JUSTICIABELEN
Jurnal Hukum
Journal homepage: http://journal.umg.ac.id/index.php/justiciabelen/index

Legal Guarantees Against Breach of International Trade Contracts Due to Non-Conformity of Goods Details reviewed from the CISG

Fita Dwi Pratiwi
Universitas Muhammadiyah Gresik – Jl. Sumatera No.101, Gn. Malang, Randuagung, Kec. kebomas, Kabupaten Gresik, Jawa Timur 61121, Indonesia.
Fitadwipratiwi19@gmail.com

Keywords*:*

Legal Warranties, Breaches Contract, CISG

ABSTRACT

In international contract transactions are currently not a difficult thing, the existence of these various technological advances provides a considerable opportunity and opportunity for the international community to establish cooperative relations between them. The execution of the contract in various ways can certainly cause problems or obstacles, especially in long-term contracts, it can be due to discrepancies in the details of the goods sold, the existence of force majeure circumstances that can result in the contract being unenforceable, or there may be changes in circumstances, such as political crises, currency fluctuations, economic crises. However, this study will focus more on discussing legal guarantees against violations of international trade contracts due to discrepancies in the details of goods reviewed from the CISG. International business cooperation transactions are the study of private law, where in private law, the law provides wider opportunities for each party to make, promise and implement the clauses they make. However, it is undeniable that to be able to carry out these activities, the parties must carefully understand and understand the legal rules that exist in the State of each party.

The research method carried out uses normative juridical, i.e legal studies carried out by using examining library materials or secondary legal materials. Meanwhile, in collecting data, it is carried out with two approaches, namely the conceptual method and the statutory technique. The purpose of this research is to find out how the legal guarantees that apply in international trade contract law if there is a violation in the contract due to discrepancies in the details of the goods received and what form of settlement efforts can be made by sellers and buyers in international trade contracts. This research resulted in a relationship to the legal guarantee of a breach of an international trade contract and what efforts were made by the parties to the matter in terms of the CISG.

1. INTRODUCTION

The main basis for international cooperation is fundamental to the extent of the profits obtained together or obtained from the cooperation. In another meaning, that international cooperation can be formed due to international life consisting of various fields such as politics, ideology, economy, social, trade, as well as the environment and others.

The definition of trade is the service sector that supports economic activities between members of the community and between nations. With the emergence of legal harmonization in international trade, it is motivated by the existence of legal regulations in international trade contracts that can hinder the implementation of international trade transactions.[1] In the context of economic globalization, laws often change due to the pressure of economic interests to take advantage of wide-open market opportunities. The dynamics of relations in international business have had an impact on the development of contract law that adapts universal principles developed into customary practice (lex mercatorial).

International trade contracts are daily activities in which there are 2 types of contracts, namely written and unwritten (oral). This activity is mainly carried out by entrepreneurs or traders in the world.

They buy a product in a country and then sell it again in a third country or in their country. The shape and type of its contract load is also quite extensive and develops very quickly. In international trade practice, there are often cases that question which country's law will be used in the event of a dispute. The answer to this problem lies in the agreement of the parties concerned contained in the contract by which they agree to contain a clause on which law of the country to use.[2]

This paper is supported by researchers who show that the potential for the enactment of CISG in the path of international trade is very large. Judging from the many issues discussed in the CISG, one of the articles of greatest concern by the ICC is Article 35 of UNCITRAL.

This research will focus on the analysis of the provisions governing the suitability of goods with contracts made by the parties with the aim of providing a clear and practical view through the analysis of the sources obtained and ascertaining whether Article 35 has contributed to the process of achieving uniformity in international trade activities and how the application of Article 35 CISG in resolving the problem is supported by the principles of Caveat Emptor and Caveat Venditor.

[1] Huala Adolf, Dasar-Dasar Hukum Kontrak Internasional, (Bandung: PT. Refika Aditama, 2007), hlm. 29.

[2] Chairul Anwar, Hukum Perdagangan Internasional, Novindo Pustaka Mandiri, Jakarta 1999, hlm.93.

