

## The Binding Power of Underhand Business Contracts in Trade Practices

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### Keywords:

*business contracts, underhand agreements, binding force, proof, trade practices.*

### Abstract

*Business contracts are an important instrument in trade practices, serving as the basis for legal relationships between parties. In practice, many business contracts are drawn up underhand for efficiency and flexibility. However, the use of underhand contracts often raises legal issues, particularly regarding their binding force and evidentiary validity in the event of a dispute. This study aims to analyze the binding force of underhand business contracts in trade practices and their implications for legal certainty for the parties.*

*This research employs normative legal research methods with both a statutory and conceptual approach. Data were obtained through a literature review of laws and regulations, legal doctrines, and literature relevant to contract law and evidence. Qualitative analysis was conducted by interpreting legal norms related to the validity and binding force of agreements.*

*The research results show that underhand business contracts have legally binding force as long as they meet the requirements for a valid agreement as stipulated in the Civil Code. The main difference between underhand contracts and authentic deeds lies in the evidentiary aspect, not in the validity of the agreement. Underhand contracts have perfect evidentiary force if acknowledged by the parties, but require additional evidence in the event of a denial. Therefore, the use of underhand business contracts remains relevant in trade practice, but requires caution in their formulation to ensure legal certainty and protection.*

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## INTRODUCTION

Underhand contracts often spark debate regarding their binding force, particularly when used as the basis for lawsuits. However, normatively, underhand contracts remain valid as long as they comply with Article 1320 of the Civil Code. This aligns with J. Satrio's opinion that the binding force of an agreement stems from the agreement of the parties, not from its form or formality. In other words, the will of the parties, as expressed in the agreement, forms the basis for the birth of a binding legal relationship.

In addition, the doctrine of freedom of contract as reflected in Article 1338 of the Civil Code gives the parties the freedom to determine the content, form, and implementation of the agreement, as long as it does not conflict with the law, public order, and morality (Pradita<sup>1</sup> et al. 2025). According to Mariam Darus, ("1. Badruzaman, Mariam Darus. Various Business Laws.... - Google Scholar," nd), the principle of freedom of contract is a reflection of legal respect for the autonomy of the will of the parties in regulating their private legal relationships. Therefore, the choice to make a business contract underhand is part of the legal freedom protected by the civil law system.

However, this freedom of contract is not always matched by an adequate understanding of the law among business actors. In commercial practice, many underhand contracts are simply drafted, often without clear clauses regarding the parties' rights and obligations, dispute resolution

mechanisms, or sanctions for breach of contract. This has the potential to create legal uncertainty when these contracts must be enforced through formal legal mechanisms.

From the perspective of the law of evidence, Article 1874 of the Civil Code distinguishes between authentic deeds and private deeds. Private deeds only have full evidentiary force if the signatures and contents of the deed are acknowledged by the parties (Aziim 2022) . According to (Harahap 2017) , if one party denies the signature or contents of the private deed, the burden of proof shifts to the party submitting the deed. This condition shows that although private contracts are valid and binding, their position is more vulnerable in the context of evidence compared to authentic deeds.

In judicial practice, judges often have to reassess the binding force of underhand business contracts by considering other evidence, such as witnesses, correspondence, or the actual implementation of the agreement. This demonstrates the gap between the legal norms that affirm the binding force of agreements and the reality of their application in commercial practice. According to Sudikno Mertokusumo, legal certainty is determined not only by the existence of norms but also by the consistency of their application in law enforcement practice.

Based on this description, it is understandable that underhand business contracts occupy a paradoxical position. On the one hand, such contracts are valid and legally binding based on the principles of *pacta sunt servanda* and freedom of contract. However, on the other hand, underhand contracts face serious challenges in terms of proof and legal protection in the event of a dispute. This situation raises fundamental questions about the extent to which the binding force of underhand business contracts can provide certainty and effective legal protection for parties in commercial practices.

