International Journal of Law and Politics Studies
ISSN: 2709-0914
DOI: 10.32996/ijlps
Journal Homepage: www.al-kindipublisher.com/index.php/ijlps

IJLPS
AL-KINDI CENTER FOR RESEARCH AND DEVELOPMENT

| RESEARCH ARTICLE

Good Faith Principles in International Business Contract Law

Muhammad Amin Sentosa[1] ✉ Siti Malikhatun Badriyah[2] and Yunarto[3]
[1]Master of Law Program, Faculty of Law, Diponegoro University, Semarang, Indonesia
[23]Lecturer of Law, Faculty of Law, Diponegoro University, Semarang, Indonesia
Corresponding Author: Muhammad Amin Sentosa, **E-mail**: m.aminsentosa@students.undip.ac.id

| ABSTRACT
This study aims to analyze the principles of good faith in international business contract law. The results showed that the principle of good faith is an honest transaction which has 3 main elements, namely: First, good faith and honest transactions as the basic principles underlying the contract; Second, the principles of good faith and honest transactions in the UPICCS (UNIDROIT Principles of International Commercial Contracts) emphasize the practice of international trade; Third, the principles of good faith and honest transactions are compelling. The objective is to encourage the application of the principles of good faith and fair dealing in all international commercial transactions. The manifestation of efforts to promote legal harmonization can be seen when contracts or national laws do not find the necessary rules, or there is a legal vacuum (gaps), so the principles of UNIDROIT (The International Institute for the Unification of Private Law) can be used as a reference.

| KEYWORDS
Good Faith Principles, International Law, International Contracts, Business Contracts

| ARTICLE INFORMATION
ACCEPTED: 01 April 2023 **PUBLISHED:** 15 April 2023 **DOI:** 10.32996/ijlps.2023.5.2.3

1. Introduction

The development of globalization of trade, investment and finance creates greater interdependence in relations between nations. The increase in international business transactions encourages the development of the legal order that governs it. Legal provisions governing transactions that are cross-national borders can no longer be determined by the legal rules of a country but lead to international rules as a manifestation of the results of efforts to unify, homogenize or harmonize. As a result, legal principles and norms have developed for international business transaction activities, both in the form of hard laws, soft laws and those derived from international trade habits.[1]

Globalization that occurs today has brought changes to all life orders, especially in terms of economy and trade, both nationally and internationally, involving many member countries, one of which is Indonesia. Contracts in international trade are an important part of international transactions; therefore, naturally, laws and regulations relating to trade have long been a concern. The diversity of national regulations of each country provides a need for universal and international regulation. The existence of different rules in each country will hinder the implementation of international business transactions that require speed and certainty. [2] Different national regulations for each country provide a need for its own universal and international nature. The establishment of an international convention basically aims to create a harmonization of laws or rules in international trade.

[1] Ida Good Rahmadi Supancana, *Development of International Trade Contract Law*, (Jakarta: BPHN, 2012), p. 1
[2] Huala Adolf *Legal Basics Contract International*, (Bandung: Refika Aditama, 2008)thing. 29

The international community has tried to unify the law on international buying and selling. Legal uniformity in international buying and selling is an important step towards *legal unification*. This step to bring legal unification has actually been started by European countries in the 18th/19th century when they pioneered legal unification. The progress taken by the international community to establish the Convention on International Sale and Purchase Contracts is a development that began when European countries codified it. There are several agreements related to international contracts, including the convention on international sale and purchase, namely the United Nations Convention on Contracts for the International Sale of Goods (CISG Convention 1980) and the Convention on the Principles of international contracts, namely the Principles of International *Commercial Contracts* in *The International Institute for the Unification of Private*.

In general, there is a fundamental principle that must not be violated by parties in international business relations, namely the principle of supremacy/sovereignty of national law whose binding power is absolute where every trade transaction set forth in a contract that occurs within the territory of a country is subject absolutely to the national law of that country.[3] And the second is the principle of freedom of contract/party autonomy; Willis Reese & Maurice Rosenberg put forward the definition of party autonomy as follows: "Party autonomy is a choice of law doctrine that permits parties to choose the law of a particular country or sovereignty to govern their contract that involves two or more jurisdictions".[4]

In addition to party autonomy, there are also several other principles that become the basis of law/reference material if there is an international trade contract dispute, as expressed by Fox below:[5]

a. Principle of Freedom of Contract/ Party Autonomy;
b. Pacta Sunt Servanda Principle;
c. The principle of *good faith*;
d. The principle of *overmacht* or *impossibility of performance*; and
e. The binding power of habitual practice.

