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AGENT PROTECTION IN AN AGENCY AGREEMENT

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ABSTRACT

Marketing products through agency business agreements is a common practice when manufacturers seek to expand their reach within specific territories. In Indonesia, this arrangement is often driven by import and export restrictions imposed on international entities. Due to these restrictions, foreign entities, referred to as principals, must engage agents or representatives to facilitate the sale of their products within Indonesia. This agency relationship is predominantly built upon a contractual agreement. In this agreement, the agent commits to representing the principal's interests, including legal representation if necessary. Conversely, the principal consents to the agent's representation on their behalf, particularly in legal matters. To gather insights into this dynamic, a Conceptual Approach method is employed to collect data. It emphasizes the significance of legal certainty within the framework of formal agreements. In Indonesia, contract law protection is founded upon this concept, ensuring that agreements are upheld. In the event of disputes arising from agency agreements, resolution processes typically defer to the terms stipulated in the initial agreement, emphasizing the importance of a well-defined and legally sound contract.

Keywords: *agent, agent agreement, agency*

INTRODUCTION

Humans are social beings who need other people in every aspect of their lives, and they will always interact with each other to fulfill these needs. After this meeting, a legally binding bond is established. According to experts, the terms of the agreement may differ. This variation is produced from various points of view or the point of view of each expert. This agreement is known as a contract in English. The definition of an agreement in the Big Indonesian Dictionary (KBBI) is a written or oral agreement formed by two or more parties, with each party promising to comply with the terms of the agreement. The word contract in Black's Law Dictionary is defined as follows: "A promissory agreement between two or more persons that creates, modifies, or destroys a legal relation" (Black, 1934). According to Munir (2001), the term agreement is equivalent to the term overeenkomst in Dutch or agreement in English. In his book Introduction to Indonesian Law, Utrecht uses the word overeenkomst for agreement, while Achmad Ichsan uses the term verbintenis. The emphasis in this definition lies on the fact that a contract is a written agreement between two or more parties. When legal relations are created, amended, or terminated, agreements have legal consequences. This term emphasizes the effect of an agreement. Business contracts need to be considered carefully as the world of commerce is constantly evolving. The fact that commercial operations usually start with the making of a deal is indisputable. Likewise with the agency agreement between the first party (principal) and the second party creates a legal relationship in the form of an agency (agent).

Agency business relationships often include the marketing of a product, where the principal employs an agent to promote the product he manufactures in a certain area (Gede Agus Wiadnyana et al., 2021). The background of this agency's business relationship may also exist because foreign parties are prohibited from importing or exporting goods directly to Indonesia.

Therefore, foreign parties—often called principals—must appoint agents or representatives to market their goods in Indonesia (Purwosutjipto, 1980; Sudjana, 2022). An agent is a person authorized by another person (called a principal) to negotiate with a third party on behalf of the principal. The main responsibility of the agent is to negotiate contracts on behalf of the principal with third parties (Nugrahastuti, 2017). In the course of a business, the agency is referred to as a legal relationship where a person is permitted to act on behalf of another person and conduct business on behalf of that person. Consequently, the main requirement for the existence of the agent is the power of the agent over the principal. A contract entered into and executed by both parties when cooperating commercially is the basis of agency (Aprita & Adhitya, 2020; Munir, 2001).

A written agreement can be used to enter into a business relationship between the agent and the principal as long as the terms of the agreement are decided by the parties by their respective interests and as long as they do not conflict with the legal and moral requirements of Article 1338 of the Civil Code. The agent only needs to approve or reject the agency agreement once the principal has added the terms to the form. Standard agreements are often used to create agency agreements. A standard agreement is an agreement between formulations that determines all or most of the contents unilaterally to provide legal clarity, security, and complete mastery of the contract formulation from the other party. In carrying out agency business, principals and agents rely on agency agreements, which are often in the form of standard agreements and in which the principal unilaterally determines the clauses (conditions) of the agreement. Without having time to discuss the terms beforehand, the agent who wants to work with the principal must accept the terms of the agreement. It seems that the parties are not free to mutually determine the substance of the agreement based on the concept of freedom of contract in an agency agreement in the form of a standard agreement. Economically, principles are in a stronger position than agents. Because they are not involved in deciding what is in the agreement, the agent is in a weak position. It is highly unlikely that the concept of freedom of contract will be achieved in an agency setting if the parties are not on an equal footing. The government needs to step in and enforce the concept of freedom of contract in agency agreements to protect agents whose position is precarious (Handojo et al., 2022).

