MIZAN
Journal of Islamic Law
P-ISSN: 2598-974X. E-ISSN: 2598-6252
Vol. 6 No. 3 (2022), pp. 349-362
https://www.jurnalfai-uikabogor.org/index.php/mizan/index

Legal Consequences of Breach in Investment Agreements without Notary Deed based on Islamic Law Perspective *

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https://doi.org/10.32507/mizan.v6i3.1733

Abstract
Not all investment agreements are made before a notary, so that agreement does not have strong enough evidence, so when one party commits a default, the other party does not have sufficient evidence to prosecute the party committing the default before the law. The purpose of this study is to analyze the validity of investment agreements without a notary deed and the legal consequences of default in investment agreements without a notary deed. This research is a normative legal research technique. This research used descriptive, interpretation, evaluation, and argumentation techniques to analyze legal material. *Akad* (contract) is a bond that occurs between two parties, one states *ijab* and the second states *qabul*, which then creates legal consequences, namely the emergence of rights and obligations between the two parties. This *ijab* and *qabul* show that both parties have voluntarily entered into an agreement that made must be in accordance with the *Shari'a*. The agreement made not before a notary is still valid, as long as it has fulfilled the legal requirements of the agreement stated in Article 1320 of the Civil Code and as long as no law stipulates that the agreement to be made must be in writing. Legal consequences of the default, the debtor is required to pay compensation for the losses suffered by the creditor, if the engagement is reciprocal, the creditor can demand termination or cancellation of the engagement through the court, the engagement to provide something, the risk of switching to the debtor since the default, the debtor is required to fulfill the engagement if it can still be made or cancellation, accompanied by payment of compensation, and the debtor obliged to pay court fees if brought before a district court and debtor found guilty.
Keywords: Default; Investment Agreement without a Notary; Legal Consequences

Abstrak.
Tidak semua perjanjian penanaman modal dibuat dihadapan notaris, sehingga perjanjian tidak mempunyai bukti yang cukup kuat, sehingga ketika salah satu pihak melakukan wanprestasi, maka pihak yang lain tidak mempunyai cukup bukti untuk menuntut pihak yang melakukan wanprestasi di muka hukum. Tujuan penelitian ini adalah untuk menganalisis keabsahan perjanjian investasi tanpa akta notaris dan akibat hukum wanprestasi dalam perjanjian investasi tanpa akta notaris. Penelitian ini merupakan penelitian hukum normatif dengan teknik penelitian. Penelitian ini menggunakan teknik deskriptif, interpretasi, evaluasi dan argumentasi untuk menganalisis bahan hukum. *Akad*

*Manuscript received date: January 18, 2022, revised: February 22, 2022, approved for publication: August 30, 2022.

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adalah ikatan yang terjadi antara dua pihak, yang satu menyatakan *ijab* dan yang kedua menyatakan *qabul*, yang kemudian menimbulkan akibat hukum yaitu timbulnya hak dan kewajiban antara kedua belah pihak. *Ijab* dan *qabul* ini menunjukkan bahwa kedua belah pihak telah secara sukarela mengadakan perjanjian yang dibuat harus sesuai dengan syariat. Perjanjian yang dibuat di hadapan notaris tetap sah, selama telah memenuhi syarat sahnya perjanjian yang tercantum dalam Pasal 1320 KUH Perdata dan selama belum ada undang-undang yang mengatur bahwa perjanjian yang dibuat harus dibuat secara tertulis. Akibat hukum wanprestasi, debitur wajib membayar ganti rugi atas kerugian yang diderita kreditur, jika perikatan bersifat timbal balik, kreditur dapat menuntut pemutusan atau pembatalan perikatan melalui pengadilan, perikatan untuk memberikan sesuatu, resiko kehilangan beralih kepada debitur karena wanprestasi, debitur wajib memenuhi perikatan jika masih dapat dilakukan atau dibatalkan, disertai dengan pembayaran ganti rugi, dan debitur wajib membayar biaya perkara apabila diajukan ke pengadilan negeri dan debitur dinyatakan bersalah.
Kata kunci: Akibat Hukum; Perjanjian Investasi Tanpa Notaris; Wanprestasi

A. INTRODUCTION

This growing economic condition certainly causes the general public to be interested in making various kinds of investments to improve their economic life. Even recently, people are competing to try their luck in improving their economic life by investing. Moreover, at this time the government is also helping to socialize the wider community to invest. Investment activity is growing very rapidly in today's society. There is a need for infrastructure development in Indonesia at this time, the government requires the role of the private sector to play a role in infrastructure development which requires very large funds due to the limitations of the state budget.

