

Analisis yuridis terhadap kekuatan mengikat dari draft memorandum of understanding (MOU) antara PT. Gema Samudra dengan PT. Berkah Rejeki Makmur: studi kasus putusan pengadilan negeri Cirebon nomor 86/Pdt.G/2013/PN.Cn. = Judicial analysis regarding to the legally binding of draft memorandum of understanding mou between PT. Gema Samudra and PT. Berkah Rejeki Makmur: case study Cirebon district court decition number 86/Pdt.G/2013/PN.Cn.

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Abstrak

Memorandum of Understanding (MoU) merupakan kontrak awal atau pra kontrak yang memuat keinginan awal para pihak. Dalam perkara antara PT. Gema Samudra (Tergugat I) dengan PT. Berkah Rejeki Makmur (Penggugat) terdapat perjanjian kerjasama yang tertuang dalam Draft Memorandum of Understanding (MoU) dan para pihak telah menjalankan kerjasama tersebut. Namun, pada minggu ke tiga setelah kerjasama berjalan, Draft Memorandum of Understanding (MoU) tersebut dibatalkan oleh salah satu pihak dan di sahkan oleh Majelis Hakim karena menurut Majelis Hakim Draft Memorandum of Understanding (MoU) tersebut masih berupa konsep sehingga belum mengikat seperti perjanjian dan dapat dibatalkan.

Tujuan dari skripsi ini adalah untuk mengetahui kekuatan mengikat dari Draft Memorandum of Understanding (MoU) tersebut. Penelitian yang akan dilakukan oleh penulis dibuat dalam bentuk penelitian yuridis normatif atau studi kepustakaan yang dilakukan terhadap hukum positif di Indonesia.

Adapun kesimpulan dari skripsi ini adalah Draft Memorandum of Understanding (MoU) antara para pihak tersebut sudah mengikat meskipun masih berupa Draft Memorandum of Understanding (MoU). Hal tersebut karena berdasarkan Pasal 1343 KUHPerdata dan ditegaskan dengan doktrin Acceptance by Conduct yang menjelaskan bahwa kesepakatan sudah mengikat bagi para pihak dilihat dari maksud dan tindakan para pihak. Dimana dalam hal ini para pihak telah melakukan tindakan dan prestasi yaitu Penggugat telah mengantarkan BBM ke Tergugat I dan Tergugat I telah melakukan pembayaran.

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Memorandum of Understanding (MoU) is an initial/pre contract that contains beginning conditions of each parties. In the case between PT. Gema Samudra (Defendant I) and PT. Berkah Rejeki Makmur (Plaintiff), there was a treaty of partnership written on Draft Memorandum of Understanding (MoU) and each parties were agreed on it. Nevertheless, on the third week of the ongoing patrtnership, the Draft Memorandum of Understanding (MoU) was cancelled by one of the party and was legalized by the Judge Assembly who, at the time, thought that the Draft Memorandum of Understanding (MoU) was merely a concept hence it had no legally binding and could still be cancelled.

The purpose of this paper is to acknowledge the binding power of the Draft Memorandum of Understanding (MoU). The research that will be conducted by the writer is a normative judicial research or a literature study of the positive law in Indonesia.

The conclusion of this paper is that the Draft Memorandum of Understanding (MoU) between the two parties has a binding power even though its form was still a Draft, based on Article No. 1343 KUHPerdata and confirmed by the doctrine of Acceptance by Conduct which explains that an agreement has enough legally binding on parties, viewed from the purpose and the action of the parties. As in for this case, both parties had done an action; the Plaintiff had delivered fuel to the Defendant I and Defendant I had done a payment.