Dari Segi Hukum Perjanjian." *Batulis Civil Law Review* 2, no. 1 (2021): 1–15.
- Sudaryati. "Aspek Hukum Memorandum of Understanding Dari Segi Hukum Perikatan Dalam Kitab Undang-Undang Hukum Perdata." *Jurnal Rechtsens* 11, no. 1 (2022): 53–66.
- Wahyudi, Ari, and Dewi Lestari. "Memorandum of Understanding Dan Letter of Intent Aplikasi Dan Kontroversinya Dalam Praktek Hukum Bisnis Nasional." *Jurnal Hukum & Pembangunan* 37, no. 2 (2026): 221–245.
- Wawointana, Rio R. "Kedudukan MoU Dan Akibat Pengingkaran Terhadap Klausula MoU Ditinjau Dari Hukum Kontrak." *Lex Privatum* 4, no. 1 (2016): 5–13.

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