

Good Faith Cooperatioan Agreement Between Companies Of Different Countries

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Abstract

This research examines and analyzes international contracts that do not fulfill the principle of good faith or in Indonesian means Good Faith because the agreement made by the parties is not reached, then there can be disputes between the parties who made the agreement and there could be parties who suffer losses if it arises. the dispute. The legal remedies chosen by the parties making the agreement must be stated in the contents of the agreement. The method used in normative research with a problem approach is the case approach. The research results in the form of Cooperation Agreements between companies from different countries have not implemented the principle of "good faith" in post-contracts in the form of implementing "good faith" so that disputes occur. The legal remedy chosen was also not implemented properly, even though the settlement option came from an agreement stated in the agreement through the Indonesian National Arbitration Board (BANI). It is reasonable to suspect that this settlement option is not pure but because in international contracts the settlement is usually through the Indonesian National Arbitration Board (BANI). The result is that one of the parties feels disadvantaged.

Keywords: Legal System, Law Enforcement, Corruption.

INTRODUCTION

In the current era of increasingly rapid progress in science and technology, resulting in increased relations between countries. Partnership cooperation agreements occur between two or more parties where the parties have agreed to the provisions that have been made in terms of partnership cooperation to do something. International cooperation occurs because of the relationship between countries that must implement existing legal provisions related to the rights and obligations of the parties in international law. The beginning of the cooperation between countries with the existence of something desired by the parties, a contract is made. The contract made depends on the intent and purpose of the parties to cooperate between countries, so that international contracts are considered necessary and important. (Cinde Semara, 2020)

Several categories listed in international agreements can be voluntarily accepted by many countries to be used as guidelines. Related to the development of international agreements as one of the sources of international law, international agreements have developed greatly in terms of quantity and quality. The rules in International Treaty Law must and must be observed by the parties who will make an agreement, especially an international agreement. International agreements relate to state sovereignty such as agreements on state boundaries, federal relations with states in the form of. An International Agreement is an agreement made by or held between subjects of International law, either between countries, or between countries and other subjects of international law, or between subjects of international law that are not countries with each other. (Maryati B, 2017).

The beginning of the existence of International Treaty Law from international customs that have been applied by the international community. When making an international contract, orderly and safe conditions are needed, so that there is a norm that regulates it, especially in International Treaty Law originating from the Vienna Convention on the Law of Treaties 1969 which is often referred to as the Vienna Convention 1969. In the Vienna Convention 1969 it is

stated that "International Treaties are the main source of international law as a means to develop peaceful cooperation between nations, whatever their constitution and social system. (Konvensi Wina, 1969)

International agreements are one of the sources of international law as stated in Article 38 paragraph (1) of the Statute of the International Court of Justice. Basically, the validity of international law is based on two principles, namely: a) *pacta sunt servanda*, namely that agreements must and only be obeyed by the parties making the agreement; b) Primacy of International Law, namely that international agreements have a higher position than the national laws of a country participating in the agreement. Since the independence of the Republic of Indonesia in 1945, Indonesia has signed 6619 agreements and implemented various agreements with foreign countries and entities. Article 6 paragraph (1) of Law 24 of 2000 has established the mechanism for making international agreements, namely exploration, negotiation of the formulation of the text, acceptance, and signing. (Erlies Septiana, 2022)

The Role of International Agreements in Shaping Global Governance, This research examines how international agreements uphold the principle of *pacta sunt servanda* by ensuring that the parties involved adhere to their commitments. It also highlights how this principle supports the stability of international law, with a particular focus on the relationship between international treaties and national law in various jurisdictions. The research explains how the primacy of international law is essential in maintaining order and predictability in global governance. This aligns with the notion that international law should supersede national law in certain matters.

In making an international contract, a principle must be met, the principle is good faith or in Indonesian means Good Faith. The reason given regarding the importance of this principle is because if the principle of good faith is not applied, it will impact the purpose of the agreement made by the parties. If this goal is not achieved, then there can be a dispute between the parties who made the agreement and there could be a party who is harmed if the dispute arises.

RESEARCH METHODS

The type of research used by the author is Normative or Juridical-Normative, in relation to the type of research is normative-juridical, the approach used is the legal approach applicable in Indonesia (positive law) which usually uses or is based on data sources in the form of a legislative approach and a case approach. Normative research is conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. These materials are compiled then studied and conclusions are drawn regarding the relationship with the problem being studied. The problem approach is through legislation and cases. (Muhaimin, 2020).

