



APPLICATION OF THE PRINCIPLES OF FREEDOM OF CONTRACTING IN IMPORT TRADE: BUSINESS LEGAL PERSPECTIVE

WIWIK SRI WIDIARTY

Doctor of Laws, Universitas Kristen Indonesia, Indonesia

Email: wiwiksriwidiarty7@gmail.com

ABSTRACT

This research aims to analyze the implementation of the principle of freedom of contract in import trade from a business law perspective. The methods used in this study are documentation and qualitative approach. The documentation method is employed to gather data from various sources such as books, journals, regulations, and relevant legal documents. The qualitative approach analyzes the data by describing and interpreting the information obtained. The findings of this research indicate that Indonesia became a member of UNIDROIT on January 1, 2009, and ratified the principles of international contract law through Presidential Regulation No. 59 of 2008. Thus, Indonesia is committed to harmonizing national contract laws with international standards to support efficient trade and business transactions. The principle of freedom of contract is a crucial foundation in import trade, granting freedom to the parties involved to negotiate, establish contract terms, and protect their rights. However, this freedom remains limited by applicable laws and regulations and considerations of ethics and social responsibility in business practices. Applying the principle of freedom of contract appropriately is expected to create legal certainty, foster sustainable trade growth, and maintain a balance between national and international interests. As well as considerations of ethics and social responsibility in business practices. Applying the principle of freedom of contract appropriately is expected to create legal certainty, foster sustainable trade growth, and maintain a balance between national and international interests. As well as considerations of ethics and social responsibility in business practices. Applying the principle of freedom of contract appropriately is expected to create legal certainty, foster sustainable trade growth, and maintain a balance between national and international interests.

Keywords: Principle of Freedom, Import Trade, Business Law

INTRODUCTION

International trade has an important role in global economic growth and creates broad business opportunities. In the context of international trade, import trade has a crucial role in meeting consumer needs for goods and services produced in other countries (Nurjannah, 2013). In carrying out import trade transactions, the principle of freedom of contract plays a very important role in the perspective of business law because it regulates the relationship between the parties involved in trade transactions, including import trade. This principle is based on the freedom of individuals or legal entities to determine the terms of their own contracts without any unlawful interference from other parties or the government.

The application of the principle of freedom of contract in the import trade provides a strong legal basis for business people to enter into agreements and carry out trade transactions with business partners. The principle of freedom of contract emphasizes the right of individuals or legal entities to determine the terms of their own contracts without any unlawful interference. In the context of import trade, this principle provides a strong legal basis for business people to enter into agreements with trade partners in the country of origin of the goods or services to be imported.

The application of the principle of freedom of contract in import trade has a number of significant backgrounds. This principle encourages economic efficiency in the allocation of resources and the creation of added value. Businesses can negotiate and set prices, payment terms and other conditions that are most favorable to both parties, resulting in the most economically efficient transactions (Utami et al., 2019).



In addition, the application of the principle of freedom of contract in the import trade also contributes to trade liberalization efforts. Within the framework of trade liberalization, restrictions and barriers to trade between countries were removed or significantly reduced (Budiyanti, 2017). The principle of freedom of contract allows business people to enter into agreements with trading partners outside their country's borders, opens up new opportunities for cheaper and better quality imports of goods and services, and expands markets for business people. However, the application of the principle of freedom of contract in the import trade must also pay attention to the applicable rules and regulations. Even though this principle gives freedom to business people in entering into contracts, there is still a need to comply with the rules and laws that apply in both the country of origin and the country of import destination. This is important to protect national interests, security, environment or other social aspects.

In the perspective of business law, the principle of freedom of contract in the import trade provides legal protection to business people. A valid contract is a strong legal basis for enforcing the rights and obligations of the parties involved. In the event of a breach of contract, the injured party may file a lawsuit and seek remedy or compensation in accordance with the terms of the contract or applicable law. So that the principle of freedom of contract in the import trade has an important background in the perspective of business law. This principle promotes economic efficiency, supports trade liberalization, and provides legal protection to business people. However, this principle must also be within the limits of applicable laws and regulations. By understanding the principle of freedom of contract in import trade,

METHODS

This study uses a qualitative approach to describe the principle of freedom of contract in the import trade. This approach aims to provide a comprehensive explanation of the application of the principle of freedom of contract in import trade from a business law perspective. A qualitative approach is expected to describe in depth the principle of freedom (Moto, 2019). In addition to the approach, this study also uses a descriptive method. The descriptive method is carried out by describing facts and followed by analysis, not only describing, but also providing adequate understanding and explanation (Ansori, 2019).

