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Techniques For Making Business Agreements With Notarial Deeds Between Indonesian Citizens And Foreigners

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Abstract – Business relations between countries increase because of the development of society globally Regarding legal certainty for the parties, the business relationship needs to have an agreement. The parties should pay attention to the provisions the use of language in the agreement by using the language from both country. So the agreement made meet the valid requirements of the agreement in the form of "the existence of a lawful cause. Research objectives is to analyze and know the technique of making agreements between foreigners and Indonesian with notarial deeds. The results of this study are making of agreements between foreigner and Indonesian based on Article 43 paragraph (3) of Law Number 2 of 2014 concerning the position of notary, and Article 27 of Law Number 24 of 2009 and Article 31 of Law No.24 of 2009. The result concluded that the agreement between Indonesian and foreigners made by a notarial deed can be made in two languages. Indonesian used to fulfill the valid conditions of the agreement, so that the agreement made is legal. Foreign languages can be used based on Article 43 paragraph (3) of Law Number 2 of 2014. Currently, notarial deeds generally use Indonesian, but the use of two languages for agreements made with notarial deeds between foreign nationals and Indonesian citizens is allowed by law and is not against the law.

Keywords – Agreement, Notary Deed, Legal Force

I. INTRODUCTION

The development of the economy and law makes people need a legal umbrella in every action, including in the act of doing business. In business activities, people carry out business agreement activities such as sale and purchase agreements, lease agreements, franchise agreements, and so on. An agreement is a form of agreement between one party and another party that binds each other to fulfill an achievement that has been mutually agreed upon. Based on the event, a relationship arises between two persons or two parties called an agreement, the agreement publishes an agreement between two people or two parties who made it (1).

In a business relationship, an agreement is useful for providing legal certainty of any business act involving more than one party. So that each other can have each other's rights and obligations in accordance with mutual agreement to achieve goals. Making an agreement in which the parties are Indonesian (WNI) or only one of the parties who are Indonesian then the agreement is subject to Indonesian law. in this case, it is necessary to look at the principles of the agreement and the legal terms of the agreement as contained in the Code

Civil Law (Civil Code). Then if the agreement is made in the form of a notarial deed, then the parties must also be subject to law No.2 of 2014 concerning the Position of Notary (1). Furthermore, in making an agreement, the parties are obliged to fulfill the valid conditions of the agreement, (1) the agreement of the parties, (2) the ability of the parties to make an agreement (3) the existence of a certain thing (4) the existence of a lawful cause. If one of the valid conditions of the agreement is not met, then an agreement can be canceled or it can also become illegally valid.(2)

When an agreement is made between Indonesian citizens and foreigners, the legal conditions of the agreement must still be fulfilled by the parties. In this case, one of the things that needs to be considered is the use of language in an agreement. If the parties in this case are Indonesians and foreigners, then in addition to the Civil Code and the Law on the Position of a notary, it is also necessary to pay attention to Law Number 24 of 2009 concerning Flag, Language, and State Emblem as well as the National Anthem(3). In all these rules, it is stated that regarding the making of an agreement where both or one of the parties are Indonesian citizens, the language used must be Indonesian.

The choice of language used in this agreement needs to be considered, because if the language used is not in accordance with the rules in Indonesia, it is feared that the agreement that has been agreed by the parties may become null and void. This has also happened, namely there have been cases of annulment of agreements on supreme court decisions because the agreements made by the parties did not use Indonesian (https://mahkamahagung.go.id/id/artikel/4641/pendekatan-hukum-perdata-internasional-in-settlement-dispute-contract-commercial-international-foreign-language: 2022) (4), in such cases, an agreement is made between a foreigner and an Indonesian citizen by using a foreign language, which in the course of the time span of the agreement. There was a dispute between the parties, up to the judicial level in the Supreme Court (MA) of the Republic of Indonesia and by the Judge (MA), the agreement was annulled.

II. Research Methodology

This research is a normative juridical research, with Qualitative approach (5). The data is collected, analyzed, abstracted, Theories will emerge as discoveries. The source of this research data is from various laws and regulations and book and research sources related to the law of agreements, notarization and others. This data analysis technique uses Qualitative analysis techniques with an interactive analysis model based on three main components, which include: Data Reduction, Data Presentation (Data Display), Conclusion Drawing (Verification) (6).