The rise of this investment practice, of course, must have a clear legal umbrella. This is inseparable from the fact that there are still many people who do not understand the mechanism of safe investment. Investment according to Article 1 paragraph (1) of Law No. 25 of 2007 concerning Investment, is "All forms of investing activities, both by domestic investors and foreign investors to do business in the territory of the Republic of Indonesia". This means that in simple terms investment can be understood as an activity of investing money or capital in a company or project for the purpose of making a profit.

In practice, investment can be divided into 2 forms, namely, first, Real Investment, namely real investment, which generally involves tangible assets such as land, machinery, or factories. Second, Financial Investment, namely financial investment, which involves written contracts, such as common stocks and bonds. The latter is often the people's choice in investing.

Investment is an activity that has a goal when investing capital or funds made by investors to get profits in the future. There are two types of investment, namely direct investment and indirect investment. Direct investment can be made by establishing joint venture companies with local partners, conducting joint operations without forming new companies, converting loans into majority participation in local companies, providing technical and managerial assistance, or by granting licenses, and so on. . In this direct investment, investors must participate in running the business. While indirect

investment is generally a short-term investment that includes transaction activities in the capital market and in the money market. Examples of these indirect investments are deposits, investments in securities (stocks and bonds), mutual funds and so on. These investments are referred to as short-term investments because they generally buy and sell shares and/or currency in a relatively short period of time. Investors do not need to be present and participate in running the business. The goal of investors in indirect investment is how to get maximum results in a not too long period of time to be able to enjoy profits.[3]

In the process of making an investment, of course, certain agreements are needed to bind the investor and the entrepreneur in which the investor invests his capital. This agreement is in the form of an agreement between the two parties, where both parties are mutually binding in accordance with the contents of the agreement they have made. In the legal context in Indonesia, agreements may be made by anyone, between one person and another, or between individuals and legal entities, this is because the agreement adheres to the principle of freedom of contract.

Business investment is usually justified by both parties using an agreement, namely an investment cooperation agreement. This cooperation is the basis for both parties in fulfilling their achievements.[4]

Agreements in the management of a business have a major role. In the business world, every agreement will be formally stated through an agreement, so that the agreement will have legal force and force to compel the parties to obey and implement it.[5] An agreement is a promise from two or more parties who enter into an agreement, so it is possible that the promises will not be fulfilled. The achievement of an agreement is the implementation of the things that have been agreed or written in an agreement by both parties who have committed themselves to it. The opposite of achievement is default, namely failure to carry out achievements or promises or obligations as they should be imposed by the agreement on certain parties mentioned in the agreement, which is a deflection of the implementation of the agreement, resulting in losses caused by errors by one or the parties.[6]

Making an agreement should ideally be done in the form of an authentic deed drawn up before a Notary. Because the agreement made before the notary can provide legal protection for the interests of the parties if a problem occurs in the future related to the implementation of the agreement. Notary institutions are needed to make a written and authentic evidence regarding a certain legal act. The strength of an authentic deed

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[3] Supancana and Ida Bagus Rahmadi, *Kerangka Hukum dan Kebijakan Investasi Langsung di Indonesia* (Bogor : Ghalia Indonesia, 2006).

[4] Kandisia Rosma Restiari, Ery Agus Priyono, and Dewi Hendrawati, 'Pembatalan Pejanjian Investasi Usaha Waroeng Lombok Galak Akibat WanprestasI', *Diponegoro Law Review*, 5.2 (2016), 1–13 <https://ejournal3.undip.ac.id/index.php/dlr/article/view/10960/10629>.

