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EXISTENCE OF AGREEMENT IN FOREIGN LANGUAGE IN THE PROCESS OF VERIFICATION IN THE COURT

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ABSTRACT:

In line with the increasingly waning of the State borders in trade and business, then currently many trade and business agreements in Indonesia are made or entered into in foreign languages. The law has in principle governed the language of the agreement, in which the Law requires the use of the Indonesian language as the primary language of the agreement, while the secondary language may use language understood by those who do not understand the Indonesian language. The problems arise when the parties to the agreement do not understand the language arrangements provided for by this law and use foreign languages as the primary language even further as the only language used in an agreement. This is certainly contrary to the provisions of the law and vulnerable to create new legal problems.

The results of this study is an agreement made or entered into ina foreign language has no legal substantiation before a Court of law as they are contrary to the provisions of Article 31 of Law Number 24 of 2009. Therefore the legal consequences of an agreement made in private form in a foreign language is considered to be null and void, and as a consequence, such agreement is considered never to exist.

KEY WORDS: the increasingly waning, the State borders in trade and business, many trade and business agreements

INTRODUCTION:

A legal relationship is a relationship between two or more legal subjects regarding rights and obligations on the one hand, dealing with rights and obligations on the other. Legal relations are often contained in an agreement, both under the hand and made before a public official better known as an authentic deed. Problems often occur related to the legal impact of the form of agreement used by the parties to explained legal relationship between them, not infrequently it causes damage to the party. Formulation legal relationship into an agreement governed by either legislation made under the arm or in authentic, not least to deny the agreement made that these rules are ultimately legally cancel the agreement in question that led its losses for the pa r a party.

Legal relations in society often occur in an agreement. An agreement is solely for an agreement that is recognized by law. This agreement is of fundamental importance in the business world and forms the basis for most trade transactions such as the sale and purchase of goods, land, lending, insurance, transportation of goods, the formation of business organizations and includes also the employment. (Abdul Kadir Muhammad, 1992). Agreement or verbintenis contains the understanding of a legal relationship of wealth/property between two or more parties which gives the strength of the right to one party to obtain an achievement and at the same time obliges the other party to give an achievement. (M. Yahya Harahap, 1996).

From this brief understanding, several elements were found to provide a form of understanding of the agreement, including legal relations involving the law of wealth between two or more people who gave rights to one party and obligations to another party regarding an achievement. An agreement is a legal relationship which by law itself is regulated and ratified by way of its relationship, therefore the agreement contains a legal relationship between an individual is a relationship that is located and within the legal environment. Agreements or agreements are regulated in book III of the Civil Code.

Economic human needs go hand in hand with the development of science and technology, it is causing more and more increasing trend for people to undertake legal relations, especially concerning the economy and so s ial. So it is not surprising that agreements arise with all kinds of contents, this is one of the interesting social phenomena lately.

In every civil law act, legal certainty, order and legal protection are very much needed, which requires evidence that can clearly determine the rights and obligations of a person as a legal subject. Therefore, laws which are abstracted through language must be understood, understood and can be carried out by the parties concerned. Usually this deed is made because the parties do not want to be bothered and already have mutual trust in each other. On the deed under the hand of the Notary is not responsible for the contents of the agreement or agreement. The authority of the Notary is only responsible for legalizing and recording the deed under the hand brought to the N otaris. (Ira Koesoemawati and Yunirman Rijan , 2009)

Notary is a legal profession and thus the Notary profession is a noble profession. Because the Notary profession is very closely related to humanity. (Abdul Ghofur Anshori 2009) Nature provisions of Article 1 paragraph 1 of Law-Law No. 2 Year 20 1 4 concerning Notary stated that the notary is a public official authorized to make an authentic deed and other authorities. Other authority of the Notary is to approve the signature and determine the certainty of the date of the letter under the hand by registering in a special book. This authority is the legalization of a deed under the hand that is made by individuals or by parties on paper which is sufficiently stamped by registering in a special book provided by a Notary (Article 15 paragraph 2a UUJN). And record the letters under the hand by registering in a special book or waarmerking (Article 15 paragraph 2b UUJN).

Discussing the problem strength documentary evidence, as if seeing the provisions of Article 1874, 1874a, 1880 in IV of the Civil Code which states that the letter - the letter concerned need to be Legalization and waarmerking notary, even though the authority of Notary not only legalize and waarmerking but Notary also authorized certify compatibility photocopy with the original letter and also make a copy collation namely coffee from the original letters under the hands of the copy that contains a description as written and illustrated in the letter in question.