III. Literature Review

3.1. Business Agreement

An agreement is an act by which one or more persons bind themselves to one/more persons (Article 1313 BW) (7). The definition of this agreement contains two elements: The existence of an "Act" in this case is a legal act.

a) The existence of the parties, in this case the binding party is more than 1 party.

b) Binding mean that the parties are willing to be bound by the agreement

In an agreement made by the parties, it is obligatory to fulfill the valid conditions of the agreement as contained in Article 1320 of the Civil Code. The agreement is valid if it meets the following conditions:

1. Subjective Terms; if this condition is violated, the contract can be canceled, including: ability to make a contract (mature and not memory sick); and the agreement of those who bind themselves.
2. Objective Terms, if this condition is violated then the contract will null and void, including: certain thing (object); and something lawful cause (power).

In making agreements, in addition to looking at the valid terms of the agreement, it is also important to pay attention to the principles of the agreement to be applied such as:

1. The Principle of Personality (Article 1315 of the Civil Code) (8).
2. The Principle of Consensuality (Article 1320 paragraph 1 of the Civil Code)
3. Principle of Freedom of contract (Article 1338 of the Civil Code) (9).

4. The principle of pacta sunt servanda

5. The principle of good faith

3.2. Notarial Deed

When an agreement is made in the form of a notarial deed, the deed made has the legal force to be used as evidence, especially evidence before the trial. The making of an agreemenin the form of a notarial deed has the power of proof by birth formally or materially. In this case, the outward force is the ability of a deed to self-declare that the deed is an authentic deed. Based on Article 1875 of the Civil Code, the outward evidentiary power on this authentic deed is not in the deed under hand (10). In terms of this proof, it is seen from the authenticity of the official's signature in the deed. Then, based on Article 138 RiB/164 of the RDS (Article 148 of the Civil Code) (11), the opposite proof of the opposing party is only allowed by using letters, witnesses and experts. Meanwhile, the power of formal proof is a form of certainty from the date of the deed and the correctness of the signature contained in the deed, the identity of the people present (comparaten) and the place where the deed is made is guaranteed to be true.

Thus, regarding the formal proof of the authentic deed is a complete proof, with the power of proof of the deed of the officials and the deeds of the parties which is the same, which means that the information of the officials contained in both the class of deeds and the statements of the parties in the deed have the power of formal proof and apply to all persons.

The material evidentiary power of an authentic deed, in this case a notarial deed, is a form of assurance that the parties are not only facing and explaining to the notary but also prove that the parties have also carried out as stated in the deed material. Based on Articles 1870, 1871 and Article 1875 of the Civil Code (12), the power of proof of a notarial deed has the power of proof that is perfect and binding, about the truth in the deed for the parties concerned.

Notarial Deed is an authentic deed made by or before a Notary according to the form and procedure stipulated by law. This is stated in the general provisions of Chapter I Article 1 number (7) in the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary (13). In the Notarial Deed, there is a prohibition containing a determination or provision. It gives something rights and / or benefits to: 1). Notary, wife or husband of a Notary; 2). The witness, wife or husband of the witness; or 3). A person who has a familial relationship with a Notary or witness, whether the blood relationship is in a straight line up or down without restrictions on the degree or marital relationship up to the third degree.

According to R. Soebekti, it is said to be "Deed" because it is a writing that was deliberately made to be used as evidence of an event and signed(14). There are several things that must be fulfilled in order for a letter to be referred to as a Deed:

a) Signed. The necessity to be signed is based on article 1874 of the Civil Code (15). The purpose is to provide characteristics or for the specifications of a deed from one to another. The signing is a form of guarantee regarding the correctness of the deed made because the signature of each person has its own characteristics

b) Events/ circumstances are contained in the letter, which then become the basis of a right or agreement. The circumstances in question are about legal events that form the basis of an agreement or right.

c) The letter was made deliberately so that it could be used as evidence. This is based on Government Regulation Number 24 of 2000 in Article 1 and Article 2 (16). Furthermore, a letter that will be used as a means of proof in court must be affixed with a stamp duty to taste.

From looking at the provisions or conditions of these conditions, it can be said that even a receipt can be said to be a deed, as well as the deeds of agreement made by a notary.

IV. Result And Discussion

4.1. Use of Indonesian In Business Agreements

According to Barber in his book "The Story Of Language" states that language is a system of signs related to the symbol of sound sounds and is used by a group of people to communicate and work together (17). According to Article 1 of Law No. 24 of 2009 Indonesian is the official national language spoken throughout the territory of the Unitary State of the Republic of Indonesia. Furthermore, in Article 1 of Law No. 24 of 2009, foreign languages are languages other than Indonesian and regional languages

(18). The main function of language is to communicate, in addition, a person also uses language to express himself, in other words, to examine what he feels without paying attention to at all the auditory reactions that may appear (19).

