CHAPTER I

INTRODUCTION

A. Context of Study

In the contemporary digital era, Indonesian society has witnessed a fundamental transformation in commercial transaction patterns, shifting from conventional face-to-face dealings to electronic exchanges conducted through various digital platforms. This evolution is particularly evident in the secondary ticket market, where the rapid growth of interest in music concerts featuring both national and international artists has created unprecedented demand that frequently exceeds supply. Lack of official ticket sellers has driven consumers to seek alternatives through unofficial channels and secondary sellers, often conducting transactions through informal digital communications such as text messages, WhatsApp chats, and social media platforms, without the protection of formal written contracts.[1]

This shift toward informal digital agreements has created a legal grey area where traditional contract law principles intersect with modern technological realities. The Indonesian Civil Code (KUHPerdata), primarily based on the principle of consensualism, recognizes that agreements can be formed through various means, not exclusively through written documentation.[2] However, the

[1] R. Subekti, *Hukum Perjanjian* (Jakarta: P.T. Intermasa, 2005), 1
[2] Indonesian Civil Code, art. 1320.

application of these traditional principles to contemporary digital communications presents significant challenges, particularly regarding the establishment of contractual obligations, proof of agreement terms, and enforcement of remedies in cases of breach and whether informal digital communications such as: text messages, chat logs, and social media exchanges, can establish legally binding contractual relationships under Indonesian civil law, and consequently, whether breaches of such informal agreements can be legally constructed as *wanprestasi* (breach of contract) with enforceable remedies.

The emergence of unwritten agreements in digital transactions presents a multifaceted legal issue that challenges both the theoretical foundations and practical applications of Indonesian contract law. At the theoretical level, there exists a tension between the consensualist principle and the evidentiary requirements necessary to prove the existence and terms of such agreements in civil proceedings.[3] Recent scholarship has identified that "making agreements in Indonesia can be done in written and unwritten form in accordance with the principle of freedom of contract in the Civil Code," yet simultaneously acknowledges that "unwritten agreements are problematic because they are very difficult to prove in civil court."[4] This paradox creates a situation where consumers

[3] Subekti, *op. cit.*, 13.

[4] Shenti Agustini, Febri Jaya, and Shelvi Rusdiana, "Legality and Proof of Unwritten Agreements from a Civil Law Perspective," *Batulis Civil Law Review* 5, no. 2 (2024): 109–115.

may be legally bound by informal digital communications yet lack adequate means to prove their rights when disputes arise.

From a practical perspective, the proliferation of informal digital transactions has exposed significant vulnerabilities in consumer protection mechanisms. Research indicates that "the main challenges include weak consumer legal literacy, lack of clarity on the responsibilities of digital business actors, weak law enforcement against foreign actors, and limited regulations on algorithms and personal data collection."[5] These challenges are compounded by the anonymous nature of many digital transactions, which facilitates fraudulent conduct while simultaneously making it difficult for injured parties to identify responsible parties and seek effective legal remedies. The legal issue is further complicated by the intersection of multiple legal frameworks. The Indonesian Civil Code provides the foundational principles of contract formation and breach, while the Law on Electronic Information and Transactions (UU ITE) establishes the legal validity of electronic communications and documents.[6] The Law on Consumer Protection (UUPK) aims to safeguard consumer rights in commercial transactions.[7] However, the integration of these legal frameworks in the context of informal digital

[5] Bernadetta Tjandra Wulandari, "Consumer Protection Law in Electronic Transactions: Challenges and Solutions in the Digital Era in Indonesia," *The Journal of Academic Science* (June 25, 2025)

[6] Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), as amended by Law Number 19 of 2016.

[7] Law Number 8 of 1999 concerning Consumer Protection (UUPK).

agreements remains unclear, creating legal uncertainty regarding the rights and obligations of parties engaged in such transactions.

Addressing the legal status and protection of parties in breach of unwritten contracts agreements is critically relevant for several interconnected reasons. The secondary ticket market exemplifies the broader challenges facing digital commerce. The increasing popularity of concerts and entertainment events has created a lucrative market for ticket resellers, many of whom operate through informal digital channels. When these transactions are conducted without formal written contracts, consumers face heightened vulnerability to fraud and breach of contract, with limited legal recourse available to recover their losses.

