



LEGALIZATION OF ELECTRONIC BUSINESS CONTRACTS WITH THE USE OF ELECTRONIC STAMPS

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ABSTRACT

Humans are social beings who really need other humans to fulfill various kinds of necessities of life, especially in the economic field. Technological developments have had a very large influence on legal relations in the economic field in society, where at first they were only carried out by individuals with the sole aim of fulfilling needs, turning into activities that are also carried out by groups to seek profit. These activities are known as business terms which include production, sales, purchases, exchange of goods and services and others. Business relations in modern society aim to exchange interests. Roscoe Pound provides a definition of "interest" or "interest" is "a demand or desire which human beings, either individually or through groups or associations in relations seek to satisfy" (interest as a demand or desire that humans want to satisfy, either individually or groups or associations). Through business relationships, the exchange of interests of the parties is always stated in the form of a contract considering that every step of business is a legal step (contract content). An important moment in the process of forming or closing an agreement is the meeting of wills, the interlocking of each statement of will as conveyed by one party to the other in a reciprocal manner and as understood by each of them.

Keywords: *Electronic Stamps; Business Contracts; Business;*

1. INTRODUCTION

Humans are social beings who really need other humans to fulfill various kinds of necessities of life, especially in the economic field. Technological developments have had a very large influence on legal relations in the economic field in society, where at first they were only carried out by individuals with the sole aim of fulfilling needs, turning into activities that are also carried out by groups to seek profit. These activities are known as business terms which include production, sales, purchases, exchange of goods and services and others.

Business relations in modern society aim to exchange interests. Roscoe Pound provides a definition of "interest" or "interest" is "a demand or desire which human beings, either individually or through groups or associations in relations seek to satisfy" (interest as a demand or desire that humans want to satisfy, either individually or groups or associations). Through business relationships, the exchange of interests of the parties is always stated in the form of a contract considering that every step of business is a legal step (contract content). An important moment in the process of forming or closing an agreement is the meeting of wills, the interlocking of each statement of will as conveyed by one party to the other in a reciprocal manner and as understood by each of them.

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The contract is an important instrument that always frames legal relations and secures the transactions of the parties. Almost none of the business activities that bring together business people in the exchange of their interests without a contract. Contracts cover so many aspects of public relations, as stated by DG Cracknell "a contract is one of the few areas of law with which almost everyone comes into day to day contact." Through negotiation, the parties try to create forms of agreement to bring together something they want (interests) through a bargaining process. Business contracts resolve problems regarding certainty and justice which will actually be achieved if the differences between the parties are accommodated through a contractual relationship mechanism that works proportionally.

Business contracts in the legal order in Indonesia are still guided by Article 1313 of the Civil Code which states that "An agreement is an act by which one or more people bind themselves to one or more other people".

The law of agreements or contracts adopted in Indonesia is open. That is, the law gives the widest possible freedom to anyone to make an agreement with the content and nature according to what he wants, as long as it does not violate the law, public order and decency. The parties to an agreement that will be held and have agreed on what was agreed in the form of promises that are agreed upon with something that must be carried out are called achievements, which can be in the form of handing over an object, doing an act and not doing an act. The agreement or consent of the will is the most important thing in making an agreement, with the existence of an agreement to enter into an agreement between the parties, then at that time there was also an agreement on the statement of will from each party (overeenstemende wilsverklaring), namely in the form of a statement from the party offering the offer (offeree), as well as a statement from the party receiving the offer, called acceptance. An agreement can be said to be valid and legally binding if it fulfills the requirements for the validity of the agreement, namely the existence of an agreement, skills, certain matters and a lawful cause as specified in Article 1320 of the Civil Code. The agreement that has been made is used as a guideline for the parties to carry out their rights and obligations. An agreement can be said to be valid and legally binding if it fulfills the requirements for the validity of the agreement, namely the existence of an agreement, skills, certain matters and a lawful cause as specified in Article 1320 of the Civil Code. The agreement that has been made is used as a guideline for the parties to carry out their rights and obligations. An agreement can be said to be valid and legally binding if it fulfills the requirements for the validity of the agreement, namely the existence of an agreement, skills, certain matters and a lawful cause as specified in Article 1320 of the Civil Code. The agreement that has been made is used as a guideline for the parties to carry out their rights and obligations.

