Legal Protection of Partiesin International Contracts

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ABSTRACT
Presence of foreign elements in international contracts is a this characteristic of it's contracts. On the other hand, the principle of nationality applies, which requires a person to be bound by his own national law, which is the reason for research to find the form of legal protection and the application of the principle of good faith as an effort to protect the parties in international contracts. This research is normative in nature, which uses a theoretical approach and analytical methods which are included in the discipline of dogmatic law. The results show that the form of legal protection in international contracts is carried out by harmonizing two different legal systems through the ratification of international conventions and the application of its principle as an effort to protect the parties by interpreting good faith as honesty in business conduct, transactions and honesty in facts and respect for reasonable trade standards.

Key words : Foreign elements, harmonization, international contracts, legal protection, the principle of nationality.

I. INTRODUCTION

A. Background

Humans are social creatures (*zoon politicon*) which means that humans basically need other creatures to be able to get along in society. In the current era of globalization, namely the development of information technology in the world that is so fast, it has indirectly erased the boundaries between countries, and made the world not limited by time and distance.

Globalization is a progress to eliminate control over barriers to movement in the world of commerce and become the beginning or capital to merge worldwide reach. Developments in information and technology have resulted in world relations without boundaries which have resulted in significant changes in the social, economic and cultural fields that have taken place so rapidly, which then provide benefits to the community not to have to worry about getting something.

This is indicated by the use of the internet which is something that cannot be separated from the life of today's modern society, including the international community. Developments in technology and information provide various conveniences for society which have an impact on dependence in modern social life in the current era of globalization which extends to almost all aspects of life related to the use of internet access. Progress in the field of information technology in cyberspace is also very influential on business activities in various fields.

Currently, what is widely known by the public, both nationally and internationally, is the use of electronic trading. By utilizing electronic transactions, making international business transaction activities today becomes easy. This convenience can provide opportunities and opportunities for the international community to form a relationship between them, even as good partners. Electronic transactions that we are generally familiar with are transactions through platforms in the form of marketplaces that bring together sellers and buyers as well as entrepreneurs around the world without the need to meet face to face. Therefore, with the development of information technology in particular, it also has a very positive impact on the world of trade, especially in international trade, including new rules or policies that cannot be separated from the development of this information technology.

In an international trade, electronic transactions or e-commerce are most often used. E-commerce is a transaction or legal act of buying and selling goods and services and in practice we can also obtain

information. This can be seen as in practice a businessman provides several choices and information about the products he will sell and consumers make choices.

In line with the development of information technology and the ease of transactions provided, of course it will not always run smoothly and may even cause new problems considering the diversity of the international community both culturally, transaction purposes, and so on. International business transactions are a private legal scope that provides broad freedom for each party to enter into agreements in accordance with the clauses that they mutually agreed to carry out in good faith. But of course with this freedom, the parties will certainly involve or be based on the laws of their respective countries which create an inconsistency in the will of the parties, such as differences in the private and common law legal systems, which ultimately affect the implementation of the agreement.

Thus, legal harmony is needed which is not burdensome to each party, of course, rules that can provide certainty and legal protection for those who carry out international business transactions. Because the parties to international contracts involve countries with countries and international organizations with countries.[1]

B. Problem Formulation

Based on the explanation of the background above, it can be formulated as follows

1. What is the form of legal protection in international contracts?
2. How is the principle of good faith in international contracts in an effort to protect the parties in international contracts?

II. RESEARCH METHODS

In essence, legal research that wants to know legal understandings and principles is called normative legal research. In normative legal research, secondary data is needed which comes from legal materials or literature. Normative legal research is the main legal research considering that the main source of law in the applicable legal system in Indonesia is law, and in normative research, approaches, theories/concepts and methods of analysis are used which are included in dogmatic legal discipline.[2]

Data sourced from legal material which is a life guide that should be obeyed in common life (*das Sollen*). The secondary data collected in this study were analyzed based on data analysis. The method used in this study was a qualitative research method, namely by using library research by taking references from several books obtained from the library. According to Babbie, an appropriate method for analyzing legal materials containing messages/communications in the form of something that must be considered and followed by members of the public is content analysis.[3]

III. DISCUSSION

A. Forms of Legal Protection

Legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings. The law so that there is a balance of rights and obligations between parties such as legal protection for consumers and business actors, given the weak position of consumers compared to business actors who are relatively stronger.