In the consumer protection standpoint, the vulnerability of individuals engaged in informal digital transactions demands enhanced legal safeguards. The UUPK establishes fundamental consumer rights, including "the right to accurate information, the right to safety, and the right to compensation for losses suffered."[8] However, the practical implementation of these rights in the context of unwritten digital agreements requires clarification and strengthening. Without clear legal protections, consumers remain exposed to exploitation by dishonest actors who can take advantage of the informal nature of digital communications to commit fraud with relative impunity.

[8] Law Number 8 of 1999 concerning Consumer Protection (UUPK), art. 4-7.

While considerable research has addressed various aspects of contract law and digital transactions in Indonesia, significant gaps remain in understanding the specific challenges posed by unwritten agreements in digital contexts. Previous studies have explored related themes, including the legal status of oral agreements,[9] breach of contract in specific business relationships,[10] and consumer protection in e-commerce transactions.[11] However, these studies have not comprehensively addressed the intersection of informal digital communications, contract formation, breach of contract, and consumer protection in the specific context of secondary market transactions.

Recent scholarship has begun to recognize the importance of these issues. Research on "the validity of electronic agreements in the perspective of Indonesian civil law" acknowledges that "the advancement of digital technology has led to significant transformations across various sectors, including the legal field," necessitating comprehensive legal frameworks for electronic contract formation.[12] Similarly, studies examining consumer protection in digital transactions have identified key challenges, including "weak supervision of digital business actors, legal uncertainty, and non-optimal compliance and oversight in applying consumer

[9] Noval Feriansyah, "Kedudukan Hukum dan Pembuktian Perikatan Lisan" (Skripsi, Universitas Islam Indonesia, 2023).

[10] Sajid Imam, "Wanprestasi Dalam Perjanjian Tidak Tertulis (Studi Antara Pengusaha Batik dan Pengusaha Konveksi di Pekalongan)" (Skripsi, Universitas Islam Negeri K.H. Abdurrahman Wahid Pekalongan, 2023).

[11] Dhea Cynara Torong, "Analisis Yuridis Wanprestasi oleh Penjual dalam Jual Beli melalui Media Internet" (Jurnal Ilmiah, Universitas Sumatera Utara, 2021).

[12] "The Validity of Electronic Agreements in the Perspective of Indonesian Civil Law," *International Journal of Health, Economics, and Social Sciences*, April 24, 2025.

protection regulations."[13] However, existing research has not adequately addressed several specific challenges posed by secondary market transactions, where informal agreements between private individuals (rather than between consumers and established businesses) create additional complications regarding the application of consumer protection laws. The legal complexities and vulnerabilities associated with unwritten digital agreements are vividly illustrated in the highly publicized case of Ghisca Debora Aritonang, involving the fraudulent sale of Coldplay concert tickets. This case serves as a critical lens through which to examine the practical implications of the legal issues identified above and demonstrates the urgent need for clarity regarding the legal status and protection of parties in breach of unwritten contracts.

Ghisca, acting as a ticket reseller, convinced numerous buyers, predominantly other resellers, that she had access to a substantial number of Coldplay concert tickets, often claiming connections with the event promoter or possession of complimentary tickets.[14] The transactions were conducted almost entirely through informal digital communications, primarily text messages and chat applications such as WhatsApp and Instagram. Prospective buyers, relying on these informal communications and the apparent trustworthiness of the seller, transferred significant sums of money in exchange for promises of tickets that were ultimately

[13] "Validity of Contracts in the Digital Era in Indonesia," *International Journal of Religion*, August 12, 2024.

[14] "Modus Ghisca Raup Miliaran dari Tipu-tipu Tiket Coldplay: Kenal Promotor," *detikNews*, November 20, 2023.

never delivered.[15] Investigations revealed that Ghisca collected an astonishing total of approximately Rp. 5.1 billion from over 2,200 purported ticket transactions.[16]

From a criminal law perspective, Ghisca was charged under Article 378 of the Indonesian Criminal Code regarding fraud and was ultimately sentenced to three years in prison.[17] However, the criminal prosecution, while addressing the fraudulent nature of her actions, did not resolve the civil law questions regarding the contractual relationships between Ghisca and the ticket buyers. According to the Court Decision Number 1029/PDT/2024/PT DKI issued after Ghisca's appeal, the case simultaneously exposed significant vulnerabilities in consumer protection mechanisms and highlighted the challenges of applying established civil law principles, including those of *wanprestasi* (breach of contract), to modern e-commerce transactions lacking traditional contractual documentation.[18]

The principle of consensualism holds that "a valid agreement is formed by the mere consent of the parties, regardless of the form in which that consent is expressed."[19] In the Ghisca case, the digital communications between the parties potentially demonstrate offers (promises to provide tickets), acceptances (agreements to purchase tickets at specified prices), and consideration (payment of

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[15] "Jejak Ghisca Tipu Tiket Coldplay Rp 5,1 M Berujung Dibui 3 Tahun," *detikNews*, April 4, 2024.

