

Principal's Liability Against Agents for Unlawful Acts Outside the Agency Agreement (Case Study: Decision Number 1666 K/Pdt/2022)

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Abstract. This research discusses the principal's liability toward agents for unlawful acts outside the agency agreement following The Case Study of Decision Number 1666 K/PDT/2022. The problem that will be discussed in this thesis is the legal relationship between the principal and the parties for unlawful acts outside the agency agreement, and the principal's liability to the agent who commits unlawful acts outside the agency agreement following The Case Study of Decision Number 1666 K/Pdt /2022. The used research method is the normative research method using statutory, case, and conceptual approaches. The legal material collection technique used is researching library materials such as books, journals, legislation, and scientific articles that are related to the legal issues to be studied using data sources, namely primary, secondary, and tertiary legal materials. The author concludes that the results of this research are that the parties obtain a principal legal relationship with the parties for unlawful acts outside the agency agreement. The principal is also liable to the agent who commits unlawful acts outside the agency agreement. Furthermore, the parties should be more careful and more thorough in carrying out sales and purchase agreements, both principals, agents, and buyers.

Keywords: Liability, Principal, Agent, Unlawful Act, Agency Agreement

Abstrak. Penelitian ini membahas mengenai tanggung gugat prinsipal terhadap agen atas perbuatan melawan hukum diluar kesepakatan perjanjian keagenan sesuai dengan Studi Putusan Nomor 1666 K/PDT/2022. Permasalahan yang akan dibahas di dalam skripsi ini adalah bagaimanakah hubungan hukum prinsipal terhadap para pihak atas perbuatan melawan hukum diluar kesepakatan perjanjian keagenan, dan bagaimanakah tanggung gugat prinsipal ke agen yang melakukan perbuatan melawan hukum diluar kesepakatan perjanjian keagenan sesuai dengan Studi Putusan Nomor 1666 K/Pdt/2020. Metode penelitian yang digunakan merupakan metode penelitian normative dengan menggunakan pendekatan perundang-undangan, kasus, serta konseptual. Teknik pengumpulan bahan hukum yang digunakan adalah meneliti bahan pustaka seperti buku, jurnal, perundang-undangan, artikel ilmiah yang memiliki keterkaitan dengan permasalahan hukum yang akan dikaji dengan sumber data yakni bahan hukum primer, sekunder, serta tersier. Penulis menyimpulkan bahwa hasil dari penelitian ini adalah para pihak mendapatkan hubungan hukum prinsipal terhadap para pihak atas perbuatan melawan hukum diluar kesepakatan perjanjian keagenan. Selain itu tanggung gugat prinsipal ke agen yang melakukan perbuatan melawan hukum diluar kesepakatan perjanjian keagenan. Selanjutnya, para pihak dapat berhati-hati dan lebih teliti dalam melakukan perjanjian jual beli baik prinsipal, agen maupun pembeli.

Kata Kunci: Tanggung Gugat, Prinsipal, Agen, Perbuatan Melawan Hukum, Perjanjian Keagenan

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INTRODUCTION

In the development of social life, interactions arise between legal subjects which then give rise to legal relationships. In this case, the number of companies operating in the agency sector has increased. The legal relationship between the principal and agent can occur after an agency agreement is established. Therefore, it is called an agency relationship because the principal uses the term agent as an intermediary in legal actions with third parties.

An agency agreement is a legal basis for the parties to carry out their business.¹ An agency agreement is a form of unnamed agreement or an agreement that does not receive special regulations in the Civil Code (KUHPerdara) and Commercial Code (KUHD). However, it must still comply with the general rules or provisions of Book III of the Civil Code.²

An agent is someone given authority by the principal to represent himself to carry out legal actions or legal relationships with third parties.³ Therefore, in this case, the agent enters into a legal sale and purchase relationship with a third party or buyer based on an agency agreement with the principal. Therefore, the principal is also responsible for losses caused by actions, negligence, or carelessness referring to the provisions in Article 1366 of the Civil Code.

Agents and Principals are regulated in the Minister of Trade Regulation Number 24 of 2021 regarding Agreements for the Distribution of Goods by Distributors or Agents, as intended in Article 1 number 3 that the principal is an individual or business entity in the form of a legal entity or non-legal entity in the country or abroad who appoints a Distributor or Agent in the country to sell Goods produced, owned or controlled by the principal.

¹ Ezra Ridel Moniung, "Perjanjian Keagenan dan Distributor dalam Perspektif Hukum Perdata, *Lex Privatum*, Vol. 3, No. 1, 2015, p. 128.

² Muhamad Absar, "Tinjauan Yuridis Perjanjian Keagenan", *Jurnal Ilmu Hukum Legal Opinion*, Vol. 2, 2014.

³ David Kelly, as cited in Ridwan Khairandy, *Pokok-Pokok Hukum Dagang Indonesia*, FH UII Press, Yogyakarta, 2013, p. 247.

Liability is a specific form of responsibility. Therefore, liability is a form of compensation or indemnity following a legal event or action.⁴ Losses arising from unlawful acts become the basis for liability within the scope of private law. Agus Yudha Hernoko believes that liability is a series of measures to cover losses resulting from errors or risks that arise in a legal relationship.⁵

The agency and distributor agreement is the implementation of a partnership or cooperation pattern in business relationships, and has a position as an intermediary between producers and consumers, both directly and indirectly, based on the principles of mutual need, trust, strengthening, and benefit, so that the partnership pattern plays an important role because it provides benefits in efforts to achieve business continuity.

