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Legal Overview of International Trade in International Business Transactions in Indonesia

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ABSTRACT: The Diverse Human Needs Give Rise to Trade Relations Between Countries. Trade relations that have been established begin with simple models such as barter, buying and selling goods, and even larger and more complex trade relationships. Establishing international trade relations aims not only to meet the needs of a country but also to involve international business transactions between Indonesia and other countries. This research is conducted to understand the legal overview of international trade in international business transactions in Indonesia. This research employs a qualitative method in which the researcher selects normative legal research as the type of research, using sources and research materials from legislation and legal literature. The importance of existence of international trade law as part of international law is crucial, as international trade law plays a vital role in regulating international trade relations within the international community to achieve desired objectives, particularly in international business transactions in Indonesia. Furthermore, fundamental principles within the scope of international agreements serve as legal sources for international trade law, such as the principle of good faith.

KEYWORDS: International Trade Law; International Business Transactions; Indonesia

INTRODUCTION

Law is a set of rules in the form of norms and sanctions created to regulate human behavior, maintain order, ensure justice, and prevent chaos (Arifin, 2021). Law has the task of ensuring legal certainty in society. Therefore, every individual has the right to legal representation. Law can be defined as a written or unwritten regulation or provision used to govern society and provide sanctions for those who violate the law (Wibawa & Putri, 2021).

International trade law is one of the fields of law experiencing rapid development. The increasing diversity of human needs gives rise to trade relationships between countries. These trade relationships begin with simple models such as barter, buying and selling goods, and even larger and more complex trade connections. Establishing international trade relations aims not only to meet the needs of a country but also to expand markets and boost the production of goods and a country's foreign exchange earnings through exports to other nations to enhance economic sector growth and create employment opportunities. It also serves to develop human skills in technology (Dewi Kasih et al., 2021). Furthermore, international trade also drives industrialization and investments by transnational corporations. However, numerous challenges are faced in international trade activities, causing many countries to fail to reap the benefits of such trade (Castellani et al., 2010).

The current traffic of international trade is advancing rapidly, and the fulfillment of people's livelihood needs is not solely derived from their own regions. The ever-increasing demands allow international communities to have more freedom in selecting and determining who and what can be considered capable of meeting their needs (Hasan & Azis, 2018). The international community consists of independent nations that are part of international organizations or nations that have established international relations with other countries. Engaging in international business transactions nowadays is not a difficult task, as various technological advancements offer significant opportunities for international communities to foster relationships among themselves (Ratna & Makka, 2018).

International business transactions are a study of private law, where in private law, there is a broader opportunity for each party to create, promise, and enforce the clauses they agree upon. However, it cannot be denied that to conduct business activities, the parties must carefully understand and grasp the legal principles in the countries of the opposing parties. This will significantly affect the implementation of the agreement (Gijoh, 2021). Business entities (legal subjects of international business contracts) will face challenges in determining the law to be used in international business contracts. This can often occur when both business entities originate from countries with different legal systems, such as the civil law and common law systems or Anglo-Saxon and Continental European legal systems.

When the principles of international civil law are applied in the resolution of an international business contract dispute, one of the parties may feel compelled to submit to a foreign law that they may not have been previously aware of and are expected to be used as the legal framework for resolving the dispute (Gayo, 2011). International business contracts are often referred to as transnational business contracts or cross-border business contracts. Sometimes, the use of the term "International" in the phrase "international business transactions" can be somewhat ambiguous, which raises the question of whether the legal acts they perform will have international legal consequences and be subject to international law. Therefore, it is essential for researchers to clarify the study of legal protection for international business transactions in the era of free trade (Syahrin, 2018).

In the context of international trade, Indonesia has established trade relations with several countries, such as Germany, China, Canada, and others. Indonesia and Germany have had a longstanding partnership. Some of Indonesia's leading exports to Germany include palm oil, machinery, footwear, electronic equipment, rubber, coffee tea, and spices. As part of this reciprocal relationship, Indonesia also imports various German products, including manufactured goods, communication equipment, chemicals, metal products, and more (Dewi Kasih et al., 2021).

As a subject of international law, a nation is understood to possess the sovereignty to regulate goods or services entering and exiting its territory. With the sovereignty held by a country, it has the authority to establish regulations that bind legal subjects, objects, and legal events that occur within its jurisdiction. This authority typically occurs when a country acts as a trader. This raises questions when a country's role is not that of a seller but that of a buyer. Clarity is needed regarding a country's position as a buyer in international trade. Concerning a country's position as a buyer, there is a need for clarity regarding dispute resolution methods that can be pursued if a country experiences losses related to the purchase of goods in international trade (Adolf, 2006).

