

THE ROLE OF LAW IN INTERNATIONAL BUSINESS TRANSACTIONS IN THE SETTLEMENT OF INTERNATIONAL DISPUTES

Maria Angela Maharanim Himan

Faculty of Law, Atma Jaya Catholic University of Indonesia, Jakarta, Indonesia

Corresponding Author: himananggye@gmail.com

ABSTRACT

International law is the law that governs all activities on an international scale. International law aims to create order and justice in the international community. It also regulates cooperative relations between countries worldwide. The purpose of regulating international relations is to prevent tension and major conflicts between countries. However, what if a country fails to maintain its international relations and even cause disputes between countries, which can lead to various problems? This research uses a normative legal research method, namely by reviewing and collecting information from literature sources such as books and laws.

Keywords: Role, International Law, and Interstate

A. INTRODUCTION

International trade law is one of the branches of international law. It has a broad scope, intersecting with several other fields such as international economic law, international business transaction law, and others.

When discussing the global economy, it is essential to understand its fundamental principles. Economics is not merely about profit, loss, and income; it extends beyond that, encompassing international trade. International trade represents an economic activity that has a direct impact on the global economy.

International trade, which is grounded in the principle of free trade, consistently adopts economic elements oriented toward efficiency, transparency, and open competition among cross-border enterprises.

Trade liberalization and economic cooperation have become dominant agendas in both global and regional economies. Such cooperation serves as a key factor in the implementation of economic policies and reflects the tangible participation of governments in international relations.¹

International trade is a process of exchange carried out when a country seeks to obtain benefits from trade, motivated by its needs. Through international trade, the parties involved can achieve mutual advantage. The outcome of international trade is the fulfillment of needs, which in turn becomes the backbone of a nation's prosperity, welfare, and strength.

This practice of international trade has existed since ancient times, dating back thousands of years—for instance, the famous “Silk Road” that connected Asia and Europe. From the 16th to the 19th centuries, European countries explored other continents in search of wealth, which stimulated import and export activities between European nations and their colonies.²

International trade activities continue to this day; however, their implementation still encounters many obstacles.

¹ Musfala Yudha, Nur Qalbi, Muhammad Agung, Ketaatan Negara Terhadap Hukum Perdagangan Internasional, Fakultas Hukum Institusi Ilmu Sosial dan Bisnis Andi Sapada, Jurnal Litigasi Amsir, Vol. 10, No. 1, 2022, hlm. 91

² Endra Wijaya, Dinamika Upaya Melakukan Sinergi Antara Hukum Perdagangan Internasional dan Hukum Lingkungan, Jurnal Hukum Pradilan, Vol. 6 No. 3, November 2017, hlm. 488.

B. RESEARCH QUESTION AND METHODOLOGY

1. Research Question

Based on the explanation above, the problems can be formulated as follows:

1. What are the factors causing disputes between Indonesia and other countries?
2. What is the role of law in international business transactions?

2. Methodology

This study employs a qualitative research method. Data and information are obtained from books/legal documents and journals in order to answer the legal questions raised in a systematic and scholarly manner. To comprehensively address the legal issues under study, normative legal research is not limited to statutory regulations alone, but also encompasses legal principles, legal synchronization, legal history, and comparative law.

C. RESULTS AND DISCUSSIONS

1. Definition and Scope of International Trade Law

1.1 Definition of International Trade Law

International trade refers to trade conducted between nations. Its origins can be traced back to Europe before later spreading to countries in Asia and Africa. States involved in international trade are required to sign international agreements on tariffs under the *General Agreement on Tariffs and Trade* (GATT). Over time, GATT evolved into the *World Trade Organization* (WTO).

From the above definition, international trade activities involve not only states and international organizations under the provisions of GATT and the WTO, but also parties from various countries engaged in international trade transactions.