In terms of ensuring legal certainty and justice, the relationship between principals, agents, and distributors in business transactions involving consumers is regulated in positive law which originates from legislation and agreements, therefore to obtain clear information according to applicable law it is necessary to understand it by reviewing legal aspects related to the existence of agency and distributor agreements as well as legal consequences that arise in connection with protection for third parties (consumers).⁶

Thus, from a legal perspective, it is important to determine the existence or presence/position of agency and distributor agreements from a legal (civil) perspective and the legal consequences, namely the responsibility for the principal if a third party or consumer who has a legal relationship with an agent or distributor feels disadvantaged.

According to Asikin Kusumah Atmadja, the concepts of granting power of attorney and assigning tasks are the same, because both contain an obligation that the party

⁴ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana, Jakarta, 2017, p. 220.

⁵ Siti Kotijah, *Tanggung Gugat Hukum Perusahaan Akibat Pengelolaan Pertambangan Batubara*, *Yuridika*, Vol. 26, No. 3 (September-December 2011), p. 288 as cited from Agus Yudha, *Lecture on Theories of Legal Responsibility and Liability*, October 25, 2010, Doctoral Study Program in Legal Sciences, Faculty of Law, Universitas Airlangga.

⁶ Ezra Ridel Moniung, *Op. Cit.*, p. 131.

receiving the task (opdracht) is obliged to carry out the task.⁷ However, the granting of power of attorney contains special matters that are not contained in the provision of agency services, namely as follows:⁸

- a. Carried out with wages or without wages as stated in Article 1794 of the Civil Code,
- b. It is unilateral so it can be canceled unilaterally as regulated in Article 1813 of the Civil Code,
- c. The granting of a new power of attorney results in the cancellation of the old power of attorney as stated in Article 1816 of the Civil Code,
- d. The recipient of the power of attorney is responsible for all losses resulting from the failure to carry out the power of attorney as stated in Article 1800 of the Civil Code.

An agency relationship is a contractual relationship so there is no room for universal actions on the part of the agency service provider. In addition, an agency relationship is a business and commercial relationship so the obligation to pay wages and the right to receive wages are important elements in an agency agreement.⁹ Therefore, the provision of agency services has a wider scope than the provision of power of attorney, because the contractual relationship in agency services contains the principle of freedom of contract as regulated in Article 1338 of the Civil Code (Burgerlijk Wetboek) which allows parties to an agency agreement to regulate the terms and conditions that bind the parties. The granting of power of attorney is a unilateral legal act that has a formal legal basis that is generally accepted and binding and does not have a consensual nature.¹⁰

Thus, if we refer to the classification of types of agreements as regulated in Article 1319 of the Civil Code (Burgerlijk Wetboek), then an agency agreement is a non-statutory agreement (innominaat) because it is not yet known in Burgerlijk Wetboek but arises, grows, and develops within society, while the power of attorney agreement

⁷Z. Asikin Kusumah Atmadja, "Lembaga Keagenan di Indonesia", Hukum dan Pembangunan, No.1 Tahun Ke XIX, Februari 1989, p. 13.

⁸Levi Lana, Problematika Hukum dalam Jasa Keagenan, Jurnal Hukum Bisnis, Vol. 13 No. 1, 2001.

⁹Sudjana, Tanggung Jawab Prinsipal Terhadap Konsumen dalam Perjanjian Keagenan dan Distributor, Jurnal Ilmu Hukum, Fakultas Hukum Universitas Padjajaran, Sumedang, 2022, p. 2.

¹⁰Muhamad Absar, Tinjauan Yuridis Perjanjian Keagenan, Jurnal Ilmu Hukum Legal Opinion, Edisi 2 Vol. 2, Tahun 2014.

is a statutory agreement (nominaat) because it is known in the Civil Code (Burgerlijk Wetboek).¹¹ This is what distinguishes between granting power of attorney and providing agency services.

The existence of agents and principals in the business world has a mutualistic symbiotic relationship, which means a relationship that requires each other. Principals need agency services for several reasons, namely as follows:

- a. Principals do not possess expertise in marketing to promote their goods and/or services,
- b. Principals are too busy with their core tasks, thus necessitating the delegation of their work,
- c. Principals require another party with extensive connections or business relationships, as well as a wide marketing network, to quickly realize the marketing objectives and targets for their goods and/or services.¹²

Meanwhile, on the other hand, agency services naturally thrive because they are needed by business entities, which face obstacles in territorial control, connections, and busy schedules, thus necessitating task delegation. Agents play the same role and function in Indonesia as intermediaries in specific regions, referring to Minister of Trade Regulation Number 24 of 2021 regarding Agreements for the Distribution of Goods by Distributors or Agents, which stipulates that the distribution agreement between the principal and the distributor designates the buyer as the distributor. Based on this agreement, the distributor receives goods from the principal for resale.¹³

In practice, in Indonesia, there exists an agency system involving manufacturers (principals), agency companies, and procurement of goods and services. One example is PT Aneka Tambang Tbk (PT ANTAM), a member of MIND ID (Mining Industry Indonesia), a State-Owned Mining Industry Holding Company that is diversified and vertically integrated with an export-oriented focus. PT ANTAM operates across Indonesia, which is rich in mineral resources. Its activities include exploration, mining, processing, and marketing of commodities such as nickel ore, ferronickel,

¹¹ Handri Raharjo, *Hukum Perjanjian di Indonesia*, Pustaka Yustisi, Yogyakarta, 2000, p. 42.