This research, when compared to some previous studies, shares a similarity in terms of the topic, which is the examination of international trade regulation. However, the focus of this study is different. This paper emphasizes the legal overview of international trade in international business transactions in Indonesia. In contrast, a previous study conducted by Deden Rafi Syafiq Rabbani in 2021 examined the "Critical Review of the Trade Facilitation Agreement (TFA) of the World Trade Organization (WTO): An Analysis of the Implementation of International Trade Policies in Indonesia" (Rabbani, 2021).

PROBLEM STATEMENT

How is the legal overview of international trade in international business transactions in Indonesia?

RESEARCH METHODOLOGY

Research is a process that is a structured and planned approach to systematically obtain solutions to problems or respond to specific statements. Research is fundamentally a search effort and not just observation with a tangible object in hand. This is because research aims to uncover the truth systematically, methodologically, and consistently. Through this research process, analysis and interpretation of the gathered data are carried out. To achieve optimal results, the method used in the research and the approach taken are juridical-informative, which consists of:

1. The primary subject matter explored in this research is the Regulations - World Trade Organization (WTO) and Law No. 7 of 2014 concerning Trade.
2. The secondary subject matter provides explanations regarding the primary subject matter. The secondary subject matter comprises all materials related to the primary subject, including official documents. Legal publications encompass books that pertain to the issues studied and the results of the research, as well as the body of law.
3. The tertiary subject matter gives guidance and explanations related to the primary and secondary subject matter, such as the Law Dictionary or Comprehensive Indonesian Language Dictionary, to clarify the meanings or definitions of terms that are difficult to interpret. This research employs a juridical-informative research method and is descriptive, utilizing secondary data sources. Data collection is conducted through library research, summarized in qualitative analysis (Soerjono Soekanto, 2010).

DISCUSSION

Legal Overview of International Trade in International Business Transactions in Indonesia

According to Mochtar Kusumaatmadja, law is understood not only as a set of principles and rules for governing human life in society but also as institutions and processes to enforce the application of those rules in reality. This concept also applies at the international level. Every social life requires an acknowledged and binding behavior system (Melda, 2008). In general, international law is defined as a collection of regulations and provisions that bind and regulate the relationships between nations and other legal entities in international society. International law is typically established with the intention of serving as a guide for nations in their international activities while also limiting the sovereignty of each nation (Boer, 2013).

A country is a subject of international trade law. In general, it can be understood that a country is the only legal entity with sovereignty that makes it a complete legal subject. This means that a country possesses Full Legal Personality because only a country can support all rights and obligations on an international scale (Salain, 2019). This national sovereignty is closely related to international trade activities. International trade can be understood as exchanging goods, services, or capital across national borders.

This activity is also known as export, which involves selling and/or sending goods or services abroad, and import, which involves buying and receiving goods or services from abroad (Wijaya, Nopiandri, & Habiburrokhman, 2017).

With the attribute of sovereignty, a nation has the authority to create regulations that bind other legal subjects, whether individuals or corporations and bind objects and legal events that occur within its jurisdiction, including trade relations within its territorial boundaries. Additionally, nations indirectly play a role in forming international organizations that give rise to international trade rules. In the context of the relationship between nations in international trade law, the sovereignty held by nations places all nations on an equal or coordinated footing. The coordinative structure adopted in international law enables nations to collectively enter into international agreements with other nations to regulate trade transaction relationships among nations. International trade agreements may commence with international economic agreements. These economic and international trade agreements may be bilateral or multilateral (Sunyowati, 2013).

The WTO Agreement is one example of a multilateral international trade agreement. Indonesia is one of the member countries of the WTO. The WTO Agreement is a legal source for international trade agreements formed by its member countries (whether it is bilateral, regional, or multilateral). The WTO's General Council has stipulated the necessity of transparency when WTO member countries establish Regional Trade Agreements (RTAs) (The WTO, 2011). Article XVI:3 of the Marrakesh Agreement (the agreement establishing the WTO) states that in the event of a conflict or contradiction between the WTO Agreement and other WTO Multilateral Agreements, the provisions of the Marrakesh Agreement shall prevail. Likewise, when Indonesia forms an agreement with Japan, the agreement's substance must not conflict with the WTO Agreement since both are WTO member countries.