Good faith must be considered to exist at the time of negotiation, contract performance, and dispute resolution. This principle is important because it requires trust from the parties in order for the making of the contract to be realized. However, this principle carries different meanings among legal systems. The understanding of *good faith* is apparently not the same between the Continental Legal System and Common Law.[6]

The principle of Good Faith in the Continental Legal System is based on the philosophy of the law, which emphasizes the relationship of the parties. This relationship requires good faith not only when the contract is signed but also before the contract is concluded. Good faith must exist both before and after the contract is signed. The principle of good faith in the Common Law System, especially English law, does not recognize good faith in the negotiation process. According to English law, the entry of the parties into negotiations does not necessarily give rise to an obligation of good faith. According to English law, as long as the contract has not been signed, the parties are not bound by each other and do not have any obligations towards the other party until the contract is finally signed. While the Principle of Good Faith in International Agreements is recognized in the principles of contracts according to UNIDROIT (*The UNIDROIT Principles of International Commercial Contracts*).

2. Discussion

1. International Business Contract Law

Black's Law defines a contract as an agreement between two or more persons that creates an obligation to do or not to do a particular thing.[7]

Wilis Reese defines an international contract as a "*Contract with elements in two or more nation states. Such contract may be between states, between a state and a private party, or exclusively between private parties*". From this definition, it can be seen that

[3] Huala Adolf *Op.Cit*, hAl. 19
[4] Willis Reese & Maurice Rosenberg, "Conflict Of Laws, Cases And Materials", 8th ed 1984, hAl. 576-596, see also Mo Zhang, "Party Autonomy And Beyond: An International Perspective Of Contractual Choice Of Law",Legal Studies Research Paper Series, Temple Beasley School Of Law University, 2008, p.1
[5] Huala Adolf *Op.Cit*., hAl. 28
[6] Huala Adolf *Op.Cit*., hAl. 25
[7] View in Huala Adolf *Op.Cit*. thing. 1

Reese requires the existence of more than one country in the contract. More simply, Sudargo Gautama explained that international contracts are national contracts that contain *foreign elements*.[8]

Understanding International Business Contract Law is a set of provisions governing the formation (*formation*), activities in the economic/industrial field (*performance*), and implementation (implementation) of contracts between the parties, both national and international. Its main purpose is to protect the expectations of individuals (which are appropriate and justifiable by law), businesses and government.[9]

The principle of equilibrium in the law of international contracts of sale and purchase in business contracts is the most important instrument to bring about changes in the form of the distribution of goods and services. The ratio (rationale) of the contract refers to the purpose of a fair shift of property (*gerechtvaardigde*) and gives rise to the legal consequences of fair enrichment of the parties (the agreement, in principle, results in legal enrichment).

If the buyer cannot agree to all the terms of the offer (*firm offer*), then the buyer can submit the desired change proposals. A request for change from a prospective buyer on an offer is called a counter offer. In the event that the prospective seller can approve the proposed changes, it means that the prospective seller is willing to renew the offer. Based on the new offer, a sales contract is arranged in which both parties bind themselves to enter into a sale and purchase agreement with the terms that have been agreed upon. This sales contract is called an *order* note, *purchase* note or also called *an import contract note*. The contents mention references from previous correspondence, statements of determination/placement of orders, descriptions of goods, determination of unit prices and price quantities, the delivery time of goods, packing methods, desired packing brands/stamps, *shipping documents* needed, payment terms, insurance and so on deemed necessary.

In preparing a sales contract (*sales contract*), it is relevant to note the following:[10]

a. Description *of goods*,
   It must be made as clear as possible by both parties, both buyers and sellers. If the goods already have international *standard quality*, then in determining the quality of this standard is mentioned, for example, natural rubber, sugar, cotton and so on. Regarding the industry, in addition to technical *specification*, the name of the manufacturer must be mentioned, such as Singer, Philips, and Siemens, by attaching a brochure or leaflet.

b. Quantity *of goods*,
   The designation of the term quantum (quantity of goods) must be clear so that disputes of interpretation cannot arise. As is known, there are various counting units, so in this case, it is necessary to mention completely and perfectly the calculated unit intended, for example, 10 tons of sugar.

c. Price,
   In determining the price of buying and selling, in addition to the type of currency, it must be clear that the terms of delivery must be firm. The type of currency must be stated, for example, English Pound Sterling, Australian Dollar (A.$), United States Dollar (US$), Singapore Dollar (S$), Hong Kong Dollar (H$), and European Union (Euro).

d. Place *of delivery*,
   The conditions for delivery of goods must be determined precisely because of the relation to determining the price of a transaction, in addition to the conditions for delivery of goods must be explained, and the name of the place and the delivery will be carried out physically. This is important to know the limits of responsibility of each seller and buyer party.