[5] Kathleen C Pontoh, 'Bentuk-Bentuk Kerjasama Dalam Kegiatan Bisnis Ditinjau Dari Perspektif Hukum Bisnis', 5 (2017) <https://doi.org/10.1017/CBO9781107415324.004>.

[6] Billy Dicko Stepanus Harefa and Tuhana, 'Kekuatan Hukum Perjanjian Lisan Apabila Terjadi Wanprestasi (Studi Putusan Pengadilan Negeri Yogyakarta Nomor 44/PDT.G/2015/PN.YYK)', *Privat Law*, IV.2 (2016), 113–22.

made by a Notary certainly has very strong legal strength and certainty and considering that an authentic deed is a perfect proof, it is not uncommon for various laws and regulations to require a certain legal action to be made in the form of an authentic deed.[7]

Authentic deed, according to R. Soegondo Notodisoerjo, is a deed made based on a form that has been determined by law, by or in the presence of public officials who do have the authority to make the deed at the place where the authentic deed was made. Authentic deed has 2 (two) main functions, namely, as a formal function (formality causa) and as evidence (probationis causa). The formal function (causa formality) can be interpreted that to make an act declared complete and perfect (not for legality) a legal action must be made in the form of an authentic deed. Functioning as evidence (probationis causa) can be interpreted that the authentic deed is deliberately made as evidence at a later date, the authentic deed is made in writing regarding an agreement. Authentic deed is a written evidence that has perfect proof power as evidence. An authentic deed is needed for those who need a means of proof for a personal interest or for the benefit of a business, such as the deed of establishment of a limited liability company, firm, civil association and others.[8]

The existence of an authentic deed containing an investment agreement is very important, so that both parties involved in the agreement can be protected by law, if one of the parties defaults. Default is a condition in which one of the parties to the agreement is unable to carry out or fulfill a performance that has been agreed upon.[9] In simple terms, investors are required to hand over goods (capital) whereby with that capital the investor can benefit in accordance with what has been agreed upon at the beginning, and the entrepreneur in which the investor invests his capital has the obligation to provide profits to investors in accordance with the previous agreement. However, if one of the parties cannot fulfill these obligations, then that party can be declared a default.[10]

In principle, an agreement will occur well if the parties carrying out the agreement are based on good faith, but if one of the parties has bad faith or does not carry out the obligations, a default occurs..[11] Every act of default has legal responsibility resulting from an agreement that was previously made. The point is that the party who defaults will receive certain sanctions as stipulated in the law and based on authentic evidence in court. One of the strongest evidences of the existence of an agreement is an agreement made before a notary in the form of an authentic deed, this deed can be very strong legal evidence in court.

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[7] Agus Toni Purnayasa, 'Akibat Hukum Terdegradasinya Akta Notaris Yang Tidak Memenuhi Syarat Pembuatan Akta Autentik', *Acta Comitas*, 3.3 (2019), 395 <https://doi.org/10.24843/ac.2018.v03.i03.p01>.

[8] Raden Soegondo Notodisoerjo, *Hukum Notariat di Indonesia : Suatu Penjelasan*, ed. by Raja Grafindo Persada (Jakarta, 1993).

[9] Siahaan Rudy Haposan, *Hukum Perikatan Indonesia : Teori dan Perkembangannya* (Malang: Intelegensia Media, 2017).

[10] Riri Elizabeth Hutabarat and Sri Redjeki Slamet, 'Wanprestasi Dalam Perjanjian Jual Beli Tenaga Listrik', *Lex Jurnalica*, 12.1 (2015), 32 <https://ejurnal.esaunggul.ac.id/index.php/Lex/article/view/1343>.

[11] Munir Fuady, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)* (Bandung: Citra Aditya Bakti, 2001).

However, the problem is, not all investment agreements made by the community are made before a notary, so that the agreement does not have strong enough evidence. The result is that when one party commits a default, the other party does not have sufficient evidence to prosecute the party committing the default before the law. The absence of an authentic deed in an investment agreement can cause various problems that can be detrimental to one of the parties.

