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Research Article

FUNDAMENTAL PRINCIPLES OF THE PARTIES IN INTERNATIONAL BUSINESS LAW CONTRACT

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A B S T R A C T

The purpose of this study to discuss, explain and analyze the fundamental principle of contract law International business. The method applied is normative, which are based on legal principles contained in the law, or set specific standards or norms against a secondary phenomenon by reviewing the data or literature. A fundamental principle of the parties in international business contracts are: an agreement made by the parties and a set of regulations governing the establishment (formation), economic activity / industry (performance), and execution (implementation) of the contract between the parties, both national and international. Its main purpose is to protect the individual expectations (asappropriate and justified by the law), business and government. Because the contract is the purpose and aim of "creating better conditions (eenbeterlevenbrengen) for both parties. Reciprocal agreements and the idea that the shift of wealth is Considered justified (feasible or Appropriate) along not only the will of the parties in conformity statement, but an element of balance has been met. Thus Spake the law of equality in international business contracts, achievement promised to be reciprocal.

INTRODUCTION

Trade or international business development on the basis of equality and mutual benefit is an important element in the effort to promote friendly relations between countries. Based on the view that the establishment of uniform regulation which will govern contracts for the international sale of goods taking into account differences in social, economic and legal systems would contribute to eliminate obstacles and barriers to trade or contract law in international business. This fact puts the Law of International Business Contracts to be very relevant to scientific inquiry in order to be a discourse for the business development of international trade law that supports the economic development of Indonesia. To be built International Business Contract Law should be charged on the principal balance of reasonableness and fairness to the parties committed themselves. a country can produce a kind of goods better and cheaper due to much better combination of factors of production (natural, labor, capital and management) then the country could also obtain "advantages" due to high productivity. This is referred to as the advantage in cost comparison (comparative advantage / cost). Sometimes the production of a country can not be consumed entirely in the country, since centuries ago has encouraged people to trade in the production output to another country outside its borders. Trade goods from a foreign country to another country outside the national boundaries that were intended to foreign trade or international trade. Similarly, the domestic trade transactions "trade", then in the foreign trade activity of the township also performed "sell" the so-called export and activity "buy", commonly called import. Buying and selling is also called Business. Exports and imports in this sense is limited to the export and import of goods (visible goods).

Table I Factors International Business harder than the domestic business (national)

No	Factors International Business harder
1	The buyer and seller are separated by boundaries of state (geopolitical);
2	Items must be sent or taken from one country to another through various regulations, such as the Customs Regulation, which is sourced from the restrictions issued by the respective government;
3	Between one country to another is not uncommon there are differences in language, currency, dose and consideration of domestic law, and so forth

In general, procedures for business in the country (national) did not differ with foreign trade, international business just a little more difficult and more complicated, which is partly due to the following factors:

Buyers and sellers separated by boundaries of state (geopolitical); Goods must be sent or taken from one country to another through various regulations, such as the Customs Regulation, which is sourced from the restrictions issued by the respective government; From country to country is not uncommon there are differences in language, currency, dose and consideration of domestic law, and so forth. These factors demand a business agreement or contract in order to avoid disputes or business disputes in case things are not desirable for both parties. This fact puts the Law of International Business Contracts to be very relevant to scientific inquiry in order to be a discourse for the business development of

international trade law that supports the economic development of Indonesia. To be built International Business Contract Law should be based on the principle of equality or fairness laden balance and fairness to the parties committed themselves. a country can produce a kind of goods better and cheaper due to much better combination of factors of production (natural, labor, capital and management) then the country could also obtain "advantages" due to high productivity.

With regard to international business that requires the speed and certainty, one of which is a very international business practice requires harmonization with the principle of balance, is the law in the field of transportation, marine, land and air. In the evolving habits and set forth in the International business contracts, such as contract clauses standard (default). Standards issued by the ICC have been widely put into trade contracts made by the business, although it is not binding. Two legal products Chamber of Commerce (International Chamber of Commerce) or the ICC (inteernational Chamber of Commerce): UCP (The Uniform Customs and Practice for Documentary Credits). How important and beneficial to the development of international trade in Indonesia prompted the authors to examine the Fundamental Principles of the Law of International Business Contracts, so it needs to be assessed in terms of fairness to the parties in international business contracts.

Formulation of the problem

What is the fundamental principle of the parties in the international Business Contract Law?