RESULT AND DISCUSSION

Continental legal system, the approach to this principle is based on the philosophy of the contract that emphasizes or focuses on the relationship between the parties. This requires a good faith obligation to occur before the signing of the contract or pre-contract. While in the common law system, good faith occurs after the signing of the contract. The principle of good faith if observed in detail is included in the depiction of a democracy. Wayan Partiana illustrates the application of the principle of good faith as follows: (Wayan, 2005)

1. The parties must implement the provisions of the agreement in accordance with the content, spirit, intent and purpose of the agreement itself;
2. Respect the rights and obligations of each party and third parties who may be granted rights or burdened with obligations; and
3. Not taking actions that could hinder efforts to achieve the intent and purpose of the agreement itself, either before the agreement comes into effect or after the agreement comes into effect.

The principles related to freedom of contract or Pacta Sunt Servanda and good faith to realize it are also stated in Article 2 of the UN Charter which states as follows: (Ahmad Irfan, 2018).

“All members , in order to ensure to all of them the right of benefit resulting from membership, shall fulfill in good faith the obligation assumed by them in accordance with the present charter”

The author argues based on the existing regulations above that UN members are required to realize the principles related to freedom of contract or Pacta Sunt Servanda and good faith in making contracts, especially international contracts. Evidence for realizing the principles related to freedom of contract or Pacta Sunt Servanda and good faith by complying with the regulations related to the parties' obligations in making contracts, especially international contracts in International Law. Recognition and the obligation to implement the principle of good faith are recognized in the principles of contracts according to UNIDROIT in Article 1.7 of the UNIDROIT Principles stating: (Cindawati, 2014)

- (1) *Each party must act in accordance with good faith and fair dealing in international trade;*
- (2) *The parties may not exclude or limit this duty.*

In Chapter VIII Dispute resolution is written as follows:

1. This Agreement is made in Indonesia and is subject to and interpreted in accordance with the laws of the Republic of Indonesia.

Based on the provisions above, related to the choice of law chosen is the Law of the Republic of Indonesia which adheres to the continental European legal system, then good faith can be applied pre-contract. Indonesia as a country that adheres to the civil law legal system, also regulates the existence of the principle of good faith in its contract law. The practice of Indonesian legislation in the application of international legal norms through laws or decisions or regulations from the President shows that Indonesia adheres to the doctrine of transformation which is believed to be a concrete form of the teachings of the dualism school. The author argues that the pre-contract in question is the existence of an agreement to make a contract so that the cooperation that occurs can run smoothly. (Salma Laitupa, 2020).

In the Cooperation Agreement, it is included in the international agreement, so the rules of UNIDROIT can also be applied. The rules in UNIDROIT regulate the rights and obligations of the parties to make a contract based on the principle of good faith, because if it is not regulated, it will make one of the parties feel disadvantaged. Another thing related to freedom of contract is related to the settlement of cases. In CHAPTER VIII Dispute Settlement in the Cooperation Agreement, it is stated as follows:

“2. If a dispute arises between the Parties as a result of the implementation of this Agreement, the Parties agree to resolve it by deliberation and consensus within a period of 30 (thirty) days;

“3. If no agreement is reached within the time period applied, the Parties agree to resolve the dispute at the Indonesian National Arbitration Board (BANI)”.

- a. The principle of good faith is coercive.

The meaning related to forcing because it is related to the goal to be achieved. The goal encourages the implementation of good faith as well as fairness that will be carried

out in the cooperation. The author argues that the goal of the Cooperation Agreement is in the rights that will be obtained by the Parties listed in the Cooperation Agreement. In addition to the rules in UNIDROIT, there are other rules that can be used as a legal basis in international agreements so that they can also be applied to the Cooperation Agreement, namely The United Nations on Contract for the International Sale of Goods (CISG) in Article 7 Paragraph which states the following contents:

In the interpretation of Convention, regard is to be had to its international character and to the need to promote uniformity in its application and observance of good faith in international trade.

The interpretation that the Author analyzes in the above rules is related to the international nature that encourages uniformity, especially in international legal agreements related to good faith. In these rules, the application of good faith must be considered to exist, at the time of negotiation, contract implementation to dispute resolution. The advantage obtained by implementing the principle of good faith is the sense of trust from the parties in the Cooperation Agreement so that the making of international agreements can be realized. The loss that is obtained if the principle of good faith is not applied is in the implementation of the contract that has been made because there is a possibility that the implementation of the contract will be difficult to carry out properly.