A business contract in contract law is a complementary law, meaning that the parties making an agreement may make or regulate their own provisions regarding the contents of the agreement, provided that if it is not regulated in the agreement, what applies are the articles regarding the agreement contained in the Criminal Code. -Civil Law (Civil Code). In the agreement or contract appears an agreement or legal relationship. This raises the rights and obligations of each party that makes. In principle, agreements/contracts will apply as laws for the makers, as stated in Article 1338 paragraph (1) of the Civil Code.

An agreement occurs through or through a statement of the will of the person or party acting, which is aimed at the emergence of legal consequences or because the party acting creates confidence in the other party that his will is directed at the occurrence of the agreement. The will of the acting person includes the offer and acceptance prior to closing the agreement. An important moment in the process of forming or closing an agreement is the encounter of wills: the interlocking of each statement of will as conveyed by one party to the other in a reciprocal manner and as understood by each of them.



According to Sudargo Gautama, the agreement or consent of the will is the most important thing in making an agreement, with an agreement to enter into an agreement between the parties, then at that time there has also been an agreement on the statement of will from each party (overeenstemende wilsverklaring), namely in the form of the statement of the party offering the offer (offer), as well as the statement of the party receiving the offer is called an acceptance.

Most forms of business contracts made in society are made in writing because there is clear evidence and they guarantee legal certainty for the parties. In practice, the use of seals in an agreement or contract is very common in conducting a business transaction. The use of stamp duty in business contracts is a manifestation of the obligation and role of the community to directly and jointly participate in state financing and national development through the collection of stamp duty even in small amounts.

Provisions for the use of stamp duty are required for agreements or business contracts in the event that they are used as evidence in court. For agreements or contracts that have not been stamped, you can pay off the stamp duty owed through the “later stamp duty” procedure by using a stamp duty or a Tax Deposit Letter which is then legalized by the Postal Officer so that it can be used as evidence in court without having to remake the entire agreement or contract. . The strength of proof in court for evidence in the form of agreements or contracts that are sealed then has the same evidentiary power as agreements or contracts that have been stamped at the time of manufacture.

The development of the era of the digital economy and information technology has also had a major impact on business contracts entered into by the public. Due to practical reasons, business people carry out electronic transactions that produce electronic documents including electronic business contracts. To provide security, convenience, availability and convenience for the community, the government issued new policies and regulations regarding electronic stamps which are regulated in Law Number 10 of 2020 concerning Stamp Duty.

2. RESEARCH METHOD

This type of research is normative legal research. Library research is research that is carried out only by examining library materials or secondary data. This research is descriptive in nature, namely legal research that describes the use of electronic stamp duty in electronic business contracts in terms of Law no. 10 of 2020 Regarding Stamp Duty. Therefore, this research is a legal research that is descriptive in nature, which is to explain or explain.

3. RESULTS AND DISCUSSION

3.1. Function of Electronic Stamp as Evidence in Electronic Business Contracts

A business contract is one part of the form of agreement entered into by business actors relating to business activities such as production, sale, purchase, exchange of goods and services, etc. The types of business contracts can be seen from the relationships and business conditions carried out by individual, group or business entity. Basically a business contract covers a specific field of business activity.

The types of business contracts can be seen from the relationships and business conditions that occur in a company. Regardless of the line of business undertaken, the types of relationships and business conditions are as follows:

- a. Business relationship between the company and contractors and business partners

The relationship with the contractor is a contracting relationship for a project, which could be in the context of constructing a factory and/or office building, where the company becomes the owner (who gives work orders) and the contractor becomes the contractor (who receives work orders). The scale and complexity of projects can vary greatly. From

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small projects to large projects; from simple to sophisticated. The concept of engagement (agreement) also varies according to these matters. From just a chartering agreement to an Engineering Procurement Construction Contract or EPC Contract. While the relationship with business partners, the company has the same interest in a particular project or object of business cooperation. In the case of a project, both parties carry out: (i) a joint operation; such as: Joint Operation Agreement or Production Sharing Agreement), or (ii) equity participation (joint venture) by establishing a joint venture company, whose agreement is called a Joint Venture Agreement. Meanwhile, the object of certain business cooperation can cover very broad and varied matters. In general: (i) there is a project financing transaction structure (such as: Build Operate & Transfer Agreement or abbreviated as BOT Agreement, or Build Operate & Own Agreement or abbreviated as BOO Agreement); (ii) certain technology or knowledge transfer processes (such as: Technical Assistance Agreement); (iii) business development/network interests (such as: Collaboration Agreement); and (iv) research and development and engineering interests regarding certain objects; there may be no income earned but the objectives of the results of these activities are prioritized (such as: Research, Development & Engineering Agreement); and (v) intellectual property rights interests (such as: License Agreement).

