

Legal Protection of Business Actors Sub Agent Gas Elpiji for Unilateral Termination of Business Relationship by the Agent



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ABSTRACT: In business development of the principal company many face problems in activities related to the management of its business so that it requires a business network in marketing its products. The creation of multi-level marketing distribution network regulated in Indonesian trade ministerial regulation No.66 of 2019. In the distribution of the principal's property until it reaches the hands of the consumer there is a tiered agreement that is the standard agreement that causes imbalance in the agreement triggered by the absence of clear regulations governing the provision and only based on the principle of freedom of contract Article 1320 KUHP. The creation of this unnamed agreement (*Inomminat*) underlies the creation of a standard or standard agreement, with the reason of facilitating the principal in its distribution practices. Because this imbalance can cause legal problems, such as unilateral business termination experienced in the network of distribution of Gas Elpiji agents to sub agents or others. The legal vacuum is far from the ideal of the law which essentially provides equality in the definition of fairness in the eyes of the law. The research uses Normative Juridical Method that emphasizes the theory of Legal Protection and Legal Certainty approach *PerUndang-Undangan* (Statute Approach) and Case Approach (Case Approach).

KEYWORDS: Principal, Law, Standard Agreement, Agency.

INTRODUCTION

In the Law, it is explained that Oil and Gas as a strategic, renewable natural resource contained in the Indonesian Mining Jurisdiction is a national wealth controlled by the state.¹ The role of the Government in the successful distribution of oil and gas, one of which is through state-owned enterprise, namely Pertamina. Pertamina itself is a *holding company* of the ministry of SOE (state-owned enterprise) as an effort by the government in realizing national energy independence to provide energy and develop new and renewable energy. Principal company or brand owner of products distributed by agencies. *Principal* is an individual or entity that in an agreement gives a mandate to the other party to carry out a trade transaction. So that it automatically has a *multi-level marketing* distribution network which is a network of tiered companies developed by direct sellers who work on commissions or bonuses based on the results of the sale of goods to consumers. In the distribution of LPG gas itself Pertamina as the principal uses agency services. What is meant by consumers is that every user of goods or services available in the community either in his own interests, others, other living beings and not to be traded.² The Agent is a national trading company that acts as an intermediary for and on behalf of the principal under an agreement to conduct marketing without transfer of the physical rights to goods or services authorized by the principal, in contrast to distributors acting on his behalf. The nature between the agent and the distributor they are equally subject to the agreement (*lasgeving*), while the fundamental difference is for and on whose behalf he acts, the distributor on his own behalf while the agent acts on behalf of the principal. Between the business relationship there is a standard agreement *Inomminat* which becomes the basis of the enactment of provisions in accordance with the will of the *Principal*, thus causing an imbalance in the legal relationship between the principal and the agent or below, this has an arbitrary impact in the unilateral Termination of Business Relationship experienced by the Agent by the Sub Agent.³

PROBLEM FORMULATION

1. What are the causal factors or constraints of termination of business relationship in distribution agreement between the Agent and sub-agent?

¹ Indonesia, Law 2001, Law of the Republic of Indonesia Number 22 of 2001 on Oil and Gas Article 1 number 4 of the Oil and Gas Law Jakarta.

² Indonesia, Law No. 8 of 1999 on Consumer Protection Article 1 (2).

³ Indonesia, Regulation of the Minister of Trade No.66 of 2019 concerning general provisions on distribution of goods.

Legal Protection of Business Actors Sub Agent Gas Elpiji for Unilateral Termination of Business Relationship by the Agent

2. How should the Agreement be made or the existence of regulations that can protect sub-agent businesses from termination of business relationships in obtaining justice?

RESEARCH METHOD

In this study used the method of research of normative juridical law. Normative juridical law research is research by simply processing and using secondary data. In normative research, library materials in the form of basic data that in research are classified as secondary data. Secondary data can include primary materials, secondary materials, and tertiary legal materials. Research that emphasizes the prevailing laws and regulations and in this case the research is conducted by starting from research on secondary data which is then continued with research on primary data in the field. By emphasizing the⁴*Statute Approach* is an approach that is done by reviewing all laws and regulations related to the legal issues that are being handled. Also, the case approach is⁵an approach by reviewing cases related to existing legal issues, which can be an argument in solving other legal issues. The type of research used by the author is a type of research that is perspective by looking at something both verbally and in writing that has the principle of causation with hypotheses if A then B, looking forward to how the law is useful for legal subjects who see explanations based on the validity of general law and analysis of rules into a development (*rechtsbeoefening*), so as to meet the ideals of the law community (*ius constituendum*).

THEORITICAL FRAMEWORK

In any legal or social the oretical research, it is a guideline for exploring the objects under study. Some of the theories that underlie and guide this research.