Methodology Writing

The method applied is normative, which are based on legal principles contained in the law, or set specific standards or norms against a phenomenon by reviewing secondary data or literature. For further sorted according to material sources of law as follows: primary legal materials consist of legislation, secondary law consists of the relevant libraries, and tertiary legal materials consist of a legal dictionary. A qualitative approach does not take advantage of statistical data and arithmetic, the purpose of this study to discuss, explain and analyze the fundamental principle of contract law International business.

DISCUSSION

The principle of the parties' agreement (consensus) Article 1320 of the Civil Code[1]: Agreed, skill, a certain thing and a cause that is halal. Konsensualisme means an agreement, consensus agreement essentially been born since the second achievement of an agreement. The principle of agreement between the parties is a fundamental principle of the parties to the contract law International business. An agreement made this occurrence will encounter creates a juridical binding force. Juridical attachment in an agreement arising from human agreement with each other.agreement by the parties, and a set of regulations governing the establishment (formation), economic activity / industry (performance), and execution (implementation) of the contract between the parties, both nationally and internationally. The principle is the basis to be implemented whether or not a dispute resolution process. This principle can also be the basis of whether a dispute resolution process that is already underway is terminated. So this principle is essential, justice agencies (including arbitration) should respect what the parties agreed. Included in the scope of the terms of the deal are: 1) That one party or both parties do not attempt to deceive, suppress or mislead other parties, 2) That the amendments to the agreement must be derived from the agreement of both parties. This means that the termination of the agreement or revision of the charge agreement must also be based on the agreement of both parties.

Table II Fundamental Principles

No	Fundamental Principles
1	The agreement is a fundamental principle that made the parties and the encounter will occur, creating juridical binding force
2	Based on this principle, the offender must implement the agreement that has been agreed upon and set forth in the contract.
3	The requirement of written contracts when deemed occurrence of an agreement: the contract documents: a. Created written agreement of the parties. b. As a statute for the parties c. As the primary source of law for the parties.
4	Achievement promised reciprocal presupposes equality, reciprocal exchange of a key concept for the creation of justice
5	Treaty as a basis for implementation whether or not a dispute resolution process
6	This principle is essential, justice agencies (including arbitration) should respect what the parties agree
7	Changes to the agreement must be derived from the agreement of both parties

Achievement mutual agreement presupposes equality. Further, they should be explored relationships between achievement, especially with respect to the substance and the purpose and objectives, and tested whether there is a factual balance between the parties. Inequality achievement will lead to imbalance. By conducting such reviews can be prevented dissatisfied one of the parties and the prevention is one of the requirements to be able to achieve balance. In this case there is an imbalance, it depends on A as the injured party to demand nullification of the agreement. Principle of balance refers to the justification for the existence of a contract and enough reason to sue the validity of the agreement, a condition for the power base of the applicable agreement.

If the position is stronger influence on achievement liaison with one another, and things which upset the balance of the agreement, it is for the injured party will be a reason to file a claim by lack of validity of the agreement. Throughout the promised achievement of equality presupposes reciprocal, so if there is an imbalance, attention will be given to equity related to the way the agreement is formed, and not on the final results and achievements are offered on alternate sides.

Factors that could Disrupt the balance of the agreement is the way to form an agreement involving parties domiciled unequal inequality or achievements that promised to be reciprocal. In principle, with the bases Themselves on the basic principles of contract law and the principle of balance, the decisive factor is not equality of achievement Agreed, but the equality of the parties, ie if exchange agreement justice to be upheld. With regard to international business contracts that require speed and certainty, one of the which is the international trade practice very wanted Harmonization and the principle of balance, is the law in the field of transportation, marine, land and water. Law used in international business Because it involves many countries, it

[1]http://www.negarahukum.com/hukum/asas-hukum-perjanjian-dalam.html diakses senin17.50wib, 2 Januari 2017.

involves many of the laws are not uniform, so Often a lot of problems items, namely:

Negotiating legal power[2], vary between the laws in one country to another. There is a legal system requires that the contract negotiations is not binding at all before the contract is signed. The legal system in Indonesia (based on the Civil Code) adheres to this system. However, there are systems in certain countries explicitly stated that the negotiations are not binding under the bond is called preliminary contract. If the agreement is established it will cause problems that should be resolved in court. In general, in a country that adheres to the Law of Common Law System. Negotiations are already considered binding. In general, orders (order) purchases or sales to and from abroad are as a result of the discussions made previously between buyers and sellers. Therefore buyers and sellers in the far distance, then as a liaison (communication) typically have used the exchange of correspondence or by sending each wire. In modern times, where the time factor is very calculated, then the use of wire telex, telephone and facsimile have become common in conducting transactions with foreign countries.

