

The Responsibility of Broker to The Third Party Based on Legal Sale

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Abstract

Trading through Broker, one side is easy; the other side could be difficult. The difficulty here means determining the hidden defects responsibility and law risk of goods purchased by a third party. After further research on the existence law, the responsibility is determined by the law of the intermediary relationship with the parties involved in the transaction. Trading through agents and brokers, their legal relationship with the employer is the authority, so the agent is outside the parties doing transaction, then who shall be responsible for the third party is the businessman as a seller. While trading through distributors

and commissioners, the legal relationship to the third party (the buyer) is the legal relationship where the commissioner and distributors are as sellers, they shall be responsible to the third party (the buyer) over the hidden defect and law risk of the goods he bought.

Keywords: Broker, Responsibility, Trading, Distributors, Commisioners

A. Introduction

Every business activity, Economic principle becomes an important factor for the business actor concerned. Seminal expenditures may, meet as many needs as possible.¹ Not only in the form of a count of goods, but also will affect those activities. The many institutions that conduct the activities are the same institutions known as "Broker Dealers", others such as Agents, Distributors, Brokers and Commissioners.²

Sale and Purchase of shares of reciprocal agreements in which one party (the seller) Passes the property rights on the goods, while the other party (the buyer) Applies to the price listed above. Understanding the agent through Kansil is the person who owns the company to provide information at the time of the making of a particular agreement, the understanding of the commissioner under Article 76 of the Criminal Code is "a person who organizes a company by taking actions closing on behalf of the firm itself, but on the mandate and the responsibility of others with receive certain wages or provisions". While the realtor's understanding is in Article 62 of the KUHD, the broker's definition is "Liberal Merchants Chosen by the Governor-General (in

¹ dkk C.S. T Kamsil, "Pokok – Pokok Pengetahuan Hukum Dagang Indonesia," *Sinar Grafika*, 2002.

² Mariam Badruzaman, *Aneka Hukum Bisnis, Alumni*, 1994.

this case the President) or by the ruler for it".³ They do their work by using the terms in Article 64 of the Criminal Code by obtaining certain fees or provisions, on the mandate and on behalf of other persons for which they are not available. Although in Article 63 KUHD, one of the actions that is not possible to be excluded from each. Aside from Article 63, the KUHD provides convenience to a realtor that cannot be used by other parties.⁴

B. Research Mehtod

The research process can be seen as a series of interrelated phases and cannot be separated from one another. A wide variety of definitions of a descriptive study, among which are studies conducted to determine the value of an independent variable, either one or more variables (independent) without making comparisons, or connect between one variable with another variable.⁵ The other says that, descriptive research is research that is intended to gather information about the status of an existing symptoms, the symptoms according to what their circumstances at the time of research.⁶ So the purpose of descriptive research is to make a systematic description, factual, and accurate information on the facts and the properties of the population or a particular region.⁷ In this sense the actual descriptive studies do not need to find or explain mutual relationships or comparisons, so it also does not require the hypothesis. However, in its development, in addition to explain the situation or incident that has lasted a descriptive study was also designed to make

³ Saryana Saryana, Ervina Dwi Indriati, and Hadi Karyono, "HUKUM DAGANG INDONESIA (SUATU PILIHAN MODEL PEMBAHARUAN)," *Jurnal JURISTIC* 3, no. 02 (2022), <https://doi.org/10.35973/jrs.v3i02.3237>.

⁴ Rizha Claudilla Putri, "BENTUK HUKUM PERUSAHAAN PERSEKUTUAN DI INDONESIA DAN PERBANDINGANNYA DI MALAYSIA," *Cepalo* 4, no. 1 (2020), <https://doi.org/10.25041/cepalo.v4no1.1913>.

⁵ I ketut Oka Setiawan, *Lembaga Keagenan Dalam Perdagangan Dan Pengaturannya Di Indonesia* (Jakarta: Ind Hill C, 1995), <https://perpustakaan.jakarta.go.id/book/detail?cn=JAKPU-03100000005578>.

⁶ Lexy J. Moleong, *Metodologi Penelitian Kualitatif, Cet. XI. Bandung: PT Remaja Rosdakarya*, 2018.