The authentic deed is important because investment always carries risks for the parties, especially for investors who invest their capital. This risk is the risk that arises due to investment contracts that are not executed, inadequate documents, incompetence, legal uncertainty, and due to bankruptcy or insolvency.[12] So related to this, the researcher wants to analyze how the validity of the investment agreement without a notary deed is. Furthermore, what are the legal consequences of default in an investment agreement without a notarial deed?

An agreement can be interpreted as a legal relationship between 2 (two) or more parties based on an agreement that creates a legal effect. An agreement can be interpreted as an event where one person promises another person or where two people promise each other to do something. The consequence arising from the agreement entered into by the parties is a legal relationship based on which one party has the right to demand something from the other party and the other party is obliged to fulfill the claim.[13]

Based on the provisions of Article 1868 of the Civil Code (KUH Perdata), it stipulates that: "an authentic deed is a deed made in the form determined by law, by or before a public official authorized for that at the place where the deed was made". An authentic deed made by or before a Public Official also does not rule out the possibility of becoming an underhanded deed, this can happen if the official is not authorized to make the deed and if there is a defect in the form of the authentic deed, as referred to in Article 1868 of the Civil Code. Deeds under the hand have a very real weakness, namely in the case of proving a deed under the hand must be accompanied by other means of proof because it is not a perfect means of proof.

There was no research that addresses the same topic as this research. So that, the researcher do this research.

B. METHODS

This research uses normative legal research, namely legal research that examines and examines legal norms contained in the provisions of laws and regulations. This

[12] Fransikus Litoama, 'Kepastian Hukum Investasi Perdagangan Berjangka Komoditi Berdasarkan Undang-Undang Nomor 10 Tahun 2011 tentang Perdagangan Berjangka Komoditi', *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum dan Keadilan*, 9 (2018), 55.

[13] Agus Toni Purnayasa, 'Akibat Hukum Terdegradasinya Akta Notaris Yang Tidak Memenuhi Syarat Pembuatan Akta Autentik', *Acta Comitas*, 3.3 (2019), 395 <https://doi.org/10.24843/ac.2018.v03.i03.p01>.

research is a type of normative legal research because this research departs from the blurring of norms in the Notary Office Law.

The technique applied in the processing of legal materials needed in this research is through the literature review technique (study document). Literature review is carried out using a card system, namely by recording and understanding the contents of each information obtained from primary legal materials, secondary legal materials and tertiary legal materials. The legal material analysis techniques used in this study are descriptive techniques, interpretation techniques, evaluation techniques and argumentation techniques. Descriptive technique is a basic technique used to analyze a problem that must be used in a study. Descriptive means that describes a state of the position of legal or non-legal propositions.

C. RESULT AND DISCUSSIONS

1. Covenant in Islam

Akad (contract) is a bond that occurs between two parties, one states *ijab* and the second states *qabul*, which then creates legal consequences, namely the emergence of rights and obligations between the two parties.[14] In Article 20 paragraph 1 Compilation of Sharia Economic Law (KHES), an *akad* is an agreement in an agreement between two or more parties to perform and/or not perform certain legal actions. From the understanding of the *akad* above, it can be seen that the agreement must be an agreement between the two parties which aims to bind themselves to each other regarding the actions to be carried out in a certain matter, which matter effectively begins to take effect after the contract is made. That is, the *akad* is realized in the form of *ijab* and *qabul*. This *ijab* and *qabul* show that both parties have voluntarily entered into an agreement. In addition, the agreement made must be in accordance with the *Shari'a*. This means that the *akad* (contract) is valid if it is carried out in accordance with the *Shari'a*.[15] There are various types of contracts in Islam. Among them are sale and purchase *akad*, *salam akad*, *ijarah akad*, *syirkah akad*, *mudharabah akad*, *wadiah akad* and many more.

DSN Fatwa No. 07/DSN-MUI/IV/2000 concerning *Mudharabah* Financing (*Qiradh*), "*mudharabah* is a business cooperation agreement between two parties in which the first party (*malik, shahib almal*, LKS) provides all the capital, while the second party ('*amil, mudharib*, customer) act as managers, and business profits are divided between them according to the agreement set forth in the *akad*. In the *mudharabah* model collaboration, investors and managers work together. The owner of capital only invests capital in the manager and does not participate in managing it. While the manager (*mudharib*), only has the expertise to manage the agreed business.

