

The Impact of Ratification and Implementation of the Convention on International Sales of Goods (CISG) on Indonesia's International Trade and Business Activities

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Abstract

This study was conducted with the aim of identifying and analyzing the role of the international convention on the sale of goods or the Convention International Sales of Good (CISG) on the international trade and business activities of Indonesia. The implementation of international business has its own obstacles that are different and more difficult to face than the obstacles in the domestic market. International sale and purchase of goods is a very important area of law in the era of globalization, especially in supporting activities in the international trade and business transaction sector. CISG includes material on the formation of international contracts which aims to eliminate the need to indicate the laws of a particular country in international trade contracts and to facilitate the parties in the event of a conflict between legal systems. To overcome the obstacles that can arise from the diversity of legal systems, the international trade community in 1988 created an international convention to regulate international sale and purchase agreements. The convention is known as The United Nations Convention on Contracts for the International Sale of Goods (CISG). CISG can function to overcome obstacles that arise from the diversity of legal systems. Indonesia needs to ratify the convention as soon as possible for the welfare of the Indonesian nation and the legal certainty of business actors.

Keywords: *CISG, Ratification, International Trade, International Business*

INTRODUCTION

Currently, the world's rotation in terms of progress towards the future is very rapid and fast, as well as what happens to the economic aspect, especially international trade and business. International trade has a very vital role in the development of the business world. International trade is generally the exchange of goods carried out by more than one country which creates international business transactions by the countries involved in the business. The most important factor in this case is the competitiveness of business actors from various countries, be it individuals, companies or governments.

Globalization is a process in which all sectors of world activity become easier to connect and engage and result in a major influence on the global market. The major influence on the global market is closely related to all aspects of life that have consequences for social, political and economic.

Business turnover in the era of globalization has a great influence, both beneficial influences on the running of the business or causing the business to be unable to run or deadlocked. The most avoided thing in a business contract agreement is a dispute that can occur in the future which causes the business to only produce losses.

The implementation of international business has its own obstacles that are different and more difficult to face than the obstacles in the domestic market. Each country has its own goal to create an obstacle for other countries in conducting international business transactions, some of the things that are obstacles in this case are:

a. Language differences

Differences in language usage are often the main factor hindering international business transactions.

This is because language is a vital communication tool both verbally and in writing.

b. Political, legal and legislative conditions

Bad relations between countries can also affect international business transactions and cause them to fail, as can applicable laws that can hinder the running of a business transaction process.

The factors explained above are factors that often cause obstacles to international business transactions.

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Seeking solutions to minimize the obstacles often faced by countries in conducting international business/trade transactions, the UN gave birth to a special convention for sales of goods contracts in 1980. The UN Convention on Contracts for the Sale of Goods, commonly called the Convention International Sales of Goods (CISG), has been able and successful in overcoming obstacles, especially in the legal aspect. CISG has succeeded in uniting the broad field of commercial law at the international level with the aim of reducing obstacles to international business/trade by creating fair and modern substantive rules that regulate the rights and obligations of the parties in an international sales agreement contract.

International sale and purchase of goods is a very important area of law in the era of globalization, especially in supporting activities in the international trade and business transaction sector. CISG covers material on the formation of international contracts which aims to eliminate the need to indicate the laws of a particular country in international trade contracts and to facilitate the parties in the event of a conflict between legal systems. CISG applies to contracts for the sale of goods made between parties whose place of business is in different countries, Article (1(1)). Thus, what determines is the place of trade and not the nationality.

The Southeast Asian region in general, and Indonesia in particular, will face free trade. Differences in legal systems between regions are often factors that hinder the rapid growth of free trade in regional and global areas.

In addition, with the joining of countries in the world in the World Trade Organization (WTO) and the emergence of free trade zones (Free Trade Area) increasingly open opportunities for traders around the world to conduct international trade. Not to mention, the development of the e-commerce industry is very rapid, where this industry and trade often involve parties from different countries. This international trade phenomenon has given rise to the need for universal and uniform regulations that regulate the rights and obligations of traders in conducting international trade transactions.

Based on the explanation above, it feels very important for Indonesia, which is also an active country in the context of export and import activities for the sake of the country's economic progress. The author will try to examine how the ratification and implementation of the CISG affect Indonesia's international trade and business activities.

FORMULATION OF THE PROBLEM

Based on the background above and to provide research limitations, several problems are formulated, as follows:

1. How does the Convention on International Sales of Goods (CISG) affect international trade and business?
2. What are the advantages and disadvantages for Indonesia in ratifying the Convention on International Sales of Goods (CISG)?