- b. Business relationship between the company and the supplier.

Simply put, agreements with suppliers of goods or services for the purposes of production or daily business operations. Usually called the Supply Agreement.

- c. Business relationship between the company and distributors, retailers/sales agents in short, if the company does not carry out direct sales through its marketing and sales division, then it will appoint another party, namely distributors or retailers or sales agents. Usually called Distribution Agreement and Sales Representative Agreement.

- d. Business relationship between the company and consumers or debtors

In short, if a consumer is unable to pay cash, the company can self-finance the consumer concerned by entering into a Purchase With Installment agreement or a Hire Purchase Agreement.

- e. Business relationship between the company and the shareholders

In general, in terms of conditions other than equity participation that have been regulated in the articles of association, such as a Subordinated Debt Agreement or if there is an agreement between the old and new shareholders, namely the Shareholder Agreement.

- f. Business relationships between companies and creditors who provide credit facilities or loans.

Generally known as a Facility Agreement or Credit Agreement. However, in terms of the nature of the debt and the structure of the transaction, it can be a variety of relationships or loan transactions, for example, Syndicated Facility Agreements, Convertible Bond Agreements, Put Option Agreements, Middle Term Note Agreements. (online law)

In the digital industry 4.0 era as it is today, many people are starting to use technology and the internet to support their business. This rapid technological development has also succeeded in creating a new information infrastructure that makes all work more efficient with the help of technology.

You can see from the many new startups, ranging from transportation startups, food delivery service providers, to now there are startups that offer online contract making services.



The term online contract is used by Edmon Makarim which means the same as an electronic contract, namely a legal bond or relationship that is carried out electronically which combines a network of computer-based information systems with systems.

In Indonesia, there are already many entrepreneurs who use online contracts in their business. Then what about online contracts in the eyes of Indonesian law? Can it be considered valid and legally binding? Below are some of the full explanations.

3.2. Contracts do not have to be made in writing

Many people still misinterpret a contract. Where, most Indonesians still think that a contract is a form of agreement set forth in writing (paper based). Not a few of them also require the contract to be written down in the form of a notarial deed or electronically via email. Meanwhile, Article 1313 of the Civil Code does not provide confirmation regarding whether an agreement or contract must be in written form or not. Where, Article 1313 of the Civil Code only states that "Agreement is an act by which one person or more binds himself to one or more other people".

3.3. Meet the Required Requirements

Whether or not a contract is valid is not seen from where this contract was made, online or offline, or from its form, written or oral. The contract will still be declared valid if the contract has fulfilled the conditions specified and confirmed in Article 1320 BW, namely, agreed between the two contracting parties to bind themselves in the engagement, the ability to make an agreement, there is one certain thing to agree on, and has a legal and lawful reasons. The first two conditions are subjective conditions, where if not met, the agreement can be cancelled. While the other two conditions are objective requirements, which if not fulfilled, the agreement is null and void.

3.4. There must be an agreement between the two parties

As is well known, the making of a contract must go through the agreement of both parties. Where, both parties who make an agreement agree on the main things stated in the contract. The agreement referred to here is an agreement that is the will of the two parties that is free from duality, mistake, coercion (dwang, duress), and fraud (bedrog, fraud). If this happens, according to article 1321 of the Civil Code, the agreement becomes invalid.

From the three things above, it can be concluded that online or electronic contracts are not explicitly explained and are not regulated in the Civil Code. However, due to technological developments and the many demands from business needs, online contracts are still said to be valid if they comply with applicable laws. So, in making online contracts, you need to pay attention to the things required by applicable law, so that the contract you make becomes legally valid. Libera, an online contract creation solution that can help you anytime and anywhere. Not just contracts, Libera also provides consulting and contracting services according to your business needs. So what are you waiting for, make your business contract right now at Libera.id.