The data collection technique in this study was a literature study. Literature study is used to collect information and data through various sources such as books, journals, articles, and others (Mirzaqon & Purwoko, 2018). Literature study is also a data collection technique that involves a review of books, literature, records, and reports that are relevant to the research problem. (Cahyono, 2020). The data sources used in this research are books, journals, articles, and similar sources found through Google Scholar by using the words principle of freedom, import trade, and business law.

DISCUSSION

Principles of Law in International Contracts

The state as a subject of international law has the authority to regulate the movement of goods and services into and out of its territory. The sovereignty possessed by the State allows it to make regulations that bind legal subjects, objects and legal events that occur within its territory. (Kasih et al., 2021).

Adjustment of national contract law in the context of international contracts should be considered as an urgent need. This need includes renewal of contract law or agreements as a result of the globalization era, so that Indonesia can continue to compete in international trade and business transaction activities. This update is a must to maintain Indonesia's existence at the global level.

The renewal of contract or agreement law basically aims to create legal certainty that protects national interests. With this legal certainty, trade and international business transactions can be carried out more efficiently and optimally. This will benefit both the state and the private parties involved.

The main objective of contract law adjustments is to create an adequate and clear legal environment, thereby promoting trust and stability in international business transactions. With an up-to-date and



relevant legal framework, parties involved in international contracts will feel more secure and legally protected. In addition, the renewal of contract law also aims to facilitate a more effective negotiation and dispute resolution process in the international context. Developments in technology and communication have changed the way business is done, so legal adjustments are needed to suit these developments.

Adjustment of national contract law in the context of international contracts is an important requirement. This reform aims to create legal certainty, increase international trade and business transactions, and protect national interests. With the updated legal framework, Indonesia can continue to participate in global trade activities and generate benefits for both the country and businesses (Simanjuntak, 2013).

As for the provisions in the international convention regarding Contracts for the International Sale of Goods (CISG) and the UNIDROIT Principle of International Contracts of 1994. The UNIDROIT principles are a source of international contract law created as an effort to create harmonization of laws and rules in international trade. According to the principles of contract law (Gijoh et al., (2021) among others are; The principle of freedom of contract, The principle of legal recognition of business practices, The principle of good faith and fair dealing, The principle of force majeure and Retroactive effect of Avoidance (not retroactive). 2. Regarding the available forums or forms of dispute resolution, it appears that each has its strengths and weaknesses.

The Principle of Freedom of Contract Negotiation

Negotiations are negotiations between the parties, in negotiations there is a process of bargaining between the parties. There are parties who make offers (offer) to other parties, and there will be acceptance (accept) from other parties (Parmitasari, 2019). Meanwhile, the contract is a series of agreements made by the parties to bind themselves to each other. The principle of freedom of contract can be summarized from the provisions of Article 1338 paragraph (1) of the Civil Code (KUHPer). The article states that all legally made contracts have the same legal force as the law for the parties who make them. The parties involved in the agreement are obliged to comply with the agreement as they comply with the law. Therefore, in making an agreement, the agreement and knowledge of all parties involved must be the underlying basis. In this context, each individual has the freedom to enter into agreements and determine the contents of the contract.

Freedom of contract is to give freedom to the parties involved in the contract to determine the contents of the contract and determine the assessment criteria needed for the implementation of the contract (Muskibah & Hidayah, 2020). The principle of freedom of contract is also explained in Article 1330 of the Civil Code. This article states that everyone has the freedom to choose the party with whom he wants to make an agreement, as long as that party is a party that has legal capacity. Thus, the principle of freedom of contract allows individuals to freely determine their contract partners, as long as the partners are legally capable parties. In essence, the principle of freedom of contract gives freedom to individuals to determine the contract partner and the contents of the contract, while still complying with applicable legal provisions and taking into account the legal capacity of the parties involved. (Dinanda & Wita, 2018).