[14] Ahmad Wardi, Fiqih Muamalat (Jakarta: Amzah, 2017), 112.

[15] Gita Rachmad Gunawan, "Perbandingan Akad Menurut Hukum Islam Dan Perjanjian Menurut Kitab Undang-Undang Hukum Perdata"(Undergraduate thesis, Universitas Diponegoro Semarang, 2012), http://eprints.undip.ac.id/52188/1/bab_I_gita_rachmad_gunawan-12.pdf

There are 3 pillars of *Mudharabah* in Article 232 of the Compilation of Sharia Economic Law, namely: a) *Shahib Al-Mal* (Owner of Capital); b) *Mudharib* (Business Actor); c) *Akad*. Meanwhile, there are 3 capital requirements in a *mudharabah akad*, namely: a) Capital must be in the form of goods, money and/or valuables; b) Capital must be handed over to the business actor or *mudharib*; c) The amount of capital in a *mudharabah akad* must be stated with certainty.

In a *mudharabah akad*, there are benefits derived from the results of capital management carried out by the *mudharib*. The distribution of profits from operations between *shahib al-mal* and *mudharib* is stated clearly and definitely. This means that the profit sharing provisions must be clearly explained at the time the contract is made. A contract or agreement certainly has bad possibilities. Such as the occurrence of broken promises or defaults made by one of the parties. In article 36 of the Compilation of Sharia Economic Law (KHES) regarding broken promises or defaults, it is stated that a party can be considered to have broken a promise if due to their mistakes: a) Not doing what was promised to do; b) Carry out what was promised, but not as promised; c) Carry out what was promised, but it was too late; d) Do something that according to the agreement is not allowed to be done.

If in a contract or agreement, there is a breach of promise or breach of contract, the party doing so will be subject to sanctions. Parties to a *mudharabah akad* who default may receive sanctions in the form of a) Paying compensation; b) *akad* cancellation; c) Transfer of risk; d) Fines; e) Paying court fees.

2. The Legitimacy of the Investment Agreement without a Notary Deed

Making an agreement is basically not bound by a certain form. According to Salim H.S, the Civil Code does not systematically mention the form of an agreement. Every party that enters into an agreement has the freedom to make an agreement, in the sense of being free to make an agreement verbally or in writing. The principle of freedom of contract is a principle that gives freedom to the parties to: a) make or not make an agreement; b) Enter into an agreement with anyone; c) Determine the contents of the agreement, implementation, and requirements; and d) Determine the form of the agreement, namely written or oral.[16]

An agreement can be interpreted as a legal relationship between 2 (two) or more parties based on an agreement that creates a legal effect. An agreement can be interpreted as an event where one person promises another person or where two people promise each other to do something. The consequence arising from the agreement entered into by the parties is a legal relationship based on which one party has the right to demand something from the other party and the other party is obliged to fulfill the claim. [17]

[16] H S Salim, 'Hukum Kontrak, Sinar Grafika' (Jakarta, 2003).

[17] Purnayasa.

There are several types of agreements that usually occur among the community, according to Sutarno, agreements are divided into several types, viz: a) reciprocal agreement is an agreement that; b) Made by placing the rights and obligations to both parties who make the agreement; c) A unilateral agreement is an agreement made by placing obligations on only one party. For example, a grant agreement; d) A fee agreement is an agreement according to the law where only one party benefits. For example, grants (schenking) and loans; e) Consensual, real, and formal agreements. A consensual agreement is an agreement that is considered valid if there has been an agreement between the parties making the agreement. A real agreement is an agreement that requires an agreement but the goods must be submitted. A formal agreement is an agreement that requires an agreement but the law requires that the agreement must be made in a certain form in writing with a deed drawn up by a notary public official or PPAT (Land Deed Making Officer); f) Named or special agreements and unnamed agreements. Named or special agreements are agreements that have been regulated with special provisions in the Civil Code book III Chapter V to Chapter XVIII. Meanwhile, anonymous agreements are agreements that do not have specific regulations in the law. Concerning anonymous agreements is regulated in Article 1319 of the Civil Code which states "all agreements, both those with a special name and those that are not known by a certain name, are subject to the general regulations contained in this chapter and other chapters."[18]

