

Utilization of Commercial Law to Promote Public Welfare and Legal Certainty for Business Actors

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Info Article	Abstract
Article History Received : 2023-09-03 Revised: 2023-09-12 Published: 2023-09-30 Keywords: <i>Trade Law; Welfare; Legal certainty</i>	Commercial law plays a fundamental role in establishing legal certainty, protecting business actors, and promoting sustainable economic development. As commercial transactions continue to expand in both domestic and international markets, a comprehensive legal framework becomes increasingly essential to regulate business activities, prevent disputes, and ensure fair competition. This study aims to analyze the role of commercial law in enhancing legal certainty and supporting public welfare within the Indonesian legal system. The research employs a normative legal research method using statutory, historical, and comparative approaches. Data were collected through a comprehensive review of legal literature, including legislation, legal doctrines, scholarly publications, and relevant legal theories. The findings indicate that commercial law serves as a vital legal instrument governing contractual relationships, corporate activities, trade, investment, and dispute resolution. The Indonesian Commercial Code (KUHD), the Civil Code (KUH Perdata), and sector-specific legislation provide the primary legal foundation for commercial transactions. The study further reveals that the validity of contracts, as stipulated in Article 1320 of the Civil Code, together with the principles of good faith and <i>pacta sunt servanda</i> , plays a crucial role in maintaining legal certainty and minimizing commercial disputes. Furthermore, dispute resolution mechanisms through litigation and alternative dispute resolution, including negotiation, mediation, and arbitration, contribute significantly to efficient conflict resolution while preserving business relationships. The study concludes that the consistent implementation of commercial law not only strengthens legal protection for business actors but also fosters a favorable business climate, supports the development of micro, small, and medium enterprises (MSMEs), and contributes to sustainable economic growth and public welfare in accordance with the objectives of the 1945 Constitution of the Republic of Indonesia.

I. INTRODUCTION

The role of commercial law in the modern economy is vital and cannot be ignored. By regulating various aspects of trade, commercial law provides a legal framework that ensures businesses operate smoothly and fairly. The legal certainty of these regulations not only protects business actors but also improves the welfare of society as a whole. Commercial law encompasses various regulations governing business conduct, such as contracts, sales, companies, insurance, and capital markets. In Indonesia, several laws have been enacted to regulate these aspects, such as Law No. 40 of 2007 concerning Limited Liability Companies and Law No. 8 of 1999

concerning Consumer Protection. With effective legal implementation, the government can create a business environment that supports sustainable economic growth. As a key economic activity, trade plays a crucial role in enhancing national stability and economic growth. In an open economic system, misunderstandings or omissions in commercial activities can arise and often trigger conflict. Prolonged conflict can lead to disputes when one party feels disadvantaged and dissatisfied with the other. This dispute is defined as a situation in which one party expresses dissatisfaction and conveys a differing opinion to the other. There are several mechanisms for resolving trade disputes,

including litigation (dispute resolution in court) and non-litigation (dispute resolution outside of court). Litigation involves a formal legal process, while non-litigation does not require a formal legal process and only requires a third party to assist in resolving the issue.

In addition to these two mechanisms, disputes can also be resolved through alternatives such as negotiation and mediation (as an alternative to adjudication) and arbitration (as an alternative to litigation). Law Number 30 of 1999, Article 1 Paragraph 10 concerning Arbitration and Alternative Dispute Resolution, regulates dispute resolution through consultation, negotiation, mediation, conciliation, and expert assessment outside the court. Although arbitration is not mentioned as an alternative dispute resolution in the law, in practice, arbitration is included in alternative dispute resolution methods. In trade, each party has different interests, so the potential for disputes always exists. The process of dispute resolution through litigation and non-litigation aims to minimize the impact of disputes, so that each dispute can be resolved effectively. Further study on the resolution of trade disputes is needed, whether through litigation, non-litigation, or alternative dispute resolution, considering that trade disputes often occur at the national level between various legal entities.

According to Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), the main objective of national economic development is to improve the welfare of all people, not just the welfare of certain individuals or groups. Therefore, the national economy must be built as a joint effort based on the principle of family to achieve prosperity and shared welfare. One way to achieve people's welfare today is by increasing the competitiveness of micro, small, and medium enterprises (MSMEs) in Indonesia. MSMEs have a strategic role in strengthening the national economy, so the government needs to focus on empowering MSMEs through priority and neutral strategies and policies. As pioneers of entrepreneurship, MSMEs require special attention from various perspectives, especially from the government, considering their potential to improve the country's economy.

