



Legal Liability for Importers in Making Payments Through the Telegraphic Transfer System at PT. Sumatera Ocean Transindo

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ABSTRACT

In digital All Access is easy to do activities. Combining relations between parties in an international context is not an easy affair. It involves differing systems, views, and judgments that act as standards that must be adhered to by parties in different countries. Transacting in the context of international business at this time is not a difficult thing, because various technological advances have opened up huge opportunities for the international community to relate to each other. However, this ease can also cause various problems between them. International business is a convict state, where convicts grant broad freedom to the parties concerned to make, negotiate, and enforce the clauses they agree to. However, it is important to recognize that in order to carry out such business activities, the parties must carefully understand the rules of law in force in the opposing country. This will have a significant impact on the implementation of the agreement. Therefore, it is very important for researchers to clarify legal protections in international business transactions in the era of Free Trade. In payment by Telegraphic Transfer there are facilities and shortcomings, which deficiencies will be very bad both exporters and importers. There is another solution from the payment system other than Telegraphic Transfer, namely there is a Letter of Credit explained that the payment of this Letter of Credit equally guarantees its security to both parties, namely exporters and importers.

INTRODUCTION

Indonesia is one of the archipelagic countries that are rich in oceans wider than the mainland, the means of sea transport is a means of shipping goods that are considered easier and cheaper, in shipping goods by sea there are several parties, among others, the sender (exporter), carrier, and recipient (importer), the responsibility of the exporter as a seller is to deliver export goods into the hands of the buyer (importer). exporters need the services of transporters to deliver export goods.

Foreign trade transactions are a series of activities in a trade commonly known as import-export trade. This trade is a simple transaction, namely buying and selling goods between entrepreneurs who each reside in different countries. The implementation of export and import of course involves various parties, namely agencies and several government agencies, among others, such as the Ministry of Finance, Directorate General of Customs and Excise, Regional Customs and Excise agency, Customs and Excise Service and Supervision Agency. Export and import activities must go through the approval of the agency by performing several stages such as registration of export/import goods that exporters must do at the customs or PEB (notification of export of goods) and PIB (notification of import of goods) for imported goods, before the goods can be exported or imported, then physical examination of export/import goods and so on. Exporters and importers in addition to engaging with relevant agencies, exporters and importers must also go through three stages; The first stage of the sale and purchase approval process, then the second stage of the payment process, and the third stage is the delivery of goods.

International trade activities including exports and imports can be carried out properly, if the supply of goods and the implementation of payments can be carried out properly by both parties involved in the transaction. Import-export trade includes activities that contain high risks, because exporters and importers are geographically far apart, different languages, customs and laws in import-export transactions. One of the risks faced by exporters is if there is a deviation or cancellation of the contract, the risk can be avoided if every export transaction carried out, set out in written form or in the form of a trade contract (sales contract). The exporter will send a copy of the Invoice and Packing List for the order of goods shipped with proof of shipment attached in the form of a copy of the Bill of Lading, Certificate of Origin

and Fumigation Certificate by electronic mail or facsimile to the buyer. The buyer will make payment for the settlement of the order on the basis of these documents within a specified period no later than 5 (five) days before the carrier arrives at the port of destination. The buyer makes payment by telegraphic transfer through the buyer's bank in the country where the buyer is resident to the seller's account. The seller is obliged to send the original physical proof of a set of documents consisting of Invoice, Packing List, Bill of lading, Certificate of Origin, and Fumigation Certificate to the buyer which will be used to pick up the ordered goods at the port, otherwise known as the custom clearance process.

The seller (exporter) will try how best to be able to fulfill the obligation to send or deliver the goods ordered by the buyer (importer), and receive his right to payment of the goods that have been sent and handed over to the buyer (importer). Rather, the buyer (importer) should also think about being able to easily carry out his obligations to pay and receive the goods he buys as well as possible. Problems that can arise in international trade concerning the issue of payment of the price of goods, namely if there is a sales contract between the seller (seller) and the buyer (buyer) for a certain number of goods, then in the sale and purchase agreement the exporter requires the buyer to send money first, then after receiving the money referred to the new exporter will send the goods. On the other hand, the buyer can include a clause that the exporter must send the goods first to the buyer's place, and with the receipt of these goods, then the buyer will send the money. It is aimed that the parties intend to secure each other's interests in advance.

