

Law of Export Contracts to Destination Countries in the Covid-19 Pandemic Era

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Abstract. Contract are the basis for the realization of trade traffic in determining exports to destination country. In cross border transactions, the parties in a relationship usually do not meet directly, so they have different social practices. Different laws followed by different government with different legal systems. These factors can give rise to misunderstanding. How can the application of export contract law to the destination country in the era of Covid-19 pandemic take place properly and successfully? The influence of each country's cultural appreciation is not only in negotiations but also in foreign market acceptance of products and services. The theory says that tosteming occurs when the offering party receives an immediate answer from the other party. The research aim is to examine the degree of legal certainty in guaranteeing goods and services. The demands for adaptation in the era of Covid-19 pandemic to be carried out digitally must be met. The method used in analyzing the data with a normative juridical approach is descriptive analysis. The result of the study show that the basic of contracting to the destination country in the international legal system are followed and adapted to the system prevailing in a particular country by respecting the existing culture.

Keywords: Contract Law, Destination Country, Culture

1 Introduction

In the global era and technological sophistication as it is today, the flow of trade between countries in the world is getting faster and more open. The implementation of exports to destination countries for one country to another has requirements that must be met. By fulfilling the conditions determined jointly internationally, it will facilitate a country's products to be exported to the destination country. The quality of the product, the way of contracting, the introduction of culture, understanding the system of the destination country is the basis for contracting to the destination country. It is no less important that communication and negotiation with various countries will add strength and ensure the availability of the law.

The main problem posed is how the application of export contract law to destination countries in the era of the covid-19 pandemic can be carried out properly and successfully.

The country system from and to the destination country is different. In this world there is a common law system, there is a civil law system or something else. This is very influential in determining the success of exports to the destination country. For developed countries, the export value can be easily targeted. In the other hand, for developing countries it is necessary to compete, promote, and negotiate first in carrying out their exports. The facts show that export activities must be carried out in stages and in a well-scheduled manner. The fact that in the era of the covid -19 pandemic, not only developing countries but also developed countries

have been hit by the Covid-19 pandemic which has not been completely resolved. Electronic commerce is one of the strategies so that trade contracts to countries of destination for exports can continue to run effectively even though there are Constraints that may occur including from the internet speed and capabilities. Constraints in the current Covid-19 pandemic situation in export activities to destination countries include an untimely schedule, declining purchasing power, decreased selling value, large stock of goods that have not been sold, as well as an increase in moving workers. or have not been absorbed and some have even experienced layoffs.

From a number of facts from trade transactions between Indonesia that have been agreed upon with Australia which include exports of plastic products worth AUD \$340,000 or USD \$232,520, exports of brown sugar and cardboard boxes worth AUD \$78,000 or equivalent to USD \$53,343 and exports of gloves for USD \$1 million. In addition, there is also an agreement on the export of processed food and fruit with a value of USD \$75,000 to the United Arab Emirates. Targets to France, Switzerland, Vietnam, Nyanmar & Azarbaijan had to face obstacles. From Indonesia's Export & Import data in May 2019, goods exported to the United Arab Emirates almost reached \$16 billion, Switzerland \$14 billion, Vietnam \$12 billion, Nyanmar \$11 billion. During the pandemic era, export to Arabs fell to \$14 billion, Switzerland fell to \$13 billion, Vietnam somewhat survived more than \$14 billion, Nyanmar also lasted around \$11 billion. In addition, WHO noted that due to COVID-19 until September 15, 2021, there were confirmed cases of Covid-19 in the world. 225,680,357 cases, and 4,644,740 deaths (CFR: 2.1%)

The purpose of this research is to examine foreign export trade contracts for the purpose of legal certainty in guaranteeing a service and goods in the current covid-19 pandemic era.

2 Literature Review

2.1 Trade Contract

Trade is stated in Article 1 (1) of Law no. 7 of 2014 concerning Trade as follows: Trade as an order of activities related to transactions of goods and or services within the country & beyond the borders of the country with the aim of transferring rights to goods and or services to obtain compensation or compensation.