2. Results and Discussions

A. The Concept of Buying and Selling Goods within the Scope of the CISG.

Countries adhering to the Common Law system on trade transactions are "the United States, United Kingdom, Canada, Singapore, Australia, Egypt, Malaysia, Hong Kong, Israel, and South Africa".[3] In the utility of the agreement of sale and buy of products "regulated in uniform legal rules or the same in accordance with the Convention of International Sales of Goods (CISG)".

The that means of worldwide contract law is a provision regarding the establishment, activity and performance of contracts carried out between parties in the economic or industrial field, both national and international.[4]

The selection of CISG as a legal choice that regulates international contracts for the sale and purchase of goods, namely based on Article 1 of the CISG, there are two circumstances that make this conferensi a law governing contracts for the sale and purchase of international goods, that is :

(a) The success of the conditions of autonomy ;

(b) The existence of a legal designation based on the existing rules in International Civil law as stipulated in Article 1 (1) (b) of the CISG.

For example, a company in Syiria (Syiria is a Participating State) enters into a sale and purchase contract with an Indonesian State company (not a Participating State), then the CISG can still apply under Article 1 (1) (b) even if one of the parties to the contract is domiciled in a non- participating country of the convention, or the condition of autonomy belongs to only one of the participants (Syiria), as provided in Article 1 (1) (a). CISG may also apply if one of the parties has a place of business in a participating country "If the rules of private international law affect it may cause the application of the law of a taking part Country" (Article 1 (1) (b)).

This Convention only gives for the introduction of a agreement of sale and buy, the rights and obligations of the seller and purchaser springing up

[3] Daeng Naja HR, Contract Drafting, Seri Keterampilan Merancang Kontrak Bisnis, cetakan kedua, Citra Aditya Bakti, Bandung, 2006, hlm. 253.
[4] Syahmin A. K, 2004, Hukum Kontrak Internasional, Raja Grafindo Persada, Jakarta, hlm.20.

as a end result of the contract. Unless expressly provided, this convention does not provide for matters relating to : the terms of the validity of the contract or the customs concerning it; the consequences of the contract, which are conceived by the goods sold are contained in Article 4.

That is :

(a) Article 4 (a) i.e. on the validity of a contract is not regulated in the CISG, due to the large diversity of laws of each country regarding the validity of a contract. Therefore, it is left to the jurisdiction of each country. meanwhile,

(b) Article 4 (b) contains that there is no legal relationship between the limitation of the validity of a contract and the consequences arising from the sale and purchase contract.

In other words, the CISG does not regulate the legal relationship between the validity of the contract and its implications. In this Article it is also explained that matters associated with the validity of the settlement and the results springing up from a contract, are subject to the national laws of the respective countries.

B. Concept of Conformity of Goods Details Based on the CISG

The content in an agreement is the expediency of what the parties will get, that is, the parties agree to carry out the achievements as specified in the agreement made. The substance of the agreement is made based on the agreement of both parties so that the parties have good faith to carry out the feat. If one of the parties does not carry out the obligations then there will be sanctions that apply to the violating party in accordance with what has been agreed in the agreement.

As it is known that a covenant is one of the sources of engagement. In this case, the engagement is an initial stage that underlies the reason for the sale and purchase. Based on the translation of article 35 of the CISG there are three subsections that are useful for determining the obligations of the seller. Among them in :

(a) Article 35 paragraph (1) explains that the primacy of the parties' contract and the autonomy of the parties in interpreting the obligations of the seller are as: "The seller must deliver goods which are of the quantity, quality and description required by the contract

and which are contained or packaged in the manner required by the contract."

(b) Article 35 paragraph (2) of the CISG explains that there is an implied obligation of conformity of goods relating to the ability and packaging of goods binding on the seller unless the parties agree otherwise, the goods are not in accordance with the contract,

except (Article 35 paragraph (2) CISG) :

a) Suitable for use in purposes for which items of the same description are normally used.

b) Appropriate use for a specific purpose either expressly or impliedly known to seller at the time of conclusion of the contract, except where the circumstances indicate that buyer did not rely, or that it was unreasonable for him to rely on, on seller's skill and judgment.

c) Have the quality of the goods that the seller has given to the buyer as a sample or model.

d) Loaded or packaged in the usual manner for the goods or, if there is no such means, in a manner sufficient to maintain and be able to protect the goods.