¹² Levi Lana, "Problematika Hukum Dalam Jasa Keagenan", *Jurnal Hukum Bisnis*, Vol. 13, April 2001, p. 32.

¹³ Yonfen Hendri, "Tanggung Jawab Hukum Distributor dan Agen Terhadap Konsumen Berdasarkan Peraturan Menteri Perdagangan Nomor 24 Tahun 2021", *National Conference on Social Science and Religion*, 2022, p. 1091.

gold, silver, bauxite, and coal.¹⁴ PT ANTAM is being sued by Budi Said in the Surabaya District Court, East Java.¹⁵

The lawsuit was filed on February 7, 2020, under case number 158/Pdt.G/2020/PN-Sby, classified as an unlawful act. In the lawsuit, PT ANTAM is demanded to pay damages amounting to Rp 817,465,600,000, which is equivalent to the price of 1,136 kilograms of gold bars from Antam Gold Boutique LM-Surabaya Pemuda location. The amount of compensation will be further adjusted according to the fluctuation of gold prices announced on PT ANTAM's official website.¹⁶

Budi Said purchased 7 tons of gold from the Marketing Unit of the Business Unit for the Management and Refining of Precious Metals (UBPP-LM) Surabaya at a price below the official price listed on PT ANTAM's official website. After the buying process was completed and fully paid, it was agreed upon, Budi Said only received 5.935 tons of gold out of the total agreed upon.¹⁷

As explained above and following Article 1365 of the Civil Code which states, "Any act that violates the law and causes harm to others requires the person who causes the harm due to their fault to compensate for the damage." Therefore, this study, undertaken by the author, focuses on agency companies or providers of goods/services, where in practice, providers obtain their goods/services from principals; however, the agency prices do not correspond with the prices provided by the principal. In this case, it results in significant losses for which the principal is liable. The principal is unaware of the prices set by the agent, which differ from those set by the principal.

The author focuses on the Case Study of Decision Number 1666 K/Pdt/2022, where the judge ruled that the principal must compensate for the negligence committed by

¹⁴ <https://www.antam.com/id/about>, accessed on June 23, 2023.

¹⁵ Tahir Saleh, Antam vs Budi Said, Begini Kronologi Gugatan 1,1 Ton Emas, retrieved from <https://www.cnbcindonesia.com/market/20210118111618-17-216762/antam-vs-budi-said-begini-kronologi-gugatan-11-ton-emas>, accessed on June 13, 2023.

¹⁶ Sistem Informasi Penelusuran Perkara Pengadilan Negeri Surabaya, Informasi Detail Perkara 158/Pdt.G/2020/PN Sby, retrieved from http://sipp.pn-surabayakota.go.id/index.php/detil_perkara, accessed on June 13, 2023.

¹⁷ Tahir Saleh, Loc. Cit.

the agent. Therefore, after conducting research, the author is interested in exploring this case further and has titled the research "Principal's Liability to Agent for Unlawful Acts Outside the Agency Agreement (Case Study: Decision Number 1666 K/Pdt/2022)". Based on the background provided above, the issues in this research can be formulated as follows: How is the legal relationship between the principal and the parties regarding unlawful acts outside the agency agreement? And, what is the liability of the principal to the agent who commits unlawful acts outside the agency agreement, following the Case Study of Decision Number 1666 K/Pdt/2022?

METHODOLOGY

In this research, the author utilizes normative research methodology, employing three approaches: statutory approach, case approach, and conceptual approach. The primary legal sources used include Book Three of the Civil Code (Burgerlijk Wetboek), Minister of Trade Regulation of the Republic of Indonesia No. 11/M-DAG/PER/3/2006 regarding Provisions and Procedures for Issuing Registration Certificates for Agents or Distributors of Goods and/or Services, Minister of Trade Regulation of the Republic of Indonesia Number 24 of 2021 regarding Agreements for the Distribution of Goods by Distributors or Agents, and Supreme Court Decision Number 1666 K/Pdt/2022. Secondary legal sources consist of books, legal journals, scientific articles, academic papers, and credible internet sources related to research on the liability of the principal to the agent for unlawful acts outside the agency agreement. Tertiary legal sources include the Kamus Besar Bahasa Indonesia (KBBI) (Indonesian Dictionary). Data collection is conducted through a literature review. The data analysis method employed is qualitative data analysis.

RESULT AND DISCUSSION

The Legal Relationship Between The Principal and The Parties Regarding Unlawful Acts Outside The Agency Agreement.

The legal relationship is the relationship between two or more legal subjects, wherein there are rights and obligations of one party facing the rights and obligations of the other.¹⁸ Law, as regulations governing social relationships, grants rights to legal subjects to act and demand what is required by those rights, and the enforcement of rights and obligations is ensured by law.¹⁹

Based on the study of Decision Number 1666 K/Pdt/2022, a legal event occurred that resulted in legal consequences and subsequently created rights and obligations that must be fulfilled by the parties involved. In this case, PT ANTAM acts as the Principal, Business Unit for the Management and Refinement of Precious Metals (UBPP-LM) Surabaya acts as the Agent, and BS acts as the Third Party. Therefore, it is necessary to first review the legal relationship that occurred among the parties regarding unlawful acts outside the scope of the agency agreement.