1.2 Scope of International Trade Law

Based on the definition explained earlier, international trade activities involve not only states and international organizations under the provisions of the *General Agreement on Tariffs and Trade* (GATT) and the *World Trade Organization* (WTO), but also parties from different countries engaged in international trade transactions.

Therefore, the scope of trade law can be examined not only from the perspective of

public international law but also from the perspective of private international law. The scope of public international law constitutes a branch of international law that deals with the rights and obligations of states and international organizations in international relations. In this sense, international trade involves states and international organizations, both global and regional, and refers to the provisions and principles of international law as agreed upon in GATT and the WTO. Meanwhile, the scope of private international law constitutes a branch of international law that concerns the rights and obligations of individuals—namely, parties and international organizations in international relations—and refers to international treaties or contractual principles agreed upon by the parties, which may originate from international trade conventions or international trade contracts, whether bilateral, regional, or multilateral.³

1.3 Trade Theory

The theory of comparative advantage refers to the relative comparison of benefits or disadvantages in international trade. To this day, the theory of comparative advantage remains the primary foundation for countries engaging in international trade.

According to David Ricardo, the value or price of a product depends on the amount of time or labor required for its production. Therefore, if a country possesses an advantage in producing and exporting goods with relatively high production efficiency, while importing goods with relatively low production efficiency, the country will benefit from international trade. In other words, if a nation is able to produce and export goods at a relatively lower cost while importing goods that are more costly to produce domestically, that nation will gain from international trade.

1.4 Fundamental Principles of International Trade Law

The following are the fundamental principles of international trade law:

a. Principle of Freedom of Contract

The principle of freedom of contract is one of the general principles in international trade law. Within the legal framework of commerce, it recognizes the freedom of the parties to establish an international contract.

³ Muhammad Sood, *Hukum Perdagangan Internasional Edisi Kedua*, Rajawali Pers, Depok, 2022, hlm. 13-18.



b. Principle of Freedom of Communication (Navigation)

Communication or navigation refers to the freedom of parties to communicate with others through any means of navigation or communication (land, sea, air, or electronic). This freedom is highly beneficial for the implementation of international trade. The parties' freedom must not be restricted by economic, political, or legal systems.⁴

1.5 Indonesia and International Law

Indonesia is a country that also has a strong need for international trade law in order to integrate with the international community. The development of Indonesia's stance toward international law can be divided into three periods.

a. Indonesia's Attitude toward International Law during the Old Order Era (1945–1965)

Indonesia's status as a former colony significantly influenced its stance on international relations. A nation's past negative experiences shape its behavior, creating a desire to avoid similar treatment in the future. This is similar to human beings, where negative past experiences cause trauma and foster a strong will to prevent the recurrence of such experiences, which in turn affects their legal behavior.

These indicators also apply to the attitudes of former colonies toward international law, where psychological factors (such as the negative experiences of being colonized in the past) may influence a nation's acceptance of international law within its own national legal framework.

Most Asian and African countries largely believed that they were not the creators of international law, but merely its beneficiaries.

In the early years of independence during the Old Order era, Indonesia adopted a rather hostile stance. There was a clear suspicion that international relations law was essentially Western law, designed to legitimize Western interests in former colonies. Indonesia's stance during the Old Order reflected a spirit of nationalism, resistance, and opposition.

Indonesia unilaterally issued the Juanda Declaration, which was later enacted into Law No. 4 of 1960 in 1957. As an archipelagic state with unique

⁴ Muhammad Reza, *Hukum Perdagangan Internasional*, Kencana, Jakarta, 2021, hlm 71



geographical characteristics, Indonesia felt it was treated unfairly, which prompted the issuance of the Juanda Declaration. If the prevailing customary international law at that time had been applied to Indonesia, it would have resulted in the creation of international waters within its archipelago. This would have posed a serious threat to Indonesia's national security. Although initially considered a unilateral act that violated customary international law, over time the archipelagic state concept was eventually accepted and recognized under Part IV of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Regarding Indonesia's position during the Old Order, Mochtar Kusumaatmadja made an interesting observation: Indonesia did not oppose international law outright, but sought to balance the interests of developing countries (most of which were former colonies) with those of developed countries.

