Law Enforceable of Memorandum of Understanding in a Contract Based on Book III Burgerlijke Wetboek (BW)

Abstract

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Bond is a law connection, on a law area of asset, between two parties which eachs exist independenly (zelfstandige rechtssubjecten). It engenders first party to another to have a right on merit. The second party has an obligation in fulfilling the merit to the first party. Creditor and debitor who granting both right and obligation, are binding themself in a contract either writen or unwriten. Article 1313 of Burgerlijke Wetboek (BW) emphasized that a contract is an action on behalf one party or more who binding him/themselves to anothers. One of the most importants thing in contract is basic principles of contract namely Memorandum of Understanding (MoU). Basically, a Memorandum of Understanding is a form of freedom of arrangement that point out in article 1338 point (1) of Burgerlijke Wetboek. Arranging of MoU is a foundation in contract arrangement in future which based on agreement of all the parties. Thus, researcher is interested to analyze a problem that occure in Memorandum of Understanding. The problem identifications consisted of: the law enforceable of Memorandum of Understanding in a Contract Based on Book III Burgerlijke Wetboek. The legal consequences, if one of the parties experiencing inqualified performance against clauses in Memorandum of Understading.

This research conducted applying descriptive analysis that describing facts from primary and secondary data. Primary data is a primary regulation that used as main tools analysis and secondary data are secondary dan tertier regulation which is relating to Memorandum of Understanding (MoU).

Based on the research result, it was concluded that Memorandum of Understanding has a power to bond for the parties who involved. Moreover, it can corceive the parties to carry out the terms of Memoradnum of Understanding. Memorandum of Understanding is based on Burgerlijke Wetboek spesificly on article 1320 (1) regarding freedom of contract principles, and article 1338 verse (3) regarding goodwilling principles and law enforcement principles. If one of parties violated the terms of Memoradnum of Understanding by experiencing inqualified performance, then the opposite parties have the right to charge and claim loss based on the existing terms.