Article 35 (3) of the CISG states that if the buyer assumes the risk of certain known discrepancies : "The seller shall not be liable under subparagraphs (a) to (d) of the preceding paragraph for the lack of suitability of the goods if at the time of the conclusion of the contract the buyer becomes aware or unaware of the discrepancy. (Harry M. Flechtner, 2012: 1)

Based on the elaboration of the provisions of Article 35 of the CISG, it can be seen that the suitability of an item has been regulated simultaneously and thoroughly accompanied by a basic agreement of a trade contract between the buyer and the seller (Harry M. Flechtner, 2012: 1). So, in the event of a trade problem or dispute relating to the discrepancy of goods, the parties can be guided and argued using the basis of the rules of Article 35 CISG which are adjusted to the case that occurs. Based on the elaboration of the provisions of Article 35 of the CISG, it can be seen that the suitability of an item has been regulated simultaneously and thoroughly accompanied by a basic agreement of a trade contract between the buyer and the seller (Harry M.

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The client is required to inform within a reasonable time period if he will carry out the method of settlement on the basis of this guarantee, and if in connection with the guarantee of suitability of the goods, the seller must inform within 2 years (Articles 39, 43). In article 39 paragraph (1) Request the buyer to inform the seller of the nature of the non-conformity within a reasonable time after he finds and or should find the discrepancy, and in Article 39 paragraph (2) explains no later than 2 (two) years.

Article 44, however, excludes the buyer from losing the right to seek damages from the seller, unless the buyer does have a reasonable reason for the failure in his notice. Article 49 paragraph (1) of the CISG regulates the possibility of the buyer reneging on the contract, which occurs:

1. If the seller's negligence to perform any of its obligations under the contract or this Convention constitutes a fundamental breach of contract,
2. In the event that no delivery is made, if the seller does not deliver the goods within the additional period set by the buyer.

Goods that are not in accordance with the contract when shipping, the buyer can reduce the price in a portion equal to the value of the goods actually sent if at the time of delivery the goods are worth equal to the value of the corresponding goods at that time. Likewise, if the seller resorts to legal remedies due to negligence in carrying out obligations or if the buyer refuses to accept the performance of obligations performed by the seller, then the buyer is not allowed to lower the price (Article 50).

The CISG also provides for claims for damages for breach of contract by the parties. If the seller neglects to carry out his obligations, then the buyer can exercise his rights, claim reimbursement, and not lose the right to pursue other laws for remedies. The contracting parties are legally obliged to assume good faith, including in terms of conveying material information that is essential to the agreement between the two parties. Good faith in the implementation of the

agreement is a propriety, that is, a good assessment of the actions of a party in carrying out what will be promised (R. Subekti, 1976:26). The principle of good faith also has the understanding that the freedom of a party if making a treaty cannot be realized at will but is limited by its good faith (Sutan Remy Sjahdeni, 1993:49). Therefore the fundamental principle that must be possessed in any contract is the principle of good faith.

C. Review of Seller's Breach of Contract by looking at the consistency of Non-Physical Goods.

A problem that is not expressly resolved in this Convention can then be resolved in accordance with the "general principles". If there is no such rule in the general principle it is based on international civil law. In terms of interpreting conventions, it is necessary to weigh its international nature in order to improve uniformity and consider its implementation with "good faith".

As in the case of the Rijn Blend Oil Case, Since 1993 and 1994, the Seller or its predecessor has completed twelve (12) sales contracts with the buyer in cooperation. Thus, it can describe that between sellers and buyers have had a long-standing trade cooperation relationship and trust has been built in the quality of the products being traded. The seller is not the only seller of Rijn Blend to the buyer.

