

THE EXISTENCE OF INTERNATIONAL COMMERCIAL TERMINOLOGIES 2010 (INCOTERMS 2010) RELATED TO RISK LIABILITY FOR INTERNATIONAL TRADING

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ABSTRAK

Jual beli internasional merupakan kegiatan yang hampir dilakukan semua orang di dunia. Karena layaknya manusia, tidak ada satu negara yang dapat memenuhi kebutuhan hidupnya sendiri. Kegiatan jual beli barang berbasis internasional tentu akan menggunakan jasa pengangkutan dalam pengiriman barangnya hingga sampai pada pembeli. Telah terdapat pengaturan dalam menunjuk pihak-pihak yang bertanggung jawab terhadap resiko tertentu yang muncul dalam pengiriman barang tersebut. Pengaturan mengenai pertanggungjawaban resiko dalam jual beli internasional terdapat pada *International Commercial Terminologies 2010 (Incoterms 2010)*.

Kata Kunci: Jual Beli Internasional, Pertanggungjawaban Resiko, Incoterms 2010

ABSTRACT

International trading is an activity undertaken by almost all people in the world. Just like human being, there is no one country that can fulfill the needs of its own life. International based sale and purchase will certainly using the transport services of the goods until it delivered to the buyer. There must be a setting of rule in appointing the parties responsible for the specific risks that arise in the delivery of the goods. Arrangements regarding the risk liability in international trading contained in International Commercial Terminologies 2010 (Incoterms 2010).

Keywords: International Trading, Risk Liability, Incoterms 2010

I. Introduction

1.1. Background

Sale and purchase is an activity undertaken by almost all people in Indonesia and in the world because there is no man that can satisfy the needs of his own life. In Article 1457 of The Indonesian Civil Code or *Burgerlijk Wetboek (BW)* mentioned that:

“Jual beli adalah suatu perjanjian, dengan mana pihak yang satu mengikatkan dirinya untuk menyerahkan suatu kebendaan, dan pihak yang lain untuk membayar harga yang telah dijanjikan.”

In accordance with the terms of trading set out in BW, the definition of international trading means buying and selling activity that cuts across the country. The most important single insight in all of international economics is that there are gains from trade, and this exchange is almost always their mutual benefit.¹ On any trading activities there are at least two parties, the seller is obliged to deliver the goods which is the object of buying and selling, and the buyer is obliged to pay the purchased price.²

Incoterms 2010 is a set of rules issued by the ICC (International Chamber of Commerce) are used in the practice of international trade transaction.³ Trade transactions may be selling goods that are internationally based and performed by seller in the form of export and import activities. In delivering goods, a variety of risks may potentially arise related to damage to the goods in the form of reduction in the quality or quantity of the goods delivered. Incoterms 2010 contains a set of clauses that essentially regulate about cost, risk, and responsibility.⁴

1.2. Study Purposes

The purpose of this study are to determine how the implementation of Incoterms 2010 related to risk liability for international trading and to analyze the importance of Incoterms 2010.

II. Main

2.1. Methods

The type of research used in this paper is the kind of normative legal research (normative analysis) by using library materials as a source of research data.⁵ On normative legal research, drafted legal rules or norms as a benchmark of human

¹Paul Robin Krugman and Maurice Obstfeld, 2009, *International economics: Theory and Policy*, Elm St. Publishing Services, Boston, p. 4.

²Munir Fuady, 2008, *Pengantar Hukum Bisnis*, Penerbit PT. Citra Aditya Bakti, Bandung, p. 25.

³Administrator, 2012, *INCOTERMS 2010*, <http://ekspor-impor.net/uncategorized/incoterms-2010.html>, Last Seen Wednesday 9 May 2013.

⁴Surono, 2012, "*Mengenal Incoterms 2010: Instrumen Pengaturan Swasta yang Menjadi Rujukan Para Praktisi Perdagangan Internasional*", Widyaiswara Pusdiklat Bea dan Cukai, Jakarta, p. 2.