⁷ Agus Budianto, "Pembaharuan Kitab Hukum Dagang Indonesia : Antara Kodifikasi , Kompilasi Dan Konsolidasi," *Asy-Syir'ah Jurnal Ilmu Syari'ah Dan Hukum* 47, no. 2 (2013): 703–25, http://repository.iainponorogo.ac.id/714/1/BUKU_HUKUM_DAGANG_SAMPUL.pdf.

comparisons and to determine the relationship of one variable to another variable. Hence the comparison and correlation studies were included in the study group descriptive. In more depth correlation research goal is to determine the extent to which the relationship between the variables studied. This kind of research can measure several variables and mutual relationship. The results obtained are high or low level of mutual relations and not to each other or not there is such a relationship.

In connection with the teacher teaching duties types of research Expected research that has an impact on teachers' professional development and improvement of the quality of learning. To that although research conducted a descriptive study that ex post facto, but should still be describes the efforts that have been made for the teacher solve problems in learning

Data Collection and Analysis Methods:

This research belongs to analytical descriptive research, which uses secondary complete data containing library research (library reserch), on main campus and author's personal literature. The descriptive and qualitative data descriptive.

C. Result & Discussion

1. Obligations between Employers, Intermediaries and Third Parties

The word "trade" in KBBI, defined the work of which associated with selling and buying goods to make a profit. While the word "Merchants", described as people who make a living by trading. An intermediary trader, according to the same source is called a merchant who sells from a wholesaler to a small trader.⁸

In practice today, the word big and small in that case is irrelevant, Due to professional profession demands. This means that traders can be traded with merchants, both large and small or vice versa, can also be mediated traders with consumers. The fixed of the formula is the intermediary as a trader whose

⁸ Nandang Sutrisno, "Memperkuat Sistem Hukum Remedi Perdagangan, Melindungi Industri Dalam Negeri," *Jurnal Hukum IUS QUIA IUSTUM* 14, no. 2 (2007), <https://doi.org/10.20885/iustum.vol14.iss2.art3>.

capital can be services can also good in the legal sense. It means here, fixed goods and movable goods, both tangible and intangible. According to the provisions of the Civil Code (Civil Code), the sale is referred to as an agreement, whereby one party binds himself to surrender a material, and the other to deliver the promised price (Article 1457).⁹ The provisions of that article make the parties gain the rights and assume the obligation. What is the right of one party will be an obligation on the part of the other. Therefore precisely the sale and purchase is a reciprocal agreement. In this case with the agreement the seller is entitled to a sum of money from the buyer as the price of his property, on the contrary for the buyer to have the obligation to save money as the price of the acquisition of the object that has been agreed upon.

It cannot be in the obligation that the parties submit anything other than what they agree on is the object and the money. Because if the buyer, for example, also surrendered the goods to the seller there will be a barter agreement, not the sale and purchase and the laws governing it, it is also the law of exchange. The buying and selling is considered to have occurred between both parties, after which these people reach agreement on the material and the price, even though the material has not been delivered, nor the price has been paid.¹⁰

With the agreement the parties have achieved the conformity of the will, what is desired by one party is also desired by the other party. Thus, it cannot be said that their will is "the same", because what they want is "the same in the opposite"¹¹ For example, one wants to release property rights to a good, provided that a certain amount of money is given instead, while another

⁹ Muhammad Arifin Budi Prasetyo, "Tanggung Jawab Hukum Pedagang Perantara Sepeda Motor Terhadap Pihak Pembeli Dan Penjual (Studi Pada Gabungan Pedagang Perantara Sepeda Motor Penumping Surakarta)" (Universitas Sebelas Maret, 2008), <https://digilib.uns.ac.id/dokumen/detail/8561/Tanggung-jawab-hukum-pedagang-perantara-sepeda-motor-terhadap-pihak-pembeli-dan-penjual-studi-pada-gabungan-pedagang-perantara-sepeda-motor-penumping-Surakarta>.

¹⁰ Anne Charina, Gema Wibawa Mukti, Rani Andriani, "KAJIAN BISNIS SOSIAL PEDAGANG PERANTARA DALAM UPAYA PENGEMBANGAN HORTIKULTURA DI JAWA BARAT," *Jurnal Social Economic of Agriculture* 1, no. 1 (2013), <https://doi.org/10.26418/j.sea.v1i1.2118>.