Therefore, a study of the binding force of underhand business contracts is relevant and important. This research is expected to provide a comprehensive understanding of the legal status of underhand business contracts, both from a normative and practical perspective, and to contribute to the development of contract law that can meet the needs of the dynamic world of commerce.

## **THEORITICAL REVIEW**

### **1. Theory of Agreements in Civil Law**

An agreement is the primary basis for establishing a civil legal relationship between parties. Article 1313 of the Civil Code defines an agreement as an act by which one or more persons bind themselves to one or more other persons. Although this definition is considered imperfect because it focuses only on unilateral obligations, this provision remains the starting point for understanding the concept of an agreement in Indonesian civil law.

Subekti defines an agreement as a legal event in which two or more people mutually promise to do or not do something, resulting in legal consequences in the form of rights and obligations. This definition emphasizes that the essence of an agreement lies in the existence of an agreement of will (consensus) between the parties, which creates a binding legal relationship.

In civil law, the validity of an agreement is determined by the fulfillment of the conditions stipulated in Article 1320 of the Civil Code, namely agreement between the parties, legal capacity, a specific object, and a lawful cause. The first two conditions are subjective, while the last two are objective. If the objective conditions are not met, the

agreement is void by law, while violation of the subjective conditions can result in the agreement being voidable.

## 2. Principles of Contract Law

Contract law recognizes several fundamental principles that form the basis for the formation and implementation of contracts.

### a. Principle of Freedom of Contract

The principle of freedom of contract is reflected in Article 1338 paragraph (1) of the Civil Code which states that all agreements made legally are valid as law for those who make them. This principle gives parties the freedom to determine whether to make an agreement, with whom the agreement is made, as well as the content and form of the agreement.

According to Mariam Darus Badruzaman, the principle of freedom of contract is a manifestation of the autonomy of the parties' will which is protected by civil law, as long as it does not conflict with the law, public order and morality. Therefore, making business contracts privately is part of legitimate legal freedom.

### b. Principle of Consensualism

The principle of consensualism states that an agreement is born and binding upon the agreement of the parties. J. Satrio (2020) emphasized that Indonesian contract law is consensual in principle, so agreements do not require a specific form unless otherwise specified by law. Therefore, private business contracts remain valid and binding as long as there is a valid agreement.

### c. The principle of Pacta Sunt Servanda

The principle of pacta sunt servanda asserts that every legally entered into agreement must be executed in good faith. This principle gives binding force to agreements and places them on a par with law for the parties. According to R. Subekti, this principle guarantees legal certainty in contractual relationships.

### d. Principle of Good Faith

Article 1338 paragraph (3) of the Civil Code emphasizes that agreements must be executed in good faith. Good faith is not only interpreted subjectively, but also *objectively*, namely the propriety and fairness in executing the agreement. This principle is important in assessing the implementation of underhand business contracts, especially when disputes arise.

## 3. Theory of Agreement Forms: Authentic Deeds and Private Deeds

In civil law, agreements can be formalized in the form of an authentic deed or a private deed. Article 1868 of the Civil Code states that an authentic deed is one drawn up by or before an authorized public official. Conversely, a private deed is one drawn up by the parties without the assistance of a public official.

According to R. Wirjono Prodjodikoro, the main difference between the two types of deeds lies in their evidentiary power, not in the validity of the agreement. A private deed remains valid as an agreement, but its evidentiary power depends on the parties' acknowledgement.

## 4. Theory of Binding Strength and Proving Power of Agreements

The binding force of an agreement relates to the extent to which the agreement must be complied with by the parties, while the evidentiary force relates to its ability as evidence in a judicial process.

According to (Harahap 2017) , a private deed has full evidentiary power if the signatures and contents of the deed are acknowledged by both parties. If a denial occurs, the party submitting the deed is required to prove its truth with other evidence.

This theory shows that underhand business contracts still have legally binding force, but have a weaker position in the context of evidence compared to authentic deeds.