Legal Language, which is Indonesian used in the field of law, judging from its function has its own characteristics, thus the Indonesian legal language must meet the requirements and rules of Indonesian (20). The language of the law that has its own characteristics specifically in terms, compositions as well as styles. In other literature it is said that The language of the law Indonesia is part of the Indonesian common language which includes the field of law in Indonesian society and the maintenance of the law and the administration of courts by agencies recognized by the law (21).

In article 27 of Law Number 24 of 2009 (22), it is stated that the use of Indonesian is an obligation that must be carried out in making state documents and notarial deeds. A notarial deed is a state document kept by a notary so that in its creation it cannot override Law Number 24 of 2009.

4.2 Business Agreement Making Techniques Between Indonesian Citizens and Foreign Nationals.

In treaty law in Indonesia, it adheres to several rules from the Netherlands, which in this case is Book III of the Civil Code [23]. In the Civil Code on Agreements there are 3 (three) principles, namely: first, the principle of obligations of the parties, namely the agreement made is a law that contains obligations for the parties so that it must be obeyed by the maker in this case the parties to the agreement.

The second, the Principle of freedom of contract, by this principle the parties are free to enter into an agreement regarding the content, with whom, and the form of the agreement made, in this case freely with as long as it does not conflict with applicable laws. Third, the Principle of Consensualism, is a principle that states that agreements in general are not actually formally held, but with an agreement from both parties it is enough. The agreement is a form of conformity between the will and the statement made by the parties to an agreement (24).

In the legal terms of the agreement, there is a condition of "a lawful cause". A halal cause means that an agreement made must not conflict with applicable laws, nor must it conflict with norms, decency and values in society. This is contained in Article 1337, namely that the content of an agreement must not be contrary to law, decency, or public order.

The discussion of the valid terms of the agreement according to the Civil Code, there are four requirements, and the four conditions can be distinguished into subjective conditions and objective conditions. The terms are outlined as follows; 1). Subjective Terms, that is, conditions for the subject of law or his person: a). The existence of a word of agreement / agreement of the parties; b). The existence of a presumption from the parties. Then 2). Objective Terms, that is, conditions for the object of law or its objects. a). The existence of certain things that are promised; b). The existence of a lawful cause.

If the objective conditions of an agreement are not met, the agreement made is null and void. A void ab initio agreement is a treaty that was originally considered void, and means that the agreement is considered to have never existed. Then if the subjective conditions are not met, then the agreement can be canceled by requesting its cancellation. An agreement that can be requested for cancellation (voidable) is an agreement that is originally in force but the agreement can be requested for cancellation while if it is not requested for cancellation then the agreement remains in force (25).

If the valid conditions of the agreement in the form of "a lawful cause" are not met in an agreement, it results in the agreement becoming null and void. Thus it is considered from the beginning that there has never been a covenant. In article 1335 of the Civil Code stating that an agreement or contract based on the existence of a non-lawful cause then the agreement has no legal force, the consequence of this is that the agreement or contract is null and void because of the non-fulfillment of the objective conditions of the validity of an agreement. An understanding of halal and non-halal causal causes is also important because objectives are one of the cores of the birth of agreements on the agreement or contract (26).

There are several principles that can be used or become a reference if a conflict is found between the sources of law to be used,

a) The principle of lex superior derogate lege inferiori, which means that the higher rule of law overrides the lower rule concerning the same thing.

b) The principle of lex specialist derogate lege generale, means that the rule of law of a special nature overrides rules

of a general nature concerning the.

c) The principle of lex posterior derogate lege priori, which states that the latest rule of law overrides the old rule of law if it provides for the same.

Thus, because the business agreement of the parties is a special agreement and is technically made with the agreement of the parties, it is necessary to look at the principle of lex specialist derogate lege generale because of Law Number 2 of 2014 is an act that specifically regulates the position of notary, but still sees and applies the provisions of Law Number 24 of 2009, especially the obligation to use Indonesian in documents made in the State of Indonesia.

On the other hand, there is also an obligation to use Indonesian by a notary in making deeds which is a formal obligation in making deeds and in Article 43 paragraph (3) of Law Number 2 of 2014 concerning the position of notary. So if an agreement whose parties are Indonesian citizens with foreign nationals, and the agreement is made by a notarial deed, it is necessary to look at Article 43 paragraph (3) of Law Number 2 of 2014 concerning the position of notary,

> "If the Parties wish that the deed can be made in a foreign language", and also Article 27 of Law Number 24 of 2009 which states "Indonesian must be used in official state documents" , in which case the notarial deed is an official state document kept by the notary as a state official, furthermore, Article 31 of Law No.24 of 2009 states "Indonesian must be used in a memorandum of understanding or agreement involving state institutions, government agencies of the Republic of Indonesia, private Indonesian institutions or individual Indonesian citizens.".

