

## Legal Protection Of Unlicensed Online Arisan Victims Reviewed From Article 1243 Of The Civil Code Concerning Tort

Aufa Dary Naufal Rusmana <sup>1\*</sup>, Dr. Asri Sri Mulyani, S.H.,M.H<sup>2</sup>,  
Temmy Fitriah,S.H.,M.Kn<sup>3</sup>

<sup>123</sup> Faculty Of Law, University Muhammadiyah sukabumi, Indonesia

\*Korespondensi: [aufadarynouval12@gmail.com](mailto:aufadarynouval12@gmail.com)

### ARTICLE HISTORY

Terkirim: 07.11.2023

Diterima: 05.12.2023

Publikasi: 29.12.2023

### ARTICLE LICENSE

Copyright © 2023 The  
Author(s): This is an  
open-access article  
distributed under the  
terms of the Creative  
Commons Attribution  
ShareAlike 4.0  
International (CC BY-  
SA 4.0)

### ABSTRAK

Penelitian ini dilakukan menggunakan metode penelitian yuridis normatif dan studi literatur terkait Fenomena Arisan Online di Indonesia. Terdapat banyak kasus penipuan yang menggunakan modus Arisan Online yang dilakukan di berbagai media sosial seperti WhatsApp, Facebook, dan Instagram. Hal ini disebabkan oleh perkembangan teknologi yang semakin canggih, sehingga memudahkan setiap transaksi melalui internet. Namun, selain dampak positif, ada juga dampak negatif melalui perkembangan ini, salah satunya adalah Arisan berbasis online yang rentan terhadap penipuan. Dalam penelitian ini, dijelaskan bagaimana perlindungan hukum bagi korban yang mengalami kerugian akibat arisan berbasis online, termasuk dalam artikel 1243 Kitab Undang-Undang Hukum Perdata, dan bagaimana penegakan hukum terhadap pemilik arisan online yang tidak memiliki izin. Arisan online memiliki kekuatan hukum sebagaimana diatur dalam Pasal 1320 Kitab Undang-Undang Hukum Perdata karena termasuk dalam perjanjian. Arisan online melibatkan media elektronik sehingga terdapat kaitan dengan Undang-Undang ITE. Arisan merupakan perjanjian sehingga mengikat pihak-pihak yang membuat perjanjian tersebut. Karena saling mengikat, akhirnya menciptakan Hak dan Kewajiban, dan jika hak dan kewajiban tersebut tidak dipenuhi, akan berakibat pada wanprestasi atau perbuatan melanggar hukum. Wanprestasi ini dapat mengakibatkan konsekuensi hukum, seperti kompensasi, pembatalan perjanjian, transfer risiko, dan pembayaran di depan hakim.

Kata kunci: Arisan online; penipuan; perlindungan hukum.

### ABSTRACT

*This research was conducted using normative juridical research methods and literature studies regarding the Arisan Online Phenomenon in Indonesia. There are many cases of fraud using the Arisan Online mode which are carried out on various social media such as WhatsApp, Facebook and Instagram. This is due to increasingly sophisticated technological developments that make it easier for any transactions via the internet to be easy. However, apart from the positive impacts, there are also negative impacts through this development. One of them is Online-based Arisan Which is prone to Fraud. In this study, it describes how legal protection is for victims who experience losses as a result of online-based arisan in terms of article 1243 of the civil code and how to enforce the law against owners of unlicensed online arisan. Arisan online has the force of law as in article 1320 of the civil code because it is included in the agreement. Arisan online involves electronic media so that there is a connection with the ITE Law. Arisan is an agreement so that it binds the parties who make the agreement. Because binding one another ultimately creates Right and Obligations and if these right and obligation are not fulfilled it will result in default or unlawful acts. This default can lead to legal consequences, namely compensations, cancellation of the agreement, transfer of risk and payment before the judge.*

**Keywords:** Arisan online; fraud; legal protection.

## **A. Introduction**

Today the development of technology is very rapid, especially with the internet. Many things can be done with the Internet, including doing business and investing online via the internet. In addition, in this era of globalization, the economy is developing rapidly because everything is designed to be as easy as possible, especially with the help of increasingly sophisticated technology. The change in the economic and financial system is that social events are now a part of it. Arisan is no longer something new for Indonesian people. Arisan is a way of raising money by a group of people. Winners are selected based on the serial number or sequence of numbers that has been determined.