Electronic commerce (E-commerce), in Law no. 7 of 2014 defines as trading through an electronic system and described in Article 1 (24), is trade whose transactions are carried out through a series of electronic devices and procedures.

The implementation of trade both nationally and especially international trade is in practice carried out between two or more parties, either individuals or by legal entities to carry out their business. Normatively, Article 1313 of the Civil Code is described as follows:

Agreement. Agreement is a legal act in which one or more persons bind themselves to one or more persons. In this case, a trading contract should have an agreement in carrying out its business between two or more parties.

The agreement brings legal consequences for the perpetrators, then the agreement conditions that must be fulfilled according to article 1320 of the Civil Code are as follows:

1. There is an agreement of the parties
2. The ability to make an agreement
3. There are certain things
4. There is a halal reason for muslim country

The first and second conditions are called subjective conditions, meaning that the parties who carry out the contract or agreement must exist to fulfill them as legal subjects and are therefore called subjective conditions. A trade contract between one country and another country agrees to procure an item that is exported by a trader to the destination country that has met the minimum requirements.

The third and fourth elements of the conditions as objects that must be agreed upon must also be fulfilled, this in the contract is called the terms of the agreement called objective conditions. If the subjective and objective conditions have been fulfilled, an agreement is legal by law. On the other hand, if the subjective and objective conditions are not met, then a contract or agreement is deemed not to meet the conditions of the agreement, so that it is not legal according to the law and can eventually be null and void. In a contract, it should be carried out according to the principle of freedom in carrying out the contract, meaning that what will be agreed upon is up to the parties to the agreement and what agreement will be agreed upon, both of them are given freedom, so the principle in a trading contract is called the principle of freedom of contract.

That all agreements made legally apply as law to those who make them. Article 1338 of the Civil Code in paragraph 1 said. A trade contract, if it has been signed by the parties, both the contents and other agreements required in the contract, is legally binding on the parties and is a law for the parties who have made it. Thus, if in a trade contract that has been agreed and signed jointly by two or more parties, the contents of the contract by both parties must be fulfilled to comply with the contract.

Pacta sunt servanda. Agreement and the ability to act in carrying out the contents of the contract will give birth to a principle known as the principle of pacta sunt servanda. This principle is known by anyone if he has ever and in good faith to fulfill his obligations as a party who has made a contract in trading.

2.2 Buy and Sell Trade

Buy and sell trade is regulated in Article 1457 of the Civil Code, which is formulated as follows: Buy and sell trade is an agreement in which one party binds himself to deliver an object and the other party to pay the price that has been promised.

This is confirmed by Article 1458 of the Civil Code as follows: Buy and sell trade purchase is deemed to have taken place between the two parties immediately after these persons have reached an agreement on the object and the price, even though the object has not been delivered or the price has not been paid. From these two bases, it can be said that in buying and selling trade also applies to business transactions related to the relationship between buyers and sellers that buyers and sellers must pay for the goods offered on demand.

It is very important that there must be uniformity in business arrangements in practice in the field. In international trade, it turns out that there are several parties involved in the process of buying and selling activities, namely the seller and the buyer. Meanwhile, several

documents related to the object of trade and absolute existence such as bill of lading (B/L) in international shipping using transportation services must also be required.

For this reason, the terms of buying and selling trade, which require a clause in the trade contract and affect if it passes between countries, especially on the implementation of business transactions. Clauses in the custom of international business contracts have been standardized.

The clauses are as follows:

1. Loco, ie the buyer receives the delivery of the goods at the warehouse (the seller), such as packing is borne by the buyer.
2. Free Alongside Ship (FAS), ie the seller delivers the goods and the buyer provides the ship.
3. Free On Board (FOB), almost the same as FAS, namely the seller submits the buyer's goods to the ship.
4. Cost Insurance and Freight (CIF), namely the seller bears the costs from where the goods are stored until the port that is the buyer's destination.
5. Cost and Freight (C&F), insurance financing by the buyer is shared and is similar to CIF.
6. Fanco, which means that the goods are delivered by the seller to the buyer's warehouse

2.3 Documents in Buying and Selling Trade

The The documents required in international trade are as follows:

1. Bill of Lading (B/L)
2. Invoice (invoice)
3. Certificate
4. Packing list and weight list
5. insurance policy

The export-import policy to the destination country of each country is different from one country to another in international trade transactions, so that is the benchmark for the existence of a national legal system and remains guided by aspects of international law, whether public or private. If the clause contained in the signed trade contract is in accordance with the conditions of the destination country and the country of origin of the goods concerned.