M. Nastir Ansawi from the Religious Court of Banjarbaru once reviewed a similar study entitled "Contract Law Protection in the Perspective of Contemporary Contract Law". This study discusses legal concepts—classical doctrines and modern doctrines—which conceptually can be separated into two categories. Legal certainty is emphasized in the philosophy of traditional contract law (Kusnadi et al., 2020). The necessity for any statement of intent to be included in a written agreement between the parties and signed to have legal effect serves as an illustration of this component. Traditional theory clearly distinguishes between default and tort / PMH. Contractual breach claims must be based on default, not illegal conduct. On the other hand, modern doctrines give greater weight to the concepts of justice and decency. According to modern theology, a contract is a structure consisting of pre-, contract, and post-contract phases. This article investigates the problem from the viewpoint of modern contract law analysis (Asnawi, 2018).

The next researcher is Ahmad Roziq from the University of Jember whose research is entitled "Unraveling the Problems of Revenue Sharing System Financing and the Islamization of Agency Theory". This study aimed to identify problems with revenue-sharing systems as

well as potential solutions in contracts. Informal analysis and qualitative methodology were used in this study (Wahyuni, 2018). The challenge of profit-sharing system funding is revealed empirically using qualitative methods. Meanwhile, the use of the kasyif method is to assess problems and potential solutions for profit-sharing scheme funding from the perspective of Islamic law. This study applies the situation of the adoption of Islamic banking to the profit-sharing financing mechanism. According to research findings, agency theory should incorporate sharia values (Islamic sharia ethics) or be reconstructed into "sharia agency theory" to better explain agency problems in financing contracts for profit-sharing systems (Roziq, 2020).

Rosida Diani and Mahendra Kusuma's study discusses the characteristics of agency agreements in civil law. In this study, agency agreements—which can be considered innominate agreements because they are not officially regulated in the Civil Code—are discussed (Diani & Kusuma, 2021). The agency agreement is an agreement that is formed and grows in society. As no specific arrangements have been made for this agency agreement, it will be referred to in case of disagreement. The main guidelines for granting power of attorney as regulated in the Civil Code will apply if there are things that are not expressly regulated in the agreement. The commissioners and committee agreements and agency agreements have the same characteristics. So agency agreements are subject to the same commission agreement restrictions as contained in the Criminal Code (Suryono, 2014).

Based on the explanation of the background and comparison above, the purpose of this study is to analyze the effectiveness of agency agreements in Indonesia at this time, whether they have proper regulations or not in terms of realizing the principle of freedom of contract that accommodates balance in an agreement.

METHOD

It is important to describe the various categories of normative legal studies in this section. Finding legal regulations, legal rules, or legal doctrines to answer pertinent legal questions is a process of normative legal research. This is due to the prescriptive nature of law as a science. The purpose of this normative legal study is to provide new theories, arguments, or ideas that can be used as guidelines to resolve existing problems. It was further emphasized that the Statute Technique—an approach used to study all laws and regulations that are relevant to legal difficulties or issues—is a research methodology used to answer research challenges. The Conceptual Approach is the method that is used and is different from the doctrines and ideas that appear in the field of law. This strategy is very important because it can be used to produce legal arguments to deal with current legal difficulties by studying emerging ideas and doctrines in the field of law.