In the Cooperation Agreement, the choice of law is the Law of the Republic of Indonesia, so the regulations of the State of Indonesia are used. The special characteristic of international agreements is the issue of state sovereignty which will have an impact on the national law of the country.¹⁷ Regulations related to good faith are contained in the Civil Code, especially in Article 1338 Paragraph (1) which is known by the term *Pacta Sunt Servanda*. The regulation states as follows:

“All agreements contained are legally binding on the parties as law”

Based on these regulations, it can be analyzed that good faith consists of subjects and objects. The subjects referred to are the parties in the agreement, especially in the Cooperation Agreement. This is the same as the pre-contract in making an international agreement in the form of a Cooperation Agreement, while the objects referred to are those listed in the agreement, in this case the contents and implementation of the contract. Its application is that the contents of the agreement must have a rational and appropriate category. Although there is a principle of freedom of contract for the contracting parties, the rationality and appropriateness of the agreement must also be taken into account.

In the author's opinion, the Cooperation Agreement still needs improvement. This is related to the absence of sanctions listed in the agreement if one party is in default. The inclusion of the sanctions in the Cooperation Agreement is also a form of implementing the principle of "good faith" because one party is aware that if they violate the provisions in the Cooperation Agreement, they will receive sanctions based on the agreement that has been agreed upon and stated in the agreement.

The legal consequences that arise from the Cooperation Agreement start from one of the parties terminating the agreement before the expiry period is completed, as stated in the Cooperation Agreement in CHAPTER V TERM, which states as follows:

1. This Agreement is valid for a period of 2 (two) years from the date this Agreement is signed ("Term"), unless terminated before the term expires by the Parties first in accordance with the methods regulated in this Agreement;
2. This agreement will end if:
 - a. The term of this agreement ends and will not be extended by the Parties;

- b. One Party intends to terminate this Agreement before the Term of this Agreement ends. The Party intending to terminate this Agreement is required to notify the other Party in writing no later than 90 (ninety) days before the effective date of termination of this Agreement; or;
 - c. This agreement cannot be implemented because there is a deviation from the applicable regulations;
3. The Parties agree to set aside the provisions in Article 1226 and Article 1267 of the Civil Code, regarding everything related to the termination of this Agreement;
 4. In the event of termination or expiry of this Agreement, there is no obligation to provide outstanding rights/compensation to the Parties, except based on obligations that have been carried out.

The Cooperation Agreement was made on May 4, 2018, so according to the provisions above, the termination of this agreement is 2 years from May 4, 2018, namely May 4, 2020. However, on November 10, 2019, one of the parties notified by sending a notification letter via email regarding terminating the employment relationship. This is because it has experienced continuous losses and when conditions like this are supported by the fact that the whole world is experiencing an outbreak in the form of Covid-19. That reason made one of the parties to terminate the agreement that had been made on May 4, 2018. The Cooperation Agreement also explains the force majeure which states as follows:

- 1) For the purpose of this clause, Force Majeure means an event that is explicitly beyond the control of the Parties and does not involve the fault or negligence of the Party and is not foreseeable by the Party. Such events include but are not limited to natural disasters, riots, wars, fires, explosions, rebellions, or changes in government policies and regulations that result in the Parties or one of the Parties being unable to perform their obligations under this Agreement.

The author notes that the Covid-19 outbreak is included in the category of natural disasters, because almost the entire world is experiencing it. However, one party does not have a problem with the current situation and has informed the other party that they will pay all costs incurred by the party by sending an email electronically. However, the payment method is not immediately paid off because it is waiting for the disbursement of funds obtained from their country related to the impact of the Covid-19 outbreak. The injured party does not have a problem with this and gives a period of 3 months since the termination of the agreement made by the parties.

The choice of law chosen is the Law of the Republic of Indonesia, then based on Article 1338 of the Civil Code which states that the agreement is considered a law to the parties who made it, then one party must be able to fulfill its obligations based on the contents of the agreement that has been made. However, over time one of the parties does not carry out these obligations, then based on the Cooperation Agreement, the settlement if there is a dispute can be resolved in the following way:

- 1) This Agreement is made in Indonesia and is subject to and interpreted in accordance with the laws of the Republic of Indonesia;
- 2) If a dispute arises between the Parties as a result of the implementation of this Agreement, the Parties agree to resolve it by deliberation and consensus within a period of 30 (thirty) days;
- 3) If no agreement is reached within the specified time period, the Parties agree to resolve the matter at the Indonesian National Arbitration Board (BANI).