1. The Legal Relationship Between the Principal and the Agent

Agency and distributor agreements are implementations of partnership or cooperation patterns in business relationships, positioning themselves as intermediaries between producers and consumers, both directly and indirectly, based on the principles of mutual need, trust, reinforcement, and mutual benefit. Therefore, these partnership patterns play a crucial role in providing benefits in efforts to achieve business continuity.²⁰

Seodradjad Djwandono states that there are 5 (five) benefits (utilities) of agency services, namely as follows:²¹

- a. The benefit of time utilization (time utility);
- b. The benefit of space utilization (place utility);
- c. The benefit of increased production volume (quantity utility);
- d. The benefit for consumers to selectively choose the type and quality of goods (assortment utility);

¹⁸ R. Soeroso, *Pengantar Ilmu Hukum*, Penerbit Sinar Grafika, Jakarta, 2011, p. 269.

¹⁹ *Ibid*, p. 271.

²⁰ Sudjana, "Tanggung Jawab Prinsipal Terhadap Konsumen dalam Perjanjian Keagenan dan Distributor", *Jurnal Ilmu Hukum*, Edisi No. 1 Vol. 6, Faculty of Law Universitas Padjajaran, 2022, p. 2.

²¹ Ezra Ridel Moniung, "Perjanjian Keagenan dan Distributor dalam Perspektif Hukum Perdata", *Lex Privatum*, Edisi No. 1 Vol. 8, 2015, p. 125.

- e. The assurance for producers regarding ownership of their goods and guaranteed income from the sale of their goods (possession utility).

The legal subject in business activities is called a business actor, which refers to any individual or business entity, whether legal or non-legal, established and operating within the jurisdiction of the Republic of Indonesia, either independently or collectively through agreements to conduct business activities in various economic sectors.²² Therefore, according to the Consumer Protection Law, the term business actors includes agents, distributors, and principals.

In general, agents and distributors are considered intermediary traders regulated specifically in the Indonesian Commercial Code (Kitab Undang-Undang Hukum Dagang - KUHD).²³ The position of agency agreements in Indonesia is recognized in legislation, starting from the issuance of regulations by the Department of Trade and Industry, which issued provisions regulating agency matters. These include Minister of Trade Decree Number 77/KP/III/78 dated March 9th, 1978, Minister of Industry Decree Number 295/M/SK/7/1982 regarding Sole Agency, Minister of Trade Regulation No. 11/MDAG/PER/3/2006 concerning Provisions and Procedures for Issuing Registration Certificates for Agents or Distributors of Goods and/or Services, which was later replaced by the Minister of Trade Regulation No. 24 of 2021 concerning Agreements for the Distribution of Goods by Distributors or Agents.

The agency agreement is almost similar to the power of attorney agreement because the agent is a distribution business entity acting as an intermediary for and on behalf of the appointing party based on an agreement, in exchange for a commission, to carry out marketing activities for goods without owning or controlling the goods being marketed.²⁴

Based on the definition above, it can be concluded that agents have the following characteristics:²⁵

²² Article 1 number (3) of Law No. 8 of 1999 concerning Consumer Protection.

²³ Agus Sardjono, Pengantar Hukum Dagang, Rajawali Pers, Jakarta, 2016, p. 115.

²⁴ Article 1 number 6 of the Regulation of the Minister of Trade Number 24 of 2021 concerning Agreements for the Distribution of Goods by Distributors or Agents.

²⁵ Budi Santoso, Op. Cit., p. 71.

- a. Agents are national trading companies;
- b. Agents act as intermediaries;
- c. Agents act for and on behalf of their principals;
- d. The legal relationship between the principal and the agent is embodied in the form of an agency agreement;
- e. The purpose of appointing an agent is to carry out the marketing of goods or services;
- f. The agent does not have the right to own or control the goods being marketed.

The granting of power of attorney according to Article 1792 of the Civil Code is an agreement that contains the granting of authority to another person who accepts it to carry out something on behalf of the person granting the power of attorney (principal). The granting of power of attorney can be done specifically, which means it only pertains to a particular or more specific interest, or generally, covers all the principal's interests. A general granting of power covers only actions related to management. A principal has the authority given to the agent, which can be given verbally, in writing, or tacitly.²⁶

The form of agency that commonly occurs is when the principal explicitly (clearly) appoints an agent to represent them, so the agent is specifically appointed by the principal to carry out certain acts generally. This appointment of the agent includes the establishment of a contractual relationship between the principal and the agent. Such explicit appointment can be made orally or in writing, based on the principle of freedom of contract because it is not regulated in the Civil Code (innominate agreement).²⁷

The legal relationship between the principal and the agent is not merely a granting of power of attorney, nor is it an employment relationship like that between an employee and an employer in an employment agreement, but rather it is a relationship of trust (fiduciary relationship) that is not periodic because it is permanent. In the agency agreement, the principal allows the agent to act on behalf of the principal, and the agent is under the supervision of the principal.²⁸

²⁶ Sudjana, *Op. Cit.*, p. 7.

²⁷ Ridwan Khairandy, *Loc. Cit.*

²⁸ Suharnoko, *Hukum Perjanjian: Teori dan Analisa Kasus*, Prenada Media, Jakarta, 2013, p. 41.