RESULTS AND DISCUSSION

Agency Law Principles

The relationship between principal and agent is primarily based on an agreement-based arrangement, where the agent agrees to represent the principal in court and the principal, on the other hand, agrees to the agent's representation of the principal in court. According to this agreement, the principal is responsible for paying legal fees incurred by the agency (Subekti, 1985).

Some of the principles of the contract as regulated in the Civil Code are as follows:

a. The principle of freedom of contract In the agreement, the parties are free to make and arrange the contents of the agreement themselves, as long as they fulfill the following conditions: 1) Meet the requirements as a contract; 2) Not prohibited by law; 3) By prevailing customs; and 4) As long as the contract is implemented in good faith. An open contract law system is reflected in the idea of freedom of contract. According to Ridwan Khairandy, it turns out that the principle of freedom of contract can cause injustice because it must be built on a balanced attitude of negotiation between the parties to be effective. It is often found that a negotiating position is stronger than the other party's. With that position, he can dictate to the other party to follow his wishes in the formulation of the contents of the agreement. To protect the weak party, the government or the state often intervenes or limits freedom of contract. This limitation can be made through laws and regulations and court decisions. Restrictions on the principle of freedom of contract have been limited in Article 1320 of the Civil Code with several conditions that must be met for the agreement to be valid in the eyes of the law.
b. The principle of Pacta Sunt Servanda, legal certainty is a must for an agreement to become a legal entity. The concept of pacta sunt servanda (binding promise) states that a legally binding agreement has been formed. 43 By Article 1338 of the Civil Code, all agreements are binding for those who enter into them.
c. The consensual principle is a fundamental idea. Contract law also upholds the consensual concept, which states that when an agreement is made, if all legal requirements are followed, then the agreement becomes valid and enforceable. An agreement becomes inherently enforceable and has immediate legal consequences once it is made, which results in the emergence of rights and obligations between the parties. Consensus or agreement between the parties is required as the basis for the agreement. If there is an agreement or uniformity of will between the parties who formulate the agreement, then the agreement is said to have been born.
d. The principle of good faith in agreements is distinguished between pre-contractual good faith and good faith on contract performance. Pre-contract When parties negotiate, there must be good faith between them. Because it is based on the sincerity of the negotiating participants, good faith is also known as subjective good faith. What is meant by "objective good faith" is related to the contents of the agreement, namely it must be reasonable and appropriate. Good faith in carrying out contracts is sometimes referred to as objective good faith.
e. The principle of personality, in essence as stated in Article 1315 of the Civil Code, a person cannot bind himself to an arrangement other than for himself. Agreements only have legal consequences between the people who form them, according to Article 1340 of the Civil Code. Since the other party is not covered by the agreement, they cannot be harmed. According to Article 1317 of the Civil Code, if an agreement is made for oneself or a gift to another person has such conditions, then an agreement can also be made for the benefit of a third party. If a third party has stated that it will use a condition that has been decided, then the person who made the condition cannot withdraw it

The agent's relationship with the employer is not an employment relationship nor is it an ordinary service relationship. It's not labor because the relationship between company agents and companies is not subordinated, it's not a relationship like that of employers and workers, but the relationship between employers and employers is both high and low(Masdupi & Ningsih, 2015). The relationship between an agent and an employer is also not of a periodic service nature because the relationship between a company agent and an employer is permanent, whereas, in a periodic service, the relationship is not permanent. Because the company's agent also represents the entrepreneur, there is also a power of attorney relationship here. This power of attorney agreement is regulated in Chapter XVI Book III of the Civil Code, starting with Article 1792 to Article 1819. This agreement always contains an element of representation (volmacht) for the power holder (Article 1799 of the Civil Code). In this case, the power holder makes a contract on behalf of the entrepreneur through the company's agent. A power of attorney agreement is defined as an arrangement with a person to permit a third party who receives it to handle a problem on his behalf (Article 1792 of the Civil Code). In Dutch, the authority given to act lawfully on behalf of another person is called "volmacht", while the English term is "power of attorney" (Subekti, 1985).

