

The Role of the State as a Seller in International Trade Law View



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ABSTRACT: Activities buy and selling between countries are carried out for countries that have an interest One each other to fulfill the needs will the well-being of its people. Already duly given clear settings will things that are allowed done and what not can be done to create its harmonious relationship between related countries. Trading international law trading binding internationally for countries in the world. Operate law trading internationally, especially countries as seller Lots lack in matter rules and their enforcement so that happen complicated problem For resolved. Study This use study normative. Legal study materials This is material primary, secondary, and tertiary law. Research results show that representatives of internal countries trading internationally as sellers is a State-Owned Enterprise Company that carries out sales to abroad get the profit used For the interests of the Indonesian state. Completion dispute trading there are two options, via arbitration or negotiations *World Trade Organization* (WTO). WTO selected if the country concerned in dispute is a WTO member. Arbitrage is chosen If a party-related dispute wants maximum confidentiality and a fast and easy process For holding the verdict.

KEYWORDS: Role, Country, Seller, Trade International.

A. INTRODUCTION

Man's instinct is to live together with other humans because man is a creature social. All activities are done without the need to help man another. The man was created by God to have reason and the ability to do various types of activity. They can do one of these activities for get money to fulfill their needs in life. In his activities looking for money to endure alive, humans establish an association that owns its condition geography, and culture as well as the same fate in the past, the so-called with a country. Standing in a country makes gathering man This need made the country he founded become more forward and beyond fine from facet economy nor facet humanity, politics, and law. Advanced economy a country needs to work the same as the good ones between ethnic groups nation in that country and with other countries because a country does not can be united if there is support from ethnic groups in other nations as well as confession sovereignty of the country from other countries. Form work the same thing that countries do to other countries is called bilateral relations and multilateral relations. Bilateral is connection work the same between one country with one other country. Multilateral is connection work the same between one country with many countries.

Every country has written goals in the constitution of each country. The goals of the state vary from one country to another. Indonesia had an objective that is as in Opening The 1945 Constitution, namely: *Advancing General Welfare, smartening up the nation, and Carrying out Based on World Order Independence, Eternal Peace, and Justice Social.*

To realize the objectives of the Republic of Indonesia as mentioned above, necessary support as well as facility support, such as the active role of all Indonesian people in the field of politics, economics, law, etc.; and the performance of state officials as facilitator for implementation the way Indonesian government.

In carrying out state goals, *Advancing General Welfare* required activity trading internationally. Trading internationally is done because inside a country there are very large numbers of people who must fulfill their desires his life. To realize "General Welfare", ie the ideals of the Republic of Indonesia to fulfill the desired life of its people, the Republic of Indonesia does trading internationally. Trading internationally This happens Because need will develop in the era in which the world develops from various sectors such as advanced technology, economics, politics, etc so fast so the Republic of Indonesia is necessary to follow the progress in this era so that it runs smoothly in reach objective his country.

Trading internationally happens No simply happen so just without a long process and history. Started from bartering activities, trading through gold currency until using modern currency like ours know the moment. That is all happening Because characteristic bases always human own Lots desire and height will need life. Implementation of trading internationally started with traders in a country or outgoing kingdom from his country or his kingdom for trade with inhabitants from the country or another kingdom. Trade whatever is possible with bartering activities. The way to barter is to exchange goods with goods, meaning we give

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our stuff to others, and others to who we give goods owned we return give items owned to We. The value of bartering is based on equality heavy between the exchanger and exchange party the goods by the exchanger. Difference color and type goods no influence mark transaction. Then when man started to use gold and silver as tools to swap goods, gold and silver made currency. How to use gold as a tool to exchange goods is by exchanging owned gold with the item you want purchased. Items you want to purchase these own different specifications and values and are interchangeable with gold in grade and weight. If the item you want to purchase is goods rarities and items quality tall exchange gold with goods the more heavier and worse rate. If on the contrary so exchanged gold thinner and more A little the rate. Gold is used as a tool to buy and sell This is gold shaped coins and bars. As it goes time and more progressed intellectual humans used gold as a tool to exchange goods abandoned and replaced with paper currency. Paper currency until now still applies.