It is known from the fact that Rijn Blend condensate comes from various offshore gas fields operated by Sellers on the Dutch continental shelf. Flow condensate is united in a P15-D platform in the North Sea, where they are located mixed with each other and with crude oil produced from offshore oil fields. From the P15-D platform, the mixture is transported via a single pipeline and then sent to the Company (a joint venture of NV (Dutch limited liability company) by 65% and BV by 35%, hereinafter referred to as terminal "Q". Located in Europoort which used to ship "ex storage tanks" to buyers as a mixture of condensate or crude oil, which was

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subsequently named "Rijn Blend"

Buyers suspect that at the Q refinery, Rijn Blend is mixture with different crude oils to optimize. The reality that the mixing of Rijn Blend with other crude oils is very likely to occur the opportunity for contamination or an

connection with Rijn Blend and there increase in certain chemical levels.

The Q refinery authority has been contacted for a long time regarding naphtha being produced that might be causing problems. In November 1997, it was alleged that there were mercury ranges inside Rijn Blend used on the Q. Buyer refinery further alleged that the network turned into created in May

1998 and various answers (both long and brief time period). This fact is reinforced by the explanation that the mixing of the refining process of Rijn Blend with other crude oils makes the possibility of contamination closer to the truth. Furthermore, there was a processing problem at the plant which led to the rapid deactivation of the corrosion catalyst which ultimately also had an impact on the increase in mercury ranges inside the Rijn Blend at the Q refinery.

Since no solution was found regarding the problem of mercury contamination, the Buyer terminated the contract with the terms of termination of the contract or the terms of the contract on renewal. Due to the lack of storage facilities and the possible absence of short-term nearby market possibilities, Rijn Blend was become transferred to the United States for sale to LL Petroleum Corp. at a price much lower than the price below

the contract.

Thus, ending the chronology of the origin of the dispute because the Seller cannot provide a solution to the disputed problem and the Buyer also terminates the contract according to the terms agreed in the contract of the parties. The choice of the Arbitral Tribunal thru the route of investigation, it could be proved that Rijn Blend in June 1998 was inconsistent with the contract, wherein the Buyer could prove that6 :

a) there was mercury contamination in or about June 1998

b) mercury contamination that is above the average of the standard level, and/or an unacceptable increase of such level occurs above the contract term. Finally, the Arbitral Tribunal held that Seller did not comply with the obligation to deliver Rijn Blend pursuant to the contract under Article

35 (2)(a) of the CISG on delivery in

June 1998.

The basis is determined by the standard of tradable goods which is based on the assumptions that exist in the Common Law legal system, specifically if the goods that can be traded imply that the goods are suitable if there is a substitute market. It is likely that this is an

6 Rijn Blend Oil Case, Nederlands Arbitrage Instituut

(Netherlands Arbitration Institute), diputuskan pada15

expression of the caveat emptor principle in which the buyer must bear the risk of quality. Caveat Emptor burdens the burden on buyers. Therefore, it is often referred to as "let the buyer beware" which gives a warning to the buyer. Defects in goods or services may be hidden from the buyer, and are known only to the seller. So in this situation, the customer also has duty for the

purchased items by first checking the goods before buying and there is sufficient time if you want to check with a professional expert for their knowledge of the goods.

Thus, it can be concluded that the principle approach of supporting caveat emptor to the CISG under the Common Law makes it possible to conclude the Rijn Blend contract to interpret Article 35 (2) (a) of the CISG which leads to the conclusion that the delivery from Rijn Blend with increased mercury levels does not correspond to the quality agreed in the known sales contract with the prudence on the part of the buyer. Then in the analysis using the Caveat Venditor principle or often referred to as "let the seller beware" which means that giving a warning to the seller.7

Since Article 35 is established on the

7 Henschel, René Franz, “Conformity of Goods in

International Sales Governed by CISG Article 35

Caveat Venditor, Caveat Emptor and Contract Law as Background Law and as a Competing Set of Rules”, Nordic Journal of Commercial Law, Issue 1, 2004.

basic principle that the seller has an obligation to deliver the goods required by the contract. The reason is that the detailed characteristics of the goods are considered to be within the sphere of influence of the seller, and the seller is considered to know more about the characteristics of the goods than the buyer who pays for the goods.