Principal and Agent Relationship

The concepts of representation and power of attorney are closely related. In addition to other sources of representation, such as laws and other agreements, such as work agreements, the grant of power of attorney is one of these sources. Representation does not always follow from the issuance of a power of attorney; conversely, representations may appear from other settings as well. A representative is included in an agency agreement, which also has elements of a power of attorney arrangement. According to the terms of the agency contract, the principal permits the agent to sell the commodity, and the principal will promptly deliver the purchased goods to the buyer. So, there is a representational component present here. In the agency agreement, in principle, it gives the authority to sell products to be forwarded directly to third parties, so there is a representation component. The link between agent and principal (entrepreneur), according to Munir Fuadi, can be summarized as follows (Munir, 2001):

a. The agent acts on behalf of the principal. An agent will sell goods or services for and on behalf of the principal.
b. Income of an agent in the form of a commission from the sale of goods/services to consumers.
c. In the case of an agency, goods are sent directly from the principal to the consumer. So that the principal knows the consumer.
d. The principal will directly receive price payments from the consumer without going through an agent

Agency Agreement Effectiveness

A business is responsible for performing distribution functions and supplying customers with the goods and services they need for local economic growth. A product can pass through several hands before reaching the customer. Distribution channels are how producers transfer these goods from producers to consumers or business customers. This distribution channel can be direct from producers to consumers or through intermediaries. Individual businesses known

as intermediaries act as a bridge between producers and consumers or commercial buyers. There are many types of intermediaries today. First, wholesalers who supply products to retail establishments, other wholesalers, or commercial clients. Second, retailers who provide products for sale to customers or other end users. Third, while not having ownership rights to the products being promoted, agents essentially perform the same role as wholesalers (Darajati, 2020).

What is meant by "agent" is a profession that performs and/or offers intermediary services, such as intermediaries, brokers, and mediators. These terms are often used in everyday life. However, there has been semantic inflation in the use of the term. Train ticket touts cannot be considered "agents" because they buy tickets in advance before selling them to potential passengers. In the context of agency law, an intermediary cannot be considered an "agent" if the intermediary is looking for land buyers but has never received a written order from the land owner (seller) and/or only received information indirectly from the land owner (seller). The same goes for middlemen looking for owners of dollar bills to trade.

The agent acts for and on behalf of the principal to market goods without owning or controlling the goods in return for a commission and based on an agreement. Agreements made and legally agreed to apply as laws that must be obeyed by the parties. The legal requirements for an agreement are regulated in Article 1320 of the Civil Code which contains 4 (four) conditions, namely:

a. there is an agreement from the parties that bind themselves (toestemming);
b. ability to make engagements (bekwaamheid);
c. regarding a certain object (een bepaald onderwerp);
d. there is a permissible cause (georllofde orzak).

The clauses in Book III of the Civil Code provide flexibility for the parties to make agreements with an open system. As a result of this structure, the parties are free to decide whether to apply the requirements of the Civil Code or not. They must comply with the agreement if Book III of the Civil Code rules are specifically determined to be applied. However, the rights and responsibilities of the parties may be governed by terms that are unique to each party. This departure is acceptable as long as it does not violate the rules of decency or public order (openbare order). There are two groups of laws in terms of their nature, namely coercive law (dwingenrecht) and complementary law (aanvullend recht). Even though in Book III of the Civil Code in general there are provisions that are complementary in nature, it does not mean that there are no coercive ones, an example of which can be seen in Article 1335 of the Civil Code. The provisions contained in Book III of the Civil Code tend to complement and it is this that can be deviated by parties, although limited to the main ones, while the others are left to the law. The choice of the terms of the agreement is the first freedom. The party is obligated to meet the conditions to make legally binding commitments resulting from binding compliance. To determine that an agreement has occurred and to show that the law of the agreement is by the consensual principle. The type of agreement, whether it is a name agreement, an anonymous agreement, or an agreement, completely depends on the person who created it.