¹¹ I Ketut Okta Setiawan, "Tanggungjawab Pedagang Perantara Terhadap Pihak Ketiga Menurut Hukum Jual Beli," *Jurnal Law Review* 3, no. 1 (2014).

(buyer) wishes to acquire property rights to the goods and is willing to give a sum instead to the owner of the good (the seller).

So, the deal in buying and selling then gave birth to the rights and obligations of sellers and buyers, has not given birth to the buyer's right for the goods he bought it. Therefore, the question arises again, when will the buyer become the owner of the goods he bought it? The answer is after the parties implement what is their respective obligations.¹²

The provisions of the article makes obtaining the rights and assume obligations. What are the rights of a party will be mandatory for the counterparties. Thus it is fitting and selling it is a reciprocal agreement. In this case with the agreement that the seller is entitled to a sum of money from the buyers as the price of his goods, otherwise the buyer has an obligation to hand over the money as the price for the acquisition of objects that have been agreed. It cannot be doing that duty handed party other than what they had agreed that the objects and money. Because if the buyer, for example, also handed over the item to the seller, there will be agreement exchange (barter), instead of buying, selling and laws that govern them, also is the law of the exchange.

For the seller, there are two principal obligations, namely:

1. Doing Levering. This obligation is one of the institutions of ownership under Article 584 of the Civil Code which states in part that: "There's nothing like an act that can make the owner of an object for someone except by decision, adhesions (natreking), inheritance (ab intestato and testamentair), delivery (levering) and expiration (verjaring). "Exchange legal events - swapping, grants and including the sale, ownership of the object (object) after the owner of the object (the seller) has made delivery (levering) to the buyer. Thus, the sale - Buy law, the buyer becomes the owner of the object he bought it when the seller has me doing of rights over the objects sold by the seller to the buyer.¹³

¹² Lukmanul Hakim, "Tanggung Jawab Produsen Dalam Perdagangan Bebas," *Among Makarti* 3, no. 6 (2010).

¹³ Tami Rusli, "Tanggung Jawab Produk Dalam Perlindungan Konsumen," *Fakultas Hukum Universitas Bandar Lampung* 7, no. 1 (2012): 79–89.

2. Secure legal guarantee, the seller guarantees secure legal obligation and hidden defects to the buyer of the goods he bought it is a consequence of the guarantee given the seller to the buyer that the goods sold or deliver it really his own and free from the burden or the demands of others. Realization of this obligation in the form of compensation when it comes to the buyer sued by a third party, with the judge's ruling was sentenced to deliver the goods he had bought it to third parties.

While The principal obligation of the buyer is to pay the purchase price at the time and place as agreed. Payment of the purchase price shall be in cash (any currency). Otherwise, for example, the price of it in the form of goods, the sale and purchase agreement was changed to "barter" or if paid by the buying and selling services, then it turned into a work contract. According to the provisions of Article 1233 KUHPerd each engagement can be born because of the agreement and for legislation. Agreement is an event where someone promised to someone else to execute something. Engagements were born because the laws meant here their legal relationship that gave rise to the creditors and debtors according to the legislation.¹⁴

Their creditors and debtors by virtue Of solely, for example, alimony rights of children, widows and the elderly; and according to the law for the actions that are lawful and unlawful. Validity of an engagement was mentioned in Article 1320 -pihak KUHPerd that party must agree to bind himself, the prowess of the parties concerned, meet certain terms and lawful reasons. Not always the parties comply with the agreement as it should be. Those who do not fulfill the treaty obligations which is called the "default", the party also called broken promises, negligence and breach of contract. Default is Dutch meaning "poor performance".