Example

In the correspondence between sellers and buyers (exporters and importers) will be found preliminary talks regarding a transaction with a request supply of goods, price, and other conditions. Demand offers or quotes from prospective buyer to the prospective seller in a foreign language called "an inquiry for a quotation" and the seller (exporter) sends an offer (offer). Acceptances are not the same as bids. Acceptance or acceptance of an offer by one of the parties in the international business is not exactly the same as the bid (offer) has been done by others. The incidence of such legal arrangements in one country to another varies. Indonesian Civil Code, consider if there is a difference between the offer by one party to the acceptance by the other parties, we agree deemed not formed. So the contract has not been considered to occur (Article 1320 of the Civil Code:[3] Agreed, skill, a certain thing and a cause that kosher). In countries adopt the Common Law System (Anglo-Saxon), consideran is a condition of validity of a contract with a few exceptions and has been diminishing its power. While in Continental Europe, including the Netherlands and Indonesia does not impose the doctrine consideran. The requirement of written contracts, time is considered the agreement. Some countries enforce that acceptance has occurred, and therefore an agreement has been reached. At the time of the offer receiving party reasonably send akseptasinya (approval) to those who do offer (bid). If we compare with the New Holland BW (NBW), practical terms the contract is governed by strict and follow the principles of UNIDROIT[4]. NBW Article 217 states: (1) A contract is formed by formed by an offer and its acceptance, (2) Articles 219-225 apply UNLESS the offer, another Juridical act or usage produce a different result.[5]

An agreement made this occurrence will encounter creates a juridical binding force. Juridical attachment in an agreement arising from human agreement with each other. But countries that consider acceptance occurs when received by the party who do offer. There are countries that adhere to the principle of subjective acceptance is considered to exist when the parties did offer to find out the real (actual knowledge)[6]. Equality of the Parties, in a reciprocal agreement in the agreed quality of the achievements of reciprocity, placed in the context of a subjective assessment reciprocal basis would be justified by the rule of law. Instead due to inequality of achievement in the reciprocal agreement is an imbalance. If the position is stronger effect on the achievement of transportation, and matters which upset the balance of the agreement, it is for the injured party will be a reason to file charges imbalances agreement. Throughout the promised achievement presupposes reciprocal equality.

Of some quirk in Business Contract Law, there are issues of judicial, where the phenomena that characterize international business if we look carefully in international business collide two countries with the legal system. Thus the buyer (importer) to notify the seller (exporter) will consent. Approval of the buyer (importer) of an offer that is referred to as acceptance. With the deals approved by the prospective buyer, then there was an agreement. Their will encounter here was no juridical attachment. From the point of law has occurred and purchase transactions are usually referred to by contract of sale or agreement to sale.

Juridical attachment in an agreement arising from human agreement with each other. The impact of unforeseen circumstances the principle of the binding force of the contract is closely related to the principle of balance, which in turn is related to the boundaries of the binding strength.

Behind the "will to be bound" can be found elements that actually justify the basis for the binding force of the achievement of common goals. Reciprocal agreements the idea that the shift of wealth is considered justified (feasible or appropriate) along not only the will of the parties in conformity statement, but an element of balance has been met[7].

In the world of economics, the contract is an important instrument to achieve economic changes in the shape of the distribution of goods and services. Ratio (rationale) contract[8] refers to the goal of a shift of wealth equitably (gerechtvaardigde) and bring up the legal consequences of the enrichment of the parties also fair. The contract embodies into the purpose and aim of "creating better conditions (eenbeterlevenbrengen) for both parties. To be fair exchange as enrichment, can be seen as a fair exchange, it is an achievement to be balanced with the contra. Basic goals, as follows: The first goal, of a contract is a promise and protect impose reasonable expectation that arise from it. The essence of the contract is a promise or set of promises can be forced to implement, or it can also be said as the agreement enforceable by law. The second purpose, of a contract is to prevent enrichment (attempt to enrich themselves) conducted unfairly or improperly. The third objective, is certainly avert sundry losses (to Prevent Certain kinds of harm).