International trade is conducted by economic entities in one country with economic entities in another country. International trade can occur due to agreements made by each economic entity (Hasoloan, 2013). The economic entities in question can be between governments, individuals, or governments and individuals of a country. The motivation behind international trade is the difference in resource potential and technology among each country. One of the benefits of international trade is the specialization in particular products that become the hallmark of a country. International trade aims to contribute to the efficient allocation of resources and stimulate the economic growth of a country. Furthermore, the purpose of international trade is that each party expects to gain profits (Vijayasri, 2013).

In concept, international trade is a transaction process that occurs without coercion from either party. Both parties can benefit from this trade activity. International trade occurs because a country's and its citizens' needs are not available in that country. Without international trade, that country's needs would have to be met from its own production. Several factors that can drive international trade include: (1) Advances in information and transportation; (2) Mutual needs among countries; (3) Economic liberalization; (4) The motive for comparative advantage; and (5) Increasing foreign exchange reserves. Countries open access to international trade because it has several benefits. The benefits of international trade include: (1) Fostering friendship among nations; (2) Meeting the needs of each country; (3) Promoting the production of goods; (4) Advancing science and technology; (5) Specialization in production for each country; and (6) Expanding job opportunities (Setiawan & Lestari Z.R, 2011). According to Salvatore (2020), the benefits of international trade include: (1) Fulfilling all needs for goods and services; (2) Specialization by each country; and (3) Expanding the market for products produced by each country.

In international law, various international provisions are regulated within several international conventions concerning international business transactions. Therefore, international trade transactions must comply with the regulations established by countries and/or international organizations. Some of these provisions are related to tariff taxes/import-export duties, goods that may be traded, as well as provisions regarding insurance, transaction methods, and others (Ratna & Makka, 2018). The legal principles governing international business transactions refer to the principles of international contract law agreed upon by the parties and international trade conventions (Gijoh, 2021). These principles of international business law can be seen from the application/source of international contract law. Huala Adolf2 explains in his book that there are 7 forms of law that can be a source of international contract law, including:

1. National Law.
2. Contract Documents.
3. Customs and practices in the field of international trade related to contracts.
4. General legal principles regarding contracts.
5. Court decisions.
6. Doctrine.
7. International agreements on contracts.

From these seven sources of law, it can be explained that although international business contracts fall within the realm of private law and apply the principles of freedom of contract and sovereignty, they still must consider several other sources of international contract law. In general, there are two general legal principles underlying the creation of international business contracts (Rahayu & Muslimah, 2013):

1. The fundamental principle of freedom of contract dictates that international business contracts are based on the freedom of the parties to determine the content and obligations to be included in the international business contract. Although they have the freedom to determine their obligations, they must still consider the sources of international contract law.
2. The principle of sovereignty/national law supremacy: In the study of private law, freedom is also given regarding the choice of law (choice of law). In contrast to national business contracts, in international business contracts, both parties usually first agree on a choice of law to submit themselves to the national law of one of the contracting parties.

Countries are increasingly understanding the concept of free markets, including their benefits. The presence of the World Trade Organization (WTO) and other trade cooperation agreements, such as AFTA, APEC, and ASEAN Economic Community, has led global trade towards a more open and accessible trade system. This trade is not exempt from fraudulent business practices. This situation presents all countries and domestic companies with two choices: compete to take advantage of market opportunities or become victims and be exploited as opportunities. Therefore, to anticipate this, protection can be achieved through self-protection methods such as through contracts. The principle of freedom of contract, which is universally applicable, also applies in Indonesia, as clearly seen in Article 1338 of the Civil Code. The consequences of international trade and applying the principle of freedom of contract have given rise to new contract models in Indonesia (Sarah, 2014).

International business transactions are a part of the study of international private law, where the principles of international private law determine whether an international business contract should be protected according to national law or foreign law. Globalization in the business world has led to complexity and diversity in transactions. Conditions like these demand legal certainty for every transaction. As described above, this makes freedom of contract the primary paradigm in contract law. Freedom of contract is seen as a legal expression of the principle of free trade. Just like trade liberalization, the doctrine of freedom of contract is built on the assumption that there is equal bargaining power between the parties involved in the transaction. Consequently, the weaker party can be dominated by the stronger party. Critics of the doctrine of freedom of contract argue for a shift from the freedom of contract paradigm toward fairness. Currently, freedom of contract does not mean unrestricted freedom. Legal certainty in freedom of contract is balanced with the element of justice for the parties involved in the contract.