Negligence (tort) the debtor may be not doing what is affordable, but do not necessarily do, do but too late and do what should not be done. Nevertheless, the debtor negligent by law assigned to defend himself if he can show himself stricken circumstances force (coercion / force majeure); or show

¹⁴ MA, "Kitab Undang-Undang Hukum Perdata," *JDIH*, 2014.

counterparty (creditors) it also negligent (non adimpleti exoptio contractus); or indicate that the creditor has waived his right to sue (rechtsverwerking).¹⁵

2. Liability towards third parties in buying and selling through Broker Dealer

Middlemen one of which is an agent and distributor, the differences between them are:

1. Agent

The word "agent" in the common understanding means "people or companies who undertake sales intermediary for other companies on behalf of employers, or may be called representative".¹⁶ While the word "Distributor" from the same source means "any person or body in charge of distributing the goods (merchandise) or may be called" channeling ".

Bernard M. Kaplan mentions that:

Agency is the relationship of the principal's legal position in respect of strangers of contracts or the disposition of property According to the formula in above, in relation to trust between principal and agent, firmly declared power given by the principal and his agent for representing him in buying and selling or trade transactions with parties third.

According to Suhadi Mangku Suwondo, the term sole agent is described as the only business entity designated by a company to produce goods with a specific brand to organize distribution activities and promotion of goods within a certain marketing area in Indonesia. Based on the conception of territory, the agent is always declared sole.¹⁷

2. Distributor

¹⁵ Hartini Gunawan, "TANGGUNG JAWAB DAN PERLINDUNGAN HUKUM PARA PIHAK DALAM TRANSAKSI BISNIS ELEKTRONIK HARTINI," *Journal of Chemical Information and Modeling* 3, no. 1 (2019).

¹⁶ Felix Oentoeng Soebagjo, "BEBERAPA ASPEK HUKUM DARI PERJANJIAN KEAGENAN DAN DISTRIBUTOR," *Jurnal Hukum & Pembangunan* 13, no. 1 (1983), <https://doi.org/10.21143/jhp.vol13.no1.943>.

¹⁷ Ezra Ridel Moniung, "Perjanjian Keagenan Dan Distributor Dalam Perspektif Hukum Perdata," *Lex Privatum* 3, no. 1 (2015).

Distributor relationship with the employer is a legal relationship in which the entrepreneur selling -Buy as the seller and distributor as a buyer. In this connection, usually with the condition that the buyer asked to resell to third parties. Such circumstances when sold to a third party distributors, as well as the seller to third parties (buyer).

If you pay attention to the legal relationship in each institution agents and distributors, the responsibilities of each party in the sale via a third party agent on *komplin* can not be charged to the agents.

In addition to agents and distributors, there is also a realtor and commissioners.

3. Broker

Broker arranged in KUHD section two chapters 62-73. One of the chapters states: "A broker is an intermediary trader appointed by the president or by a superior who the president has declared authorized to do so. He organized his company with to do the works as set forth in article 64, in the case of certain hired or provision, on the mandate and name of persons with whom he has no fixed relationship. Before being allowed to do his work, he must swear before the district court which he belongs to his jurisdiction, that he will sincerely fulfill all the obligations imposed upon him (Article 62 KUHD) " Based on the above provisions, the job as a broker must be appropriated from the competent authority and prior to carrying out his work, he must appoint an oath before chairman of the district court where he lives.

In addition, the realtor in carrying out his or her work is affirmed for and on behalf of others and is entitled to provision by it. The broker mentioned in article 62 of the KUHD is no longer to be found in practice. This can be seen in practice at the Stock Exchange. To be able to run the activities as an intermediary trader in the Stock Exchange, they must obtain a business license from Bapepam. However, to become an intermediary trader in the Stock Exchange is not required to appoint an oath in advance as provided for in article 62. Only to conduct its activities as an intermediary trader, the company shall have at least one director and an employee each of whom has individually obtained permission as a broker of securities broker (Article 36 PP 45 of 1995).

Under the KUHD, each broker is given an obligation and avoids the prohibition. Obligations for realtor have pocket book and diary. The book is to record each and every agreement that has been made and its intermediary. Then move the notes into a diary made with extraordinary accuracy (Article 66 KUHD).

In addition, the broker is also obliged to keep the goods on the sample until the sale-purchase that he brokered after. If the broker brokers the sale of a money order / other securities, the broker must bear the validity of the seller's signature. The prohibition for a realtor is to trade in the same corporate field in which he is appointed as a broker. Another prohibition, a broker shall not make himself a guarantor (borgtoch) in the agreement he brokered (Article 65 paragraph 2 KUHD).