The main purpose of choosing "terms of trade" in international trade is to determine at what point or place the seller must fulfill his obligation to "deliver" the goods juridically to the buyer the "point" or "place" of delivery, as well as the limit point at which the risk of goods (loss, damage to further carriage and stockpiling costs) of the seller ends, and from that "point" or "place" the

[8] Sudargo Gautama *Contract Trade International*, (Bandung, Alumni, 1976), hAl. 7 see also Huala Adolf *Legal Basics Contract International*, (Bandung: Refika Aditama, 2008), hLm. 4
[9] Shahmin A. K., *Law Contract International*, (Jakarta: King Grafindo Persada, 2004), hAl. 20.
[10] Amir M.S., *Subtleties Ins and outs and Engineering Trade Outside Country*, (Jakarta: PPM, 2000), hAl. 11.

buyer begins to assume the risk of the goods. So the *incoterms* govern the rights and obligations as well as the costs and risks of each seller and buyer on each trading condition.[11]

Terms of trade according to Incoterms 2000, ICC Publication 560 entered into force on January 1, 2000, in Jakarta. Incoterms (The International Commercial Terms) was formed to provide a universal standard definition of terms used in international trade transactions such as FOB and CIF. International trade practices that standardly and practically guide in a simple form bypass the boundaries of traditional and complicated contract law. KADIN (International Chamber of Commerce and Industry) or Incoterms 2000 (International Chamber of Commerce) as a handle for "sales contracts" abroad and their follow-up contracts, such as those related to banking, transportation companies (EMKL), insurance, customs, and taxes.[12]

Trading conditions in the provisions of Incoterms 2000, there are four (4) groups of transport modes, namely:[13]

1) Conditions of delivery of goods applicable to all types of carriage, including multimodal, which include the following conditions:
    a) EXW: Ex Works (named place).
    b) FCA: Free Carrier (named place).
    c) CIP: Carriage and insurance paid to.
    d) DAF: Delivered at frontier.
    e) DDU: Delivered duty unpaid.
    f) DDP: Delivered duty paid.
2) Air transports. Conditions used: FCA: Free Carrier (named place).
3) Transportation by train. Conditions used: FCA: Free Carrier (named place).
4) Inland water way. Terms of delivery of goods used:
    a) FAS: Free alongside ship.
    b) FOB: Free on board (named port of shipment).
    c) CFR: Cost and freight (named port of destination).
    d) CIF: Cost, insurance and freight (named port of destination).
    e) DES: Delivered ex ship (mentioned port destination / named and destination).
    f) DEQ: Delivered ex quay (mentioned port destination / named and destination).

These conditions are formulated so neatly that they become conditions that apply to all people who make economic agreements with the businessman concerned. In other words, the terms are standardized, meaning that they are set as a benchmark for each party that makes economic agreements with the entrepreneurs concerned. Standard agreements are also called standard agreements; in English, they are called Standard Contracts, Standard Agreements. The word "standard" or "standard" means a benchmark used as a benchmark. In this connection, a standard agreement means an agreement that becomes a benchmark used as a benchmark or guideline for every consumer who enters into a legal relationship with an entrepreneur. What is standardized in the standard agreement is to include models, formulations, and measures.[14][15]

Important aspects and elements in standard contracts, especially sales contracts. If entrepreneurs enter into agreements with fellow entrepreneurs, it is generally understood that on terms they mutually agree, they will achieve their expected economic goals. This does not cause problems because both parties have understood the meaning of the specified conditions.

2. Principles of Good Faith in International Business Contract Law

The principle of *Good Faith* carries different meanings among legal systems. The notion and understanding of good faith appear to differ particularly between the Continental Legal System and Common Law. According to Subekti, this essence (principle) is one of the most important joints in the Law of Treaties. According to Sudargo Gautama, International Contract Law is nothing but national contract law that has foreign elements, so this principle is relevant to International Contract Law. [16][17]

The principle of good faith appears to differ particularly among the Continental Legal System and Common Law:

[11] Amir M.S., *Export trade contracts*, (Jakarta: PPM, 2002), hAl. 17.
[12] Soedjono Dirdjosisworo, *Introduction Legal Science.* (Jakarta. PT Grafindo Persada, 2001), hAl. 37
[13] *International Commercial Terms* (*Incoterms*), 2000.
[14] Soedjono Dirdjosisworo, *Op.cit*., hAl. 51
[15] *Ibid*, hAl. 55
[16] Subjection, *Law Covenant*, (Jakarta: Intermasa, 1979), hAl. 41
[17] Sudargo Gautama *Contract Trade International*, (Bandung, Alumni, 1976), hAl. 65

a) The Principle of Good Faith in the Continental Legal System
In the Continental Legal System, the approach to this principle is based on a philosophy of contracts that emphasize or focus on the relationship of the parties. This relationship requires a duty of good faith not only when the contract is signed but also before the contract closes. For example, the Belgian Civil Code, this country requires all contracts to be executed in good faith and interpretation (contractual) must be accompanied by custom.[1819]

b) The Principle of Good Faith in the Common Law System
The British, in particular, are not familiar with the negotiation process; the parties are bound by the principle of good faith. According to English Law, the entry of the parties into negotiations does not necessarily give rise to a duty of good faith. According to English Law, as long as a contract has not been signed, the parties are not bound by each other and have no obligation whatsoever towards the other until the contract is finally signed. As the law in the United States (US) also argues, good faith only exists after the contract is signed. In the Common Law System, the meaning of good faith is nothing but "honesty" in conduct or honesty in trade transactions, including honesty in facts and respect for fair trade standards and honest trade transactions. [20]

c) The Principle of Good Faith in International Treaties
The recognition and obligation to carry out the principle of good faith are recognized in the principles of commercial contracts in countries that wish to apply them. According to UNIDROIT (The International Institute for the Unification of Private Law). Article 1.7 of the UNIDROIT principles states, "Each party must act in accordance with Good Faith and fair dealing in international trade" and "The parties may not exclude or limit their duty". Norms that have been stated abstractly in the provisions of the article, then restated in the form of explanatory descriptions accompanied by examples, are therefore called restatements.

According to the restatement of the article above, there are 3 (three) elements of the principle of good faith and honest transactions, namely: (1) good faith and honest transactions as the basic principles underlying the contract; (2) the principles of good faith and fair dealing in the UPICCS (*UNIDROIT Principles of International Commercial Contracts*) are emphasized in international trade practices; (3) the principle of good faith and honest transactions is coercive. The aim is to encourage the application of the principles of good faith and fair *dealing* in every commercial transaction of an international nature. There are no necessary rules in contracts or national laws, there has been a legal vacuum (gaps), so the UNIDROIT principles can be used as a reference.

The United Nations on Contracts for the International Sale of Goods (CISG) applies to contracts for the sale and purchase of goods whose parties choose to place business in different countries. The scope of buying and selling goods is limited only to commercial purposes, not personal purposes or government interests. The UNIDROIT principles are general principles for international commercial contracts that can be applied to national law or used by contract makers to regulate commercial transactions as a choice of law. The UNIDROIT Principles are legal principles that govern the rights and obligations of parties; when they apply the principle of freedom, if not regulated, it can endanger the weak. Similarly, although it is recognized that the principle of freedom of contract is flexible, it can be used to suppress the weak. To apply the principle of balance, the Arbitral Institution must be able to critically view freedom of contract with UNIDROIT principles.[2122]

The UNIDROIT Principles provide solutions to problems that arise when it is proven that it is impossible to use legal sources relevant to the laws in force in a country. UNIDROIT principles are used as a source of law for reference. If there are no rules found in the governing *law*, additional principles are needed because the principles are drawn from internationally uniform customs and practices. Most of UNIDROIT's principles intended a set of balancing rules around the world without regard to legal traditions and political economic conditions. From a formal point of view, this principle avoids the use of terminology used in any particular legal system. In addition, this principle refers to the CISG, so in terms of substance, the principles of UNIDROIT are flexible.[23]

The same obligation is also contained in The United Nations on Contract for the International Sale of Goods (CISG). Article 7 (1) of the CISG states as follows: (1) In the interpretation of the 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. In interpreting this Convention,

[18] Grace Xavier, "Global Harmonization of Contract Laws Fact, or Fiction?", *Construction Law Journal*, Vol. 20, No. 1, 2004, Pp. 13.
[19] *Ibid*thing. 15
[20] *Ibid*thing. 18
[21] *The United Nations on Contracts for the International Sale of Goods* (CISG)
[22] Soenandar Taryana, *Principles UNIDROIT As Source Law Contract and Settlement Business International,* (Jakarta Light Graphics, 2004), hAl. 4.
[23] *Ibid*, hAl. 10.

attention should be drawn to its international nature and the need to encourage uniformity in its use and observation of good faith in international trade. This principle should be considered to exist at the time of negotiation, execution of contracts, and the resolution of disputes. This principle is important because it is only with this principle that trust is needed in business so that contract making can be realized. Without good faith from the parties, it is very difficult for a contract to be made. Even if the contract has been signed, the implementation of the contract will definitely be difficult to run well if this principle does not exist.