Every cooperation agreement definitely requires a business contract to ensure that the agreed agreement can run smoothly. This is necessary to anticipate all possibilities that could harm one of the parties to the agreement.

Even though making a business agreement is an important thing, there are still many people who think that a business contract agreement is not an important thing and in the end they only do work or cooperation based on verbal agreements.

So that when there are parties who violate there is no valid evidence to be able to sue in the form of default and compensation as part of the agreement. This is why every entrepreneur or person who enters into a business agreement must enter into a black and white cooperation contract so that it can be protected and does not harm either party.

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Legal Basis and Requirements for the Legitimacy of Business Contracts

Many people misunderstand that a business contract will be valid if it is made in writing. Not a few people also think that a contract is considered valid if it is signed on a stamp duty. In fact, the determination of whether or not a contract is valid is not seen from the seal or form in writing or verbally, but is seen from the fulfillment of the legal terms of the agreement that is regulated, based on Article 1338 paragraph (3) of the Criminal Code and Article 1320 paragraph (1) of the Criminal Code regulates written contract agreements, as well as verbally. In addition to having a legal basis, a contract can be said to be valid if it meets the following principles:

1. There is an agreement between the two parties.
2. The ability to take legal action from both parties.
3. There is an agreed object.
4. There is a cause that is lawful and does not violate existing norms.

3.5. Purpose and Function of Contracts in Business

Business agreements or contracts are made to regulate and protect businesses from various risks that may occur in the future. Below are some of the purposes of business agreements and business contracts that you need to know about:

1. Ensure the efficient and smooth functioning of security and market mechanisms for every business stakeholder involved.
2. Protecting various types of businesses, especially for Small and Medium Enterprises (SMEs) are the most vulnerable.
3. Help improve the financial and banking system.
4. Provide protection for all economic actors or business actors regulated in the applicable laws.
5. Realizing a safe and fair business climate for all business people.

In addition to legal agreements made to create a safe, orderly and peaceful life so that no party is harmed. In addition, the functions of contracts in business include:

1. The contract functions as a law or statute. Because based on article 1338 of the Civil Code, it explains that all agreements made legally apply as laws for those who make them. Ha this means that the Contract functions as a governing law for the parties who make it. This contract regulates the rights and obligations of the parties. So that with the existence of a contract, the parties are bound by the special provisions contained in the contract.
2. The contract serves as a tool to monitor and control. It means that with a Contract, you can easily monitor and control whether your partner has done what was promised or not, or has even violated the things that have been agreed upon in the Contract.
3. Contracts serve to prevent future problems from arising. With the existence of a contract, each party can know their rights and obligations, so that they can support the smooth implementation of a business relationship.
4. The contract serves to determine how to resolve the problem. For example, the parties choose to resolve the problem in an amicable way by deliberation first, if the problem is not resolved through an amicable way by deliberation, then the parties choose to resolve it through the Court or Arbitration. With this provision, the parties are no longer confused about how to resolve it if a problem occurs at a later date.
5. The contract serves as evidence in the event of a dispute. So not always a business relationship can run smoothly, it is very possible for one party or even both parties to break their promise, not do what has been promised or violate the Contract that has been made.



So that a business contract is absolutely necessary as written evidence to sue your partner who breaks a promise or defaults.

3.6. Types of Business Contracts

1. Contract By Name

Cooperation or business agreement contracts based on their legal sources are one of the classifications of contracts based on where the contract is found. Based on the above understanding, according to Article 1319 of the Criminal Code and Article 1355 NBW only two types of contracts are mentioned by name, namely:

Contract Nominat (Named).

Nomination contracts are contracts that are commonly known in the Criminal Code. Included in the nominate contract includes buying and selling, exchange, borrowing, power of attorney, leasing, etc.

Innominaat Contract (Unnamed)

Is a Contract that appears, grows, and develops in society. Included in innominate contracts are franchise agreements, leasing, buying leases, contract contracts, joint ventures, contracts of work, agency, production sharing, etc.

2. Contract by Form.

In the current Criminal Code, there is no systematic mention of the form of a contract. However, if we examine more deeply the various provisions contained in the Civil Code, contracts according to their form can be divided into two types, namely:

Oral Contract (verbal).

Oral (verbal) contracts are contracts or cooperation agreements made by the parties simply verbally or by agreement of the parties (Article 1320 of the Criminal Code). However, it was a pity that this type of contract had weak strength. Due to the lack of documents and evidence that can be submitted to court.