Payment methods that have been widely used in a payment transaction among export businesses - Import, which is divided into payment by Non Letter of Credit (Non LC) and Letter of Credit (L/C) Methods, in the payment process the parties use the telegraphic transfer payment system, the telegraphic transfer payment system has risks for exporters, when the ordered goods have been sent to buyers abroad while the buyer does not make payment for various reasons that result in losses for the exporter. The Port Authority with the authority it has can auction the goods for up to a certain period of time. The buyer in theory cannot take the ordered goods without the original documents but the fact is that the goods can be taken by the buyer in collusion with the shipping agent (which in fact is appointed by the buyer) or obtained by participating

in the auction. While the seller only has the opportunity to take back the goods by importing the goods, but it will add to the buyer's losses due to shipping cost constraints to Indonesia, including import taxes and import duties.

Telegraphic transfer payment system can harm the exporter and importer. The exporter is disadvantaged if it does not do the repayment of the importer with the reason that often happens is the goods do not fit the order. Meanwhile, the importer is harmed if the importer has given an advance payment but the goods are not sent by the exporter. Telegraphic transfer payment system is widely used by exporters for the reason that there is an advance payment of 20% – 30%.

In the payment system via telegraphic transfer is always expected to run smoothly and safely. That is why the law regulates how if the buyer does not make a payment resulting in losses for the exporter, so the author felt the need to conduct research on legal protection against exporters in export transactions using Telegraphic Transfer (study PT. Sumatera Ocean Transindo).

METHOD

The type of research in this study is empirical jurisprudence. Juridical legal research is a type of sociological legal research and can also be called Field Research, which examines the applicable legal provisions and what happens in reality in society. Empirical juridical research is legal research on the application or implementation of normative legal provisions in action at any particular legal event that occurs in society. This research also means a study conducted on the actual situation or the real situation that occurs in the community with the intention of knowing and finding the facts and data needed, after the required data is collected and then leads to the identification of problems that ultimately lead to solving the problem.

RESULTS AND DISCUSSION

Contract of sale and Purchase Agreement which usually contains terms based on a period of time, delivery of goods, product specifications described and discussed in detail such as; quantity of goods, price of goods, payment methods, packaging, rights and obligations and responsibilities described in the purchase contract in detail, and others in accordance with the agreement. A lot of things have to be agreed/ negotiated before signing it. A detailed discussion of the contract is carried out to avoid or minimize the risks posed, especially the risk of payment. As for some of the risks of concern to

exporters and importers such as; 1. Risk of default; failure of payment by the importer to the detriment of the exporter. 2. Financing risk; the fee the importer pays to make the payment. 3. Transaction risk; the importer or exporter aims to commit fraud. 4. Currency risk; the rise and fall of foreign exchange rates. 5. Payment Risk

Transportation risk; the cost of using failure to pay insurance, generally often occurs in exporters, to avoid these risks, risk identification is needed in transactions. Many risks are posed to importers or exporters. For this reason, in conducting transactions other than agreements that are already based on law, business sense is needed in assessing partners. The power of instinct (instinct) is also very instrumental in determining an agreement. The impact of various risks of failure of payment acceptance on small and medium-sized exporting companies can result in bankruptcy. For small-scale companies are generally faced with a dilemma, on the one hand they need orders from importers, and on the other hand they have limited information so that they often experience payment risks.

A. The rights and obligations of exporters in making payments through the Telegraphic Transfer system at PT. Sumatera Ocean Transindo

The exporter is entitled to receive payment from the importer, and the exporter is obliged to hold the goods (products) in accordance with the previously agreed and deliver them to the importer (buyer), at the destination as agreed, safely.

To get to the importer's place at the destination safely, the distribution of goods (products) are used means of transport commonly used and in accordance with previously agreed in the sales contract. In the sales contract or contract/agreement of sale and purchase, attached to the terms of delivery and Point / Place of delivery of goods, as stipulated in the provisions of incoterm.

B. Rights and obligations of importers in payment through Sisktem Telegraphic Transfer at PT. Sumatera Ocean Transindo

The importer has the right to receive the goods (products) that he ordered/purchased from the exporter in good condition and in accordance with the order. The importer is obliged to pay for the goods (products) ordered according to the amount/Price previously agreed. Payment in the export-import trade can be used several ways, but to protect the interests of exporters and importers, in the export-import trade commonly used letter of

credit (also known as documentary credit or documented credit), issued by the bank, as a means of payment as required in the Uniform Customs and Practice for Documentary Credit (UCPDC).