RESEARCH METHODS:

The approach in the method used in this research is the approach of juridical normative, approach Juridical that is used to analyze legislation. (Ronny Hanitijo Soemintro, 1982) The research method of juridical normati f or legal research methods literature is the method or methods used in research law made by examining the existing library materials. (Soerjono Soekanto and Sri Mamudji, 2009) The research specifications used in this study are descriptive analytical research that aims to provide a detailed, systematic and comprehensive picture of

everything related to the problem to be examined and illustrate the applicable laws and regulations relating to the making of agreements that use foreign language and is also associated with legal theories concerning the above problems.

Primary legal material is legal material that has authority, consisting of statutory regulations and official records or minutes in making a statutory regulation and judge's decision. Primary legal materials, namely binding binding legal materials, are mainly used to focus on the laws in force in Indonesia (H. Zainuddin Ali, 2009).

Data collection techniques that are intended to obtain data in research that supports and relates to issues that will be presented in legal research. Once the data is the primary legal materials, secondary law and tertiary legal materials relating to complete this study were collected and then analyzeds, so that data can answer all the problems underlying this research just do it. Processing and analysis of data in a study basically depends on the type of data. In normative legal research only recognizes secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials, so "in processing and analyzing these legal materials, they cannot escape from various interpretations known in the science of law". (Amiruddin and H. Zainal Asikin, 2012).

The location of this research is done in City East Jakarta and West Jakarta. In the initial research, the author has conducted a search to find supporting data. In the search, the writer found a research report with a similar theme even with the main point of the problem.

RESEARCH RESULTS AND DISCUSSION:

A. Agreement in Foreign Languages in the Form of Authentic Deed and Under-Hand Letters:

As has been described above that of the Deed a letter under the hand and agreements, it is known that agreement based on the above description is an agreement made by the parties to have binding legal force. One of the principles in the agreement is the principle of freedom of contract, which can be analyzed from the provisions of Article 1338 paragraph (1) of the Civil Code, which reads: "All treaties made legally apply as laws for those who make them."

Based on Article 43 Paragraph (3) of the UUJN, the deed can be made in a foreign language if the parties wish. That is, the will of the parties determines. The will of the parties is the essence of a contract/agreement. However, Article 43 paragraph (4) requires the Notary to translate the deed into Indonesian if the deed is in accordance with the wishes of the parties to be made in a foreign language. The provisions of Article 43 of the JN Law are also in accordance with the provisions in Law No. 24 of 2009, so that the Deed of Agreement in Foreign languages made by a Notary Public is legally binding on the parties.

Unlike the agreement made under the hand, here only subject to Law No. 24 of 2009, where agreements made under the hand are required to use Indonesian, or if foreign parties are involved, they must use 2 (two) languages (Indonesian and Foreign Language). And agreements made in foreign languages are in violation of the laws and regulations. Similarly, under the hands of the foreign languages that have been validated by Notary also do not have the strength of evidence, although it is still binding on the parties making the agreement.

B. The Power of Proof of Under-Hand Agreement Made in a Foreign Language in the Proof Process in the Court:

As explained in the previous chapter about the agreement made under the hand that this kind of agreement is binding and its proof is not as perfect as an authentic deed, thus judex

factie may reject the agreement under the hand as an evidence of the occurrence of a legal action, in the case on which it is based This thesis is made where judex factie considers the agreement made under the hand made by the parties as the basis for the performance of their achievements to one another is invalid and has no legal basis thus the agreement is declared null and void , this is based on the fact that the agreement between the parties made in the form of a letter under the hand other than the letter is also written in a foreign language (English). Research agreement in the form of a letter under the hand alone is reducing the value of the validity of a treaty, let alone the writing done de with a foreign language.

If we try to evaluate and study the basic/legal thinking patterns of judex factie, there are some conflicts with general legal theories that apply, among others, the principle of freedom of contract. The principle of freedom of contract in the laws and regulations in Indonesia related to making the agreement among the parties are free memasuk k an clause whatever you agreed by the parties, including but not limited about the making of the agreement in a foreign language. Although the use of language actually has its own rules governing it.

The use of a foreign language often lead to differences in interpretation between this leads to disputes between the parties, in some cases until sued in court, though, this does not deter the general public in making the agreement under hand in the form of language foreign . Thing is proven by the many people who make an agreement between them by using a foreign language as the language of instruction in the agreement they make.

Agreement in principle is made to know the rights and obligations of each party. And if one of the parties in default, then the agreement can used as evidence related action or relationship that occurred between the parties. For be accepted as an evidence that an agreement would have to meet the elements regulated by law.

To convince the judge of the truth of the proposition or the arguments put forward in a dispute. Proof an important part in the procedural law, because the evidence for the purpose will be achieved a real truth is the truth of the legal relationship of the partie. By way of proof it will be known who exactly is wrong and who is actually correct, so that can guarantee the protection of rights-rights of the parties.

In proving to be proved is not the law. Event presented by Plaintiff and Defendant not necessarily all important for the judge to base its decision considerations, but the relevant events that should be enacted and in accounts payable agreement between Plaintiff and T is sued, then what must be proven is whether at certain times and places have been fulfilled the legal requirements of an agreement, so that there is an agreement between the two parties.