⁵Amiruddin and Zainal Asikin, 2004, *Pengantar Metode Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta, p. 166.

behavior that is considered inappropriate. Because this research is using normative analysis, then the data obtained through the data which has been researched and compiled by other parties related to research problems.⁶ In addition, the approach taken in this paper is applicable regulatory approach, which means that the approach is done by reviewing all laws and regulations relevant to the legal issues that are being addressed.⁷

2.2. Results and Discussion

2.2.1. The Implementation of Incoterms 2010 related to Risk Liability for International Trading

Incoterms 2010 has been applied by international trading practitioners almost all over the world, including Indonesia. The rules in Incoterms 2010 determining the terms of trade as a set of clauses that including the cost, risk, and responsibility.

Rules in Incoterms 2010 are divided into two parts. The first part is a group of the rules that can be used for all types of transport (rules for any mode or modes of transport) and the second part is a group of rules that can be used for sea and river transport only (rules for sea and inland waterway transport). The 11 rules (which divided into two groups) in Incoterms 2010 are as follows:

1. *Rules for any mode or modes of transport:*
 - 1) EXW (*Ex Works*)
 - 2) FCA (*Free Carrier*)
 - 3) CIP (*Carriage and Insurance Paid To*)
 - 4) CPT (*Carriage Paid To*)
 - 5) DAT (*Deliver at Terminal*)
 - 6) DAP (*Deliver at Place*)
 - 7) DDP (*Deliver Duty Paid*)
2. *Rules for sea and inland waterway transport*
 - 1) FAS (*Free Alongside Ship*)
 - 2) FOB (*Free on Board*)

⁶Bambang Sunggono, 2010, *Metodologi Penelitian Hukum*, Rajawali Pers, Jakarta, p.86.

⁷Peter Mahmud Marzuki, 2009, *Penelitian Hukum*, Kencana Prenada Media Grup, Jakarta, p. 93.

- 3) CFR (*Cost and Freight to*)
- 4) CIF (*Cost, Insurance and Freight to*).⁸

Group of rules in Incoterms 2010 which can be used for all types of transportation are: EXW, FCA, CIP, CPT, DAT, DAP and DDP. While the group of rules in Incoterms 2010 which can only be exclusively used for sea and river transport are: FAS, FOB, CFR and CIF.

2.2.2. The importance of Incoterms 2010

Incoterms 2010 is the latest edition in a previous rule called Incoterms 2000, the change is in the number of rules which originally numbered 13 rules into 11 rules. Changes in the number of rules contained in Incoterms 2010 is due to adjustments where Incoterms 2010 against trading conditions in the world.

The importance of the rules contained in Incoterms 2010 which is a feature owned by Incoterms 2010 such as:

1. Providing references which are internationally accepted by various countries, government agencies, and the international trading practitioners around the world. This is because the rules in Incoterms 2010 have been used and applied by trading practitioners internationally based.
2. To avoid uncertainty, differences in perception of an international trading transaction, due to the importance of perception can make transactions in the international trading becomes more secure when the rules that binding them is clear.

III. Conclusion

The rules in Incoterms 2010 are divided into two parts. The first part is a group of the rules that can be used for all types of transport (rules for any mode or modes of transport) and the second part is a group of rules that can be used for sea and river transport only (rules for sea and inland waterway transport). Group of rules in Incoterms 2010 which can be used for all types of transportation are: EXW, FCA, CIP, CPT,

⁸Official Website of ICC (*International Chamber of Commerce*), <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/>, *Incoterms* 2010, Last Seen Friday 10 May 2013.

DAT, DAP and DDP. While the group of rules in Incoterms 2010 which can only be used for sea and river transport alone are: FAS, FOB, CFR and CIF.

The importance of the rules contained in Incoterms 2010 which is a feature owned by Incoterms 2010 such as providing references which are internationally accepted by various countries, government agencies, and the international trading practitioners around the world and to avoid uncertainty, differences in perception of an international trading transaction.

IV. References

4.1. Books

Amiruddin and Zainal Asikin, 2004, *Pengantar Metode Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta.

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4.2. Laws

INTERNATIONAL COMMERCIAL TERMINOLOGIES 2010 (INCOTERMS 2010)

The Indonesian Civil Code or *Burgerlijk Wetboek* (BW)

4.2. Other Sources

ICC (*International Chamber of Commerce*), <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/the-incoterms-rules/>, *Incoterms 2010*

INCOTERMS 2010, <http://ekspor-impor.net/uncategorized/incoterms-2010.html>