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Named and Unnamed Agreements

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ABSTRACT: Agreements, often called contracts, in Indonesia can be divided into two types based on their names, namely named agreements (nominate) and unnamed agreements (innominate). Both types of agreements have their own definitions, terms, elements, and legal basis. Lease agreements, which are included in the category of named or nominat agreements, must meet the elements and terms of the agreement in accordance with the provisions of the applicable law in Indonesia.[1] Meanwhile, unnamed agreements, which are generally developed in society, are still legally recognized even though there are no specific detailed regulations regarding this matter. These unnamed agreements can also be written or unwritten agreements. The requirements for a valid agreement, both subjective and objective, apply generally to both types of agreements. However, in practice, there are often discrepancies, especially in unnamed agreements which are usually not written. On the other hand, written named agreements are generally in accordance with existing legal provisions or legislation, so that their implementation provides legal certainty. This certainly has its own legal consequences and consequences for the parties involved. Agreements, which are often called contracts, in Indonesia can be divided into two types based on their names, namely named agreements (nominate) and unnamed agreements (innominate). Both of these types of agreements have their own definitions, conditions, elements, and legal bases. Lease agreements,

[1] Subekti, Contract Law, Intermasa, 2005.

which are included in the category of named or nominat agreements, must meet the elements and conditions of the agreement in accordance with the provisions of the law in force in Indonesia. Meanwhile, unnamed agreements, which generally develop in society, are still legally recognized even though there are no specific detailed regulations regarding this matter. These unnamed agreements can also be written or unwritten agreements. The requirements for a valid agreement, both subjective and objective, apply generally to both types of agreements. However, in practice, there are often discrepancies, especially in unnamed agreements which are usually not written down. On the other hand, written named agreements are generally in accordance with existing legal provisions or legislation, so that their implementation provides legal certainty. This certainly has its own legal consequences and consequences for the parties involved.

KEYWORDS: Named Agreement, Unnamed Agreement, Contract Law, Freedom Of Contract, Indonesian Civil Code, Legal Certainty, Innominate Agreement, Lease Agreement, Jurisprudence

INTRODUCTION

Agreements or contracts are important elements in the civil law system in Indonesia, because they form the basis for legal relations between individuals, legal entities, or other parties. In this context, agreements can be divided into two main categories, namely named agreements (nominate) and unnamed agreements (innominate). Named agreements are agreements that are specifically regulated by law, such as sales and purchase agreements, leases, and loans. On the other hand, unnamed agreements appear as a form of agreement that is not explicitly regulated in laws and regulations, but its existence is still recognized in legal practice. In Indonesia, named agreements, such as lease agreements, have clear and detailed provisions regarding the terms and elements that must be met, in accordance with applicable legal provisions. Meanwhile, unnamed agreements, although not specifically regulated, are still recognized as valid in law and often develop based on agreements between the parties. The existence of these unnamed agreements often poses challenges, especially when the agreement is unwritten and does not meet applicable legal requirements. In practice, the application of the requirements for the validity of an agreement, both subjective and objective, often encounters obstacles, especially in unnamed agreements that are not written. This can cause legal uncertainty, as well as affect the resolution of disputes that may arise in the future. On the other hand, a named agreement that has been regulated in legislation tends to provide stronger legal certainty, because it refers to clear rules.

UNNAMED AGREEMENT

An unnamed agreement is an agreement that is not specifically regulated by law, especially the Civil Code and Commercial Code. Another name for this agreement is innominaat. Usually, this agreement letter arises because of the needs of the community

regarding something. As a result, the name of this agreement varies and is adjusted to the needs at that time. For example, cooperation agreements, marketing agreements, and so on.

LEGAL BASIS OF NAMED ACTION AGREEMENT

Indeed, anonymous agreements are not specifically regulated in the Civil Code, but Article 1319 explains that, "All agreements, whether they have a specific name or are not known by a specific name, are subject to the general regulations contained in this chapter and other chapters."[2]

So, even though innominaat is not regulated or mentioned in any law, people can still make it and the agreement will apply to the parties. As long as you make sure you have met the legal requirements of the agreement so that its validity is strong.