In general, the rights of an agent concerning the provision of agency services are as follows:²⁹

a) The Right to Commission

The right to receive commissions from the principal for the services provided by the agent is inherent in the practice of agency business. Therefore, since agency business relationships are based on agreements, the commission that becomes the agent's right is generally explicitly specified in the agency agreement. If there is an agency agreement that does not explicitly specify the commission, the judge may determine the amount of commission for the agent who has conducted agency business activities.

b) The Right to Request Reimbursement from The Principal

The agent has the right to request reimbursement for all expenses incurred in connection with the performance of agency work for the benefit of the principal.

c) The Right to be Exempted from All Legal Liabilities

As for the obligations of the agent concerning the provision of agency services, they are as follows:³⁰

- a. Avoiding conflicts of interest with the interests of their principal;
- b. Not taking secret profits from agency services (non-secret profit- making);
- c. No taking bribe; and
- d. Maintaining separate accounting (duty to separate account) with the principal's assets, including reporting and providing an account of everything received based on their authority to the principal.

The most prominent aspect regarding the rights of the principal is the rights that arise as a consequence of the fulfillment of the fiduciary duties of the agent, resulting in fiduciary rights for the principal. This is because the partnership pattern imposes obligations on the agent to carry out the tasks entrusted to them, and the principal has rights arising from the agreements made in the agency agreement. Furthermore, the principal is obligated to fulfill the obligations made by the agent according to the authority granted to them, reimburse the expenses incurred by the agent in carrying

²⁹ Ezra Ridel Moniung, Op. Cit, p. 130.

³⁰ Ibid.

out their authority, and pay their remuneration if agreed upon. Thus, if the agent does not commit negligence, the principal cannot avoid the obligation to reimburse the expenses and pay the remuneration, even if the agent is unsuccessful in their endeavors.³¹

As outlined above, when associated with the legal relationship between the principal and the agent, referring to Minister of Trade Regulation No. 24 of 2021 concerning Agreements for the Distribution of Goods by Distributors or Agents following Supreme Court Decision Number 1666 K/Pdt/2022, there exists an agency legal relationship between PT ANTAM as the Principal and the Business Unit for the Management and Refinement of Precious Metals (UBPP-LM) Surabaya as the Agent. The existence of this agency legal relationship is regulated in the Agency Agreement (innominate agreement) based on freedom of contract.

2. The Legal Relationship Between the Principal and Third Parties

The Principal is divided into a manufacturer principal and a supplier principal. The manufacturer principal is an individual or a business entity, whether incorporated or unincorporated, with the status of a manufacturer who appoints another business entity as an agent, sole agent, distributor, or sole distributor to conduct sales of goods produced and/or services owned or controlled. The supplier principal is an individual or a business entity, whether incorporated or unincorporated, appointed by the manufacturer principal to appoint another business entity as an agent, sole agent, distributor, or sole distributor according to the authority granted by the manufacturer principal.³²

Article 1 number (2) of Law No. 8 of 1999 concerning Consumer Protection (Consumer Protection Law - UUPK) states: "Consumer is any person who uses goods and/or services available in society, whether for their interests, family, others, or other living beings and not for trading."³³

³¹ Ibid.

³² Sudjana, Op. Cit, p. 11-12

³³ Law Number 8 of 1999 concerning Consumer Protection

Consumers have rights that must be respected by principals, agents, or distributors, especially the right to receive compensation, damages, and/or replacement if the goods and/or services received do not conform to the agreement or as they should be. However, on the other hand, consumers also must pay according to the agreed exchange value.³⁴

The issues faced in reality in Indonesia involve various parties, such as businesses and the government. Businesses are required to respect consumer rights.³⁵ Based on this, consumers are expected to have an understanding of their rights so that they can exert social control over the actions and behaviors of businesses and the government.³⁶

The complex economic system has led to a shift in the legal relationship between producers and consumers. Initially built on the adage *caveat emptor* (let the buyer beware), it has transformed into *caveat venditor* (let the seller beware), where businesses bear responsibility.³⁷ The principal is responsible based on the principle of strict liability in the agency agreement if consumers feel aggrieved due to the actions or deeds of the agent in the agreed-upon contract because the agent is merely a business intermediary on behalf of the principal. However, the principal may be exempt from liability if the agent exceeds the authority granted in the agreement or alters the technical aspects of the product, either due to negligence based on unlawful acts committed through negligence (negligence tort liability), relying on the concept of fault related to intermingled moral and legal issues or intentional unlawful acts (intentional tort liability) causing harm to the plaintiff or knowing that the defendant's actions result in loss. Agents are presumed not to be liable until proven guilty.

³⁴ Sudjana, Op. Cit.

³⁵ Sukarmi and Yudhi Tri Permono, "Perlindungan Konsumen dalam Transaksi Secara Online", *Jurnal Ilmu Hukum*, Vol. 35 No. 1, 2019, p. 81.

³⁶ Nyoman Rizkyta Putri dan AA Ketut Sukranatha, "Tanggung Jawab Pelaku Usaha Terhadap Konsumen Terkait Produk Makanan Kemasan yang Sudah Kadaluwarsa", *Jurnal Ilmu Hukum*, Vol. 2 No. 1, Kertha Semaya, 2018, p. 13.

³⁷ Wiwik Sri Widiarty, "Lemahnya Posisi Konsumen terhadap Produk Pangan Kadaluwarsa", *Jurnal Hukum Magnum Opus*, Vol. 4 No. 2, 2021, p. 199-200.