[16] "Ghisca Debora Jadi Tersangka Penipuan Tiket Coldplay, Kerugian Rp5,1 M," *CNN Indonesia*, November 20, 2023.

[17] Indonesian Criminal Code, art. 378.

[18] "Ghisca Penipu Tiket Coldplay Divonis 3 Tahun Penjara," *CNN Indonesia*, April 4, 2024; *Court Decision Number 1029/PDT/2024/PT DKI*.

[19] Subekti, *op. cit.*, 13.

money). However, questions remain regarding whether these informal communications satisfy the legal requirements for establishing genuine mutual consent, particularly given the fraudulent nature of the seller's representations.

In this context, *das sollen* refers to the expected legal norms that regulate contractual relationships in digital transactions and the protection of parties in breach of unwritten agreements. For example, Article 1320 of the Indonesian Civil Code establishes that agreements are legally valid regardless of their form, provided they meet four essential requirements: consent of the parties, capacity to contract, a definite object, and a lawful cause, embodying the principle of consensualism. Research confirms that "a valid agreement is formed by the mere consent of the parties, regardless of the form in which that consent is expressed," reflecting the form-free nature of Indonesian contract law".[20] In addition, the UU ITE recognizes that "electronic information and/or electronic documents and/or their printouts constitute valid legal evidence," establishing equivalence between digital and physical documentation, while Article 19 of the UUPK establishes that business actors are liable to provide compensation for damages and losses suffered by consumers. Recent scholarship emphasizes that "electronic agreements possess legal validity if they fulfill traditional contractual requirements and possess the same legal force as conventional physical agreements."[21] These norms are expected

[20] Taufik Hidayat Lubis, "Hukum Perjanjian di Indonesia," *SOSEK: Jurnal Sosial dan Ekonomi* 2, no. 3 (2021): 180.

[21] "The Validity of Electronic Agreements," *op. cit.*

to provide legal certainty and justice for all parties engaging in digital commerce, ensuring that informal digital agreements carry binding force and that injured parties of breach can access effective legal remedies. However, in reality (*das sein*), in cases of breach of unwritten contract, there is often a significant discrepancy between what is regulated by the law and what occurs on the ground. Research on digital consumer protection identifies that the main challenges include weak consumer legal literacy, lack of clarity on the responsibilities of digital business actors, weak law enforcement against foreign actors, and limited regulations on algorithms and personal data collection. Injured parties face substantial obstacles in proving the existence and terms of agreements, as studies acknowledge that "unwritten agreements have binding legal force" under Indonesian law, but it is very difficult to prove it in court because evidence in civil law comes from written letters.[22]

Although legally consumers possess rights to compensation and legal protection under both the Civil Code and UUPK, recent analysis reveals that weak supervision of digital business actors, legal uncertainty, and non-optimal compliance and oversight in applying consumer protection regulations undermine the effectiveness of legal protections. In practice, many injured parties find themselves unable to recover their losses due to evidentiary difficulties, inadequate supervision mechanisms, and the perpetrator's insufficient assets to compensate all

[22] Agustini, Jaya, and Rusdiana, *op. cit.*, 109–115.

injured parties. This discrepancy reflects the gap identified in contemporary scholarship that, despite comprehensive regulatory provisions, implementation faces obstacles, including inadequate supervision mechanisms and legal uncertainty in dispute resolution processes, demonstrating how enforcement mechanisms struggle to keep pace with rapidly evolving digital commerce.[23]

B. Problem Formulation

1. What is the legal status of breach of contract acts concerning unwritten agreements under Indonesian civil law?
2. What legal protection is afforded to the injured party concerning a breach of an unwritten contract in digital transactions?