As it is known that the contract is one of the sources of the birth of legal relations. Legal protection becomes problematic in a legal relationship. Legal protection in principle is protection for legal subjects, namely people and/or legal entities in a form of device that is either preventive or repressive in nature, either verbal or written. Legal protection is an effort to provide protection for human rights that are harmed by other people and this protection is given to the community so that people can enjoy the rights granted by law or in other words legal protection is a variety of legal remedies that must be given by law enforcement

[1] Huala Adolf, *Dasar-Dasar Hukum Kontrak Internasional*, (Bandung : Refika Aditama) , 2008, p.. 47.

[2] Elisabeth Nurhaini Butarbutar, *Metode Penelitian Hukum. Langkah-langkah untuk Menemukan Kebenaran dalam Ilmu Hukum*, Cetakan Pertama, (Bandung : PT Refika Aditama), 2018, p. 79.

[3] Earl Babbie, *The Practiceof Social Research*, (California : Wadsworth Publishing Co.), 1986, p. 294.

officials in order to provide a sense of safe, both mentally and physically from various disturbances and various threats from any party.

The contract is essentially a law that is binding and has legal consequences for the parties who make it as stipulated in Article 1338 paragraph (1) of the Civil Code which contains the principle of pacta sunt servanda. The legal definition of a contract is based on Van Dunne's opinion in Khairandy's book[4] that there are three stages in making an agreement, namely the pre-contractual stage which is a form of offer and acceptance, the contractual stage which is the conformity of the statements and the will of the parties, and the post-contractual stage which is the implementation of the agreement. In international business contract activities, all regulations regarding what is prohibited internationally by international institutions as well as provisions regulated by countries must be understood. Such as import-export tax or duty rates, provisions regarding what types of goods may not be entered or traded, insurance provisions, provisions regarding transaction conditions, as well as methods and so on.

Legal protection for parties to international contracts is important in the economic stability of a country. By conducting international trade, it will provide benefits and create a country's economic growth directly in the form of influencing the allocation of resources and helping to create jobs.[5]

Indonesia adheres to the civil law legal system so that it must first carry out a legal transformation or ratification process to be able to enter into an international convention or international agreement. The sources of contract law in Indonesia are found in Chapter Two of Book III which regulates four matters concerning agreements, namely General Provisions, Conditions for the Validity of the Agreement, Consequences of the Agreement and Interpretation of the Agreement.[6] As is known, the indicators of the existence of an international contract are in the elements of different nationalities, different legal domiciles of the parties, the law chosen, one of the country's rules will be the choice of law in the event of a dispute over the international contract, the signing of the contract is carried out abroad, the object of the contract is located abroad, the language used in the contract is a foreign language, and foreign currency is used in the contract.[7]

The principles of responsibility are very important in consumer protection law. If there is a case of violation of consumer rights, caution is needed in analyzing who should be responsible and how far the responsibility can be borne by the parties involved. In general, the principles of accountability in law can be distinguished between, liability of fault, presumption of always being responsible (persumption of liability), presumption of non-liability, absolute liability (strict liability) and limitation of liability (limitation of liability).

In principle, everyone is subject to their own national law in accordance with the principle of nationality and the principle of respect for national law which means that in working together, each country must respect the national laws of other countries.[8] International contract law is embodied in *lex mercantoria* (customary trade law) in order to harmonize various existing legal systems in the world, including efforts to establish an international convention which basically aims to create a harmonization of laws or rules in international trade.

Several international conventions that have been ratified in Indonesia, namely the Statute Of The International Institute For The Unification Of Private Law into the Presidential Regulation of the Republic of Indonesia Number 59 of 2008. International institutions in carrying out the unification of civil law aim to

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[4] Ridwan Khairandy, *Itikat Baik dalam Kebebasan Berkontrak*, (Jakarta : Pascasarjana FH Universitas Indnesia), 2003, p. 190.

[5] Ni Kadek Srimasih Ristiyani, "Kedudukan Hukum Perdagangan Internasional terhadap Perekonomian Indonesia," *Jurnal Komunikasi Hukum*, Volume 8 Nomor 2, (August 2022) : 649, https://doi.org/10.23887/jkh.v8i2.

[6] Elisabeth Nurhaini Butarbutar, *Hukum Harta Kekayaan, menurut Sistematikan KUH Perdata,* Cetakan Pertama, (Bandung : PT Refika Aditama), 2012, p. 135.

