

The Contract or Agreement Business Law in Indonesia

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Abstract. Agreement regulated in article 1313 of the Civil Code (KUH Perdata), namely "an act in which one or more people bind themselves to one or more other people". In contrast to an engagement which is a legal relationship, an agreement is a legal act. It is this legal act that gives rise to a legal relationship of engagement, so that it can be said that the agreement is the source of the engagement. Besides the agreement, we also know the term contract. Grammatically, the term contract comes from English, contract. Both agreements and contracts contain the same meaning, namely a legal act to bind the parties to each other in a legal relationship. The term contract is used more often in business practice.

Keywords: Agreement; Business; Contract.

1. Introduction

The definition of an agreement or contract is regulated in Article 1313 of the Civil Code. Article 1313 of the Civil Code reads: "an agreement is an act by which one or more parties bind themselves to one or more people." According to a new theory put forward by Van Dunne, which is defined by an agreement, is "a legal relationship between two or more parties based on an agreement to cause legal consequences."¹

According to Salim HS, SH, MS, an agreement or contract is a legal relationship between one legal subject and another legal subject in the field of assets, where one legal subject has the right² to achievement and so does the other legal subject is obliged to carry out his achievements in accordance with what was agreed upon³.

According to Subekti, an agreement is an event where a person promises to another person or where two people promise each other to do one thing. From this event, a relationship arises between the two people which is called an

¹ Noor, Muhammad. (2015). Penerapan Prinsip-Prinsip Hukum Perikatan Dalam Pembuatan Kontrak. Vol. XIV, No.1, and see Endang Tirtana Putra, Analisis Kualitas Layanan Terhadap Tingkat Penjualan Produk Telkomsel di Outlet NDX CEL, Sekolah Tinggi Ilmu Ekonomi (STIE) Yappas Pasaman Barat (Yappas), *e-Jurnal Apresiasi Ekonomi* Volume 2, Nomor 2, May 2014

² Agus Yudha Hernoko, (2008), *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*, Cetakan Pertama, LaksBang Mediatama, Yogyakarta, and see I Ketut Artadi, (2010), *Hukum Perjanjian kedalam Perancangan Kontrak*, Udayana University Press, Denpasar.

³ Peter Mahmud Marzuki, (2005), *Penelitian Hukum*, Kencana, Jakarta.

engagement. In its form, the agreement is in the form of a series of words containing promises or commitments spoken or written⁴.

Thus the relationship between the agreement and the engagement is that the agreement issues the engagement. The agreement is the source of the engagement, in addition to other sources. These other sources include the name of the law. So, there are agreements that are born from agreements and there are agreements that are born from laws⁵.

With the many meanings of the agreement that have been described above, there are three elements that can be concluded, namely:

- a. There are people who sue, or in business terms are usually called creditors
- b. There are people who are sued, or what in business terms are usually called debtors
- c. There is something that is demanded, namely achievement.

2. Research Methods

This research is a qualitative research⁶, which uses a juridical approach. Primary data were taken from the main documents of business contracts and related laws, while secondary data were obtained from literature studies and interviews⁷.

3. Results and Discussion

3.1. Basic Principles of Contracts and Characteristics of Contracts

a. Agreement principle

Even though in a standard contract it is doubtful that there is an agreement of will that is really what the parties want, both parties eventually signed both contracts. With this signing, it can be assumed that both parties have agreed to the contents of the contract, so that it can be concluded that an agreement has occurred⁸.

⁴ Ilhamdi. 2014. Perjanjian Kerjasama Waralaba antara PT. Raos Aneka Pangan dengan Ny. Hj. Maryenik Yanda. *JOM, Jurnal FH Riau* Vol. 1 (No. 2 October). 2014 p. 1-15, Hernoko, A Yudha & Ratnawati, Ika, and see Yunia. 2015. Asas Proporsionalitas dalam Perjanjian Waralaba (Franchise). *Jurnal Hukum Bisnis*, Vol. 1 (No.1, April), p. 1-17

⁵ Sri Laksmi Anindita, Hukum yang dipergunakan dalam Kontrak Dagang Internasional, *Jurnal Hukum Internasional*, Vol. 6, No.2, 2018, and see Malik, C. 2007. Implikasi Hukum Adanya Globalisasi Bisnis Franchise. *Jurnal Hukum UII*. Vol.14 (No.1, January), p. 97-113

⁶ Soerjono Sukanto and Sri Mamuji, (1998), *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Rajawali Press, Jakarta.

⁷ Gumilar, Rusliwa Somantri, Memahami Metode Kualitatif, *Makara, Jurnal Sosial Humaniora*, Vol. 9, No. 2, December 2005

⁸ Priyono, E.A. 2016. Penerapan Asas Itikad Baik dan Keadilan dalam Perjanjian Waralaba. *Jurnal Hukum USM HUMANI*. Vol.6 (No. 3, September). p.65-75

b. Risk Assumption Principle

In a contract each party⁹ is not prohibited from assuming risk. This means that if there is a certain risk that may arise from a contract but one of the parties is willing to bear the risk as a result of the bargain, then if indeed the risk does occur, it is the party assuming the risk that must bear the risk. In relation to a standard contract, by signing the contract in question, it means that all risks in whatever form will be borne by the party signing it according to the contents of the contract.

c. Principle of Obligation to read

Actually, in contract law it is taught that there is an obligation to read (duty to read) for each party who will sign the contract. Thus, if he has signed the relevant contract, the law assumes that he has read it and agrees with what he has read.

d. Contract Principle follows custom

It has become a daily habit that many contracts are made by default. Because the standard contract becomes bound, partly because the attachment of a contract is not only to the words contained in the contract, but also to things that are customary. See article 1339 of the Indonesian Civil Code. And the standard contract is a daily habit in trade traffic and is already a community need, so its existence should not be questioned anymore.