b. Indonesia's Attitude toward International Law during the New Order Era (1966–1968)

During the New Order era, Indonesia began to adopt a more positive attitude toward international law. In this period, Indonesia's foreign policy tended to be Western-oriented. The New Order regime was highly open to foreign investors. Indonesia quickly ratified the 1965 Washington Convention on the Settlement of Investment Disputes (ICSID) in 1968 as part of its efforts to attract foreign investors. The New Order government also signed a number of Bilateral Investment Treaties (BITs) with the home countries of foreign investors, providing comprehensive security guarantees for them.

c. Indonesia's Attitude toward International Law during the Reform Era (1998–present)

Compared to the two previous periods, Indonesia has been more open to accepting international law during the Reform Era. Indonesia has signed various cooperation agreements in multiple fields, including economics, defense, security, social affairs, and culture.

Throughout the Reform Era, Indonesia has made extensive use of international law to advance its national interests. However, Indonesia experienced a major setback in attempting to enforce legal claims over the geostationary orbit (GSO) located north of the equator. In 2002, Indonesia eventually ratified the 1967 Outer Space Treaty, but this treaty does not recognize the sovereignty claims of

any state over outer space. Consequently, this initiative was deemed a failure, stemming from the lack of logical foundation in the proposal being advocated and the opposition it faced from the majority of countries.⁵

1.6 Negative and Positive Impacts of International Trade

All activities and advancements related to trade bring both positive and negative impacts, whether for governments or for the society of a nation.

a. Negative Impacts

The negative impacts of international trade can be observed particularly in a country's dependency on imports. These include:

1. Hindering the development of domestic industries.
2. Developing countries becoming dependent on developed countries.
3. The needs of developing countries being controlled by developed nations.
4. Differences in technological development between developed and developing countries, which may result in unfair competition.

b. Positive Impacts

The positive impacts of international trade can be outlined as follows:

1. Access to goods that cannot be produced domestically.
2. Expansion of market networks for domestic products.
3. Acquisition and utilization of modern technology transfers.⁶

1.7 Export

Globalization has led to the growth of international trade, enabling every country to export its products to various parts of the world.

a. Definition of Export Activities

Import and export activities are based on the reality that no country is entirely self-sufficient; rather, countries are interdependent and complementary. Each country has unique characteristics, such as natural resources, climate, geography, economic structure, and social structure. These differences result in variations in the types of goods produced, production costs, as well as the quality and quantity of products in each country.

⁵ Sefriani, *Hukum Internasional Suatu Pengantar Edisi Kedua*, Rajawali Pers, Depok, 2022, hlm. 22-29

⁶ Venantia Sri Hadiarianti, *Langkah Awal Memahami Hukum Perdagangan Internasional Dalam Era Globalisasi*, Universitas Katolik Indonesia Atma Jaya, Jakarta, 2019, hlm. 6

The interdependence of nations in meeting their needs ultimately drives the emergence of international trade. Each country has its own strengths and weaknesses. Goods produced in one country may not be used directly because they are raw materials that require further processing. These raw materials can then be utilized by other countries as inputs for their industries.

b. Benefits of Export

A country engages in export activities to meet the demand for goods and services in other countries. According to Sukirno, the benefits of export include:

1. Expanding markets.
2. Increasing national income.
3. Creating employment opportunities.⁷

Export activities generate new jobs for society. The greater the volume of exports, the higher the level of production, which in turn increases the demand for labor.⁸

c. The Impact of Export on Economic Growth

From the perspective of macroeconomic theory, the relationship between exports and economic growth or national income is an identity, since exports constitute a component of national income. From the expenditure perspective, exports are a key factor; thus, changes in export values have a direct impact on public income. Conversely, when a country's export value tends to be high, its economy becomes highly sensitive to fluctuations in the international market and the global economy.