A fairly important principle regulated in the UNIDRIOT principles is the scope of the principle of good faith which applies since the negotiations based on Article 2.15 which regulates the prohibition of negotiations in bad faith by determining:

- (1) *A party is free to negotiate and is not liable for failure to reach an agreement;*
- (2) *However, a party who negotiates or breaks off negotiations in bad faith is liable for the losses to the other party;*
- (3) *It is bad faith, in particular, for a party to enter into or continue negotiations when intending not to reach an agreement with the other party.*

The explanation that has been explained above explains that based on the UNIDRIOT principle, legal responsibility exists from the negotiation stage which consists of the following:

- a) There is freedom to negotiate for the parties making the agreement;
- b) There is a form of responsibility related to negotiations without applying the principle of "good faith"; and
- c) There is a form of responsibility for the cancellation of negotiations without applying the principle of "good faith".

The above provisions explain that there is freedom to conduct negotiations that decide when negotiations are carried out to resolve disputes that occur. Negotiations chosen by the parties by means of deliberation. The implementation of deliberations carried out using email because it is constrained by distance and the outbreak that occurred throughout the world in the form of Covid-19, so it cannot be face to face. The results of the deliberations carried out with technology did not produce satisfactory results which were proven until March 2020 there was no good faith from either party to resolve the dispute, so in accordance with the contents of the Cooperation Agreement it was resolved through the efforts of the Indonesian National Arbitration Board (BANI). Arbitration is usually chosen by entrepreneurs to resolve disputes in the field of trade, because it turns out to have several advantages and conveniences, namely:

- a) The results of the arbitration are confidential and information about the parties is not disseminated, so that the images of the parties can still be protected;
- b) The results obtained by the parties are in the form of decisions in accordance with their wishes and intentions which are final and binding.
- c) The arbitration option is chosen because of its advantages of being cheaper and the process is fast. There is a time limit regulated in Law No. 30 of 1999 regarding the time for resolving disputes until the arbitration decision is issued.
- d) Arbitration is known as a method of settlement through fast track and also standard track;
- e) The choice of law of the parties intended to resolve the dispute that occurs;
- f) The difference between arbitration and court is that the implementation in arbitration is not as formal as in court, so there is room for a friendly approach that does not damage the relationship between the disputing parties;
- g) Determination of the arbitrator depends on the parties with the criteria desired by the parties;
- h) If arbitration efforts are carried out with more than 1 arbitrator, then there is no relationship between the previous and subsequent arbitrators in providing their considerations;
- i) The results of arbitration efforts can be implemented by the court.

Although it has been determined that the settlement through the Indonesian National Arbitration Board (BANI) does not apply the dispute resolution. If one party does not carry out its obligations as agreed, then the other party has the right to take legal action to obtain its rights. This is due to the lack of understanding related to dispute resolution through the Indonesian National Arbitration Board (BANI), which is considered to be a waste of time and expensive costs. So this problem is just left alone. Settlement of problematic agreements must be through steps in accordance with the provisions stated in the agreement, such as arbitration, negotiation,

or legal action. In addition, it is important to prioritize the principle of good faith so that a settlement can be achieved in a way that is fair to both parties.

When observed in relation to the principle of good faith that has been explained previously, one of the parties did not apply the principle of good faith after the agreement which resulted in a party being harmed who had to pay taxes and employee honorariums which should have been an obligation. The dispute resolution options that have been set out in the Cooperation Agreement cannot be applied with the advantages that have been explained. The dispute resolution option was chosen because according to the parties in the Cooperation Agreement, it is a custom applied to international contracts, and at the same time they did not think long to choose it without thinking about the consequences of their choice. In the author's opinion, of course, this is not in accordance with the principle of good faith which is considered the legal basis for international agreements.

CONCLUSION

Cooperation Agreement between companies of different countries, the application of the principle of good faith occurs during the pre-contract and when making the agreement. This can be observed because during the pre-contract the parties to the Cooperation Agreement intend to make a cooperation agreement. Then the application of the principle of good faith when making the agreement can be observed by stating the good faith of the parties who made the Cooperation Agreement. However, it should be noted that the application of the principle of good faith is not applied to the post-contract which the author observed was a dispute between the parties who made the Cooperation Agreement. The consequence of not applying good faith to the Cooperation Agreement is a dispute. The Cooperation Agreement has determined the method used if there is a dispute with legal remedies of deliberation and arbitration, but it cannot be implemented properly which results in one of the parties being harmed.

Before making a contract, it is expected to understand how to make a proper contract. This is necessary because of the consequences that will be produced from the contract that is made. Making a contract includes: pre-contract, when making a contract, and post-contract. All stages of the contract must be passed, considering that there is a separate purpose of making the contract which is usually mutually beneficial for the parties who make the contract. Before making a contract, it is expected to understand the dispute resolution, if later there is a dispute that occurs in the contract made by the parties. The choice of dispute resolution must be agreed upon by the parties who make the contract and must pay attention to the time, costs generated, effective and efficient resolution.

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