Written Contract

A written contract is a contract made by the parties in oral form. We can see this in the grant agreement that must be made with a notarial deed (Article 1682 of the Civil Code).

These contracts are divided into two types:

- Deed under the hand is a deed that is sufficiently made and signed by the parties that make the business agreement
- The deed made by a notary is a deed of a designated government official. For example, in making minutes of the General Meeting of Shareholders (GMS) in a PT.

3. Reciprocal Contract.

Reciprocal contracts are agreements entered into by the parties that give rise to basic rights and obligations such as buying and selling and leasing.

4. Free Agreement

What is meant by a free agreement is that it is based on the benefits of one of the parties and the achievements of the other party. Free agreements are agreements that

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according to law only give rise to benefits for one of the parties and do not provide benefits for the other party.

For example: prizes from raffle quizzes and lottery raffle.

3.7. How to make contracts for business

Pay attention to the Points of the Contents of the Contract Agreement

Basically, a business agreement is news or information related to the contents of the agreement.

Therefore it is important to pay attention to the details and contents of the terms of the contract agreement so that it is not wrong and ultimately gives a different perception of the contract agreed upon. Points of content of the contract agreement generally include:

- Introduction
- Definition
- Representations and Warranties
- Contract Contents
- Price
- Payment Terms and Methods
- Payment obligations
- Time & Delivery
- Rights/titles
- Liability & Indemnity
- Circumstances of force / force majeure
- The validity period of the agreement
- Default & Consequences of default
- Diversion
- Inspection Testing and Certification
- confidentiality
- Litigation/Arbitration/Alternative Dispute Resolution
- Applicable law
- Jurisdiction
- Waiver
- Attachment
- Closing

3.8. Using a notary or not

In preparing a business contract, there are several agreements that need to use a notary as legal evidence that the agreement can be carried out.

For this reason, it is better to make sure in advance whether the business contract that is made requires a notary or not. Because it would be very useless if the agreement had been agreed upon and signed but instead required the legality of a notary so that it could be considered valid



3.9. Avoid Contracts That Harm One of the Parties

When you are going to make a contract agreement, make sure the contents of the contract accommodate the interests of the parties to the contract. In addition, as much as possible avoid the contents of the contract that are one-sided and detrimental to one party. Because in general there are parties who have a more dominant position, and there are also those who are weaker.

This practice is often encountered in the banking world, where there are standard clauses that make it seem as if the customer is "forced" to agree to the clauses listed in the agreement made by the bank. So that the customer unknowingly cannot negotiate or change or eliminate this clause.

3.10. Use Legal Aid Services

If you feel like you are a layman and don't have experience in making business contracts used in an agreement. Then you can use legal aid services that are available online. Now many legal institutions provide legal services online.

For examples of the documents above, you can contact legal consultant offices whose addresses you can see in our directory.

The Minister of Finance (Menkeu) Sri Mulyani Indrawati issued two regulations regarding stamp duty. First, regulations for paying stamp duty using electronic stamps Regulation of the Minister of Finance Number (PMK) No.134/PMK.03/2021 which took effect from 1 October 2021. Second, regulations regarding the procurement, management and sale of stamp duty in PMK No.133/PMK .03/2021 which took effect on September 29, 2021 which is a rule for implementing Government Regulation Number 86 of 2021 concerning the procurement, management and sale of stamp duty.

In a written statement, Friday (1/10) the Director General of Taxes (DGT) Suryo Utomo explained the rules for using electronic stamps. He said that stamp duty payments using electronic stamps were made by affixing electronic stamps to documents that owed stamp duty through an electronic stamp duty system.

4, CONCLUSION

E-seal is an electronic seal that is affixed to electronic documents containing civil events. The application of e-stamps to electronic documents will take effect in 2021. E-stamps function as an indirect tax collection on electronic transactions (e-commerce) and as evidence in court.

The legality aspect of e-stamps is the same as post-stamp stamps since the Stamp Duty Law was enacted. e-seal is not a form of legal condition of the agreement, but a formal requirement as evidence in court. Therefore, the absence of an e-stamp attached to a document does not mean that it cancels the legal actions of the parties concerned. But only not fulfilling the requirements as evidence in court.

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