

THE IMPORTANCE OF WRITTEN AGREEMENTS IN BUSINESS TRANSACTIONS

Written by:

Rima Grvianty Baskoro, S.H.,ACI Arb.

Managing Partner of RIMA BASKORO & PARTNERS Law Office

Looking at the current development, we easily find various variants of business transactions anytime and anywhere. The transaction of products sale and purchase, sponsorship transaction, equipment lease transactions, and other cooperation, are familiar to us in our daily work. But did you know that all business transactions activities must always start with a legal event called "agreement"?

The Agreement content a deal with regards to the rights and obligations of the parties, either written or verbal. So if there are parties who think that the verbal agreement is not a formal legal product that is a total-wrong understanding. However, to be more secure, it is strongly recommended that the agreement be made in writing completed with witnesses.

Not all matters "considered as business transactions" can be made by an agreement, for example: human trafficking, prostitution, gambling, it cannot be made as matters in agreement because the act itself is not a business transaction that is permitted by applicable law in Indonesia, even worst the act is qualified as a crime. The following are the terms of the agreement deemed valid as provided for in Article 1320 of the Burgerlijk Wetboek ("BW") or Indonesian Civil Code:

1. The existence of agreement of the parties. Agreement means that there

is a free will to be accorded between the parties on the subject matter of the agreement. In this case, between the parties must have a free will (voluntary) to bind themselves, free from mistakes (dwaling), coercion (dwang, duress), and fraud (bedrog, fraud). In other words, the agreement becomes invalid if the agreement occurs because of elements of error, coercion, or fraud;

2. Parties that enter into this Agreement are permitted by law, for example but not limited to: adult (minimum age 21 [twenty-one] or married), not in ability, in good physical and spiritual condition;
3. There is a thing or object to be agreed upon, at least the goods or objects intended in the agreement are determined by type; and
4. The contents of the treaty are not contrary to law, morality, or public order.

The agreement requirement as mentioned in the above 4 (four) points is cumulative, means that the whole must be fulfilled, not partly. If there is one (1) requirement that is not fulfilled, then the agreement may be canceled or null and void. Furthermore, if the agreement is made between Indonesian citizen and foreigners, then in accordance with Article 31 paragraph (1) of Law no. 24 Year 2009 on Flag, Language, and Symbol

of Country, And National Anthem, hence obliged to use Bahasa Indonesia.

The contents of the agreement in general are as follows, but are not limited to:

1. Place and time of signing the agreement;
2. The names of the parties and the positions of the parties, as well as the witnesses;
3. The reason for the agreement;
4. The object of the agreement, including the price and details of payment procedures;
5. The rights and obligations of the parties to be fulfilled during the agreement and the legal consequences of any party violating;
6. Force Majeur / Force Majeure;
7. Dispute resolution;
8. Agreement period;
9. Cancellation and / or termination of the agreement before the expiration of the term of the agreement;

Although there is no prohibition to make the agreement orally, it is strongly advised to made it into a written agreement, because:

1. Not everyone has a good memory. With a written agreement, the parties does not need to remember the rights and obligations of each because it can easily read directly in the written agreement;
2. It indicates the good faith of the parties to fulfill their respective obligations as set out in the agreement. Without a written agreement, it would be very easy for an unlawful party to be absent or neglect their obligations to others by reason of forgetting or not remembering, or even worse the

"bad will" party can shout an alibi that oral agreement is not an agreement;

3. Written agreements are not intended to complicate business transactions, it even better to make clear and definite about the rights and obligations of parties related to business transactions. With written agreement, all rights, obligations, payment procedures, force majeure, even until the settlement of the dispute is agreed upon by the parties clearly so it will not give a multi-interpretation and ambiguity for the parties to the agreement;
4. A written agreement to protect our legal rights if at any time the other party is badly against us. This is because according to Article 1338 Burgerlijk Wetboek stipulated that the binding agreement is as a law for the parties who made it. In other words, to be able to determine whether the other party has violated the agreement or not to, it can be seen in the clauses in the written agreement. We can invite the opposing party to solve the problem by using a written agreement as the basis.
5. In the event of a legal conflict and must be resolved in a district court or an arbitration, a written agreement may be one of the important evidence to substantiate our argument. If the agreement is only done verbally, this will certainly make it difficult in the evidence stage because the opponent may be evading his or her previous obligations verbally, especially if there is only one witness who knows the oral agreement.

Written agreements may be made by the parties or made in the form of a notarial deed. If made in the form of notarial deed and used as evidence in court in a state court or arbitration, the agreement in the form of notarial deed has the most perfect evidentiary power.

business transactions.

Therefore, making written agreements is very important and useful to protect the legal rights of the Parties. Good-faith parties should not object to a written agreement because written agreements constitute the basis of the parties' actions in exercising their rights and obligations relating to mutually agreed b