With the use of documented credit in this export-import trade transaction, all parties involved only deal with documents related to goods (products), not with the goods themselves. The importer has the right to receive the goods (products) that he ordered/purchased from the exporter in good condition and in accordance with the order. The importer is obliged to pay for the goods (products) ordered according to the amount/Price previously agreed. Payment in the export-import trade can be used several ways, but to protect the interests of exporters and importers, in the export-import trade commonly used letter of credit (also known as documentary credit or documented credit), issued by the bank, as a means of payment as required in the Uniform Customs and Practice for Documentary Credit (UCPDC).

With the use of documented credit in this export-import trade transaction, all parties involved only deal with documents related to goods (products), not with the goods themselves.

C. Legal protection of exporters in export transactions using Telegraphic Transfer

According to Wirjono Prodjodikoro, default is the absence of an achievement in treaty law, where achievement means something that must be implemented as the content of an agreement. Yahya Harahap defines default as the execution of an obligation that is not on time or is not done in accordance with due. Thus giving rise to the obligation for the debtor to provide or pay compensation (schadever goeding), or in the event of default by one party, the other party may demand cancellation of the agreement.

Thus, in every agreement, achievement is something that must be fulfilled by the debtor in every agreement. Performance is the content of an agreement, if the debtor does not meet the performance as specified in the agreement, the act is a default. R.Subekti argues that the default is negligence or forgetfulness which can be in the form of 4 kinds, namely : 1) not doing what he was told to do. 2) to do what he has promised, but not as he has promised. 3) doing what was promised but too late. 4) perform an act that according to the agreement cannot be performed.

In the payment process by advance payment method with Telegraphic Transfer payment instrument, which must be considered carefully

several things that can be a risk, namely ; a. The importer defaulted, did not make payments. b. Goods received by importers do not match those ordered in terms of quantity, specification or quality. c. Export documents are not in accordance with the provisions of the exported goods, such as; the amount of goods, raw materials used, causing the goods to be detained at the importer's port. d. Goods shipped late received by the importer. e. The existence of a possible ban on exporting to importing countries suddenly due to political events, trade wars.

Often the case of default in international trade, this form of violation is generally around the issue of payment, the goods shipped are not in accordance with the order. For handling it usually uses a deliberative and consensus approach, but if the peaceful path taken is deadlocked, then the problem can be taken to international arbitration.

International trade transactions are loaded with the potential to give birth to disputes, because generally in international trade involves 2 (two) countries where the laws of these countries are different from each other, then legal conflicts between countries involved can not be avoided. Generally, trade disputes are often preceded by settlement by negotiation. If this method of settlement fails or does not work, then other methods such as settlement through court or arbitration.

The submission of a dispute, both to a court and to arbitration, is often based on an agreement between the parties. The usual step is to make an agreement or insert a dispute resolution clause into the contract or agreement they make, either to the court or to the arbitration board.

The legal basis for the forum or dispute resolution body that will handle the dispute is the agreement of the parties. The agreement is put, either at the time the contract is signed or after a dispute arises. Usually, the failure of the parties to determine this forum will result in difficulties in resolving disputes because the emptiness of the choice of the forum will be a strong reason for each forum to declare itself authorized to examine a dispute. In the Common Law system, it is known as ' long arm ' jurisdiction. With this concept, the court can declare its authority to accept any dispute brought before it even though the relationship between the court and the dispute is very thin. For example, the courts in the United States and the United Kingdom often always accept disputes that the parties submit before them even though the relationship or connection of the dispute with the

judiciary is very small. For example, the respondent has a business in the United States or in such contract expressly or tacitly refers to one of the states of the United States or English law countries there are very close and mutual relations and services under a contract, etc.

In addition to the forum of the court or arbitration board, the parties may also submit their disputes to an alternative way of dispute resolution, commonly known as ADR (Alternative Dispute Resolution) or APS (Alternative Dispute Resolution). An alternative arrangement here can be an alternative way in addition to the court. It can also mean alternative settlement in general, that is, various alternative dispute resolution that the parties can use, including alternative settlement through the court. Usually, the clause is also included or stated in the law to be applied by the dispute resolution body. In international trade law, it can be argued about the principles of resolving international trade disputes.