2.4 Role of Contracts in International Trade

A contract is an agreement that can be written or unwritten. The terms of the written contract can be in the form of memos, certificates or receipts that are restricted by law. The role of the contract is increasingly important, especially if a party enters into a transaction with another party who is not yet known and is abroad. Making international contracts to other countries is a more complicated process than making contracts between parties residing in one country or one culture.

The aspects that are needed as a condition to carry out the role of an International Trade contract are:

1. The balance of power shall at least consist of: the party who drafted the contract, parties familiar with written contracts, and one party contract ratification.
2. Cross-border rights and obligations, consisting of: differences in business practices, International Law, and accuracy & capability must be predictable.

3. Cross-Cultural Expectations, at least: behave soapy and write, follow submit the host, take care to make a questioning movement, speak firmly, confidently, warmly bearing the other party's comments, and sign all correspondence.
4. Personal Commitment, in terms of: before negotiating, it is necessary to decide on the agreement to be made, and business transactions through culture must pay attention to how to show commitment.
5. Legal basis, must be clear.
6. Enforcement
7. Choice of way out
8. Requirements in the contract, at least the contract has agreed on four conditions, namely: description of goods in terms of type, quantity, and quality, delivery time, price, and time and method of payment.

In this case, there needs to be an international tendency to avoid disputes and must practice business practices. Also Payment and Delivery Terms, these two requirements are significant essential conditions in international contracts usually using the currency of the country concerned but options can be made.

2.5 Fundamentals of Contracts in the International Legal System

We must understand the legal system of the destination country that influences the contract. The differences in the legal system in the country of export destination will determine certain aspects of the contractual environment law. Besides the law in one country, it can also benefit from the law of other countries. The existing legal system in various countries in the world there are four types of legal systems that can be used as the basis for trade contracts as follows:

Common Laws. The system was developed as a court system in England before any regulations were adopted by the country. Legislation functioned as a complement to affirm, codify and limit customary law in courts. The influence of local law is very strong, so before entering into a contract it is always necessary to study the legal system that applicable in the local country. Courts in common law countries apply legislation with the principle of developing previous decisions as the basis for implementing a newly recognized situation. Countries that apply the common law system are: England, United States of America, Australia, Singapore, Hong Kong, Israel, Malaysia, Egypt, South Africa.

Civil Laws. A systematic and comprehensive collection of laws that regulate all aspects of life is known as the civil law system. The Court's decision is based on the legal principles of the existing regulations. The civil law system understands that the judiciary is not a jury except for criminal cases and courts usually consist of a panel of judges. In contrast to the common law system, the rules specify less evidence, defense and oral arguments before a judge. The legal interpretation used by the judge is the decision used by the judge. Written evidence is mostly used by judges in court.

Islamic Laws (Syariah). The law used comes from the Qur'an and Sunnah. The Qur'an is a collection of revelations from Allah while the sunnah is the words and deeds of the prophet Muhammad as the messenger of Allah. The Qur'an and Sunnah are not detailed rules, but are Muslim religious principles. In business practice, most Muslim countries have adopted the ERO [model of law, which has been modified, especially French or Napoleonic law].

Social Laws. The legal system is derived from the Manifesto developed by Karl Marx. Manifesto is a philosophy that prioritizes or teaches individual property rights to goods as part of the ownership rights of the whole community with the stipulation that the rights of each citizen are inherent in the goals of the state. Society will run by itself without the need for legislation. foreign trade is carried out by the state. Individual commercial dispute resolution rarely relies on the social court system. The court will prove all the evidence presented, determine, value & factors and make decisions based on the principles of common law and social ideology.