A. Theory of Legal Protection

The focus of this theory study on the legal protections provided to the community. A society based on this theory, that is the community society is in a weak position, both economically and juridically. ⁶Philipus M. Hadjon argues that legal protection is an act that protects and/or provides assistance to legal subjects, using legal devices. ⁷in terms of legal protection of Gas Agent Elpiji, it can be determined by Law No.8 of 1999 contained in Article 1 paragraph (3), it is stated that "Business actors are any individual or business entity either in the form of a legal entity or not a legal entity given and domiciled or conducting activities within the jurisdiction of the State of Indonesia, either alone or jointly through agreements to conduct business activities in various economic fields" with the protection of the law may give the allocation of power to the parties, and can answer the formulation of issue number 1 about the constraints of termination of business relations by the agent.⁸

B. Theory of Legal Certainty

Normative legal certainty is when a regulation is made and enacted definitively because it regulates clearly and logically in the sense of not causing doubt (multi-interpretation) and logical in the sense in the system of norms with norms arising from legal certainty. Legal certainty is the certainty of the law or regulation, all kinds of ways, methods and so forth must be based on the law or regulation, legal certainty there is a positive law and written law, Written law written by the authorized institution, has strict sanctions, valid by itself marked announced in the State Institution. Legal certainty is a situation where human behavior both individuals, groups and organizations are related and are in the corridor that has been outlined by the rule of law while certainty because the law is intended that because the law itself is a certainty, for example the law determines the existence of a daluarsa institution, by passing the time a person with a darluarsa institution will get a certain right or will lose certain rights. ⁹Teubner argues that legal certainty is a law that is able to satisfy all parties is a responsive law. As well as a responsive law only born of the democraticism of legislation. To answer the formulation of problem number 2, namely how should the agreement between the principal and the Agent to the end user, and whether new regulations should be created to put forward the principle of justice in

⁴ Soerjono Soekanto and Sri Mamudji. *Normative Law Research*, PT. King Grafindo Persada, Jakarta, 2001, p. 24.

⁵ Pradanar, Alrido. *record label's liability in artist record cooperation agreements and artist management agreements*. Diss. Faculty of Law, 2018.

⁶ Salim HS and Erlies Septiana Nurbani, *Application of Legal Theory In Thesis Research And Dissertation*, PT Rajagrafindo, Jakarta, 2013, p. 259.

⁷ Philipus M. Hadjon, 2011, *Introduction to Indonesian Administrative Law*, Gajah Mada University Press, Yogyakarta, p.10.

⁸ June, Sabarudin, "*Legal Protection for Consumers Seen in Terms of Losses Due to Defective And Reciprocal Goods*.", 2002.

⁹ Sapjipto Raharjo, *Understanding Legal Certainty*, Pt. Citra Aditya Bakti, Bandung, 2002, p.54.

Legal Protection of Business Actors Sub Agent Gas Elpiji for Unilateral Termination of Business Relationship by the Agent

order to interfere and prevent the arbitrariness of termination of business relations between agents and sub agents because of the standard clause.¹⁰

RESEARCH RESULTS AND DISCUSSION

A. Factors Causing Termination of Business Relationship

It is necessary to draft a new law that is relevant to protect all aspects of juridical, in the standard agreement. The current legal vacuum in practice is much detrimental to the weak, namely those who must always abide by the standard agreement. So far the standard agreement has been the standard of various business agreements, etc. companies that are only guided by the principle of *pacta sunt servanda* Article 1338 KUHPer and Article 1320 which governs the validity of an Agreement. An opinion occurs a legal vacuum occurs because, one of the parties does not raise freely or the absence of bargaining applies *adagium* "take it or leave it contract" pragmatically it imposes the burden on the Sub agent in his agreement with the Agent or Principal, usually the standard contract requires, among others: How to terminate the agreement, how to extend the agreement, clause of exconception and dispute resolution. Unilateral termination of business relationship by the agent to the sub agent due to the absence of legal protection, it is necessary to review the *exoneratie clause (exoneratie clause exemption clause)* i.e. exemption or limitation of responsibility from the principal that is commonly found in standard contracts. The concept that is no longer relevant, which in the Consumer Protection Act No.8 of 1999 expressly regulates the rights and obligations of businesses and things that are prohibited, including standard clauses that cause losses to consumers or sub-agents.¹¹

B. How the Agreement Should be made and its Regulations

In response to this, it should be known together that the provisions of Article 1320 KUHPer on the terms of validity of the agreement contain subjective and objective elements, as for subjective terms including agreed, the proficiency of the parties. Objective Requirements contain a matter of promise and a lawful reason. If an agreement does not meet the subjective terms of the agreement may be canceled, whereas if it does not meet the objective requirements of the agreement null and void. When all these conditions are met, the agreement between parties applies in accordance with Article 1313 KUHPer. In the agency agreement or standard Agreement does not contain an agreement between the two parties, because it is made by the Principal who generally form a form, this makes the sub-agent party powerless if faced with a conflict with the agent or above. in the future there must be a strict Regulation that prioritizes legal certainty, through the codification of future draft laws that can meet *the Juridicali* underlying a standard agreement in order to realize justice in accordance with the ideals of the law (*Ius constituendum*).

CONCLUSION

Termination of business relationship between the agent and the sub-agent is closely related to the legal vacancy (rechtsvacuum) in a standard Agreement, the standard Agreement itself is actually widely applied and by some allowed as long as it is not contrary to the Law. But because of the huge risks that will be borne by the parties presented in a standard agreement is a weak party, there should be strict regulations governing the legality of the validity of the agreement in the positive laws of Indonesia.

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¹⁰ Gunther Teubner *Substantive and Reflexive Elements in Modern Law, Law and Social Review*, Volume 17 Number 2.

¹¹ Indonesia, Law No.8 of 1999 on Consumer Protection.

Legal Protection of Business Actors Sub Agent Gas Elpiji for Unilateral Termination of Business Relationship by the Agent

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