Agents have Agent Middlemen who connect agents and buyers because agents do not have ownership right over all the goods they handle. Agent Middlemen can be classified into 2 (two) categories based on their functions, namely:³⁸

- a) Supporting Agents specialize their activities in various aspects of goods and services transfer. Their activities aid in relocating goods in such a way that they establish direct relationships with buyers and sellers. Supporting Agents cater to group needs simultaneously, which can be undertaken independently by the buyer group. Supporting Agents can be categorized as follows:
 - 1) Bulk Transportation Agents;
 - 2) Storage Agents;
 - 3) Specialized Transportation Agents;
 - 4) Procurement and Sales Agents.
- b) Supplementary Agents, function to provide additional services in the distribution of goods to rectify any deficiencies. If merchants or other institutions cannot carry out activities related to the distribution of goods, supplementary agents can replace them. The services they provide include:
 - 1) Consultation services;
 - 2) Financial services;
 - 3) Information services;
 - 4) Marketing services.

As outlined above, concerning the legal relationship between the principal and the consumer according to Supreme Court Decision Number 1666 K/Pdt/2022, there exists a caveat venditor (let the seller beware) legal relationship based on strict liability. In this case, according to the mentioned decision, UBPP-LM Surabaya functions in marketing, and in the context of the agency relationship, it is referred to as a Supplementary Agent.

In the case where PT ANTAM acts as the Principal and Budi Said as the consumer, the legal relationship with the Supplementary Agent, who committed an Unlawful Act

³⁸ Indah Puji Ningrum, Pengaruh Biaya Promosi dan Biaya Distribusi Terhadap Volume Penjualan Studi Pada Perusahaan Manufaktur Food and Beverages yang Terdaftar di Bursa Efek Indonesia Periode 2012-2015, Thesis, Faculty of Social Sciences, Library of IAIN Kudus, Kudus, 2017, p. 32.

due to negligence resulting in the occurrence of a purchase agreement outside of the agreement, constitutes a legal relationship of sale and purchase.

The employment relationship is regulated in Article 1 number 15 of Law Number 13 of 2003 concerning Manpower, which states that the employment relationship is a relationship between employers and workers/employees based on an employment agreement that includes elements of work, wages, and instructions. Furthermore, Article 1 number 14 of Law Number 13 of 2003 concerning Manpower defines an employment agreement as an agreement between workers/employees and employers or employers containing the terms of work, rights, and obligations of the parties involved.

Referring to that article, employees and companies can be said to have an employment relationship if there is already an employment agreement that includes terms of work, rights, and obligations. The Supplementary Agent is an employee of the UBPP-LM Surabaya Agent. Therefore, there is a binding employment agreement between the UBPP-LM Surabaya Agent and the Supplementary Agent who committed the Unlawful Act, consequently, PT ANTAM is responsible for the Supplementary Agent who committed the Unlawful Act.

3. Legal Relationship Between Agent and Third Party

An agreement, as per Article 1313 of the Civil Code reads: "an act by which one or more persons bind themselves to one or more other persons." Therefore, an agreement signifies binding oneself with others, resulting in obligations or performances, and the rights to such performances must be fulfilled.

The principle of consensus or consensualism is one of the important principles in agreements. Consensualism dictates that an agreement made between two or more parties is binding as soon as the parties reach an agreement or consensus, even if it's reached only verbally.³⁹

³⁹ Dhira Utari Umar, Penerapan Asas Konsensualisme Dalam Perjanjian Jual Beli Menurut Perspektif Hukum Perdata, *Lex Privatum*, Vol. 8 No. 1, 2020, p. 39.

The essential elements of a sales contract are the goods and the price. Concerning the principle of consensualism underlying the Civil Code agreements, a valid sales contract is formed the moment the word “agreement” regarding the goods and the price is reached.⁴⁰ The consensual nature of sales is emphasized in Article 1458, which states: “A sale is deemed to have occurred between the parties as soon as they reach agreement on the goods and the price, even if the goods have not been delivered or the price has not been paid.”

The unequal relationship in a sales contract is sometimes confronted with contractual freedom based on the fundamental assumption that the parties to the agreement have balanced bargaining positions. However, in reality, the parties do not always have balanced bargaining positions. The balanced bargaining position is reflected in the mental attitude of the parties in the form of good faith.⁴¹

Article 1338 paragraph (3) of the Civil Code states that “agreements must be carried out with good faith.” In the Kamus Besar Bahasa Indonesia, *itikad* refers to trust, firm belief, and intention based on goodwill.⁴² In this context, the law protects parties acting in good faith, while those acting in bad faith (*te kwader trouw*) must take responsibility and bear the consequences.⁴³ Good faith is regulated in Article 1338 paragraph (3) of the Civil Code, meaning it is objective and dynamic following the legal act's surrounding circumstances. Parties should refrain from actions that harm others when making an agreement and should not exploit others' negligence for personal gain.⁴⁴

Related to the principle of consensualism, the fundamental principle of contract formation is the existence of an offer and acceptance to ensure that the offer and acceptance process does not cause problems in the future. It is important to note that the party making the offer and the party accepting the offer must have the competence

⁴⁰ Ibid.

⁴¹ Siti Nurwulan, Hendrik Fasco Siregar, *Asas Konsensualisme dalam Penambahan Klausula Kontrak Berdasarkan Prinsip Itikad Baik*, Prosiding Seminar Nasional, Faculty of Law Universitas Pamulang, 2017, p. 5.

⁴² Kamus Besar Bahasa Indonesia

⁴³ Siti Nurwulan, Hendrik Fasco Siregar, *Op. Cit.* p. 6.