RESEARCH METHODS

The research method implemented in this work applies a normative approach by utilizing the case study method. The use of a case study approach within the framework of normative research serves to explore the application of legal norms and principles involved in legal practice, especially by analyzing specific cases that have been established and recorded in the history of jurisprudence. This approach focuses the analysis on cases that are the core of exploration in the legal realm. This study identifies and describes existing issues, then conducts an analysis by referring to existing legal concepts. Afterwards, the research links theoretical aspects with legal regulations that apply in legal practice. The approach through legislation is an approach that is carried out by examining all laws and regulations related to the legal issues being handled.

RESULTS AND DISCUSSION

The influence of the Convention on International Sales of Goods (CISG) on international trade and business

The phenomenon of international trade has given rise to the need for universal and uniform regulations that govern the rights and obligations of traders in conducting international trade transactions. The contents of national laws that differ from one country to another have resulted in legal uncertainty and difficulties among traders in making international trade contracts.

To overcome the obstacles that may arise from the diversity of legal systems, the international trade community created an international convention to regulate international sale and purchase agreements for goods in 1964 under the name The Uniform Law on the International Sale of Goods 1964 and The Uniform Law on the Formation of Contract for the International Sale of Goods 1964. In 1980, both conventions were revised by UNCITRAL and then integrated into The United Nations Convention on Contracts for the International Sale of

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Goods (CISG). CISG is a Convention that regulates the material legal rules that will be applied to every international trade transaction. In this view, the convention relating to the choice of law is not a convention that regulates the legal rules in international trade transactions, but only applies domestic legal provisions to an international trade transaction.

The CISG contains 101 articles arranged in a structure divided into 4 (four) main parts, namely:

1. Part I regulates the scope (articles 1 to 6) and general provisions (articles 7 to 13)
2. Part II regulates the rules regarding the formation of international sales and purchase contracts for goods (goods 14 to 24)
3. Part III Rights and Obligations of the seller and buyer arising from the contract
Chapter I General Provisions (Articles 25 to 29)
Chapter II General Seller Obligations: Article 30 Section 1 Delivery of goods and arrangement of documents, Section 2 Conformity of goods and third party claims (Articles 35 to 44), Section 3 Losses due to breach of contract by the seller (Articles 45 to 52)
4. Chapter III General Buyer Obligations: Article 53 Section 1 Payment (Articles 54 to 59), Section 2 Delivery (Article 60), Section 3 Losses due to breach of contract by the buyer (Articles 61 to 65)
5. Chapter IV Risks (Articles 60 to 70) Chapter V General Provisions on Obligations of Sellers and Buyers. Section 1 Anticipation of breaches and replacement of contracts (Articles 71 to 73), Section 2 Damages (Articles 74 to 77), Section 3 Benefits (Interests) (Article 78), Section 4 Exceptions (Articles 79 to 80), Section 5 Impact of cancellation.

a. Implementation of CISG

The CISG provisions do not provide a specific definition of an international sale of goods agreement. The provisions of Article 1 of the CISG contain the following provisions:

(1)Regulates international sales and purchase contracts between parties who have a place of business in different countries, and the countries in question are required to:

- a. If the business transaction occurs in a country participating in the convention;
- b. If the rules of private international law refer to the application of the law of the participating convention;

Thus, according to Article 1 of the CISG, it is known that the CISG regulates buying and selling between parties who have their positions in different countries and requires that these countries are parties to the convention or if the rules of International Private Law require the use of the law of one of the participating countries.

The problem arising from Article 1 (1) (b), will the CISG apply, if the parties in a sales and purchase contact have a clause regarding choice of law, where the parties have chosen the law of one of the parties participating in the convention?

The choice of law of the parties is not enough to apply the CISG. To be able to apply the CISG, there must be an objective relationship factor, because it must be seen whether the choice of law is only for domestic sales law or a choice of law that includes the CISG. If the CISG has become domestic law, then the CISG will apply and vice versa based on Article 6 of the CISG, the parties are allowed to apply the CISG. This means that Article 1 (1) (b) is included for not being applied. There are four (4) things to determine the application of the CISG, namely:

- a) Regarding the parties in an international trade contract of sale and purchase:
 - 1) The parties must be parties whose places of business are in different countries, both of which have agreed to apply the CISG;
 - 2) The parties must be parties whose place of business is in different countries, both of which have participated in implementing the CISG; however, international law rules designate the law of this country (the CISG participant) as the law applicable to the sale and purchase transaction;
- b) Regarding the Contents of International Contracts
 - 1) The international sales and purchase contracts regulated by the CISG are commercial international sales contracts and do not include sales to consumers or end users; and;
 - 2) Not all traded goods are subject to the provisions of the CISG. This can be seen from the provisions of Article 2 of the CISG, namely that the CISG excludes:
 - a. For goods purchased for personal, family or household use, unless the seller did not know before or at the time of the conclusion of the contract or should have known at the time of its conclusion that the goods purchased were for that purpose (for personal, family or household use).
 - b. Buying and selling at auction;

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- c. Sale and purchase in the context of executing a court decision;
- d. Shares, securities, securities for investment purposes, negotiable instruments or money;
- e. Ship (ship, vessel), hovercraft or airplane;
- f. Yesng related to electricity

From the formulation of Article 2 of the CISG it appears that the provisions of the CISG only apply to movable and tangible goods.