C. Objective of Research

1. To analyse the legal foundation and validity of unwritten agreements under Indonesian contract law principles, particularly Article 1320 of the Civil Code, and examine how a breach of an unwritten agreement can be proven and legally constructed as *wanprestasi* (breach of contract) in the context of informal digital communications.
2. To identify and evaluate the various legal protections available to injured parties under Indonesian law, including provisions under the Law on Consumer Protection (UUPK) and the Law on Electronic Information and Transactions

[23] *Ibid*. 115

(UU ITE), and to assess the adequacy and effectiveness of these protections in addressing breaches of unwritten digital agreements.

D. Originality of Research

The researcher must conduct research related to previous studies that are similar or correlate with this research before compiling a thesis. This ensures the originality of this research entitled **"The Legal Status and Protection of Parties in Breach of Unwritten Contracts".** After the researcher researches the internet, there are several previous studies with themes like this thesis, as follows:

No	Sources	Main Differences
1	Feriansyah, Noval. "Kedudukan Hukum dan Pembuktian Perikatan Lisan." Skripsi, Universitas Islam Indonesia, 2023.	The thesis discusses the legal status of oral agreements and whether the breaching party can be held accountable from a normative legal perspective.
2	Imam, Sajid. "Wanprestasi Dalam Perjanjian Tidak Tertulis (Studi Antara Pengusaha Batik dan Pengusaha Konveksi di Pekalongan)." Skripsi, Universitas Islam Negeri K.H. Abdurrahman Wahid Pekalongan, 2023.	The thesis discusses why breaches of non-written agreements occur between Batik Kayra and convection entrepreneurs in Pekalongan and the legal consequences of such breaches.
3	Dantjie, Angel Heraria. *Analisis Yuridis Wanprestasi dalam Perjanjian Sewa-Menyewa Secara Lisan: Studi Kasus Mahkamah Agung Putusan No. 2368 K/PDT/2019*. Skripsi, Universitas Pembangunan Nasional Veteran Jakarta, 2025.	The journal discusses the legal validity and proof of oral agreements and the legal consequences when a breach of contract occurs, based on an analysis of Supreme Court Decision No. 2368 K/Pdt/2019 and Indonesian Civil Law.
4	Firdausy, Muhammad Riyadh. *Analisis Sosio-Yuridis Wanprestasi Pelaku Usaha atas Perjanjian Jual-Beli Barang yang*	The thesis discusses the types and factors of default by business actors on Instagram, including delays, damaged

	Dilakukan Melalui Media Sosial Instagram. Skripsi, 2024.	goods, non-conforming items, and fraudulent, fictitious online shops.
5	Torong, Dhea Cynara. "Analisis Yuridis Wanprestasi oleh Penjual dalam Jual Beli melalui Media Internet." Jurnal Ilmiah, Universitas Sumatera Utara, 2021.	The thesis discusses legal certainty, legal protection, and dispute resolution for online sale and purchase agreements on social media platforms, analyzing how civil law provisions and platform-specific contracts apply to e-commerce transactions.

The author found several studies that correlate with this title. This study focuses on examining the topic of unwritten contracts and breach of unwritten contracts. Although, without the author's knowledge, it turns out that there are similarities between the results of the research that the author describes, it is hoped that this research will complement the previous research.

E. Literature Review

1. Agreement

According to Article 1313 of the Indonesian Civil Code (KUHPerdata) an agreement is an act by which one or more persons bind themselves to one or more other persons, establishing a legal bond known as an obligation. Professor Subekti distinguishes between the abstract concept of obligation and the concrete event of agreement, explaining that while an obligation represents an invisible legal relationship that exists only in contemplation, an agreement is the tangible event through spoken words or written text that gives birth to that obligation.[24] The essence of an agreement lies in the mutual consent of the parties regarding the

[24] Subekti, *op. cit.*, 1.

essential elements of their arrangement, reflecting what they each wish to receive from the other in a reciprocal fashion. This mutual understanding forms the foundation upon which legal obligations rest, creating rights for one party and corresponding duties for the other. The Indonesian legal system, following the civil law, recognizes agreements as the primary source of obligations, alongside obligations arising from the law, whether from statute alone or from lawful acts, unlawful acts, or unjust enrichment.[25]

The transformation of an agreement into a legally binding contract depends entirely upon satisfaction of the four requirements stipulated in Article 1320 KUHPerdata, without any mandate that the agreement be reduced to writing. These four requirements are: (1) consent of those who bind themselves, (2) capacity to make an agreement, (3) a specific subject matter, and (4) a lawful cause.[26] The first two requirements are classified as subjective conditions relating to the parties themselves, while the latter two are objective conditions concerning the agreement's content and purpose. Significantly, Article 1320 makes no reference to any requirement of written form, leading to the inescapable conclusion that agreements may be validly formed either in writing or verbally.4 This principle of consensualism (*asas konsensualisme*) means that a contract comes into existence and becomes binding from the moment agreement is reached on the essential elements, regardless of whether any writing memorializes the understanding. As

[25] Subekti, *op. cit.*, 1-3.
[26] Indonesian Civil Code, art. 1320.