As technology progresses, social gathering keeps up with the times with online-based social gathering. Online-based arisan is the same as offline arisan, it's just that the arisan system is online-based. This online gathering certainly has positive and negative impacts in its implementation. With arisan members usually conduct an offline gathering in carrying out arisan transactions, but with online arisan, arisan members conduct transactions through social media such as WhatsApp, Instagram and Facebook.

Online gatherings are conducted online. The agreement of the parties is an electronic contract that is carried out partly through social media. The ITE Law defines electronic commerce as any legal transaction carried out via a computer, computer network, or other electronic media (Article 1 Paragraph 2). In civil law, when a problem arises, the search for truth is only based on the available evidence. This is different from the criminal law system which distinguishes between mistakes made intentionally and mistakes made unintentionally. In civil law, anyone who hurts another person is responsible for compensating for his losses if all evidence can be proven in court (Raditio 28:2014).

The practice of online gathering is actually not prohibited by law. What needs to be considered in online arisan activities is that these activities are based on good faith, honest, open, responsible, and do not violate the agreements made. If the arisan participant agrees with the arisan maker to hold arisan with a certain monetary value for a certain period of time, then the arisan participant and the arisan maker have made a legally binding agreement (Magdalena etc. 23:2019).

As Arisan is an agreement that binds both parties, it arises. Each party has certain privileges and obligations that must be enforced by the other party. According to Article 1320 of the Civil Code, for an agreement to be binding, the parties must (1) agree on the subject matter of the agreement; (2) competent to enter into agreements; and (3) agree on the subject matter of the agreement, and may not be made for any reason. which is against the law. For this reason, the owner of the arisan or the person holding the arisan or the creditor must fulfill his obligation to grant rights to the debtor those who receive the arisan, and the debtor or member of the arisan must pay the arisan contributions that have been mutually determined in the arisan agreement.

However, as we know that in online arisan transactions are carried out electronically which of course can lead to fraud from a criminal law perspective and or default from a civil law perspective. This is because the boss of the online arisan does not make an agreement to track member responsibilities. In this online gathering, the agreement discussed is an

agreement that is considered to have a high level of evidence because it is still based on the trust of other members, or it can also be called an open agreement.

**Arisan Online Is Investment Crowdfunding** The basic idea behind crowdfunding comes from the idea of crowdsourcing, where a group of people work together to provide comments and ideas to help a new company grow. Arisan online uses the internet to collect money, which will then be returned in different ways according to the agreement in the contract. Because online arisan is carried out on the internet, it can be said that this activity is donation-based. The person making the arisan will advertise it on social media sites like Facebook. Then, people who want to help will put their money into the agreed way of playing. Usually, online arisan acts can be included in the same category as crowdfunding-based investment deals.

Arisan can be done online without having to meet the group owner or boss. You can use an Automated Teller Machine (ATM) or mobile banking to pay for goods with Arisan money. Because the drawing method is done automatically through electronic media, it is important to have a trustworthy mindset when doing business. Because people don't see each other, fraud and theft are more likely in online meetings.

There are 2 Arisan Online, namely Authorized and Unlicensed Online Arisan. Permitted Arisan Online has clear legality of OJK institutions and legal entities. Unlicensed online arisan is a fraudulent investment because there are many cases of fraud that occur from unlicensed online arisan. Arisan Online is not licensed, does not have a permit from the OJK or does not have legality and is not a legal entity and promises high profits and is free of risk. Here are some examples of fake online arisan cases that have occurred in several cities in Indonesia.