Relationships in international trade are complex. All relationships within the international trade process have the potential to give rise to disputes involving international trade law subjects, including states. Generally, a trade dispute is often resolved through negotiation (Mawanda & Muhshi, 2019). If the parties do not find a way forward through negotiation, disputing parties can pursue several other dispute resolution methods, such as resolving disputes through arbitration or through the court. The choice of dispute resolution method that can be pursued by the parties is generally determined in the agreement clause between the parties. Parties to such agreements typically choose one legal system (choice of law) or select a dispute resolution institution (choice of forum), which may also include submitting disputes to Alternative Dispute Resolution (ADR) or Alternative Dispute Settlement (APS). In principle, dispute resolution forums in international trade law are similar to dispute resolution forums in international disputes in general. The dispute resolution forums that can be chosen by the parties involved include negotiation, mediation, conciliation, arbitration, legal settlement, or court-based dispute resolution, as well as other methods of dispute resolution chosen or agreed upon by the parties, as stipulated in Article 33 of the United Nations Charter. These methods are recognized as dispute-resolution techniques in the legal systems of various countries (Suparman, 2018).

An international trade agreement is binding based on the agreement of the parties that create it. Therefore, like international agreements in general, an international trade agreement will only bind a country if that country agrees to sign or ratify it. Once a country has ratified it, that country is obliged to incorporate it into its national legal framework. The international agreement that has been ratified then becomes part of the national law of that country. Compliance with international law thus takes place without the imposition of any specific party on the accepting country because the signing signifies the willingness of the country in question to adhere to the international norms agreed upon in the international agreement (Ratno Lukito, 2015).

Failure to comply with international agreements will give rise to international accountability, and a country cannot hide behind its national laws to justify this failure. In this regard, a country must ensure that compliance with these agreements is justified by its national law. Current globalization tends to require certainty that every national law of the participating countries complies with international agreements. For this reason, international law has begun to develop a mechanism for compliance with agreements. This is where international trade agreements will be seen and tested regarding the compliance of the parties in carrying out the contents of the international trade agreement (Damos Dumoli, 2015).

The presence of the principle of good faith within the scope of international trade agreements serves as legal firmness to foster substantive justice, thus achieving a fair solution for both parties that have reached an agreement. This principle of good faith imposes an obligation on a country that has become bound by an international trade agreement to always adhere to the relevant clauses. The principle of good faith supports and reinforces the principle of *pacta sunt servanda* to ensure that an international trade agreement can be executed and that the agreements' regulations are also adhered to by the countries that commit themselves to the agreement. The legal force in binding an international trade agreement cannot be enforced against a country without a good faith intention to implement the agreement. Therefore, the principle of good faith is crucial in executing agreed-upon agreements,

including in international trade. Hence, it is important for both countries engaging in international trade to mutually apply good faith, minimizing the potential for disputes (Victorija, 2014).

CONCLUSION

International trade significantly influences economic growth. Exports have a substantial impact on economic growth. Exporting also maintains a positive relationship with economic growth. These findings are consistent with the hypothesis. As the level of exports increases, the economic growth rate also rises, aligning with the initial hypothesis formed based on existing theories. When exports increase, aggregate output also rises. The growth of the production sector results in an increased workforce, leading to higher wages that will subsequently be used for household consumption. This serves as a stimulus for further economic growth.

The law of international business transactions is categorized within the realm of private law, granting the parties the freedom to determine the contents of an agreement that constitutes the performance of a contract. Nevertheless, international business transactions carried out by two legal subjects of different nationalities must still adhere to international law concerning the transactions they undertake and consider the legal principles of their respective countries. Legal certainty in international business contracts can be seen through the principles of international private law. However, the principles of international private law can prove to be quite challenging and time-consuming in the resolution of breach of contract disputes since the application of international private law must consider the points of connection or links present within the international business contract.

The significance of the existence of international trade law as a part of international law lies in its crucial role in regulating international trade relations within the international community to achieve desired objectives, particularly in international business transactions in Indonesia. Furthermore, fundamental principles within the scope of international agreements serve as a source of international trade law, namely the principle of good faith. The presence of the good faith principle obligates a country bound by international trade agreements to adhere to the clauses therein consistently.

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