### **5. Theory of Legal Certainty in Business Agreements**

Legal certainty is one of the primary objectives of law. According to Sudikno Mertokusumo, legal certainty means not only the existence of written rules, but also the certainty of their application and enforcement. In the context of underhand business contracts, legal certainty is greatly influenced by the clarity of the agreement's clauses and the consistency of their application by law enforcement officials.

Thus, a study of the binding force of underhand business contracts is important to assess the extent to which these instruments are able to provide legal certainty and protection in trade practices.

## **RESEARCH METHODOLOGY**

### **1. Types and Approaches of Research**

This research is normative legal research, focusing on the study of positive legal norms governing agreements, particularly underhand business contracts. Normative legal research examines the principles, rules, and legal norms related to the binding force of contracts in commercial practice.

The approaches used in this research are the statute approach *and* the conceptual approach . The statute approach is carried out by examining the provisions of relevant laws and regulations, such as the Civil Code, especially Article 1313, Article 1320, Article 1338, Article 1868, and Article 1874. Meanwhile, the conceptual approach is used to examine the doctrines and views of legal experts regarding agreements, the principle of freedom of contract, as well as the binding force and evidentiary power of private contracts.

### **2. Sources of Legal Materials**

The legal materials used in this research consist of primary, secondary and tertiary legal materials.

#### **a. Primary Legal Materials**

Primary legal materials include laws and regulations directly related to the research object, including the Civil Code, particularly provisions regarding agreements and evidence, as well as court decisions relevant to disputes over underhand business contracts.

#### **b . Secondary Legal Materials**

Secondary legal materials are in the form of legal literature that provides explanations of primary legal materials, such as civil law and contract law textbooks by Subekti, J. Satrio, Mariam Darus Badruzaman, Munir Fuady, (Harahap 2017) , as well as journal articles and previous research results that discuss business contracts and the binding force of agreements.

#### **c . Tertiary Legal Materials**

Tertiary legal materials are used as supporting materials, including legal dictionaries, legal encyclopedias, and other sources that help clarify the legal terms and concepts used in this research.

### **3. Legal Material Collection Techniques**

The collection of legal materials is conducted through library research, which involves searching, collecting, and reviewing various laws and regulations, legal textbooks, scientific journals, and other legal documents relevant to the research topic. Literature research is conducted systematically to obtain accurate and scientifically sound legal materials.

### **4. Legal Material Analysis Techniques**

The analysis of legal materials in this study was conducted qualitatively, using legal interpretation methods. The collected legal materials were analyzed by outlining applicable legal norms, assessing their compliance with expert doctrine, and drawing conclusions based on logical and systematic legal arguments.

The legal interpretation used includes grammatical, systematic and teleological interpretation, in order to obtain a comprehensive understanding of the binding force of underhand business contracts in trade practices.

### **5. Conclusion Drawing Techniques**

The conclusions were drawn using the deductive method, which involves drawing conclusions from general legal principles and applying them to the concrete problems examined in this research. This method is expected to yield conclusions that accurately address the problem formulation and are consistent with the theoretical framework used.

## **RESULTS AND DISCUSSION**

### **1. The Binding Power of Underhand Business Contracts in Trade Practices**

Based on a normative review of the provisions of the Civil Code, underhand business contracts have the same binding force as other agreements as long as they meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. The terms of agreement, capacity, specific object, and lawful cause are essential elements that determine whether a contract is valid or not, regardless of the form in which the contract is made.

Article 1338 paragraph (1) of the Civil Code states that every legally made agreement applies as law for the parties who made it. This provision contains the principle of *pacta sunt servanda* which provides legal legitimacy to private business contracts. Thus, normatively, there is no difference in binding force between a private contract and a contract set out in an authentic deed.

In commercial practice, underhand business contracts are widely used due to efficiency and flexibility. Businesses tend to prioritize trust and practical needs over legal formalities. However, this tendency is often not matched by an adequate understanding of the legal consequences of these agreements, particularly in the event of default.