3 Methodology

In this study, it is necessary to explain beforehand that the method used in the study is a normative juridical approach with a descriptive analysis approach according to the material.

4 Discussion

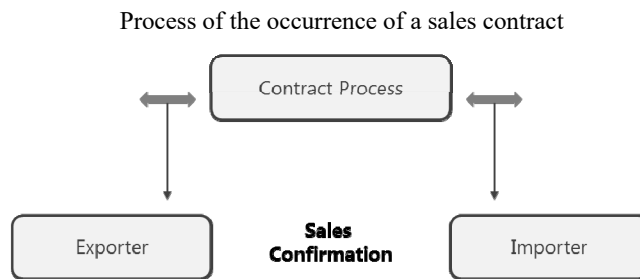


Fig. 1. The process of running a trade contract.

The process of running a trade contract can be described as follows:

1. Exporters promote their export products through exhibitions or display on the internet, sometimes exporters directly allow offers to attract potential importers.
2. Interested importers will send a letter of request by e-mail to the exporter.
3. The exporter responds by sending a complete offer sheet, including the price description of the product, FOB, CRF/CIF price conditions, packaging details, payment terms, delivery time, drink orders, and other matters. Another important thing that importers need to know.
4. Interested importers will send orders (order sheets) to exporters by stating, besides that, they must also be equipped with requirements applied by the government in the import sector and explain shipping brands that have become customary (usage) in shipping goods in international trade.
5. The exporter will send a sales confirmation which must be signed by the importer as a reinforcing bond before the product is prepared or produced by the exporter.
6. The exporter or importer issues a sales contract which must be signed by both parties.

5 Conclusion

The law of export contracts to the destination country in the era of the covid-19 pandemic can still run well if the legal basis of the contract is fulfilled according to the system of the destination country and provide the contract documents are fulfilled and adjusted to the culture of the country to be addressed.

Apart from that, the contract procedure for the export destination country in the situation of the COVID-19 pandemic can still run with a strategy through online trading systems with complete supporting documents and legal certainty that guarantees the implementation of trade contracts.

In addition, the concept required in the export contract law to the destination country in the current era of the covid-19 pandemic can be based on Law No. 7 of 2014 essentially that trade can be carried out through electronic sets and procedures by being carried out publicly or privately.

Export transactions can also occur either through face-to-face correspondence processes or through face-to-face negotiations, but both methods are finally formulated in writing in the form of an export trade contract or commonly called an export sales' contract. export is recommended in written form.

References

- [1] Agus Ery, Priyono. Journal Law Reform, Aspects of Fairness in Indonesian Business Contracts (Reviews on Franchise Agreements), Vol. 14, No.1, Master of Law, Faculty of Law, Diponegoro University, Semarang (2018)
- [2] Handayani, Sarjiyanto, Journal of Indonesian Vocation, Risk Mitigation and Insurance Claims for Export Freight Forwarding International Freight Forwarders, Vol. 7, No.1, January-June, Trade Management Diploma Program, Sebelas Maret University, Surakarta (2019)
- [3] Johanes, Johny Koyuya. Journal of Legal Trading Compilation, Trade Transactions Through Electronic Systems by E-Commerce Business Actors in the Target of Tax Revenue, Vol. 4, No. 2, Faculty of Law, University of Mataram, (2019)
- [4] Karla, C. Shippey, J.D. Drafting International Business Contracts, World Trade Press, Penerbit PPM, Jakarta, (2001)
- [5] Robin A. Suryo & Agita M. Ulfa, Contract Theory & Its Implications for Government Goods/Services Procurement Regulations, Vol. 3, No.3, (2013)
- [6] Sentosa Sembiring, Commercial Law, Third Revision Edition, PT Cutra Aditya Bakti, Bandung, (2008)
- [7] Zein, Yahya Ahmad, Electronic Commerce Export, Mandar Maju, Bandung, (2009)