In Banjarmasin there was a case of fake online arisan where the victim suffered a loss of 6 billion, Sumedang with a loss of 21 billion, Cilacap with a loss of 13.4 billion, Salatiga with a loss of 4.7 billion, Ambon with a loss of 1.2 billion, Blora suffered a loss of 45 billion, Mojokerto 1 billion (Kompas, 2023). And one of the cases that occurred in the city of Sukabumi, namely there were 6,664 the people of the city of Sukabumi who are victims of online fraud cases in 2020 (Sukabumi Update, 2023).

Based on the results of the literature search that the researcher did, there is no research regarding the research that the writer will examine. On this basis, according to the author, it is very important to raise the issue of unlicensed online arisan into a thesis with the title "Legal protection for victims of unlicensed online arisan in terms of article 1243 of the civil law book on default". Based on this history, the author provides an overview of the problem as follows: How can Article 1243 default on the Civil Code help people who lose money because of online arisan? And how does the government handle unlicensed online arisan owners?

## **B. Research Method**

In this study used a standard legal approach. According to Soerjono Soekanto and Sri Mamudji, the normative juridical approach is to conduct legal research by referring to pre-existing works or secondary sources. In order to achieve this, the researcher will explore the relevant rules and scientific works. Descriptive-analytic research was conducted, meaning

relevant laws and regulations were defined and then linked to legal theory and the actual application of positive law.

### C. Result

#### 1. Legal Protection for Victims Who Experiencing Losses Unlicensed Online-Based Gathering in View of Article 1243 of the Indonesian Civil Code

##### a. Forms of Legal Protection for arisan victims by the Sukabumi City Police

Victims are defined as people who suffer physical, mental or financial losses as a direct result of a crime (Article 1 of the Law of the Republic of Indonesia No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection). Witnesses and Victims). This is part of the legal protection process. This means that when viewed from the meaning of the victim, it is the victim who is personally and financially harmed. Efforts to legally protect victims are efforts to make victims feel safe and comfortable. Sasongko said that it was a protective measure or a way to protect certain people using certain methods. 18 Article 5 paragraph 1 of the 2014 Law revising the 2006 Law which protects witnesses and victims states, it explains the rights of people who witness a crime or are harmed by it (Ssongko 31:2007).

Based on the results of interviews with Brigadier Naufal Aprianto. S.H. as part of the Sukabumi city police because until now there has been no threat from the reported party or the suspect. Regarding legal protection, the police gave telephone numbers to several police officers to victims in Sukabumi, whatever happens, you can directly contact the telephone number that has been provided by members of the police.

##### b. The legal strength of the online social gathering agreement

In terms of legal force, the agreement born from the Arisan Agreement has fulfilled all the agreed legal standards and principles, as stated in Article 1320 of the Civil Code. Online gatherings use electronic media as a tool, to the extent that the ITE Law (Electronic Information and Transaction Law) is also a factor. In Article 5 of Law Number according to Lidya etc 19 of 2016 known as the Electronic Information and Transaction Law (UU ITE) it is stated that:

1. The existence of electronic goods or can be written down is a formal proof.
2. Paragraph 1 of electronic goods, or their written representations, are admissible as evidence under Indonesian procedural law, and can be used in conjunction with other evidence.
3. Acceptable electronic information and/or electronic paper must comply with statutory provisions before being used in an electronic system.
4. The names are excluded from the scope of paragraph 1 of electronic information regulations.
5. The law says that letters and documents must be in the form of a notarial deed or a deed drawn up by a civil servant.
6. The law says that all letters must be written.

If you look at the Civil Code in particular, it is clear that the online arisan verbal agreement fulfills the legal requirements for an agreement as referred to in Article 1320. This means that online arisan participants must agree to it, they must be able to legally carry out online arisan, arisan activities must become the object of online arisan, and the act of making the agreement must be a formal agreement in an online social gathering that fulfills the legal requirements of an agreement. As referred to in Article 1320 of the Civil Code, has legal force for people who participate in the online arisan, as referred to in

Article 1338 of the Civil Code, which reads: "Agreement made legally applies as a law for those who make it".