Paper currency's fractions vary and the value is different in each country. Most currencies used for countries in the world are the dollar. The dollar currency is the currencies of the United States, Australia, and Singapore but that is a reference for all over currency in the world is United States dollar.

After finding paper currency as a tool to swap goods and services, the world of trade, in particular, trading internationally changed. Trading internationally the more progress, develops, and is effective. This is caused by using banknotes is very easy to determine the market price of some goods. Technology joined in as well as advanced the world of trade because the existence of a visa as a condition for somebody entering the territory of another country, buying, and selling or delivering goods by through air traverse oceans, and deep countries activity import-export, communications between countries use *cellphones* and social media. All of these make it easier to launch trading internationally.

The purpose of holding it trading internationally is to fulfill the needs public in the Lots sector, like clothing, food, and shelter through mechanism import from foreign countries. If you want to grow a country's economy, carry out export products domestically to abroad to be purchased by the destination country export.

Activity exporting goods overseas can raise the exporting country's foreign exchange because profits obtained are allocated to the APBN balance sheet. this APBN is used for building road toll roads, road highways, and facilities in general such as hospitals, community health centers, green open spaces, posyandu, schools, and universities.

Related to law trade international where Indonesia exports goods abroad, there are supporting theory discussions, on the theory of sovereignty country. In theory, the country is looked at occupy the power highest. All the rules existing legislation in the adherent country theory state sovereignty is established source law main. (Rosa, 2022). If in Indonesia the 1945 Constitution becomes the reference main in the state, therein there is an arrangement about trading internationally like in Article 5 Paragraph (1), Article 11, Article 20, and Article 33. Article 5 Paragraph (1) reads: " President The Republic of Indonesia holds power government according to Constitution ". Then Article 11 reads : Paragraph (1): " President with the approval of the House of Representatives states war , make peace , and treaties with other countries." Paragraph (2): " President in make agreement international others that give rise to it broad and fundamental consequences for related people's lives with burden state finances , and/ or require change or formation Constitution must with approval from the House of Representatives ." Paragraph (3) " Provisions more carry on about agreement international arranged with Constitution ". Article 20 reads: Paragraph (1): "The People's Representative Council holds power form Constitution ". Paragraph (2) "Every Design Constitution discussed by the House of Representatives and the President for get agreement together". Paragraph (3): "If the Design Constitution that no get agreement together, Design Constitution that no can submitted again in the session of the House of Representatives at that time". Paragraph (4): "President validate Design Laws that have been Approved together gor become Constitution ". Paragraph (5) "in matter Design Laws that have been approved together the no approved by the President in time three tens day since Design Constitution the approved, Draft Constitution the legitimate become Statutory and mandatory invited". Article 33 reads: Paragraph (1): "Economy arranged as business together based on principle kinship. Verse (2): "Branches important production for the state and those who control it desire many people's lives controlled by the state." Verse (3): "Earth, water and wealth nature contained therein controlled by the state and used for big prosperity of the people." Paragraph (4): "Economy national held based on democracy economy with principle togetherness, efficiency fair, sustainable, insightful environment, independence, as well with guard balance progress and unity economy national". Paragraph (5): " Provisions more carry on about implementation chapter this arranged in Constitution ".

The country as the holder power supreme should apply the principle *non - non-discrimination*. (Mastromatteo, 2017). The principle of this *non - non-discrimination* gives a chance The same to the parties who do so trading For something transaction trade in a country's territory. Principle This also applies to participating State-Owned Enterprises (BUMN). active in trading internationally.

In implementing laws in a country, there are several principle base or *fundamental principles* introduced by Professor Aleksander Goldstein, namely: principles of freedom of the parties for contract or *the principle of the freedom of contract*, principle *pacta sunt servanda*, and principles use arbitration (Muhammad Natsir Asnawi, 2017). With existing principles, this country has the authority to apply a principle freedom contract, including principles of freedom to choose and determine method solution disputes can be materialized through the *choice of forum* and *choice of law* (Desak Putu Dewi Kasih, 2021).