The study shows that as long as the parties execute the contract in good faith and there is no denial of its contents, underhand business contracts can be effective and provide factual legal certainty. Legal issues only arise when one party fails to fulfill its obligations or denies the existence of the agreement.

### **2. The Position of Underhand Business Contracts as Evidence**

The most crucial aspect of a private business contract lies in its evidentiary power. Under Article 1874 of the Civil Code, a private deed is written evidence whose evidentiary power depends on the parties' acknowledgement. If the signatures and contents of the deed are acknowledged, the deed has full evidentiary power for the parties who signed it.

However, if one party denies the signature or the contents of the contract, the underhand business contract no longer has full evidentiary force. In such circumstances, the party submitting the contract must prove its veracity through other evidence, such as witness testimony, supporting documentary evidence, or actual execution of the agreement.

In judicial practice, judges not only assess underhand contracts textually but also consider the context and behavior of the parties. The actual execution of the agreement, payments made, and correspondence between the parties are often important indicators in assessing the existence and validity of the contract. This demonstrates that the evidentiary power of underhand business contracts is relative and contextual.

Thus, even though an underhand business contract is valid and legally binding, its position as evidence is still weaker than an authentic deed, especially in disputes involving denial.

### **3. Legal Implications of Underhand Business Contracts for Legal Certainty**

The use of underhand business contracts has direct implications for legal certainty for the parties. On the one hand, these contracts provide convenience and flexibility in trade practices. On the other hand, weak evidence can potentially create legal uncertainty in the event of a dispute.

The discussion results indicate that legal certainty in underhand business contracts depends heavily on the quality of the agreement's clause formulation and the parties' legal awareness. A clearly drafted, detailed, and legally signed contract will have a stronger standing than a simply drafted contract lacking clarity about rights and obligations.

Under legal protection, underhand business contracts should not be viewed as weak legal instruments, but rather as valid agreements that require careful drafting. Efforts to strengthen legal certainty can be made by involving witnesses, authenticating signatures, or improving the substance of the contract without always requiring it to be formalized in an authentic deed.

Thus, underhand business contracts remain relevant and valid in trade practices, but their use must be accompanied by adequate legal understanding in order to provide optimal legal protection and certainty for the parties.

## **CONCLUSION**

Based on the results of research and discussion regarding the binding power of underhand business contracts in trade practices, the following conclusions can be drawn:

1. Business contracts made underhand have legally binding force as long as they meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. Based on the principle of *pacta sunt servanda* reflected in Article 1338 of the Civil Code, private contracts apply as law to the parties who make them, regardless of the form of the agreement.
2. The fundamental difference between a private business contract and a contract in the form of an authentic deed lies in the evidentiary aspect, not in the validity of the agreement. A private business contract has full evidentiary force if the signatures and contents of the agreement are acknowledged by both parties. However, if a contract is contested, additional evidence is required to prove its existence and contents before the law.

3. The use of underhand business contracts in trade practices has implications for legal certainty for the parties. While providing convenience and efficiency, underhand contracts have the potential to create legal uncertainty if drafted without clear clauses and an adequate understanding of the law. Therefore, the binding force of underhand business contracts is greatly influenced by the quality of the agreement's formulation and the good faith of the parties in executing it.

## **SUGGESTION**

Based on these conclusions, this study provides several suggestions as follows:

1. Business owners are advised to pay closer attention to the substance and clarity of clauses in private business contracts, particularly regarding the rights and obligations of the parties, dispute resolution mechanisms, and sanctions for breach of contract. This is crucial to minimize the potential for disputes and increase legal certainty.
2. Although private business contracts are legally valid, parties are advised to strengthen their evidentiary positions, including by involving witnesses, verifying signatures, or providing relevant supporting documents. This can enhance legal protection in the event of a future dispute.
3. Policymakers and academics need further research on strengthening legal protection for underhand business contracts, particularly in the context of modern trade practices. Further research is expected to contribute to the development of contract law that is more responsive to the needs of the business world.

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