4. Commissioner

Commissioner defined by the person in charge carrying out the sale of merchandise belonging to the government or others by receiving benefits from the profits. In KUHD article 76, it is stated that:

"The commissioner is a man organizing his company by doing the deed an act of concluding an agreement on his own behalf or firm but on the trust and responsibility of others and by receiving certain fees or provisions. "

In other words, the commissioner is the person who runs the company by making agreements on his own behalf that get commissions on orders and fees from others. Based on the above statements and when compared to the broker previously described, the commissioner's characteristic is that there is no appointment and shedding, no burden of obligation and none order away from the prohibition as mandated by the broker institution. In the commissioner's legislation has special rights in the form of "retention" rights, namely the right to hold commissary goods to commissions and purchase costs have been paid by the committees (article 85 KUHD). Other privileges are "privileged" privileges, among other things, to sell the goods of its commits if after retention has not been paid off by the commissions and expenses incurred, in the form of selling the goods for its repayment (Articles 81, 82, 83 KUHD) .It is said to be a privilege for the commissioner, since generally in a sale may only be done by

the owner of the goods or his proxy and in the case of a sale made by the commissioner not as the owner and without power.

Entrepreneurs legal relationship with a realtor based on power relationships. That power, is the power that is set in KUHD mentioned in Article 62 KUHD "trader-broker is a middleman who was appointed by the president has been declared competent authority. He held firm to do the job as in Article 64 as she gets hired or certain provisi, on the mandate and the names of people with whom he did not have something steady relationship. "And not the power that is set in the general law (KUHPerd). The difference with KUHPerd power in the Commercial code, most importantly on wages / provisioning for the realtor does not need to be mentioned before he did his job, as authorized under the law of wages in general (KUHPerd) this state is based on the principle of *lex specialis*. While the commissioners, by understanding the commissioner mentioned in Article 76 Commercial code, the commissioner acted to third parties for and on behalf of myself, the relationship with employers seem nonexistent. However, when viewed commissioners action against a third party, got the order and the cost of komiten employer, then the employer relationship is a commissioner with the power institution, where the entrepreneurs as the endorser and endorsee as a commissioner.

Because of the legal nature of this commission agreement is not set explicitly in the legislation, the experts argue it is an empowering relationship that is "special". It lies in the nature of specificity commissioner acts as an authorized representative, becomes so when his actions for himself and on behalf of third parties.

By understanding the legal relationship intermediary, it can be revealed that the parties responsible for komplin third parties regarding hidden defects and unsafe laws of the goods bought by a third party. In buying and selling through a broker, if third parties suffered losses because goods bought hidden defects and unsafe laws then komplin which must be submitted to the employer, because in fact the status of the seller is a businessman (not a broker) is natural sellers are responsible for the purchaser. Realtor action in that case on behalf of the host A businessman against a third party.

According to R. Soekardono (Professor of commercial law, University of Indonesia), a realtor who is therefore referred to as "wild realtor". The term "wild" should not be interpreted committing lawless (illegal) but based on the provisions set out in KUHPerd power, where wages in terms of it being a preliminary agreement before the job is done. While the sale-Buy through the commissioner, whose relationship against on the basis of specific authorization can be held liable for defects and unsafe hidden laws of the goods purchased by a third party who determines it is the commissioner relationship with third parties are acting for and on behalf of (company) itself.

D. Conclusions

Can be delivered the conclusion that paying attention to the legal relationship intermediaries as mentioned above, it can reveal hidden defects liability law and unsafe goods purchased by a third party. In buying and selling through an agent, the responsibility lies on the shoulders of the principal, because as a sellers, and third parties as a buyer, while the agent outside of the parties who make buying and selling it.

While in the buying and selling through distributors, responsibilities of the hidden defects and insecure legal action against a third party, must be borne by the distributor, because he is in buying and selling it as a third-party seller and as a buyer. If the purchase was made through a broker, the responsibility must be shouldered by the entrepreneur because he as a third-party seller and as a buyer, while brokers outside the parties who make buying and selling.

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