Thus, for the benefit of the parties, the deed can be drawn up in two languages, namely Indonesian and English or other foreign languages agreed upon by the parties to the agreement. Foreign languages and Indonesian if translated have the same meaning Indonesian used in the agreement to fulfill the elements of the valid conditions of the agreement, namely so that it does not conflict with the legislation and so that the agreement made is not null and void because it is contrary to the law. Meanwhile, foreign languages can still be used because of article 43 paragraph (3) of Law Number 2 of 2014 concerning the position of notary. Although currently if there is an Indonesian citizen make an agreement with a notarial deed generally using Indonesian, but the use of two languages for agreements made by notarial deeds between foreign nationals and Indonesian citizens is not prohibited by law and does not conflict with the law.

V. CONCLUSION

The conclusion of this study is that agreements between Indonesian citizens and foreign nationals made by notarial deeds can be made in two languages (which have the same meaning and meaning). Indonesian used in the agreement to fulfill the elements of the valid conditions of the agreement, namely so that it does not conflict with the legislation and so that the agreement made is not null and void because it is contrary to the law. Meanwhile, foreign languages can still be used because of article 43 paragraph (3) of Law Number 2 of 2014 concerning the position of notary. Although currently if there is an Indonesian citizen making an agreement with a notarial deed generally using Indonesian, However, the use of two languages for agreements made by notarial deeds between foreign nationals and Indonesian citizens is not prohibited by law and does not conflict with the law.

REFERENCES

[1] Dhaniswara K. Harjono, Aspek Hukum Dalam Bisnis, (Jakarta: Pusat Pengembangan Hukum dan Bisnis Indonesia, 2009), hlm.7.

[1] law No.2 of 2014 concerning the Position of Notary

[2] KUHPerdata article 1320

[3] Law Number 24 of 2009 concerning Flag, Language, and State Emblem as well as the National Anthem

[4] https://mahkamahagung.go.id/id/artikel/4641/pendekatan-hukum-perdata-internasional-dalam-penyelesaian-sengketa-kontrak-komersial-internasional-berbahasa-asing. Diakses pada Juni 2022

[5] Lexy. J.Moeloeng. (2009). Metodologi Penelitian Kualitatif, Bandung : Remaja Rosdakarya.

[6] Miles, Matthew B, & Huberman, A.Michael, Penterjemah Tjejep Rohendi Rohidi, 1992..Analisis Data Kualitatif, Jakarta .UI Press. Hlm.16-18.

[7] KUHPerdata Article 1313

[8] KUHPerdata article 1315

[9] KUHPerdata article 1338

[10] KUHPerdata Article 1875

[11] Article 138 RiB/164 of the RDS (KUHPerdata Article 148)

[12] Articles 1870, 1871 and KUHPerdata Article 1875

[13] Chapter I Article 1 number (7) in the Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notary

[14] Subekti,1990, Hukum Perjanjian, Cet.12, Jakarta : PT. Intermasa. Hlm.34

[15] KUHPerdata Article 1874

[16] Government Regulation Number 24 of 2000 in Article 1 and Article 2 (15).

[17] R.H Robins, General Linguistics, Terjemah, Soenarjati Djajanegara, Linguistik Umum : Sebuah pengantar, 1992, Yogyakarta ; Kanisius, hal. 14

[18] Article 1 of Law No. 24 of 2009

[19] Andre Martiner, Elements de Linguistique Generale, terjemah, kanisius, Ilmu Bahasa ; Pengantar, Yogyakarta ; Penerbit Kanisius, hal. 22

[20] Panuti Sudjiman, 2002, Bahasa Hukum Indonesia, Jakarta ; STIEP Press, hal. 5

[21] Badan Pembinaan Hukum Nasional, Simposium Bahasa dan hukum, Binacapta, hal. 98

[22] article 27 of Law Number 24 of 2009

[23] KUHPerdata book III

[24] Arthur S. Hartkamp, dan Marianne M.M. Tillema, Contract Law In The Netherlands, hlm. 34.

[25] Rusli, “Hukum Perjanjian Indonesia dan Common Law,” hlm. 44.

[26] C.S.T. Kansil, Modul Hukum Perdata, Cet. 2, (Jakarta: Pradnya Paramita, 1995), hlm. 233.