## **2. Law Enforcement Against Unlicensed Online Arisan Owners**

a. The owner of Arisan Online is threatened with criminal penalties if there is a default

Failure in social events occurs when people don't do what they agree to do. A common case is when some people don't pay their arisan contributions and then disappear after taking the money. Everyone who has signed the agreement is obliged to pay his share of the costs in accordance with the terms of the agreement. So, not completing dues in a smooth manner is a common way to break the rules in online arisan activities.

Article 1243 of the Civil Code states that if a person does not fulfill his responsibilities in a timely manner, he can be sued for interest, losses or fees. This is called the "default". Criminal responsibility is an important part of any criminal law. Every law will have the same rules about what is and isn't a crime, so it's not just in the Criminal Code. Both the Criminal Code and Law Number 19 of 2016 Concerning Electronic Information and Transactions (UU ITE) stipulate guidelines and sanctions for the collection and use of illegal data in the digital realm.

Based on Law Number 19 of 2016 concerning ITE, people who commit online fraud can be punished for their actions, although there are no clear rules regarding fraud crimes. When someone does something against the law, they are to be blamed according to civil law. People who are annoyed by online social gathering deals can go to court and sue for breach of contract. This happens because one of the parties feels disadvantaged because they cannot find a solution or solve the problem through these other methods. If both parties in the argument want to settle it without going through a court, the non-litigation process must take precedence. This is especially true for cases involving defaults on online arisan transactions.

b. Settlement of Defaults on Arisan Agreements Online

The default step is something that is detrimental to one of the parties and needs to be redeemed. By default, actions can occur on purpose, carelessly, or by accident (without intent or carelessness). But in contract law, it doesn't matter whether the wrong was done on purpose or not.

According to Mariam Darus Badruzaman, there are three different forms of default: total non-compliance with the agreement, partial compliance with the agreement, and late compliance with the agreement, or the debtor makes a mistake and does not deserve to fulfill the agreement (Badruzaman 23:2015).

People or groups who do not comply with the agreement can be grouped into four groups:

- 1) The creditor does not carry out one of the terms of the agreement;
- 2) The deal was done, but the terms weren't followed;
- 3) The agreement was executed, but is no longer valid;
- 4) The creditor does something that is not in accordance with the agreement. In general, default only occurs when creditors tell customers that they are negligent (in mora stelling; ingebereke stelling).

The person who has to get the money at the meeting is the creditor. The person who has to give the money is the debtor at the online meeting. Before announcing the default, sloppy comments were made public. Thus, this careless comment is a warning to the debtor that he must fulfill his responsibilities immediately, or he is given time to do so before he is declared in default. Creditors must pay compensation. There is also *sommatie*, which is a legitimate written threat or comment through the District Court from the

creditor to the debtor. At least three visits from the creditor or the sheriff are required to fulfill this order. If the debtor fails to pay, the creditor can file a lawsuit, and the court will assess whether the debtor is in default or not.

Article 1267 BW says that the party who is harmed by default has the right to sue to try to recover his contractual rights "the party against whom the agreement was not fulfilled can choose; force the other party to fulfill the contract, if it can still be done, or demand cancellation of the agreement, with compensation for costs, losses and interest." When a default occurs, four types of legal consequences that occur are:

1) Payment

"Reimbursement of costs, losses and interest due to non-fulfillment of an agreement is required, if the debtor, even though he has been declared negligent, fulfills the agreement, or if something that must be given or done can only be given. or carried out within a time that exceeds the specified time". Reads Article 1243 of the Civil Code. What are the terms of compensation? It is something that is controlled by law. There is a limit to how much can be claimed in damages under this clause. Therefore the law still provides and protection for negligent persons to prevent creditors from acting arbitrarily.

2) Contract Termination

This cancellation does not legally end the agreement and thus does not constitute a cancellation as referred to above. But as a punishment from creditors to debtors who default. Because in a reciprocal agreement, the rights and responsibilities of each party were closely related to one another, and because according to Roman law, if one party failed to fulfill its obligations, the other party was released from its own obligations.