UNNAMED ELEMENTS OF THE AGREEMENT

The innominaat elements are the same as the named agreement, namely:

• Essensialia—elements that must always be present in the agreement, such as the price and the object.

• Naturalia—elements that are regulated by law, but you can ignore them. For example, there is no clause that discusses hidden defects, so the seller must automatically bear them.

• Accidentalia—complementary elements that can be specifically regulated by the parties according to their mutual wishes. For example, the agreement states the place where the agreement is ratified.

UNNAMED TYPE OF AGREEMENT

Innominate agreements are divided into two, namely:

• Independent Agreement - there is only one type of innominate in an agreement.

• Mixed Agreement - combining two or more types of provisions in one agreement. For example, a contract for cleaning a house

1. DEFINITION OF NAMED AGREEMENT AND ITS LEGAL BASIS

A Named Agreement (benoemd overeenkomst) or special agreement is an agreement that has its own name. The agreement is named by the legislator and is an agreement that is often found in society.

In general, the agreements regulated/known in the Civil Code are as follows: Sale and purchase agreement, exchange, lease, work, civil partnership, association, grant, deposit of goods, loan, fixed and perpetual interest, profit, grant of power of attorney, debt guarantor and peace. In legal theory, the agreements above are called nominaat agreements. The legal basis for named agreements is found in Chapters V to XVIII of Book Three of the Civil Code.

- Article 1457 of the Civil Code “A sale and purchase is an agreement by which one party binds himself to deliver an item, and the other party to pay the promised price.”
- Article 1541 of the Civil Code “Exchange is an agreement by which both parties bind themselves to give each other an item reciprocally in exchange for another item.”
- Article 1548 of the Civil Code “Renting is an agreement, by which one party binds himself to provide the enjoyment of an item to another party for a certain period of time, with the payment of a price agreed to by the latter party. People can rent out various types of goods, both fixed and movable.”
- Article 1601 of the Civil Code "In addition to agreements to provide certain services that are regulated by special provisions for that purpose and by agreed conditions, and if these provisions and conditions do not exist, agreements that are regulated according to custom, there are two types of agreements, by which the first party binds himself to do a job for another party by receiving wages, namely: work agreements and work contract agreements.
- Article 1618 of the Civil Code “A partnership is an agreement by which two or more persons bind themselves to include something in the partnership, with the intention of sharing the profits that arise from it”
- Article 1653 of the Civil Code “In addition to true civil partnerships, associations of persons as legal entities are also recognized by law, whether the legal entity is established by general authority or recognized as such, whether the legal entity is accepted as permitted or has been established for a specific purpose that does not conflict with law or morality”
- Article 1666 of the Civil Code “A gift is an agreement by which a grantor hands over an item free of charge, without being able to withdraw it, for the benefit of a person who receives the transfer of the item. The law only recognizes gifts between living persons.”
- Article 1694 of the Civil Code “A deposit occurs when someone receives something from another person on the condition that he will keep it and return it in its original form”
- Article 1740 of the Civil Code “A loan for use is an agreement in which one party hands over an item for free use to another party, on the condition that the party receiving the item will return the item after using it or after a specified time has passed.”

[2] Sudikno Mertokusumo, Law of Contracts, Liberty, 2006.

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- Article 1754 of the Civil Code “A loan for use is an agreement, which determines that the first party hands over a number of items that can be used up to the second party on the condition that the second party will return similar items to the first party in the same amount and condition.”
- Article 1770 of the Civil Code “A perpetual interest agreement is an agreement that the party who provides the loan will receive interest payments on a principal amount that will not be requested back.”
- Article 1774 of the Civil Code “A profit-and-loss agreement is an act whose results, namely regarding profit and loss, both for all parties or for some parties, depend on an uncertain event.
- Such are: insurance agreement; life insurance interest; gambling and betting. The first agreement is regulated in the Commercial Code.
- Article 1792 of the Civil Code “A power of attorney is an agreement containing the granting of power to another person who receives it to carry out something on behalf of the person granting the power of attorney.”
- Article 1820 of the Civil Code “A suretyship is an agreement in which a third party for the benefit of the creditor, binds himself to fulfill the debtor's obligation, if the debtor does not fulfill his obligation.”
- Article 1851 of the Civil Code “Peace is an agreement containing that by handing over, promising or withholding an item, both parties end a case being examined in court or prevent the emergence of a case if made in writing.”