[2]SoedjonoDirdjosisworo (2006), Introduction to International Trade Law, Bandung: PT RefikaAditama p. 33

[3] http://www.negarahukum.com/hukum/asas-hukum-perjanjian-dalam.html Internet access senin17.50 pm, January 2nd, 2017

[4]UNIDROIT (The United Nations Commission on International Trade Law).

[5]TaryanaSoenandar (2004), the UNIDROIT Principles as a Source of Contract Law and Dispute Resolution Business, SinarGrafika, Jakarta p.37

[6]SoedjonoDirdjosisworo (2006), Introduction to…..Op Cit, p37

[7]HerlienBudiono. (2006), Fundamentals of Equilibrium for Indonesian Contract Law Contract Law is based on principles Wigati Indonesia, PT Citra Aditya Bakti, Bandung. p 47

[8]*Ibid,p.308*

In addition to the three objectives outlined above, added another essential goal, which is derived from the principle of harmony (harmony), the fourth goal of the contract is to achieve a balance between its own interests and related interests of the opposing party. Objectives are: exchange value (the value of money and goods), then the implementation of the necessary contracts with certain conditions, namely approval (the manifestation of a desire shared or mutual assent), promises are supported on certain considerations (preamble), and the capacity to contract and does not violate the law.

Next will be described the sense of international business and contract clauses.

Definition of Contract Law in International Business is a set of regulations governing the establishment (formation), economic activity / industry (performance), and execution (implementation) of the contract between the parties, both nationally and internationally. Its main purpose is to protect the individual expectations (as appropriate and justified by the law), business and government[9].

Clause Sales Contract (Sales Contract)

In drawing up the contract of sale (sales contract) is relevant to note the following[10]:

1. Description of goods (description of goods), must be made very clear by both parties either
2. Buyer or seller. When the item already has an international quality standard (International Standard Quality), thus determining the quality of the raw quality of these mentioned, for example, natural rubber, sugar, cotton and so on. Regarding industry, in addition to technical information (technical spesification), should mention the name of the manufacturer, such as Singer, Philips, Siemens, by attaching a brochure or leaflet.
3. The amount of goods (Quantity), determination of the terms of the quantum (number of items) must be clear so that no dispute may arise interpretation. As we know, there are a variety of unit of account, so in this case needs to be mentioned with a complete and perfect unit of account intended. For example, 10 ... ..tons of sugar.
4. Price (price), in determining the selling price, in addition to the currency type, must clear the terms of his surrender must be firm. Regarding the type of currency must be stated, for example, English Pound Sterling, Australian Dollar (A $), United States Dollars (US $), Singapore dollar (S $), Hong Kong Dollar (H $), European Union (Euro).
5. Place of delivery of goods (place of deliver), the terms of delivery of the goods to be defined precisely because of its connection to determine the price of a transaction, in addition to the condition of the goods to be explained, the name of the place, the handover will be done physically. It is important to know the limits of responsibility of each seller and buyer.

The Contract Documents are the primary source of law for the parties. Contract documents are drawn up in writing the agreement of the parties. Contract Document is a document statute for the parties. Reciprocal agreements the idea that the shift of wealth is considered justified (feasible or appropriate) along not only the will of the parties in conformity statement, but an element of balance has been met.[11]

Example: The case of UCP (Uniform Customs Practice for Documentary Credits).

UCP 500 (Uniform Customs Practice for Documentary Credit). Authorize the issuing bank to authorize the Bank successor in order to make the payment of Letter of Credit (L / C) to the recipient. The authorization was published in the Letters of Credit. In the case of Bank successor is authorized to make payments Letters of Credit by way of payment of bearer (sight payment) or Letters of Credit which payment is made in cash and letters of credit contains no clauses Choice of Law, the National Law that applies to Letters of Credit are set by linkage theory Closest and Most Realistic. Banks successor as the paying bank before making a payment Letters of Credit have to do some activities. First, the paying study the appropriateness of the documents filed with the Letters of Credit. Secondly, the paying bank to make payments Letters of Credit to the recipient in terms of the documents submitted in accordance with the payment Letters of Credit. Based on the performance of the functions above, according to the theory of linkage Closest and Most Real, National Law that applies to the Letter of Credit, the National Law state where the payer bank is located. In conjunction with the issuing bank to function only as a publisher of Letters of Credit[12].