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Indonesia is a country that became subject to the law in law international own roles and responsibilities for running sovereignty and exercising provision in law international because in trading internationally there are various activities lots of trade types and existence the interests that create it activity trading become variation so that required rule law trade international for restrict and bind perpetrator business international do mutual things harm that occurs in the territory of each country involved (Adolf, 2004).

Regulation regarding the country as a buyer usually occurs in the position of the country as an importer. Then it appeared to question how if otherwise, how rule regarding the country as seller or explorer. There must be clarity in legislation.

A position like this often occurs in countries such as buyers, the so-called import. Import done to fulfill domestic needs effort welfare its people with method buy or import commodities important for the public from other countries to consumed by the public or for sale returned by the merchant local for purchased by consumers.

So the opponent is export. Export is the activity sell a commodity to other countries to obtain foreign exchange for the prosperity public.

Study this is different from the study before and has similarities. The similarities is you're welcome to study the role of the state associated with law trading internationally, however, focus the discussion differently. This writing focuses on the legitimacy of the state as a seller in law trading international as well as choice solution disputes that can be taken If happen loss on sales something goods by country based law trading international

A study previously by Desak Putu Dewi Kasih, Ni Ketut Supasti, Dharmawan, Made Suksma Prijandhini Devi Salain, and Putri Triari Dwijayanthi discusses "The Role of the State as Buyer in Commercial Law Perspective International" (Desak Putu Dewi Kinasih, 2021). Focus study This is do identification, analysis, and elaboration from state legality as buyers (*buyers*) in law trading international and optional solution disputes can be taken if loss in matter purchase goods by country based law trading international. Research by George Lucky Kaparang entitled "The Role of the State in Finish Dispute Trading International" (Kaparang, 2019) at its core focuses on how the settlement process works in dispute trading internationally according to GATT and WTO and Indonesia's role in dispute trading. Hata's research is entitled "Implementation of Public International Law in Instruments and Practice *World Trade Organization*" (Hata, 2010) and focuses on searching the role of law international public in organizing connection trading internationally specifically in the WTO system. Writing by Muhamad Rafi Darajati entitled "State Compliance with Trade Laws International". (Darajati, 2020) focused on the explanation of why an inner country carrying out trading internationally must be obedient to the law of trading internationally.

Writing purpose this is to analyze, identify, and explain the legitimacy of the state as a seller (*seller*) in law trading international and optional solution disputes can be taken if loss consequence sale goods by country-based law trading international. In an attempt to finish this writing, this writing will made in a way systematic in discussing relevant substance with the focused problem. First, explained the rule about the legitimacy of the state as seller (*seller*) in law trading international. Second, choice solution disputes can be taken if loss on sales goods by country-based law trading international.

B. RESEARCH METHODS

Writing This based study law uses method study normative. Study this use study to regulate legislation regarding the country as a seller in law trading international and settle selected disputes if loss consequence sale of goods by country based law trading international. Study law uses method normative This focuses on the role of the state as a seller in law trading international as well as solution dispute taken after a dispute, with approach legislation, against material primary law, law secondary, and materials law tertiary.

C. RESULTS AND DISCUSSION

1. The Role of the State as Seller in Commercial Law International

A country that is subject to law international does not quite have enough answers for its people in operating its role in the world of trade international. The reason why the country does not quite answer is that the state has the authority to arrange alone the way government and state have people who must nurtured to achieve well-being as mandate Opening The 1945 Constitution in which the Indonesian State aims to " Advance General Welfare".

One of the elements its founding a country is its legitimate sovereignty. With its sovereignty, the state owns the authority to arrange whatever comes in and what comes out from that country as Jean Bodin's thoughts on Sovereignty "Sovereignty divided into two, viz sovereignty to deep and sovereign to outside. Sovereignty to in is state sovereignty in which the state (government) regulates all affairs domestic. So from that's it sovereignty to in this no can there is mix hands of other countries. Temporary that is, sovereignty goes out is state sovereignty in which the state (government) plays a role very in connection with other countries or can said connection internationally.