1. DEFINITION OF ANONYMOUS AGREEMENT AND ITS LEGAL BASIS

Unnamed agreements are agreements that have not been specifically regulated in the Law, because they are not regulated in the Civil Code and the Commercial Code (KUHD). The birth of this agreement in practice is based on the principle of freedom of contract, making agreements or party autonomy.

Unnamed agreements are regulated in Article 1319 of the Civil Code, which reads: "all agreements, whether they have a special name or are not known by a certain name, are subject to the general regulations contained in this chapter and other chapters".

Outside the Civil Code, other agreements are also known, such as joint venture contracts, production sharing contracts, leasing, franchise, work contracts, hire purchase, womb contracts, and so on. This type of agreement is called an innominate agreement, namely an agreement that arises, grows, lives, and develops in the practice of community life. The existence of both nominaat and innominaat agreements cannot be separated from the system that applies in the law of the agreement itself.

Leasing actually comes from the word lease which means to rent. In Indonesia, leasing is more often termed as "lease". Lease is an agreement where the lessor provides goods (assets) with the right of use by the lessee in exchange for rental payments for a certain period of time. In general, leasing means equipment funding, namely financing equipment or capital goods to be used in the production process of a company either directly or indirectly.

Article 1 paragraph 1 of the Decree of the Minister of Finance of the Republic of Indonesia No. 1169/KMK.01/1991 provides a definition of leasing, namely: "Leasing is a financing activity in the form of providing capital goods either through a lease with an option right (finance lease) or a lease without an option right (operating lease) to be used by the Lessee for a certain period of time based on periodic payments."

Leasing as a form of anonymous agreement until now there is no specific law that regulates it. The regulation of leasing is only at the level of the Decree of the Minister of Finance and other regulations below it. The provisions of the laws and regulations as a definite reference are the Joint Decree of the Three Ministers, namely the Minister of Finance, the Minister of Industry, and the Minister of Trade of the Republic of Indonesia No. KEP 122/MK/IV/2/1974, No.32/M/SK/2/1974, and No. 30/Kpb/I/74 dated February 7, 1974.

Leasing is an agreement that arises from the practice of community life based on the principle of freedom of contract. Leasing as one of the legal institutions of agreement is an in-nominate agreement (an agreement without a name) where the provisions regarding the agreement are not regulated in the Civil Code. However, leasing remains subject to the general provisions regarding agreements in the Civil Code Book III Chapter I and Chapter II of the Civil Code, this is as stipulated in Article 1319 of the Civil Code.

The Jurisprudence of the Supreme Court of the Republic of Indonesia Regarding Leasing Institutions is something new for Indonesia recognized by the Supreme Court. The principle of freedom of contract which is the basis for enriching legal institutions in the system in Indonesia that grows in this practice. The Supreme Court Decision Reg. 131K / Pdt / 1987 dated November 14, 1988 has developed various new institutions in the legal system in Indonesia, because in practice it is widely used daily in Indonesia, the Court also recognizes its validity.

In its decision, the Supreme Court considered the following: "Although the Leasing Institution is not regulated in the Civil Code, with the open system adopted by the Civil Code where there is a principle of Freedom of Contract, the parties are free to enter into any agreement as long as it does not conflict with Article 1320 of the Civil Code"; So the Supreme Court firmly supports the principle of freedom of contract. Any agreement that is not prohibited is permitted.

CONCLUSION

In conclusion, Indonesian contract law distinguishes between named (nominate) and unnamed (innominate) agreements. Named agreements are explicitly regulated by the Civil Code, offering clear legal certainty and structure. Examples include sales, leases, and loans. On the other hand, unnamed agreements arise from social and economic needs and are not specifically regulated by law. However, their existence and legality are still recognized as long as they meet the general requirements for a valid contract under Article 1319 of the Civil Code. Unnamed agreements reflect the flexibility and adaptability of contract law through the principle of freedom of contract. Legal certainty for unnamed agreements can be challenging, especially when they are not in writing. Nevertheless, jurisprudence supports their enforcement, affirming their importance in Indonesian legal practice.

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