The terms of trade in international trade are to determine the point or place where the seller must fulfill his obligation to deliver the goods physically and juridically to the buyer. The point or place of delivery is also the boundary point where the risk to the goods (loss, damage, further transportation, and stockpiling costs) from the seller ends, and from that point or place, the buyer begins to bear the risk of the goods.

According to Incoterms 2000, ICC Publication came into force on January 1, 2000. The International Commercial Terms were formed to provide a universal standard definition of terms used in international trade transactions such as FOB and CIF. International trade practices that standardly and practically guide in a simple form bypass the boundaries of traditional and complicated contract law.

KADIN (International Chamber of Commerce and Industry) or Incoterms 2000 (International Chamber of Commerce) as a guide for "sales contracts" abroad and further contracts such as those related to banking, transportation companies (EMKL), insurance, customs, and taxes. Important aspects and elements in standard contracts, especially sales contracts, If entrepreneurs enter into agreements with fellow entrepreneurs, it is generally understood that with the terms they mutually agree, they will achieve the economic goals they expect. This does not cause problems because both parties have understood the meaning of the conditions stipulated.

These conditions are formulated so neatly that they become conditions that apply to all people who make economic agreements with the businessman concerned. In other words, the terms are standardized, meaning that they are set as a benchmark for each party that makes economic agreements with the entrepreneurs concerned. Standard agreements are also called standard agreements; in English, they are called Standard Contracts, Standard Agreements. The word "standard" or "standard" means a benchmark used as a benchmark. In this connection, a standard agreement means an agreement that becomes a benchmark used as a benchmark or guideline for every consumer who enters into a legal relationship with an entrepreneur. What is standardized in the standard agreement is to include models, formulations, and measures.[24]

3. Conclusion

The principle of good faith is an honest transaction that has 3 main elements, namely: *First*, good faith and honest transactions as the basic principles underlying the contract; *Second*, the principles of good faith and fair dealing in the UPICCS (UNIDROIT Principles of International Commercial Contracts) are emphasized in international trade practices; *Third*, the principle of good faith and honest transactions is coercive. The aim is to encourage the application of the principles of good faith and fair dealing in every international commercial transaction. The manifestation of efforts to encourage legal harmonization is seen when in the contract or national law, there are no necessary rules, or there has been a legal vacuum (gaps), then the principles of UNIDROIT (The International Institute for the Unification of Private Law) can be used as a reference.

Funding: This research received no external funding.
Conflicts of Interest: The authors declare no conflict of interest.

References

[1] Amir, M.S., (2000). *Subtleties and Techniques of Foreign Trade*. Jakarta: PPM.
[2] Amir, M.S., (2002). *Export trade contracts*. Jakarta: PPM.
[3] Dirdjosisworo S. (2001). *Introduction to Legal Science*. Jakarta. PT Grafindo. Persada.
[4] Grace X. (2004). Global Harmonization of Contract Laws Fact or Fiction? *Construction Law Journal*. 13.
[5] Huala A. (2008). *Fundamentals of International Contract Law*. Bandung: Refika Aditama.
[6] Ida B R S. (2012). *Development of International Trade Contract Law*. Jakarta: BPHN.
[7] International Commercial Terms (Incoterms), 2000.
[8] Mo Z. (2008). Party Autonomy And Beyond: An International Perspective Of Contractual Choice Of Law, Legal Studies Research Paper Series, Temple Beasley School Of Law University
[9] Subject. (1979). *Law of Treaties*. Jakarta: Intermasa.

[24] Soedjono Dirdjosisworo, Op.cit., hal. 55

[10] Sudargo G. (1976). *International Trade Contracts*. Bandung: CV. Alumni
[11] Shahmin A. K. (2004). *International Contract Law*. Jakarta: King Grafindo Persada.
[12] Taryana S. (2004). *UNIDROIT Principles as a Source of International Business Contract and Settlement Law*. Jakarta: Sinar Grafika
[13] The International Institute for the Unification of Private Law
[14] The United Nations on Contracts for the International Sale of Goods (CISG)
[15] Willis R & Maurice R. (1984). Conflict Of Laws, Cases And Materials, 8th ed 1984, hal. 576-596,