In the provisions of Article 1313 of the Civil Code it stipulates that: "an agreement is an act by which one or more people bind themselves to one or more other people. The form of the agreement can be written and oral. An agreement can be said to be valid if it fulfills the provisions in Article 1320 of the Civil Code, namely agreement, ability to act, certain objects and the agreement must fulfill a lawful cause. Terms of agreement and ability to act are subjective conditions, while specific object conditions and lawful causes are objective requirements. The consequence of non-fulfillment of subjective conditions is that the agreement made by the parties can be cancelled, that is, the agreement will no longer be valid since the request for cancellation is granted by the Court. If the agreement does not meet the objective requirements, then the agreement is null and void and the agreement is deemed to have never existed.

The legal requirements for an agreement are regulated in Book III of the Civil Code. Article 1320 of the Civil Code is the main legal instrument for testing the validity of an agreement made by the parties, because this article determines that there are 4 (four) conditions that must be met for an agreement to be valid, namely: a). Agree for those who bind themselves; b) The ability to make an engagement; c) A certain thing; d) A lawful cause. This is also in accordance with the terms of the contract or agreement in Islamic law, which is manifested in the form of consent and qabul which shows that both parties have voluntarily entered into an agreement.

This means that the parties may not enter into agreements that are prohibited by law, or that are contrary to the values of decency, decency, and public order values. The

[18] Satiah Satiah and Riska Ari Amalia, 'Kajian tentang Wanprestasi Dalam Hubungan Perjanjian', *Jatiswara*, 36.2 (2021), 126 <https://doi.org/10.29303/jatiswara.v36i2.280>.

first and second conditions are called subjective conditions because they relate to the parties, the third and fourth conditions are called objective because they relate to the object. After fulfilling the terms of the agreement, the parties must also fulfill what was promised (achievement). Both non-fulfillment of the legal requirements and achievements arising from the agreement will certainly result in legal consequences if one of the parties objects.[19]

When the agreement has been agreed, it is included in the investment agreement, then all parties must carry out the agreement. The implementation of the agreed promises must be carried out in full good faith and a sense of responsibility by taking into account the interests of other parties so that they cannot be decided unilaterally.[20] If one or both parties do not implement the agreement, a default occurs.

Article 1320 of the Civil Code does not regulate the form of an agreement, so that when making an agreement, the community is free to determine the form. This shows that an agreement made not before a notary is still valid, as long as it fulfills the requirements for a valid agreement listed in Article 1320. An oral agreement is also valid as long as there is no law stipulating that the agreement to be made must be in writing. Based on this description, an investment agreement without a notarial deed also has the force of law to bind the parties who made it, so that if there is a default in the agreement, the agreement can be used as a basis for declaring someone to have committed a default.

However, if the investment agreement without a notarial deed is denied/recognized by the party suspected of having defaulted, then the agreement has no legal force to declare someone in default, because the agreement may or may not exist, depending on the evidence of the parties. This is because the presence or absence of an agreement is very decisive in declaring someone to be in default, because a person cannot be declared in default if there is no agreement made. An Investment Agreement without a notarial deed that is denied/not recognized by one of the parties who made it, has no legal force to declare someone in default, but if an agreement that has been denied/recognized can regain its legal force if it can be proven that the verbal agreement was true exist or have been made.

3. Legal Strength of Notary Deed

Based on the provisions of Article 1868 of the Civil Code (KUH Perdata), it stipulates that: "an authentic deed is a deed made in the form determined by law, by or before a public official authorized for that at the place where the deed was made". An authentic deed made by or before a Public Official also does not rule out the possibility of becoming an underhanded deed, this can happen if the official is not authorized to make the deed and if there is a defect in the form of the authentic deed, as referred to in Article 1868 of the Civil Code. Deeds under the hand have a very real weakness, namely in the case of proving a deed under the hand must be accompanied by other means of

[19] Satiah and Amalia.