Jean Bodin also said in theory state sovereignty that the state is a legal entity that considers its obligations and rights as well as can do action or deed law at a time to support rights and obligations. Man as a member public in theory state sovereignty, the state that owns its power highest for creating law (Hukumonline, 2022).

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Connection state sovereignty with trading internationally is trading interpreted as activity trade carried out by one country to another. Wahono Diphayana says that trading internationally is transaction involving business from one country, fine trading bilateral international, trade regional international, and multilateral (2022) trade .

Because state sovereignty matters power is in the hands of the state, then the state owns its authority in matter-making regulations that apply to individuals and companies that are binding incident law within its jurisdiction including sectors connected to trade in the territory of that country. Connection between one country with another country, 's law trading internationally is equal and coordinating (Sunyowati, 2013).

WTO *agreement* is one of the example connections to multilateral international because the WTO is the parent organization of world trade and is a must-notice activity trading international members. WTO *agreement* also became a source law agreement internationally created by its members (good laws in the form of bilateral, multilateral, and regional). There is the so-called agreement *Marrakesh Agreement*, is the agreement that established the WTO states that when conflict/contradiction between the WTO agreement with WTO multilateral agreements, and treaties international other than that is enforced provisions in *Marrakesh Agreement* (Desak Putu Dewi Kinasih, Kedudukan Negara sebagai Pembeli dalam Perspektif Hukum Perdagangan Internasional, 2021).

The agreement mentioned above is used by countries as source law when transaction trading is outlined internationally in the form contract (Desak Putu Dewi Kinasih, Peran Negara sebagai Pembeli dalam Perspektif Hukum Perdagangan Internasional, 2021). Related state position as sellers, in general company from his country can do transaction trade other. This matter is related tightly to the essence ff transaction trade which is *fundamental freedom* (Desak Putu Dewi Kinasih, Kedudukan Negara sebagai Pembeli dalam Perspektif Hukum Perdagangan Internasional, 2021) freedoms.

The role of the state as the seller is related tightly to principle *jure imperii* and *jure* questions. *Jure imperii* is the actions of legal entities will be protected by state immunity if action the is action government or authority executive (Sefriani, 2012). However If transaction business, then the immunity of some institutions within a country will be lost If carry out *jure* questions (Lantang, 2013).

Based on terms regarding the country doing transactions buying and selling to other countries then what is meant is the state represented by state-owned companies. This matters because state-owned companies run businesses representing the country in trading internationally but also the product or the advantage used For progress or fulfilling the needs and life desires of many people in the country. For example state-owned company, PT Pertamina (Persero) sells material burn oil all over Indonesian society, materials burn oil needed by Indonesian society. The difference between PT Pertamina (Persero) when selling material burn oil abroad is when selling abroad profit taken by Pertamina and its products needed overseas communities where PT Pertamina is located operate his business while in Indonesia PT Pertamina profit taken by PT Pertamina and its products needed or profitable Indonesian society.

BUMN was created subject law representing the country in law trading internationally because Civil Code Article 1654 states "All established legal entities with legitimate, as well as private people, in power for do deeds civil, without reduce amending legislation power that, limits it or subdued him to the procedures certain". This article means BUMN companies are legal entities private in the form of the state-owned company. This means that BUMN plays a role as a seller of goods For the advanced Indonesian economy.

2. Completion Dispute Trading International given Commercial Law International

The responsibility carried out by the state is in the form of giving facilities to its inhabitants from institution solutions dispute trade international through arbitration (Israhadi, 2018). Arbitrage is a solution to dispute civil cases outside the judiciary in general, namely the judiciary below where is the Supreme Court? its implementation needs help from some people who behave as capable neutral (the arbitrator). finish dispute (Pahlepi, 2022). Arbitrage held referring to the Law Number 30 of 1999 concerning Arbitration. In addition to arbitration, settling disputes in trade internationally can use Alternative Completion Dispute (*Alternative Dispute resolution*). An alternative Completion Dispute is something method to finish a dispute outside court based on consensus (agreement) carried out by the parties to the dispute Good without or with the help party the third is neutral. Refer to Constitution Number 30 of 1999 Article 1 number 10 states that there are 4 (four) ways to finish disputes through Alternative Completion Disputes, namely: consultation, negotiation, mediation, conciliation, or evaluation expert (Hanif, 2020).