In agreeing, it is necessary to see whether there is a balance that benefits the parties. The position of the parties in the agency agreement is unbalanced if the agent is not given the choice

to voice his opinion (will) and freedom while creating the actions and contents of the agency agreement (unbalanced). The notion of freedom of contract cannot or does not apply in this situation. The use of standard agreements in agency agreements prevents the full application of the concept of freedom of contract. Furthermore, freedoms that are impossible to achieve include:

a. Because the agency agreement is usually made in writing and takes the form of a standard agreement, the parties are free to choose the form of the agreement.
b. The flexibility of the parties to decide how the agreement will be structured because, in an agency agreement, the principal alone is responsible for deciding how the contract will be structured; agents are not involved in this decision-making process.
c. The flexibility of the parties to determine how the agreement will be made because, in every situation involving an agency agreement, the principal has already determined how the agreement will be made. The only freedom that can still be obtained in an agency agreement is the freedom of each agent to decide whether to agree or not and the freedom of each agent to choose the parties to be invited to the agreement.

From the previous explanation, it can be seen that the principle of freedom of contract in agency agreements, especially the freedom to choose the contents of agency agreements, has not been fully achieved. The reality is that in actual agency business activities, the principal unilaterally makes the terms and contents of the agency agreement without giving the agent the flexibility and opportunity to contribute to its making. The application or manifestation of the notion of freedom of contract appears to be increasingly restricted in conventional types of contracts or agreements. Due to the adoption of standard contracts, the application of the notion of freedom of contract has become increasingly limited. Conditions as described above seem to occur in Indonesia as well. Standard agreements have been widely used, including in agency transactions, while Book III of the Civil Code which contains the principle of freedom of contract, is currently still used as the basis for almost all transaction activities in Indonesia. The concept of freedom of contract is attainable in its present form and achieves its goals when all parties are in a balanced relationship. If one party has less negotiating power than another, that party can use force to pressure the other party in its interests. Similar circumstances may also arise in agency contracts and legal interactions between principals and agents.

In general, principals are often considered as big parties, having a better negotiating position than agents. The agent's position is weaker in this situation, making it more challenging to implement the concept of freedom of contract. The idea of contractual freedom was first intended to allow the parties to negotiate their interests in the agreement without outside influence. It is thought that the parties can obtain the best results for their respective interests with the flexibility of this contract (Hatta, 1999). It is impossible to achieve or achieve this because naturally, the two parties have different bargaining power so that one party can use its strong position to determine the will in the agreement for its benefit. The other party is in a weaker position partly because it needs a strong party. In the case of a foreign principal and agent originating from Indonesia, based on the principles of International Civil Law, the parties to the agreement are free to choose the law. In the agency agreement, some provisions oblige the agent to uphold the principal's wishes regarding the law. The parties agree to choose the law of the main party to implement this agency agreement, by the relevant paragraph of the agreement. Likewise in the event of differences of opinion regarding how the agreement is

implemented. Several examples of agency agreement clauses show how weak the agent's position is and how a principal with a stronger position can impose his will on the agreement.

CONCLUSION

The concept of legal certainty which focuses on the formality of an agreement is the foundation for contract law protection (agreement) in Indonesia. However, as the protection of contract law has developed, the issue of substantive justice has received increasing attention. The notion of justice and/or balance of status, rights, and obligations between producers and consumers, as well as creditors and debtors, is emphasized by contract law protection when it comes to normal contracts.

Commission agreement, unique power of attorney agreement, and agency agreement are the same. Between an agency agreement and a commission agreement, which is a unique power of attorney from an attorney granting a salary, working on their behalf, and having privileges, there are several similarities. The agency agreement is regulated in Book III Chapter XVI Part II and III of the Criminal Code and Book I Chapter V Part I of the Criminal Code because it is a special gift agreement. This agreement must be executed in good faith. If there is a dispute over the agency agreement, the settlement refers to the agreement made by the parties to the agency agreement. For matters that are not specifically regulated in the agreement, general provisions in the Civil Code will apply.

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