So in international business, often in cases that are concerned about the state law which will be used in the event of a dispute. Generally, the key problem lies in the approval of the parties concerned in the sales contract, which contains a clause on the law of the country which will be used. If the parties appoint Arbitration in certain countries, then this institution is trying to finish judge actions. If the case goes to Court (Litigation) also directed that they pointed to the Court of the country which has jurisdiction, and they also want that the law of that country will be used as the master contract law. However, if the parties did not expressly state their intentions about the law of the country which will be used by the contract in the event of a dispute, the parties desire to be indicated by the Court of contract and related situation.

The general principle in this case is a reasonable law, which applies to the contract is a legal system that shows on the basis of the legal system the contract is made or a transaction in a very close relation. On an international scale, highly authoritative Arbitration Board so that cases of commercial disputes can be resolved without litigation in court

According Sudargo Gautama[13], that in order to determine the applicable national law on International Business Contracts based on the "Theory of Achievement Most characteristics" with the contract. Said that with the achievement of the most characteristic criteria, will obtain more legal certainty than using the old theories like Lex loci contractus or Lex Loci Solutionis or other theory.

[9]Syahmin AK. (2004), International Contract Law, King GrafindoPersada, Jakarta, p.20
[10]Amir MS. (2000), Inside and Technics of Foreign Trade, PPM, Jakarta. p 11
[11]HerlienBudiono. (2006), Fundamentals of Equilibrium…,Op cit p 471
[12]*Ibid*
[13]Sudargo Gautama (1997), International Trade Contract Law….,Op cit p. 43

Most theories Achievement Characteristics of Sudargo Gautama[14] that goes for letters of credit, letters of credit are given in International Business Contracts. In terms of choice of law clause does not load, then to determine the applicable national law is used Theory of Achievement Most characteristic. So in international business, there are often cases that are concerned about the state law which will be used in the event of a dispute. Generally, the key problem lies in the agreement or approval of the parties concerned in the sales contract, which contains a clause on the law of the country which will be used. If the parties appoint Arbitration in certain countries, then this institution is trying to finish judge actions. If the case goes to Court (Litigation) also directed that they pointed to the Court of the country which has jurisdiction, and they also want that the law of that country will be used as the master contract law. However, if the parties did not expressly state their intentions about the law of the country which will be used by the contract in the event of a dispute, the parties desire to be indicated by the Court of contract and related situation.

CONCLUSION

The fundamental principle that the agreement by the parties of the will encounter creates a juridical binding force. Set forth in the written contracts as agreed by the parties, as the law for the parties and the main source of law of the parties. This principle is universal agreement any legal system in the world to respect this principle.

A fundamental principle of the parties to the Contract of International Business are: an agreement made by the parties and a set of regulations governing the establishment (formation), economic activity / industry (performance), and execution (implementation) of the contract between the parties, both national and international. Its main purpose is to protect the individual expectations (as appropriate and justified by the law), business and government. Because the contract is the purpose and aim of "creating better conditions (eenbeterlevenbrengen) for both parties. Reciprocal agreements the idea that the shift of wealth is considered justified (feasible or appropriate) along not only the will of the parties in conformity statement, but an element of balance has been met. Thus the law of equality in international business contracts, achievement promised to be reciprocal.

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Reference

Amir MS. (2000), Inside and Technics of Foreign Trade, PPM, Jakarta.

HerlienBudiono. (2006), Principle of Balance For Indonesia Treaty Law, PT Citra Aditya Bakti, Bandung.

SoedjonoDirdjosisworo (2006), Introduction to International Trade Law, Bandung: PT RefikaAditama.

Sudargo Gautama (1997), International Trade Contract Law, Alumni, Bandung.

SoedjonoDirdjosisworo (2006), Introduction to International Trade Law, Bandung: PT RefikaAditama.

Syahmin AK. (2004), International Contract Law, King GrafindoPersada, Jakarta.

TaryanaSoenandar (2004), the UNIDROIT Principles as a Source of Contract Law and Dispute Resolution Business, SinarGrafika, Jakarta

Legislation

ICC (International Chamber of Commerce): Uniform Customs Practice for Documentary
Credits (UCP 500).

Uniform Customs Practice for Documentary Credits (UCP 600) Revision 2007

UNIDROIT (The United Nations Commission on International Trade Law).

Internet

http://www.negarahukum.com/hukum/asas-hukum-perjanjian-dalam.html diakses senin17.50wib, 2 Januari 2017.

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[14]*Ibid*