1.8 International Business Transactions

At present, international business—encompassing exports and imports—is no longer merely a matter of addressing shortages of natural or human resources in a particular country. Rather, international trade has developed into a mutually beneficial, symbiotic relationship among nations.

a. Definition of International Business

⁷ Adrian Sutedi, *Hukum Ekspor Impor*, Raih Asa Sukses, Jakarta, 2014, hlm. 11

⁸ Fenin Farina, Achmad Husaini, *Pengaruh Dampak Perkembangan Tingkat Ekspor dan Impor Terhadap Nilai Tukar Negara Asean Per Dollar Amerika Serikat (Studi Pada International Trade Center Periode Tahun 2013-2015)*, Fakultas Ilmu Administrasi Universitas Brawijaya, Malang, Vol. 50. No. 6, September 2017, hlm. 46



International business is defined as commercial activities that cross national borders. This definition not only covers international trade and overseas manufacturing but also the growing service industries in various sectors such as transportation, tourism, banking, advertising, construction, retail, wholesale, and mass communication. International business refers to commercial activities conducted between one country and another.

To meet their needs, no country can survive without engaging in trade activities; therefore, various forms of business emerge.⁹

b. Principles of Business Law

The principles of international business law can be observed from the applicability/sources of international contract law. Huala Adolf, in his book, explains that there are seven forms of law that may serve as sources of international contract law, namely:

1. National law.
2. Contract documents.
3. Practices commonly applied in the field of international trade related to contracts.
4. General legal principles concerning contracts.
5. Court decisions.
6. Doctrines.
7. International agreements on contracts.

From these seven sources of law, it can be explained that although international business contracts fall within the domain of private law and apply the principles of freedom of contract and sovereignty, they must still take into account several other sources of international contract law.¹⁰

1.9 Compliance with International Law

According to Mukhtar Kusumaatmadja, law is not merely a collection of principles and rules governing human social life, but also a system and procedure for applying those rules in practice. This also applies at the international level. Every social order

⁹ Angga Gumilar, Analisis Bisnis Internasional di Indonesia, Vol 2 No. 2, Februari 2018

¹⁰ Aminur Alfi Syahrin, Nuri Aslami, Peran Hukum pada Transaksi Bisnis Internasional di Era Perdagangan Bebas, Jurnal of Social Research, Vo. 1 No. 3, hlm. 5



requires a set of recognized and binding codes of conduct.

International law is generally defined as a body of rules and regulations that restricts and regulates interactions between states and other legal entities within the international community.

The role of international law encompasses all aspects of state actions and relations, such as the use of land, sea, and air. In the non-public sphere, international law governs international telecommunications, national border services, the transportation of goods and people by sea and air, as well as the transfer and receipt of money in foreign currencies, commonly known as remittance transactions. Hence, international law is closely related to trade law.

International law functions as the foundation that regulates the conduct of foreign relations for every state. Given the vast and complex nature of inter-state relations, international law is essential to ensuring international stability and order. National interests can only be achieved in an orderly and structured manner if they adhere to international law.

2. Discussion

2.1 Factors Causing International Disputes

International disputes are conflicts that arise between one state and another. In the sphere of international relations, interactions among states are not always harmonious; disputes sometimes occur. Such disputes often involve issues such as territorial boundaries, nationality, human rights, or terrorism.

To resolve disputes between states, international law is necessary to regulate state boundaries, govern diplomatic relations, and to establish, enforce, and terminate treaties. In addition, international law addresses matters of common interest in the fields of economics, society, culture, law, and security. International disputes may also occur between a state and an individual, or between a state and an institution or group bound by international law.

There are numerous reasons why international disputes may arise, including:

- a. A party's failure to fulfill obligations in an existing international treaty.
- b. Differences in interpretation concerning the content of an international treaty.