[7] Huala Adolf, 2008, *Op Cit*, p. 4.

[8] Janus Sidabalok, *HUKUM PERDAGANGAN. Perdagangan Nasional dan Perdagangan Internasional*, (Medan : Yayasan Kita Menulis), 2020, p. 225.

create a uniformity and coordination of civil law between countries, the state and prepare for legal submission by various countries regarding harmonious civil law rules in stages.

Another legal protection related to international business contracts is by using an Arbitration institution which later when a dispute occurs the parties can make Arbitration efforts as referred to in Law Number 30 of 1999 to find a solution in resolving disputes. The certainty of international business contract law can be seen from the general guidelines of international private law. However, these guiding principles will be difficult to apply, especially in dispute resolution because it takes a long time to pay attention to the points of connection contained in these international business contracts. The legal source of international business transactions that has not been ratified by Indonesia to date is the Contracts for the International Sale of Goods (CISG) or Contracts for the International Sale and Purchase of Goods.

The National Law Formation Agency has issued an Academic Paper on the Ratification of the UN Convention in 2013. The text states that if the CISG has been ratified by the Indonesian government, there will be legal certainty for business people in Indonesia who wish to enter into contracts internationally which are based on a clear rule of law and on this basis automatically improve the provisions of positive law in Indonesia. especially regarding international sale and purchase contracts. The ratification of the CISG is also intended to have a positive impact on the legal uniformity of buying and selling contracts in the ASEAN region and to enhance ASEAN's efforts to form the ASEAN Economic Community in 2015.

To determine references to sources of law in interpreting unclear contract terms, UNIDROIT principles, the International Institute for the unification of civil law, can be used. The UNIDROIT Principles are aimed at harmonizing commercial contract law against countries that wish to implement them. This principle has also referred to the CISG so that it is flexible. This then becomes a solution if there is a source of law that is irrelevant to the law in force in that country.

B. The Principle of Good Faith in International Contracts

In international contracts there are principles that must be considered, namely the principle of national legal sovereignty, the principle of freedom of contract. the principle of pacta sunt servanda. the principle of goodfaith (good faith) and the principle of reciprocity. The principle of good faith is one of the special legal principles that apply in civil law. The principle of good faith comes from Roman law which is known as the principle of bonafides. The Civil Code uses the term good faith in two senses, namely the notion of good faith in a subjective sense which in Indonesian is called honesty, and the sense of good faith in an objective sense which is often interpreted by the term propriety.

The definition of good faith in a subjective/honesty sense is contained in Article 530 of the Civil Code which regulates positions of power (bezit). Good faith in a subjective sense is an inner attitude or a state of mind. A bezitter is considered to have good faith, if he is not aware of any defects in his ownership so that he is protected by law.

The definition of good faith in the sense of honesty is also regulated in Article 1386 of the Civil Code which stipulates that payments made in good faith to someone who holds the letter of credit are valid. The meaning of good faith here is that the debt payer does not know that the party receiving the payment is not the creditor, so even though the payment is received by someone who is not the creditor, the payment is considered valid.

Butarbutar stated, *in the contract, the in good faith it has the function of complement or as an enhancer, that in good faith that can be used to increase the functionality of a treaty, meaning that if a contract is not clear, it can be explained by in good faith, as a the Article 1344 of the Civil Code*.[9] The definition of good faith in an objective sense is formulated in Article 1338 paragraph (3) of the Civil Code, that an agreement must be implemented in good faith. Good faith according to Article 1338 paragraph (3) of the Civil Code, refers to unwritten objective norms, namely what is a general opinion about proper behavior in the implementation of agreements. Article 1338 paragraph (3) of the Civil Code stipulates that an agreement

[9] Elisabeth Nurhaini Butarbutar, "Implementation the Principle of in Goodfaith in the Standart Contract," *International Journal of Business, Economics and Law,* Vol. 7, Issue 4 (August-2015): 42, https://www.ijbel.com/wp-content/uploads/2015/09/KLIBEL7_Law-13.pdf

must be implemented in good faith. This means that in carrying out the agreement, the attitude must be carried out in accordance with feasibility (redelijkheid) and propriety (billijkheid).