The principle of agreement of the parties is a fundamental principle in the settlement of international trade disputes. This principle is the basis for the implementation or not of a dispute resolution process. This principle can also be the basis for whether a dispute resolution process that has been in progress is terminated. So, this principle is very essential. Judicial bodies (including arbitration) must respect what the parties agree on. Included in the scope of this agreement are: 1. that one party or both parties do not attempt to deceive, pressure or mislead the other party; 2. that changes to the agreement must come from the agreement of both parties. That is, the termination of the agreement or revision of the content of the agreement.

The second important principle is the principle where the parties have complete freedom to determine and choose the way or mechanism by which the dispute is resolved (principle of free choice of means) . This principle is contained, among others, in Article 7 of the UNCITRAL Model Law on International Commercial Arbitration. This article contains a definition of an arbitration agreement, namely an agreement on the submission of disputes to an arbitration body. According to this article, the submission of the dispute to arbitration is an agreement or agreement of the parties. That is, the submission of a dispute to an arbitration body should be based on the freedom of the parties to choose it.

The principle that applies is the principle of freedom of the perpetrators to submit their own law

what will be submitted (if the dispute is not resolved) by the judiciary (arbitration) to the subject matter of the dispute. It is one of the many ways to obtain rights and freedoms (ex aequo et bono) . These latter principles are the sources on which learning will be based the main principles, the fundamental principles or the foundations of understanding disputes. An example of this choosing authority that must be respected by the arbitral tribunal is Article 28 paragraph (1) of the UNCITRAL Model Law on International Commercial Arbitration is as follows. The arbitral tribunal shall decide disputes in accordance with the rule of law chosen by the parties applicable to the substance of the dispute, the legal designation or legal system of a state shall be construed, unless otherwise stated, as referring directly to the substantive law of that state and not to its conflict of law rules."

The principle of good faith can be said to be the fundamental and most central principle in dispute resolution. This principle requires and obliges the good faith of the parties in resolving their disputes. In dispute resolution, this principle is reflected in two stages. First, the principle of good faith is required to prevent disputes from arising that could affect good relations between states. Secondly, this principle is required to be in place when the parties resolve their disputes through the means of dispute resolution known in international (trade) law, namely negotiation, mediation, conciliation, arbitration, court or other means of the parties ' choice.

The exhausted principle of ' local treatment is in fact all born of the principle of international Nationality Law. The UN International Law Commission made a special decision establishing this principle in Article 22 of the ILC article on state responsibility. This article 22 states the following. "When the conduct of a state has created a situation incompatible in its consequences by international obligations regarding the treatment also given to foreigners, whether natural or juridical, but the obligation allows that this or an equivalent result can still be achieved. by the further conduct of the state, there is a breach of the obligation only if the foreigner concerned has exhausted the effective local efforts available to them without obtaining the treatment demanded by the obligation or, if that is not possible, an equivalent treatment according to this principle, international Nationality Law stipulates that before the seeker learns of his / her dispute to an international education, the dispute selection measures available or provided for by the National Law of a state must first be

terminated (exhausted). In the Interhandel Case dispute (1959), the International Court of justice stated : " before the resort can be submitted to the International Court of justice... the state in which the offense occurred should have the opportunity to correct it in its own way, within the framework of its own domestic legal system. "

The dispute resolution Forum in international trade law is in principle also the same as the forum known in (international) dispute resolution law in general. The Forum is a negotiation, investigation of the facts (inquiry), mediation, conciliation, arbitration, settlement through law or through the courts, or other dispute resolution methods chosen and agreed upon by the parties.

Failure to determine this forum will result in difficulties in resolving disputes, because the absence of such a forum option will be a strong reason for each forum to declare itself authorized to examine a dispute.

CONCLUSION

In the stage of forming a sales contract, the parties must include the forum used in the event of a dispute and include clauses on the rights and obligations of the parties in detail so that there are limits on the rights and obligations between exporters and importers. Legal liability for importers in making payments through the telegraphic transfer system at PT.Sumatera Ocean Transindo based on the rights and obligations arising from the agreement agreed by the exporter and importer in the sale's contract.

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