⁴⁴ Ibid.

and authority to do so.⁴⁵ The provisions outlined above, when applied to a buyer-seller relationship, cannot be altered based solely on the will or desire of one party, whether it be the seller or the buyer.⁴⁶

In a buyer-seller relationship, the seller must deliver the goods, while the buyer must pay the price of the goods. Article 1474 of the Civil Code stipulates that the primary obligation of the seller in a sale is to deliver and guarantee the goods being sold.⁴⁷ As previously mentioned, this guarantee is further elaborated in Article 1491 of the Civil Code, which consists of:⁴⁸

- a. Ensuring the safe and peaceful use of the goods for the buyer,
- b. Preventing the existence of hidden defects or any such issues that would give grounds for canceling the sales agreement.

Article 1234 of the Civil Code states that performance can consist of an action to do something, to provide something, or to refrain from doing something. In the case of the Supreme Court Decision Number 1666 K/Pdt/2022 according to the Agency Agreement, there is a sales relationship between the seller (agent), namely UBPP-LM Surabaya, and the buyer (Third Party), namely Budi Said.

In that case, concerning the Agency Agreement, both parties utilize the principle of consensualism, which binds them, thereby creating an obligation for UBPP-LM Surabaya to fulfill its obligation in providing the gold as per Budi Said's entitlement. Budi Said's obligation has been fulfilled by providing the money as per the existing agreement, thus there is nothing that can annul the agreement between the two parties.

If we relate it to the legal relationship between UBPP-LM Surabaya as the Agent and Budi Said as the Third Party according to the Supreme Court Decision Number 1666 K/Pdt/2022, there is a contractual relationship of sale. In this case, UBPP-LM Surabaya acts as the distributor of goods and/or services in the trading system,

⁴⁵ Ibid.

⁴⁶ Fauzul Aliwarman, *Perlindungan Hukum Bagi Pembeli dalam Transaksi Jual Beli Mobil dengan Cara Indent di Kota Yogyakarta*, *Perlindungan Hukum Bagi Pembeli*, Fakultas of Law UPN Veteran Jatim, p. 52.

⁴⁷ Ibid.

⁴⁸ Ibid.

positioned between PT ANTAM (Principal) and Consumer Budi Said (Third Party). Budi Said engages in a sale transaction with the Supplementary Agent UBPP-LM Surabaya, acting for and on behalf of PT ANTAM as the Principal. Therefore, based on Article 1474 of the Civil Code, UBPP-LM Surabaya as the Agent of PT ANTAM has the principal obligation to Budi Said in the contractual relationship of sale to deliver and guarantee the sold goods.

In the case, according to Supreme Court Decision Number 1666 K/Pdt/2022, the party engaging in the sale transaction is the Supplementary Agent UBPP-LM Surabaya, acting as a worker of the Agent UBPP-LM Surabaya. The sale transaction conducted by the Supplementary Agent, known and approved by the UBPP-LM Surabaya Agent, with Budi Said as the Buyer, involved the purchase of 7 tons of gold. However, the price offered by the Supplementary Agent did not align with the price set by the Principal. Consequently, the Principal provided gold at the official price, resulting in a shortfall of 1.1 tons of gold received by Budi Said. Principal's Liability to the Agent who Commits Unlawful Acts Outside the Agreement of the Agency Contract According to the Study of Decision Number 1666 K/Pdt/2022

Referring to the provisions found in Article 1366 of the Civil Code, responsibility (*verantwoordelijkheid*) is a term used for someone to bear the losses caused by their actions, negligence, or lack of caution, while liability (*aansprakelijkheid*) is a specific form of responsibility. The notion of liability refers to the position of an individual or legal entity deemed to pay a form of compensation or damages after a legal event or action.⁴⁹ Losses arising from unlawful acts form the basis for the emergence of liability within the scope of private law.

Article 1367 paragraph (1) of the Civil Code states: "A person is not only responsible for the losses caused by their actions but also for the losses caused by the actions of those for whom they are responsible or caused by goods under their supervision."

Based on the concept of liability used as a form of responsibility, it can be understood that in the legal relationship of the sale and purchase conducted by the Third Party,

⁴⁹ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana, Jakarta, 2017, p. 220.

Budi Said as the buyer has acted in good faith according to Article 1338 of the Civil Code. This is supported by Article 531 of the Civil Code regarding the provision of good faith which states: "The position is in good faith when the one who holds it acquires the property by acquiring ownership rights, in which he is unaware of any defects contained therein."

Article 1365 of the Civil Code regulates the compensation for damages, which states: "Every act that violates the law and causes harm to others obliges the person who causes the harm due to his fault to compensate for the damage." Looking at the case position in Supreme Court Decision Number 1666 K/Pdt/2022, it can be understood that Budi Said acted in good faith by fulfilling his obligation according to the sales and purchase agreement that had been agreed upon with PT ANTAM. Therefore, Budi Said feels aggrieved by the legal act of UBPP-LM Surabaya Agent and demands compensation from PT ANTAM.

Referring to Article 1367 paragraph (3) of the Civil Code, which states: "Employers and those who appoint others to manage their affairs are responsible for the losses caused by their servants or subordinates in carrying out the work for which these persons are employed." This article can be explained based on the *argumentum a contrario*, which is the explanation of a legal rule based on the opposition of the meaning of what is regulated in the law⁵⁰ so that an employer is not responsible and specifically liable for losses caused by parties who are not their subordinates, and parties who are not bound by the employer in an agreement.⁵¹

Abdulkadir Muhammad explains that the theory of responsibility in tort liability is divided into 3 (three) theories, as follows:⁵²

1. The responsibility arising from intentional tort liability requires that the defendant has intentionally committed an act in such a way that it harms the plaintiff or knows that the defendant's actions cause harm.