3) Transfer Of Risk To The Debtor

As an explanation of risk transfer, we can say: In the absence of delivery, the buyer bears the risks associated with purchasing certain commodities under Article 1460 of the Civil Code. faster than the buyer to the seller, so that the risk is passed on to him in the event of the seller's carelessness. Since the completion of the sale and purchase agreement, the buyer has assumed all risks associated with the goods. Vendor defaults if he/she delivers late. In the event of a scenario of coercion that prevents one of the parties from carrying out his achievements, the other party may be released from his responsibility to hand over the item for the sake of justice and fairness.

4) Judge Prepayment

The party that loses in a civil lawsuit is usually the party responsible for paying court fees and other costs. To ensure that litigation costs are covered by all responsibility, not just money.

c. The anti-fraud law on internet gatherings has been completed in Sukabumi City.

Based on the results of interviews with the author, several reports have been found at the Sukabumi City Police regarding online arisan fraud that occurred in Sukabumi City and the legal settlement process.

Furthermore, based on the results of the author's interview with Brigadier Naufal Aprianto S.H related to legal settlement of online arisan fraud perpetrators, it can be resolved by first being compensated, one continues to the court level because only two reporters with online arisan cases are different from the two legal settlements against the owner. online arisan fraud in sukabumi.

## **D. Conclusion**

This study concludes that the ITE Law provides legal protection for victims of illegal online arisan gatherings because the transaction system is electronic. In addition, online arisan

is regulated in the provisions of the Civil Code because it is a legally binding contract that meets the requirements of Article 320 of the Civil Code. In the city of Sukabumi, legal protection for unofficial online social gatherings is not yet optimal because there are many ordinary people due to a lack of education from the Sukabumi City Police. Then the form of legal protection at the Sukabumi City Police for now does not exist because until now there has been no threat from the reported party or the suspect.

Law enforcement against unlicensed online arisan which causes default can result in legal consequences of compensation, cancellation of agreements, transfer of risks and payment before a judge. In addition, there are criminal sanctions for defaults committed by creditors and debtors regulated in the ITE Law and the Civil Code which are unlawful acts or defaults by submitting a litigation process. For law enforcement against owners of unofficial online arisan in Sukabumi, it is optimal, but the process of reporting procedures from victims takes quite a long time so that handling cannot be done in a short time. The first form of law enforcement at the Sukabumi Police is to be compensated, then if there is no compensation for the victims of unofficial online arisan gathering in the city of Sukabumi, it will continue up to the court level.

#### DAFTAR PUSTAKA

- Dermina, Dalimunte. (2017). Akibat Hukum Wanprestasi dalam Perspektif Kitab Undang-Undang Hukum Perdata (BW). Jurnal Al-Maqasid. Vol.3 No.1 Edisi Januari-Juni 2017.
- Mariam Darus Badruzaman. (2015). Hukum Perikatan dalam KUH Perdata buku III. Bandung: PT Citra Aditya Bakti.
- R, Raditio. (2014). Aspek Hukum Transaksi Elektronik. Yogyakarta: Graha Ilmu.
- Wahyu, Sasongko. (2007). Ketentuan-Ketentuan Pokok Hukum Perlindungan Konsumen. Bandar Lampung: Unila.
- Magdalena Sukaryanti, Tulus Siambaton, Uton Utomo. (2019) Tinjauan Keabsahan Arisan Online oleh Sekelompok Mahasiswa dengan Perjanjian. PATIK : Jurnal Hukum.Vol. 08 No. 01.
- <https://regional.kompas.com/read/2022/03/06/060600678/7-kasus-arisan-online-dengan-kerugian-miliaran-rupiah-ada-yang-pelakunya?page=all> diakses tanggal 07 Maret 2023 pukul 10.04 WIB.
- <https://www.sukabumiupdate.com/jawa-barat/79349/tersangka-arisan-bodong-miliaran-rupiah-ditangkap-polisi-ribuan-warga-sukabumi-jadi-korban?page=2>, diakses tanggal 28 Februari 2023 pukul 20.40 WIB.