[20] Destri Putriarni Nurhamim and Universitas Padjadjaran, 'Perlindungan Hukum Bagi Investor Akibat Pemutusan Sepihak Perjanjian Bangun Guna Serah / Build Operate and Transfer', 4.4 (2021), 315–31.

proof because it is not a perfect means of proof. Based on the provisions of Article 1868 of the Civil Code, which at least must be understood regarding the form of an authentic deed, it must fulfill the following elements: a) The form of the deed that has already been determined based on the statutory rules of a deed so that it is considered an authentic deed; b) Made by or before an authorized public official; c) Where the deed was drawn up.

The main difference between an authentic deed and a deed under the hand is regarding the procedure for making or the occurrence of the deed. A deed made under the hand is a writing that is deliberately used as evidence about an event or an event which later the deed is obliged to sign, therefore there is a very important element, namely the intentional element of making written evidence and doing it signature on the authentic deed. As a means of evidence in a trial in court, the deed under the hand does not have a perfect evidentiary force because the truth lies in the signatures of the parties which, if it is recognized, becomes a perfect proof as an authentic deed. An authentic deed is a perfect proof tool for all parties related to the authentic deed. An authentic deed is a means of evidence that is binding in nature, which means that the truth of what is written in the contents of the deed must be recognized by all parties, that is, the deed must be considered true as long as the truth cannot be proven otherwise. While the deed under the hand can be a perfect means of proof against the person who signed it.[21]

The strength of the proof of an authentic deed is a condition of assessing an authentic deed as a means of evidence. In this case there are 3 (three) aspects that must be considered when the deed is drawn up, these aspects relate to the evidentiary value, which include:[22] a) Outwardly (*uitwendige bewijskracht*), the outward ability of the notarial deed is the ability of the deed itself to be able to prove its validity as an authentic deed (*acta publica probant seseipsa*). So if seen from the stage of making it as an authentic deed, the notarial deed will still be an authentic deed, until there is a lawsuit from another party that already has permanent legal force. And regarding the burden of proof at trial, the party who denies it must be able to present valid evidence that the notary deed is indeed flawed at the time it was made. The strength of the notarial deed from the outward aspect means that the notary deed must be considered as a valid deed as it is, therefore no other evidence is needed to support the validity of the notary deed, related to proof, the party who denies the authenticity of the notary deed from the outward aspect is required to prove the denial of the Notary deed. This proof was made when there was a lawsuit in court; b) Form (*formele bewijskracht*), regarding the formal aspects of a notarial deed, the notary deed must provide certainty regarding an event or legal action carried out by the parties as well as to formally prove the certainty of the day, date, month, year, at (time) facing and the parties facing , initials and signatures of the appearers, witnesses and notaries. This is also to prove what was seen, witnessed, and heard by the Notary (in the deed of officials/official minutes) and to record the statements or statements of the parties/appearers (in the deed of parties). Denial of the

[21] Purnayasa.

[22] Habib Adjie, *Hukum Notaris Indonesia : Tafsir Tematik Terhadap Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris* (Refika Aditama, 2008).

formal aspect of a notarial deed, the parties who deny it are required to prove their denial in a trial in court, and regarding the burden of proof it is fully handed over to the party who denies it; c) material (*material bewijskracht*), regarding the material aspects of a notarial deed, namely the validity of the material contained in the contents of the notary deed, it must be considered valid until it can be proven otherwise (*tegenbewijs*). Regarding the material made in the notary deed, it is a statement and the will of the appearers who come to the notary to make an authentic deed. Denial of the material aspects of the Notary's deed can be filed with a lawsuit in court with reverse evidence carried out by the party who denies it.

4. Legal Consequences of Default in Investment Agreements without Notary Deeds

The Civil Code is a source of formal law as well as a source of material law for contract law in force in Indonesia. Agreements are specifically regulated in the Civil Code, Book III, Chapter II concerning "Agreements Born from Contracts or Agreements" and Chapters V to Chapter XVIII which regulate legal principles and legal norms of agreements in general, as well as norms of Agreement law that has special characteristics, is better known as a named agreement.