1. Consultation

Consultation is something activity, that is personal between one party, the so-called client with the other party who is the party consultant, who provides his opinion to the client the to fulfill needs and requirements his client the. Consultant role no dominant because the consultant only gives opinion law as a request where is the client? Furthermore, decisions about solution disputes will taken by the parties themselves.

2. Negotiation

Negotiation is a means for the parties to the dispute o discuss the solution without third-person involvement. Through track negotiations between the disputing parties, an exploration process returns will rights and obligations of the parties to the dispute with something the same situation leading, with release or give leeway on rights certain. But the negotiation process there is a

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weakness, the first is the position of the parties who are not balanced. A strong party will push a weak party. Second, the ongoing process of negotiation tends to slow and consume lots of time.

3. Mediation

Mediation is an intervention in something dispute by parties the third (mediator) does not take sides and helps the disputing parties reach an agreement in a way that volunteers to disputed issues and can be accepted present by the parties to the dispute. The mediator acts as a facilitator. This matter shows the mediator's job is only to help the parties to the dispute finish the problem and not have the authority To make a decision. The mediator's job is only to help the parties reach the only deal that can decided by the parties to the dispute. Mediators don't authorize pushy but must bring together the parties to the dispute. The mediator must create a possible conducive atmosphere to ensure the creation of compromise between the parties to the dispute to obtain mutual results profitably.

4. Conciliation

Conciliation is the technique solution disputes through several people or bodies (Commission Conciliation) as a so-called mediator conciliator with brings together or gives facility to disputing parties to finish the problem in a way peace. Conciliators follow as well as in a way actively give solutions to disputed issues.

Maintenance arbitration in Indonesia is carried out by an institution named BANI. BANI is an abbreviation of the Indonesian National Arbitration Board. BANI is an independent institution that provides service various related ones with arbitration, mediation, and other forms of solution to disputes outside court (BANI, 2022). With the existence of BANI, the solution disputes the easy, faster, and more confidential case guaranteed OK, that's the case and the parties involved.

Completion dispute trading international held based on object disputed matter. If that's the case between the Indonesian state and other countries the solution depends on the country being object dispute. For example case business in Australia, Indonesia his partner experienced a loss on what is being done, by an Australian businessman. This matter requires a solution dispute carried out in Australia because that became an object dispute in the company in Australia.

The United Nations (UN) has an organizational unit that oversees its trading internationally, the organization called WTO (*World Trade Organization*). The WTO is institutions that supervise, operates, and helps the way of trading internationally. The founding of the WTO results from bond agreements and negotiations from almost all countries in the world, organizations that also help align global needs.

Another aim of establishing the WTO is: For openness of territorial boundaries, providing a guarantee of the “*most-favored-Nation principle*” (MFN) and non-discriminatory treatment by and among member countries, as well as a commitment to transparency in all activities (Indonesia, 2014).

Because it has the objective want non-discriminatory treatment between member countries WTO automatically has a role to reconcile disputes that occur between member countries with other member countries.

Until 2022, that's it There are 164 WTO member countries. Of the 164 countries, 117 are developing countries. 117 developing countries WTO members own right to state opinion in forums (NISP, 2022).

D. CONCLUSION

The role of the state as a seller in law trading internationally is the country has State-Owned Enterprises (BUMN) as sellers representing Indonesia in trading internationally. The seller's intent here is a BUMN doing export or sell to foreign countries for looking for profit or profit where profit is for state interests, i.e. raising foreign exchange.

Completion disputes can be taken in trading internationally through arbitration and negotiations at *the World Trade Organization* (WTO). Arbitrage chooses If one wants stronger confidentiality for a finished dispute experienced. Negotiations at the WTO were selected if the country is in dispute both of them become members. This matters because solution disputes through negotiations at the WTO require the two countries in dispute incorporated into it.

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