Article 1338(1) KUHPerdata declares, "all agreements legally made have the force of law for those who make them," and the word "all" encompasses both written and verbal agreements, provided they satisfy Article 1320's requirements.[27] The Indonesian legal system thus adopts an open system for contract formation, granting parties freedom of contract to determine not only the content but also the form of their agreements. This stands in contrast to the closed system applicable to property rights, where specific formalities are often required. Exceptions exist for certain formal contracts, such as gifts of immovable property requiring notarial deeds or compromise agreements requiring written form, but these constitute departures from the general rule that agreements need not be written to be valid and binding.[28]

2. Breach of Contract (*wanprestasi*)

Breach of contract, known in Indonesian law as *wanprestasi*, occurs when a debtor fails to perform obligations as promised under a valid agreement. Contemporary scholarship confirms that breach of contract manifests in four forms: (1) complete non-performance, (2) defective or incomplete performance, (3) late performance, and (4) performing a prohibited act.[29] Breach of contract can be recognized as a breach when one party fails to fulfil its contractual obligations, whether through negligence, deliberate omission, or inability to perform as agreed.

[27] Subekti, *op. cit.*, 13.
[28] Subekti, *op. cit.*, 13-16.
[29] *Ibid*. 45.

The legal consequences of breach of contract are substantial, including: (1) payment of damages comprising costs, losses, and interest; (2) cancellation of the contract; (3) transfer of risk; and (4) payment of litigation costs if judicial proceedings ensue.[30]

The legal status of breach of contract acts concerning unwritten agreements under Indonesian civil law is theoretically equivalent to breaches of written contracts, yet the practical enforcement of remedies faces significant obstacles rooted in evidentiary challenges. When an unwritten agreement satisfies the requirements of Article 1320 KUHPerdata, it creates legally binding obligations with the same force of law as written contracts pursuant to Article 1338 (1), meaning that breach of an unwritten contract constitutes breach of contract no less than breach of a written one.[31] Therefore, the principle of *pacta sunt servanda* (agreements must be kept) applies equally to unwritten and written contracts, binding the parties regardless of the form in which their consent was expressed.[32] The injured party possesses the same theoretical rights to demand performance, seek damages, or request cancellation under Articles 1266-1267 KUHPerdata regardless of whether the breached contract was unwritten or written. Contemporary research confirms that while unwritten contracts possess formal legal validity equal to written contracts, their practical legal status in breach

[30] Subekti, *op. cit.*, 46.
[31] Feriansyah, *op. cit.,* 3287.
[32] Subekti, *op. cit.*, 1.

situations is considerably more precarious, as the injured party may find their substantive rights unenforceable due to procedural obstacles of proof.[33]

3. Legal Protection for Injured Parties

Legal protection in the context of contract law refers to the mechanisms and remedies available through the legal system to safeguard the rights and interests of parties who have suffered harm due to another's failure to fulfil contractual obligations. In the Indonesian context, legal protection encompasses both preventive measures and remedial measures. For parties injured by breach of contract, Indonesian law provides several forms of protection rooted in the principles of *pacta sunt servanda* and good faith as articulated in Article 1338 KUHPerdata. Recent scholarship confirms that the injured party may seek: (1) specific performance, compelling the breaching party to fulfil their obligations as originally promised; (2) compensatory damages to make the injured party whole; (3) cancellation of the contract to release both parties from further obligations; or (4) any combination of these remedies as circumstances warrant.[34] Article 1267 KUHPerdata explicitly provides that in reciprocal agreements, the party claiming non-performance may choose either to compel performance (if still possible) or to seek cancellation with damages, giving the injured party strategic options depending on their circumstances and interests. The good faith principle embodied in Article 1338 (3) empowers judges to ensure equitable application of contractual