An agreement according to Article 1313 of the Civil Code is an act by which one or more people bind themselves to one or more other people. In order to obtain an agreement there must be at least two parties as legal subjects, where each party agrees to bind itself in a certain matter. Certain things in question can be in the form of giving something up, doing something, or not doing something. The agreement issues an agreement between two people who make it, in the form of an agreement can be in the form of a series of words containing promises or abilities spoken or written.[23]

Default can also be caused by the occurrence of a force majeure (overmacht or force majeure). The term 'force majeure' does not find a specific formulation in the law, but from several articles of the Civil Code it is concluded that overmacht is a situation that releases a person or a party who has obligations to fulfill based on an agreement (the debtor or debtor), who does not or cannot fulfill his obligations. , from the responsibility to provide compensation, fees and interest and/or from the responsibility to fulfill these obligations.[24]

The legal consequences for parties who have defaulted are the following penalties or legal sanctions: a) The debtor is required to pay compensation for losses suffered by creditors (Article 1243 of the Civil Code); b) If the agreement is reciprocal, the creditor can demand termination or cancellation of the agreement through the court (Article 1266 of the Civil Code); c) Agreement to give something, the risk of switching to the debtor since default occurs (Article 1237 paragraph (2) of the Civil Code); d) The debtor is required to fulfill the agreement if it can still be done or canceled; e) Accompanied by payment of compensation (Article 1267 of the Civil Code); f) The debtor

[23] Harefa and Tuhana.

[24] Rahmat S.S. Soemadipradja, *Penjelasan Hukum tentang Keadaan Memaksa* (Jakarta : PT. Gramedia., 2010).

is obliged to pay court costs if the case is brought before a district court and the debtor is found guilty. [25]

According to Article 1267 of the Civil Code, default results in creditors being able to sue in the form of: (1) Fulfillment of achievement; (2) Termination of achievement; (3) Compensation; (4) Fulfillment of the agreement accompanied by compensation; (5) Termination of the agreement accompanied by compensation. agreement with compensation. Default is a negligence or omission of what was promised, so in this case there are sanctions or penalties that will be given to the debtor.

Default has very important consequences, so it must be determined in advance whether the debtor has defaulted and if this is denied, it must be proven. The determination of when a default occurs is often not agreed exactly, when the debtor is required to perform the performance that has been agreed upon. Regarding the time of occurrence of default, it is regulated in Article 1238 of the Civil Code, which states that the debtor is negligent, if he has been declared negligent by a warrant or similar deed, or for the sake of his own engagement, if this stipulates that the debtor will be deemed negligent by stopped time elapsed.[26]

D. CONCLUSION

Akad (contract) is a bond that occurs between two parties, one states *ijab* and the second states *qabul*, which then creates legal consequences, namely the emergence of rights and obligations between the two parties. This *ijab* and *qabul* show that both parties have voluntarily entered into an agreement that made must be in accordance with the *Shari'a*. The existence of an investment agreement without an Authentic Deed if referring to Article 1320 of the Civil Code can say a valid agreement. Because the Article does not regulate the form of an agreement, so that in making an agreement, the public is free to determine the form. This shows that an agreement made not before a notary is still valid, as long as it fulfills the requirements for the validity of the agreement listed in Article 1320 of the Civil Code and as long as there is no law stipulating that the agreement to be made must be in written form. Thus, if one of the parties involved in the agreement commits a default, then he must bear the legal consequences of his actions. The legal consequence of this default is that the debtor is required to pay compensation for losses suffered by the creditor (Article 1243 of the Civil Code). to the debtor since the default occurred (Article 1237 paragraph (2) of the Civil Code), the debtor is required to fulfill the agreement if it can still be done or canceled, accompanied by compensation payments (Article 1267 of the Civil Code), and the debtor is obliged to pay court fees if the case is before the district court and the debtor found guilty.

[25] Abdulkadir Muhammad, *Hukum Perdata Indonesia* (Bandung : Citra Aditya Bakti, 2014).

[26] Steven Kawet, 'Wanprestasi Terhadap Penanaman Modal Ventura di Indonesia Ditinjau Dari Perspektif Hukum Perdata', III.3 (2015), 175–82.

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