- c. Competition over economic resources.
- d. Cases relating to national pride or dignity.
- e. Interference in the sovereignty of another state.
- f. Competition over political, security, and economic influence at both the regional and international levels.
- g. Rivalry in gaining political, security, and economic influence at the regional and international levels.

2.2 The Role of Law in International Business Transactions

International business is based on commercial activities that involve transactions among parties from different countries. International marketing refers to commercial transactions between companies in one country and companies or individuals in another country, carried out on the basis of mutual agreement. These parties may consist of individuals, individuals and governments, or governments of different countries.

The legal regulation of international business transactions falls within the domain of private law, which allows the parties to freely determine the provisions of the agreement forming a contract. However, business transactions between two legal entities of different nationalities must comply with international law in addition to the domestic law of each country.

D. CONCLUSION AND RECOMMENDATON

International law is the body of law that governs all activities within the international context. It also aims to uphold order and justice within the international community. To maintain security and stability among states and to strengthen cooperation in international relations, a country sends diplomatic missions to other countries. International relations refer to the interactions established by one state with another in various aspects. However, such relations are not always harmonious; disputes between states may arise. These disputes generally involve issues such as territory, nationality, human rights, or terrorism. To prevent interstate disputes, it is necessary to establish guidelines, rules, and mechanisms to enable the parties to resolve conflicts peacefully.

Based on the conclusions regarding interstate disputes, the author recommends that countries engaged in disputes should develop a deeper understanding of the benefits of existing policies and regulations, so that they may resolve international conflicts effectively and peacefully. Furthermore, international organizations and other global institutions should unite countries worldwide to collectively realize their vision and mission of strengthening cooperation, particularly in the field of international relations. In addition, international organizations and global institutions should serve as a forum for dispute resolution within the framework of international law, in order to prevent prolonged conflicts that may ultimately lead to war.

REFERENCE

- Adrian Sutedi. *Hukum Ekspor Impor*. Jakarta: Raih Asa Sukses, 2014.
- Aminur Alfi Syahrin & Nuri Aslami. “Peran Hukum pada Transaksi Bisnis Internasional di Era Perdagangan Bebas.” *Journal of Social Research*, Vol. 1 No. 3.
- Angga Gumilar. “Analisis Bisnis Internasional di Indonesia.” Vol. 2 No. 2, Februari 2018.
- Endra Wijaya. “Dinamika Upaya Melakukan Sinergi Antara Hukum Perdagangan Internasional dan Hukum Lingkungan.” *Jurnal Hukum Pradilan*, Vol. 6 No. 3, November 2017.
- Fenin Farina & Achmad Husaini. “Pengaruh Dampak Perkembangan Tingkat Ekspor dan Impor Terhadap Nilai Tukar Negara ASEAN Per Dollar Amerika Serikat (Studi pada International Trade Center Periode Tahun 2013–2015).” *Fakultas Ilmu Administrasi Universitas Brawijaya*, Vol. 50 No. 6, September 2017.
- Muhammad Reza. *Hukum Perdagangan Internasional*. Jakarta: Kencana, 2021.
- Muhammad Sood. *Hukum Perdagangan Internasional*, Edisi Kedua. Depok: Rajawali Pers, 2022.
- Musfala Yudha, Nur Qalbi & Muhammad Agung. “Ketaatan Negara Terhadap Hukum Perdagangan Internasional.” *Jurnal Litigasi Amsir*, Fakultas Hukum Institut Ilmu Sosial dan Bisnis Andi Sapada, Vol. 10 No. 1, 2022.
- Sefriani. *Hukum Internasional: Suatu Pengantar*, Edisi Kedua. Depok: Rajawali Pers, 2022.
- Venantia Sri Hadiarianti. *Langkah Awal Memahami Hukum Perdagangan Internasional dalam Era Globalisasi*. Jakarta: Universitas Katolik Indonesia Atma Jaya, 2019.