[33] *Ibid.* 41.
[34] Feriansyah, *op. cit.,* 3289.

terms and prevent unfair outcomes, serving as a crucial mechanism for protecting vulnerable parties from oppressive enforcement that might technically comply with contract language but violate principles of fairness and justice.[35]

When the breached contract is unwritten, the legal protection theoretically available to the injured party becomes severely compromised by evidentiary difficulties that may render these remedies possibly inaccessible, raising serious questions about the adequacy of consumer protection in an increasingly digital economy. The Indonesian legal system, governed by the Articles 1865-1945 KUHPerdata for evidentiary rules, recognizes five categories of evidence: written evidence, witness testimony, presumptions, confession, and oaths.[36] For unwritten agreements, the injured party typically must rely heavily on witness testimony and confession, as written evidence is absent. Research by Feriansyah (2023) demonstrates that oral and unwritten contracts can achieve high evidentiary effectiveness when supported by adequate supplementary proof such as receipts, email or text message confirmations, bank transfer records, or credible testimony from disinterested third parties.[37] Recent analysis of Indonesia's consumer protection framework in digital transactions reveals that Law No. 8 of 1999 on Consumer Protection and Law No. 19 of 2016 on Electronic Information and

[35] Feriansyah, *op. cit.,* 3290.

[36] John D. Calamari and Joseph M. Perillo, *The Law of Contracts*, 7th ed. (St. Paul, MN: West Academic Publishing, 2020), 75–92.

[37] Feriansyah, *op. cit.,* 3290.

Transactions provide enhanced protections for electronic agreements.[38] However, The burden of proof under Article 1865 KUHPerdata rests entirely on the claimant, and failure to meet this burden results in dismissal of the claim regardless of the truth of the underlying breach.

F. Operational Definition

An unwritten contract is an agreement that lacks a formal written document. It is formed through informal digital communications, such as text, social media exchanges, or other community-driven platforms, and is considered legally valid and binding as long as it meets the four cumulative conditions outlined in Article 1320 of the Civil messages Code: consent of the parties, capacity to contract, a certain object, and a legal cause.[39]

The breach of an unwritten contract is defined as the failure or negligence of a party to fulfill their promised obligations, which includes complete non-performance, delayed performance, or imperfect performance.[40] This breach, which is grounded in Article 1238 of the Civil Code, makes the breaching party liable for legal remedies.

The legal status of these unwritten agreements determines their enforceability under Indonesian law, while legal protection refers to the various legal safeguards available to an injured party, such as the right to seek

[38] Angga Juanda, "Can Indonesia's Laws Keep Up? Protecting Consumer Rights in Digital Transactions," *Journal of Law & Legal Reform* 5, no. 3 (2024): 878–882.

[39] Subekti, *op. cit.*, 1.

[40] J. Satrio, *Hukum Perikatan: Perikatan pada Umumnya* (Jakarta: Alumni, 1999).

compensation, demand specific performance, or terminate the agreement, as provided by the Civil Code, UU ITE, and UUPK.[41]

G. Research Method

1. Type of Research

This thesis uses a normative legal research methodology, which focuses on the study of legal norms, principles, and doctrines. This approach, also known as doctrinal legal research, is a non-empirical method that relies on a systematic analysis of legal texts and frameworks to answer research questions. The normative method primarily serves to discover the truth based on the scientific logic of law from a normative perspective, making it a foundational approach for legal scholarship.[42] This method is used for this research in seeking to clarify the legal status and protection of parties in the absence of formal written agreements, as it allows for a deep dive into the legal framework itself without needing to collect data from the field.

2. Research Approach

In this research, there are three types of research approaches, namely:

a. Statute Approach

The statute approach is fundamental in normative legal research as it relies on legal provisions as the primary source of analysis. This approach

[41] E. Allan Farnsworth, *Farnsworth on Contracts*, 3rd ed., vol. 1 (New York: Aspen Publishers, 2004), 2.