The application of the principle of freedom of contract in the import trade plays an important role in the perspective of business law. The principle of freedom of contract refers to the ability of the parties involved in the contract to agree on the terms and conditions of the contract freely and without interference from third parties. In the context of import trade, this principle refers to the ability of importers and exporters to determine the terms of their trade contracts without unfair boundaries.

Application of the Principle of Freedom of Contract in the Import Trade

Indonesia became part of UNIDROIT on January 1, 2009 by ratifying the principles of international contracts with Presidential Decree No. 59 of 2008 concerning Ratification of the Statute of the International Institute for the Unification of Private Law. With the ratification of Presidential Decree No. 59 of 2008 this indicates that there will be harmonization regarding the harmonization of national contract law with international contract law in order to modernize national law to support national and international trading practices which are expected to not find problems in contracting in trading



practices, so that differences in national contract law are not become a barrier to international trade practices(Saputra, 2020).

The principle of freedom of contract gives freedom to importers and exporters to negotiate and set contract terms that are mutually beneficial for both parties. This includes prices, product quality, contract terms, payment methods and all other matters relating to trade transactions. This principle provides flexibility to the parties involved to reach an agreement that suits their respective interests and needs.

One of the scopes of freedom of contract is the freedom to choose the party with whom one wants to make an agreement. This coverage means that a person can choose or refuse to make agreements with other people based on his subjective or objective considerations. The considerations used are closely related to the purpose of the agreement to be made, for example in a work agreement the considerations in selecting workers are the qualifications and ability of a person to fill a certain position.(Syaufiga & Rusdiana, 2018).

The provisions of contract law in Indonesia indeed emphasize that the agreement reached by the parties as one of the fundamental bases for forming a valid agreement or contract must not be based on coercion or fraud or oversight of the other party, where if the agreement is then proven to be reached by the intended effort in Article 1321 of the Civil Code, it will give the right to the aggrieved party to request cancellation of the contract that has been formally agreed upon or signed by the parties.(Panggabean, 2010).

The application of the principle of freedom of contract in the import trade also involves effective contract enforcement. When there is a breach of contract or disagreement between the importer and the exporter, this principle allows the aggrieved party to protect their rights through a fair legal process. This includes any dispute resolution mechanisms, arbitrations or other legal procedures available to ensure performance of contracts and fulfillment of obligations.

Although the principle of freedom of contract provides freedom in negotiating contracts, there are limitations set by applicable laws and regulations. For example, there are laws governing the import and export of certain goods, international payments, consumer protection, and environmental issues. Parties involved in the import trade need to understand these legal limitations and ensure that their contracts comply with applicable regulations.

In applying the principle of freedom of contract, it is important to consider ethical and social responsibility aspects. While the parties involved have the freedom to set the terms of the contract, they are also responsible for ensuring that the import trade is conducted ethically and respects the rights of all parties involved, including workers, consumers and the environment. This principle encourages responsible and sustainable business practices.

The application of the principle of freedom of contract in import trade ensures that the parties involved have the freedom to negotiate, protect their rights, and reach mutually beneficial agreements. However, it is also important to understand and respect the relevant legal and ethical boundaries in the context of international trade.

CONCLUSION

Based on the research results, it can be concluded that Indonesia's efforts to harmonize national contract law with international contract law in order to support efficient and unhindered trade and business transactions. The principle of freedom of contract gives freedom to the parties involved in the import trade to negotiate, determine the terms of the contract, and protect their rights. However, this freedom of contract is also limited by applicable laws and regulations, and requires attention to aspects of ethics and social responsibility. The application of the principle of freedom of contract in import trade aims to create legal certainty, protect national interests, and encourage responsible and sustainable business practices. Being part of UNIDROIT and ratifying international contract law principles, Indonesia recognizes the importance of harmonizing national contract law with international standards. This is expected to modernize national laws and create a conducive environment for trade and business transactions, both at the national and international levels. The principle of freedom of contract provides flexibility to the parties involved in the import trade to

reach mutually beneficial agreements. However, it is also important to understand applicable legal and ethical boundaries and ensure the fulfillment of social responsibility in business practices. Thus, the application of the principle of freedom of contract is expected to create legal certainty, protect the rights of the parties involved,

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