Good faith in an objective sense means that an agreement made must be carried out by heeding the norms of decency and decency which means that the agreement must be carried out in such a way as not to harm either party. Proper behavior in carrying out the agreement is related to the same demands. Demands must be the same based on recognition of human nature which has the same degree and dignity, so that humans have the same rights and obligations. On the other hand, the demand for unequal treatment is based on the consideration that every human being, apart from having the same nature, also has differences from one another.[10]

International contracts which are national contract laws that have foreign elements. In national contracts there are principles that are generally general in nature because they are contained in every contract law of each country. Therefore, it is very relevant that the principle of good faith is applied to international contract law contained in ratified conventions, namely The United Nations on Contracts for the International Sale of Goods (CISG) and The International Institute for the Unification of Private Law (UNIDROIT).

CISG includes material for forming contracts internationally which aims to eliminate the need to show the laws of certain countries in international trade contracts and to make it easier for the parties in the event of a conflict between legal systems. The CISG applies to contracts for the sale of goods made between parties whose places of trade are in different countries.

In Article 1.7 UNIDROIT, regulates the principles of good faith and honest transactions that must underlie the entire contract process starting from negotiation, execution and termination of the contract (each party act in accordance with good faith and fair dealing in international trade, the parties may not exclude or limit this duty).

The relationship between the parties to the contract requires an obligation of good faith not only when the contract is signed, but also in the performance of the contract. In accordance with the provisions of Article 1338 paragraph (3) of the Civil Code as national contract law, that an agreement must be implemented in good faith. The principle of good faith and fair dealing in international trade practices is coercive whose purpose is to encourage the application of the principles of good faith and fair dealing in every international commercial contract.

The fundamental principle within the scope of international agreements which is the legal source of international trade law, namely good faith. The existence of the principle of good faith can give an obligation to a country when it is bound by international trade agreements to always comply with the clauses that regulate it. The principle of good faith is defined as honesty in behavior or honesty in trade transactions, including honesty in facts and respect for fair trade standards and fair trade transactions. The Consumer Protection Law also stipulates that business actors in carrying out their business must apply the principle of good faith which is intended so that when consumers use purchased goods they receive legal protection measures.

In the event of a dispute on international trade, the principle of good faith is used in the dispute settlement effort. Based on good faith or the use of peaceful channels, this is done to prevent the emergence of other conflicts that could threaten peace between countries. The principle of good faith in the sense of decency and propriety as stipulated in Article 1338 paragraph (3) of the Civil Code, can be applied as an effort to protect parties in international trade because carrying out a will in good faith can prevent conflict in the future.[11]

This honesty or decency is rooted in the nature of the role of law in general, namely efforts to balance the various interests that exist in society. Therefore, the elements of the principle of good faith and honest transactions, faith is the basic principle on which contracts are formed. The principle of good faith is defined

[10] Notohamidjoyo, *Masalah Keadilan*, Tirta Amerta, Semarang, 1971, p. 54.

[11] Elisabeth Nurhaini Butarbutar, "Implementation of Good Faith Principle as Efforts to Prevent the Business Disputes," *Journal of Advanced Research in Law and Economics*, Volume XI, (Summer, 2020) : 1132, https://doi.org/10.14505//jarle.v11.4(50).07

as honesty in behavior or honesty in trade transactions, including honesty in facts and respect for fair trade standards and fair trade transactions.

Thus, the application of good faith in international contracts contained in the Conventions of The United Nations on Contracts for the International Sale of Goods (CISG) and The International Institute for the Unification of Private Law (UNIDROIT) which have been ratified by the state as an effort to align the possibility of a clash between two contract laws that are different from international contracts that have foreign elements. Manifestations like this become an effort to encourage legal harmonization when the contract or national law does not find the necessary rules or there are legal gaps (gaps), then the principle of good faith can be used as a reference.[12]

With the principle of good faith which is defined as honesty in behavior or honesty in trade transactions and honesty in facts and respect for fair trade standards and honest trade transactions can be enforced so that disputes do not occur in the future, which can harm relations the two countries involved in the contract.

IV. CONCLUSION

Based on the discussion of the problems raised in this study, it can be concluded that the presence of foreign elements in international contracts results in a clash between two different legal systems, because according to the principle of nationality, a person is bound by his own national law, therefore, it is necessary to harmonize the two these different legal systems by ratifying international conventions as an effort to equal legal protection for the parties, and implementing the principle of good faith which is defined as honesty in behavior or honesty in trade transactions and honesty in facts and respect for trade standards and transactions Fair trade in international contracts is necessary to provide legal protection to parties.

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