[42] Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 45.

involves identifying, examining, and interpreting relevant legislation to understand the legal framework applicable to the research problem. By systematically analyzing statutory provisions, researchers can determine how existing legal regulations address the issues under study.[43] In this research, the statutory approach is applied by reviewing laws and regulations related to prenuptial agreements. This includes an in-depth examination of the Indonesian Civil Code, which contains general provisions regarding contracts and agreements, the Marriage Law, which governs the legal aspects of marriage, and other supporting regulations that may influence the legal standing of prenuptial agreements.

b. Conceptual Approach

A conceptual approach is employed to explore and analyze the fundamental legal concepts relevant to the research topic. Legal concepts form the basis of legal reasoning and interpretation, making this approach essential in normative legal research. The conceptual approach begins with an examination of various doctrines, legal theories, and expert opinions that have shaped the development of the legal norms under study.[44] In the context of this research, the conceptual approach is used to analyze key legal concepts related to prenuptial agreements, such as contractual

[43] Sigit Sapto Nugroho, Anik Tri Haryani, and Farkhani, *Metodologi Riset Hukum* (Yogyakarta: Oase Pustaka, 2020), 95.

[44] Nugroho, Haryani, and Farkhani*, op. cit., 97.*

freedom, marital property regimes, legal certainty, and justice in contractual relationships. This approach enables researchers to assess how these concepts have been interpreted and applied in legal literature, jurisprudence, and International legal perspectives.

c. Case Approach

The case approach is another significant method in normative legal research that involves studying legal cases to understand how legal norms or rules are applied in practice. This approach focuses on analyzing court decisions or judicial precedents related to the research topic. By examining the reasoning and outcomes of past cases, a researcher can gain insight into how judges interpret and apply the law. This approach is crucial for understanding the practical application of legal theory.[45] The case approach involves examining a relevant case related to unwritten agreements and breaches of contract, especially using the Court Decision Number 1029/PDT/2024/PT DKI. Studying how judges interpret and apply legal principles, this approach provides a realistic understanding of the law's application. The case approach helps to identify any gaps between the written law and its practical implementation, as well as to highlight the challenges of proving unwritten agreements with digital evidence.

3. Research Data Source

[45] Muhaimin, *op. cit.*, 62.

This research relies on several different forms of legal sources to support the analysis made. These sources are divided into:

a. Primary Legal Materials, the main legal material consisting of several laws and regulations that are related to the legal issues in this research, including but not limited to:
    1) Article 1313 of the Indonesian Civil Code;
    2) Article 1320 of the Indonesian Civil Code;
    3) Article 1238 of the Indonesian Civil Code
    4) Court Decision Number 1029/PDT/2024/PT DKI
    5) Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), as amended by Law Number 19 of 2016, Article 5.
b. Secondary Legal Materials, are legal source that provides information, analysis, and commentary on primary legal materials, which can be found in books, legal journals, legal cases, articles, and court decisions related to this research.[46]
c. Tertiary legal materials are a guide to both primary and secondary legal materials, with examples are legal dictionaries, language dictionaries, and legal encyclopedias. These sources provide an entry point into a

[46] Muhaimin, *op. cit.*, 62 & 75.

topic and are used to quickly find definitions or overviews before moving on to more authoritative sources.[47]

4. Data Collection Technique

The primary data collection technique in normative legal research is a comprehensive document study or literature study. This involves gathering and organizing legal materials, which include primary, secondary, and tertiary legal sources.[48] The process of collecting these materials is done by reading, viewing, or listening to credible sources that can be done both offline and through online media like websites. The collected materials are then inventoried and classified according to the research questions.[49]

5. Research Analysis

Research analysis in normative legal research focuses on the processing and analysis of legal materials. This analysis is a non-statistical, qualitative process that involves using legal logic to understand legal issues. The analysis may involve identifying legal principles, formulating legal concepts, establishing legal standards, and forming legal rules. If a legal norm is unclear or incomplete, the researcher may use methods of legal interpretation, such as grammatical, systematic, or teleological interpretation, to clarify its meaning.[50]

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[47] *Ibid. 64.*
[48] *Ibid. 76.*
[49] Muhaimin, *op. cit.*, 67.
[50] Muhaimin, *op. cit.*, 70-75.

H. Structure of Writing

Chapter I consists of background, problem formulation, research objectives, research benefits, originality of research, literature review, research methods, and thesis outline.

Chapter II, development related to the literature review in the first chapter, about strengthening theory, principles, and explanations.

Chapter III, the results will describe the results of the research in detail. Meanwhile, the discussion section contains answers to the formulation of the problems in this thesis.

Chapter IV, in the conclusion, contains a brief statement that includes all the contents of the research results and discussion. Meanwhile, the suggestions are made based on analysis and consideration from the author to provide direction to future researchers.