⁵⁰ Sudikno Mertokusumo, *Mengenal Hukum (Sebuah Pengantar)*, Liberty, Yogyakarta, 2008, p. 181.

⁵¹ *Ibid.*

⁵² Abdulkadir Muhammad, *Hukum Perusahaan Indonesia, Cetakan Kelima*, Citra Aditya Bakti, Bandung, 2021, p. 503.

2. Tanggung jawab akibat perbuatan melanggar hukum yang dilakukan karena kelalaian (negligence tort liability), didasarkan pada konsep kesalahan (concept of fault) yang berkaitan dengan moral dan hukum yang sudah bercampur baur (interminglend). The responsibility arising from negligence tort liability is based on the concept of fault, which is associated with intermingled moral and legal issues.
3. Strict liability in tort arises from actions, whether intentional or unintentional, without regard to fault. This means that even if it's not their fault, the responsible party is still liable for any resulting damages from their actions.

Based on the principle of strict liability in agency agreements, if a consumer feels aggrieved due to the actions or conduct of the agent in the agreed-upon contract because the agent is merely a business intermediary on behalf of the principal, except if the agent exceeds the authority granted in the contract or alters the product technically, which is the object of the contract due to negligence (negligence tort liability), based on the concept of fault related to moral and legal issues that are intermingled, or intentionally through unlawful acts, resulting in harm to the plaintiff or knowing that the actions of the defendant caused harm. Therefore, the agent, based on the principle of presumption, is not always liable until proven guilty.

As outlined above, PT ANTAM is liable for the damages caused by the Agent. This is based on the principle of strict liability in the agency agreement. Budi Said, as the Consumer feels aggrieved due to the Supplementary Agent UBPP-LM Surabaya exceeding its authority by technically altering the product, which is the subject of the contract, namely 7 tons of gold, with a price reduction that does not match the price provided by PT ANTAM as the Principal due to negligence. This negligence is based on the concept of fault related to intentional acts of violating the law (intentional tort liability). This has harmed Budi Said as the Plaintiff, and UBPP-LM Surabaya, the Agent, is aware that the actions of the Supplementary Agent UBPP-LM Surabaya have caused harm to Budi Said.

The concept of liability aims to obtain payment as compensation or damages for a legal act. Therefore, PT ANTAM is liable for the claim brought by Budi Said. PT ANTAM and UBPP-LM Surabaya, as the parties responsible, are liable for the

unlawful acts committed by the Supplementary Agent UBPP-LM Surabaya, causing harm to Budi Said.

CONCLUSION

3 (three) Legal relationships can be elucidated based on the position case found in Supreme Court Decision Number 1666 K/Pdt/2022. First, the legal relationship between PT ANTAM as the Principal and UBPP-LM Surabaya as the Agent is an Agency Agreement based on freedom of contract. Second, the legal relationship between PT ANTAM as the Principal and Budi Said as the Third Party is based on the principle of seller's responsibility (*caveat venditor*) according to the principle of strict liability, but due to negligence caused by the Supplementary Agent without the knowledge of PT ANTAM, a sales agreement occurs. Third, the legal relationship between UBPP-LM Surabaya as the Agent and Budi Said as the Third Party is a sales relationship according to Article 1457 of the Civil Code. In the position case found in Supreme Court Decision Number 1666 K/Pdt/2022, the object being sold is gold weighing 7 tons. Budi Said has acted in good faith as a buyer or Third Party by paying the price according to the sales agreement with UBPP-LM, the Supplementary Agent who committed Unlawful Acts due to negligence, thus there is no sales agreement outside the Agency Agreement.

PT ANTAM's liability for the losses caused by the Supplementary Agent UBPP-LM Surabaya refers to Article 1 number 15 of Law Number 13 of 2003 concerning Manpower, which stipulates the existence of an employment relationship between UBPP-LM Surabaya and the Supplementary Agent. The parties bound in the sales agreement between the Supplementary Agent UBPP-LM Surabaya and Budi Said are employees of UBPP-LM Surabaya. The element of fault caused by the Supplementary Agent UBPP-LM Surabaya becomes the basis to fulfill the liability against UBPP-LM Surabaya. This is because individuals or legal entities may be liable for the actions of other individuals or legal entities according to Article 1367 of the Civil Code. Furthermore, PT ANTAM is obliged to be liable for the losses caused by the Supplementary Agent UBPP-LM Surabaya.

Advice for parties offering a contractual agreement in their business is to mutually apply the principles of good faith, whether they are buyers or sellers. Good faith should be accompanied by honesty in transactions, with attention to detail in the clauses and contents of the sales and purchase agreement, so that neither party is disadvantaged. Advice for Budi Said as a buyer is to carefully review and study the contract provided and not hastily accept promotions of gold price discounts.

Advice for PT ANTAM is to be more careful in selecting agents, so that no detrimental events occur, even without PT ANTAM's knowledge.

Advice for UBPP-LM Surabaya is to be more careful in finding Supplementary Agents, to avoid the recurrence of Workers committing Unlawful Acts due to negligence, resulting in losses to both the Agent and the Principal.

COMPETING INTEREST

There is no conflict of interest in the publication of this article

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