In the process of proof required to prove or submit evidence is concerned in the dispute or case, meaning is the Plaintiff or Defendants. This can be seen in article 1865 of the Civil Code which states "whoever claims to have rights, or designates an event to confirm his rights or to deny someone else's rights, is obliged to prove the existence of that right or the stated event" So who should submit evidence is that the parties and stating proven or not is Judge. Means of proof itself of its provisions can be found in article 1866 Book of the Law of Civil Law that states, m aka the so-called evidence, namely: Proof of the letter; Witness evidence; Forecasting; Confession, and Oath.

Letter evidence is evidence in a civil case is the main evidence, because in civil traffic often people deliberately provide evidence that can be used if disputes arise and the evidence provided is usually in the form of writing. The evidence of this letter is a very valuable group for proof, namely the so-called act a. A deed is a

writing that is deliberately made to be evidence of an event and signed. Thus, the important elements for a deed are intentional to create a written proof and the signing of the writing.

The important thing about a deed is indeed the signing, by putting his signature as a person is assumed to bear the truth of what is written in the deed or is responsible for what is written in the deed. If the signature is denied or not recognized by his heirs, then according to article 1877 of the Civil Code, the Judge must order that the truth of the deed be examined before the Court. Instead what if the signature of the deed is recognized by someone to whom the writing is intended to be used, then the deed can have a complete proof of proof, which is free, in the sense that it depends on the judgment of the Judge. The recognition of the signature means that the statement of the deed listed above the signature is also recognized. This is understandable, because usually a person who signs something to explain that the information listed above is true statement because there is a possibility that the signature in the deed under the hand is not recognized or denied.

Thus the deed under the hand only provides sufficient material evidence to the person for whom the statement was given (to whom the deed of the deed wishes to provide evidence). While the other party the strength of the proof is dependent on the judge's judgment (free evidence). The deed is under the hand at public. m does not have the power of proof of birth, because the signature of the deed can be denied.

Deed under the hand is a deed made by the parties without the intermediary of a general official. Regarding the binding strength of the parties deed under t thinking as well as the deed, so when the agreement was made legally, which means not contrary to law, then pursuant to Article 1338 of the Civil Code, the agreement is valid as law for those who make it, so that the agreement cannot be withdrawn, except based on the agreement of both parties or based on the reasons stated in the law. (R. Subekti, 1984) As for the strength of proof rather than a deed under the hand, based on stated that a deed under the hand is any deed made without the intermediary of a general official, where the proof can have the same evidentiary power with deed if the party signing the agreement does not deny his signature, which means he does not deny the truth of what is written in the agreement letter. However, if there are those who enter into the agreement who deny the signature, then the party submitting the agreement is required to prove the signing or the contents of the deed is correct.

Whereas has a perfect proof of strength, because the deed was made by an authorized official. Perfect matters is the deed itself can back to prove himself as a deed, may prove the truth of what is witnessed by a public official, and the deed was valid as the correct one among the parties and the heirs and assigns. Deed authentic when used upfront court is sufficient for a judge without having to m e ask other evidences.

Although in making agreements or contracts in Indonesia referring to the principle of freedom of contract, it does not mean making agreements or contracts can be made freely in accordance with the wishes of the parties. Legal Agreements in Indonesia as stated in the above scope regarding freedom in the Agreement there are still set limits which can and cannot held in the manufacture of such contracts in in Civil Code article 1320 of the Civil Code governing the terms of the legitimate its agreement that is valid and subjective terms. Where if violation of subjective terms to article 1320 agreement the parties to the agreement and secondly the ability of the parties in the agreement can be requested for cancellation, can be canceled meaning that one of the parties can request the cancellation. The agreement itself is still binding on both parties as long as it

is not canceled (by the judge) at the request of the party entitled to request the cancellation (the party who is not capable or the party giving the agreement is not free) whereas if it violates the objective conditions namely certain things and legal reasons then the agreement can be canceled by law, null and void means that from the beginning it was thought that there had never been a birth and there was never an agreement.

CONCLUSION:

Agreement made under the hand foreign languages in the process of proving in court, did not have the strength of evidence, because the agreement is considered invalid. Judges should not judge the evidence made under hand using a foreign language as the language of his introduction, because by law cannot be accepted as a valid and binding agreement to the parties.

So that an agreement involving a foreign party has perfect proof of strength in a court of law, the agreement should be made in a tentative deed before an authorized notary. And if the deed uses a foreign language, the Notary must be translated by the sworn translator. And the need for a comprehensive socialization to the public about the importance of entering into any agreement/contract through a Notary official, in order to obtain a deed that has absolute proof power that can protect the interests of the parties from things that can harm the interests of the parties.

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