Advantages and Disadvantages for Indonesia Ratifying the Convention on International Sales of Goods (CISG)

Indonesian companies that are active in international trade are not too concerned about which country's law will be used to regulate international trade contracts with their foreign trading partners. When the law of the trading partner country that is based on the common law legal system, which is different from the civil law legal system adopted by Indonesia, is chosen as the governing law (the law that regulates the contract), then Indonesian traders are exposed to high legal risks because they should not understand the common law legal system.

Thus, international sales contracts made by Indonesian companies with their foreign trading partners are automatically subject to/governed by the CISG if the law they designate to regulate their contracts is the law of a foreign country that has ratified the CISG. If Indonesian traders with their foreign trading partners do not explicitly designate a particular country's law to regulate their sales contracts, then based on the principles of international civil law, their sales contracts can be subject to the CISG if the contract has many points of connection with the laws of a foreign country that has ratified the CISG.

With the ratification of the CISG into Indonesian law, it will certainly make it easier for business actors to understand their rights and obligations when conducting trade transactions with foreign parties because of the uniformity of regulations originating from the CISG. In addition, the CISG accepts trade customs and customs between the parties as the basis for interpreting the provisions of the contract. As in Indonesian contract law, good faith is used as the main principle in the main interpretation in the interpretation of the provisions and implementation of the contract. Considering that the CISG has been used by many countries, the ratification of the CISG can certainly be a good consideration that is expected to help promote Indonesian trade. There are several arguments that support the urgency of the Indonesian Government to immediately ratify the CISG.

First, as previously explained, Indonesian positive law currently only regulates domestic sales contracts that occur between Indonesian citizen business actors where Indonesian civil law applies to the sales transaction. However, if the sales activity is international in nature, Indonesian positive law cannot automatically apply to the contract or activity because the scope of the applicability of Indonesian civil law is narrow and limited to domestic transactions. The sales law contained in the Civil Code is currently not ready to face problems related to international sales and purchases that are increasingly developing every day and encounter new and complex problems. The CISG norms and standards that have reflected international trade law have not been integrated into Indonesian law. In fact, the CISG is based on best practices in international sales transactions with a better breadth and depth of substance regarding international sales and purchase contracts than Indonesian civil law.

Second, Indonesia's ratification of the CISG can provide legal certainty and better prepare Indonesian business actors when dealing with the laws applicable to international sales contracts. Based on the results of the study, international sales contracts drafted by law firms more often refer to the laws of the largest trading partner countries such as the European Union, the United States, and Singapore that have ratified the CISG. If referring to European law, then because the CISG is part of the positive law of the European Union, based on the principles of international civil law, the contract can be subject to the CISG. However, for countries such as the United States and Singapore that made reservations in their ratification (they are only willing to apply the CISG to international sales contracts made by their business actors with business actors from other countries that have also ratified the CISG), then the domestic laws of the United States and Singapore apply to the contract.

These conditions have negative consequences for Indonesian business actors because Indonesian business actors are completely unfamiliar with the CISG or the domestic laws of other countries because they are not included in positive Indonesian law. As a result, these business actors, when conducting international sales and purchases, are not prepared for the legal consequences that can be caused by the CISG or the domestic laws of other countries, each of which is different, on their international sales and purchase contracts.

Ratification of the CISG will support and optimize Indonesia's trade potential. The CISG is the result of a 'grand' compromise of the principles known in the world's major legal traditions, such as the Anglo-American legal tradition (common law), the European-Continental tradition (civil law), the law of socialist countries, and also from its flexible nature to be open to development and adjustment to the Islamic legal tradition (BPHN: 2013).

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Therefore, the CISG can function to overcome obstacles arising from the diversity of these legal systems. This will result in many foreign business actors being interested in conducting international trade cooperation with Indonesian business actors because there is already legal certainty over the international trade contract that is familiar to them, where the law (CISG) has integrated parts of their country's legal system.

CONCLUSION

Ratification of the CISG encourages the development of the Indonesian economy and minimizes legal problems that may arise due to the legal vacuum with the absence of Indonesian legal provisions that specifically regulate international trade. Ratification of the CISG will provide legal certainty because current positive Indonesian law only regulates domestic trade, therefore there is a need for CISG in the regulation of sales and purchase contracts so that it can have a wider scope in the international business of Indonesian citizens. CISG can support and optimize the potential for trade and business of business actors in Indonesia internationally. Indonesia will gain enormous benefits if it has ratified and implemented the CISG. Therefore, the author believes that Indonesia needs to ratify the convention as soon as possible for the welfare of the Indonesian nation and the legal certainty of business actors.

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