Therefore, on the basis of the contract price and the nature of the relationship between the parties, the allocation of risks associated with changes in composition is placed to the seller who should be able to continue to monitor the composition or even should be responsible for eliminating mercury levels by reducing the price from the initial price. In any risk such as due to an increase in chemical levels in the object of buying and selling, it will certainly be charged to the seller who has control based on the possibility that the cause of the increase in chemical levels. Therefore, sellers are in a better position if they detect the increase in chemical levels and what is the cause of the increase in levels. Then immediately fix the problem of the quality of the object being sold to the buyer.

The buyer may also take precautions to detect changes in the composition to troubleshoot its obligations including the buyer's right to suspend performance. Because in such circumstances, the seller

bears a greater burden of liability than the buyer in terms of removing mercury in order to deliver at the level of quality as expected or desired and in the event that it has been agreed between the two taking into account the price.

Through the explanation of the example case above, the application of the Caveat Venditor and Caveat Emptor Principles to carry out their role as supporting provisions for Article 35 of the CISG relates to the settlement of discrepancies in goods resolved in international arbitration forums. These two principles have an

important function in following up on the application of Article 35 of the CISG to cases of discrepancies in the goods sold. Without both understandings of these principles, there may be errors in the imposition of liability for the problems that occur.

In conclusion, if there is a discrepancy in the details of the goods due to non-fulfillment of the specifications as explained by Article 35, then in international arbitration commonly called the Counsel must be able to provide strong advice and arguments and must have or look for evidence from the agreed contract process, as well as evidence in the contract that there is a clause that gives detailed meaning to the detailed specification of the goods that must be met before it is submitted and has been agreed between the parties.

To avoid if there is a discrepancy in the details of the goods promised in the contract with the goods that have been received by the buyer, because the buyer party obtains the right to liability from the seller that has been agreed and determined in the contract or implicitly regulated in the contract and the rules of Article 35

CISG and or other Articles that have a connection in the event of liability due to discrepancies in the details of the goods. This can also be related for example if the intention to cancel the contract due to default on the part of the seller on the basis of having made a mistake or violation of the cooperation contract.

Therefore, similarity based on existing rules to regulate the incompatibility of these items is very important. With the same provisions governing the discrepancy in the details of the goods, the counsel can easily provide arguments in choosing a solution along with the process of resolving the problems faced in the choice of an international arbitration forum.

The reason is that there cannot be a difference in understanding of the rules on which a dispute is based occurs between the parties if it may be housed in different

countries, different rules or national jurisdictions regarding the trade contract. However, with the existence of such a common provision, between the parties can be united by the existence of uniformity of international law on international trade contracts and the parties are bound by an arbitration agreement that already includes about the clauses of how dispute resolution is dealt with in real and written, it is agreed by the parties to choose regarding the place of arbitration, the forum used, the arbitration rules used, The language used includes the number of arbitrators already selected in resolving the dispute.

3. Conclusion

CISG is commonly used on rules in contracts that are commonly seen from the principle of consensualism, greatly affecting the validity of contracts. The contract of sale and purchase in the CISG in addition to requiring the consent of both parties, If there is a discrepancy regarding the goods due to non-fulfillment of the composition details as described in Article 35, the counsel or legal representative of the parties must be able to provide their arguments along with a strong case analysis in finding a way out in resolving the dispute due to

discrepancies regarding the details of the goods.

If a discrepancy occurs in the goods that have been agreed in the contract, the buyer party can obtain the right to liability from the seller which has been specified in the contract or implicitly and explicitly related to the rules in Article 35 of the CISG and its supporting principles, namely the Caveat Venditor and Caveat Emptor principles which have a bond of scope of responsibility that is closest to the obligation for the suitability of the details of the goods promised between the parties to the creation of a contract.

From the description in the study above, suggestions were proposed, namely: a) There is a need for an International Trade Law in accordance with the CISG convention, b) Due to the potential validity of CISG in international trade traffic has a large capacity, Indonesia needs to reclassify, because Indonesia is not a member of the CISG participants.

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