3.2. Contract Characteristics

The most important characteristic or characteristic of a contract is the mutual consent of the parties. This collective agreement is not only a characteristic in contracting, but it is important as an intention expressed to other parties. In addition, it is very possible for a valid contract to be made without mutual consent.

3.3. Standardized Contract Language

A standard contract is a written contract that has been duplicated in the form of forms, the contents of which have been standardized or standardized unilaterally by the parties who offer, and are offered in bulk, without considering the different conditions that consumers have.

The term standard or standard agreement in English terms includes the terms standardized agreement, standardized contract, pad contract, standard contract, contract of adhesion, standardvoorwaarden (Dutch), contract D'adhesion

⁹ Priyono, Ery Agus. 2018. Aspek Keadilan Dalam Kontrak Bisnis Di Indonesia (Kajian pada Perjanjian Waralaba). *Jurnal Law Reform Program Studi Magister Ilmu Hukum* Volume 14, Nomor 1, 2018, p. 15

(French), Allgemeine Geschäftsbedingungen (Germany).), standard agreement, standard agreement, standard contract, or standard contract

The standard agreement is also known as the standard agreement. In English it is called a standard contract, standard agreement. The word standard or standard means a benchmark that is used as a standard. In this connection, a standard agreement means an agreement that becomes a benchmark that is used as a standard or guideline for every consumer who enters into a legal relationship with an entrepreneur. What is standardized in the standard agreement is the model, formula, and size.

What is meant by the language of the standardized contract is the language of the standard agreement containing the standard terms, namely:

- a. Use words or sentences that are neat and orderly.
- b. The font used is clear, neat, the contents are visible and easy to read in a short time, so that this does not harm consumers.
- c. Examples of standard agreements are insurance policies, guaranteed loans, transport tickets and others.
- d. The standard agreement writing format includes models, formulas, and measures. This format is standardized, which means that the model, formulation and size have been determined, so it cannot be replaced, altered or made in other ways because it has already been printed.
- e. The model agreement can be in the form of a complete blank agreement document, or a blank form attached with the text of the terms of the agreement, or a proof document of the agreement containing the standard terms.

3.4. Forms and Types of Contracts in Transactions/Business Activities

The types of business contracts can be seen from the relationships and business conditions that occur in a company. Regardless of the line of business undertaken, the types of relationships and business conditions are as follows:

- a. Business relationship between the company and contractors and business partners

The relationship with the contractor is a contracting relationship for a project, which could be in the context of constructing a factory and/or office building, where the company becomes the owner (who gives work orders) and the contractor becomes the contractor (who receives work orders). The scale and complexity of projects can vary greatly. From small projects to large projects; from simple to sophisticated. The concept of engagement (agreement) also varies according to these matters. From just a chartering agreement to engineering production construction contract or EPC contract.

While the relationship with business partners, the company has the same interest in a particular project or object of business cooperation. In the case of a project, both parties carry out: (i) a joint operation; such as: a Joint Operation Agreement or a Production Sharing Agreement), or (ii) a joint venture by establishing a joint venture company (joint venture company), whose agreement is called a joint venture agreement.

Meanwhile, the object of certain business cooperation can cover very broad and varied matters. In general: (i) there is a project financing transaction structure (such as: Build Operate & Transfer Agreement or abbreviated as BOT Agreement, or Build Operate & Own Agreement or abbreviated as BOO Agreement); (ii) certain technology or knowledge transfer processes (such as: technical assistance agreements); (iii) business development/network interests (such as: Collaboration Agreement); and (iv) research and development and engineering interests regarding certain objects; there may be no income earned but the objectives of the results of these activities are prioritized (such as: Research, Development & Engineering Agreement); and (v) intellectual property rights interests (such as: License Agreement).

b. Business relationship between the company and the supplier

Simply put, agreements with suppliers of goods or services for the purposes of production or daily business operations. Usually called the Supply Agreement.

c. Business relationship between the company and distributors, retailers/sales agents

In the event that a company does not carry out direct sales through its marketing and sales division, it will appoint another party, namely a distributor or retailer or sales agent. Usually called the distribution agreement, and sales representative agreement.

d. Business relationship between the company and consumers or debtors

In short, if a consumer is unable to pay cash, the company can self-finance the consumer concerned by entering into a purchase agreement with installments (Purchase With Installement) or a Hire Purchase Agreement.

e. Business relationship between the company and the shareholders

In general, in terms of conditions other than equity participation that have been regulated in the articles of association, such as a Subordinated Debt Agreement or if there is an agreement between the old and new shareholders, namely the shareholder agreement.

f. Business relationships between companies and creditors who provide credit facilities or loans

Generally known as Facility Agreement or Credit Agreement. However, in terms of the nature of the debt and the structure of the transaction, it can be a variety of relationships or loan transactions, for example, Syndicated Facility Agreements, Convertible Bonds, Agreements, Put Option Agreements, Middle Term Note Agreements.

4. Conclusion

An agreement is an act by which one or more parties bind themselves to one or more people or a legal relationship between two or more parties based on an agreement to cause legal consequences. And has several basic principles of the contract, namely: the principle of agreement, the principle of risk assumption, the principle of the obligation to read, and the principle of following the habit of the contract.

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