When the New Order government replaced the

Old Order during the reform era, economic development became a top priority. The underdevelopment and extreme poverty inherited from the Old Order spurred the New Order government's strong determination. During the reform era, Indonesia's economic development as an instrument of progress and social welfare also became a focus. The industrialization process was expected to bring rapid change, with the hope of transforming Indonesia's traditional agrarian society into a modern industrial society (Kusumaningtuti, 2009). These changes in economic development were accompanied by the creation and modification of policies, regulations, institutions, and oversight mechanisms tailored to Indonesia's economic development. The economic impact of these policy and regulatory changes created a unique economic law. This sector continues to be a political focus in Indonesia because economic growth has become a national development effort. This demonstrates that economic development, even before the crisis in Indonesia, and government legal action also benefit the economy.

II. RESEARCH METHODS

The legal research to be conducted is normative legal research with a normative legal approach that emphasizes the use of literature sources or secondary research support materials. In addition, this research also applies legal, historical, and comparative approaches (Ibrahim, 2006).

This research is a descriptive analysis. It explains and examines legal certainty and legal protection in relation to improving the welfare of business actors. Secondary data was collected to strengthen the literature review findings, including books, concepts, theories, and expert perspectives, as well as observations related to the literature.

III. RESULTS AND DISCUSSION

A. Research result

Commercial law is a crucial law for regulating and protecting buying and selling activities within and between countries. With the rapid growth of the global economy and the increase in business transactions, there is

an urgent need for clear and comprehensive regulations in this area. Commercial law aims to provide a legal basis for business actors, ensure legal certainty, and create a fair and supportive business environment. In Indonesia, the primary sources of commercial law are the Indonesian Civil Code (KUHD), which originates from the Dutch legal system, and the Indonesian Civil Code (KUH Perdata), which covers basic principles regarding contracts and legal relationships between individuals (Ali, 2016).

Referring to normative studies discussing commercial law regulations and expert opinions, it is clear that commercial law is a vital legal instrument for regulating and protecting commercial activities, both locally and internationally. Global economic growth, as evidenced by the increasing number of business transactions, requires clear and organized legal regulations that guarantee legal certainty for all business actors. In the context applicable in Indonesia, research reveals that the existence of the Commercial Code (KUHD) adapted from Dutch law and the Civil Code (KUH Perdata) remains the main basis in managing legal relations in the trade sector (Ali, 2016).

The results of this study also indicate that contracts play a crucial role in the application of commercial law as the basis for legal relations between business actors. As stated by Subekti (2015), contracts establish legal relationships that give rise to rights and obligations for all parties involved. By examining Article 1320 of the Indonesian Criminal Code, we can conclude that fulfilling the requirements for a valid agreement, including agreement between the parties, legal capacity, specific objects, and legitimate causes, are essential elements for ensuring

legal certainty in business transactions. This study shows that violations of these provisions can lead to business conflicts and legal uncertainty for entrepreneurs. Furthermore, the results of this study indicate that the application of the principle of good faith and the implementation of the principle of *pacta sunt servanda* in business agreements are key to maintaining the stability of legal relations between business actors. Breach of contract or non-compliance with an agreement can result in legal consequences, such as the obligation to fulfill the agreement, pay compensation, or cancel the agreement. This finding confirms that the legal liability system in the world of commerce functions as a legal safeguard and prevents acts of abuse of rights in business activities. Therefore, this study shows that consistent and efficient application of business law can create legal certainty for entrepreneurs and improve public welfare. This legal certainty influences the creation of a favorable business climate, the growth of trust among business actors, and sustainable economic growth, so that business law functions not only as a regulator but also as a means of economic development and social welfare (Soekanto, 2014; Mertokusumo, 2012).

B. Discussion

Commercial law is a set of norms that arise specifically in the business world or corporate activities. These norms can be derived from codified legal regulations, namely the Civil Code and the Commercial Code.

Commercial law consists of 2 different things, namely law and trade, where each has its own definition. According to a legal expert, namely HMN Purwosutjipto, SH, law is a whole norm, which by the state authorities or community authorities is stated or considered as a binding regulation for some or all members of society, with the aim of establishing an order desired by

the authorities. While trade can be interpreted as all activities involving the provision of goods and services needed and desired by others with the aim of gaining profit Commercial law is made to regulate and protect trade from various risks that may occur in the future Commercial law itself has a fairly broad scope and has been regulated in the Law. In general, the scope of commercial law includes several things such as the form of business entity (PT, Firma, CV), buying and selling activities (including exports and imports), investment or capital investment, employment, financing, debt guarantees and securities, intellectual property rights, insurance, and others related to commercial activities Material legal sources are laws that are seen from their content and come from factors that determine the content of the law, namely socio-economic conditions, religion, and the legal system of other countries. Meanwhile, formal sources of law are those related to the procedures or methods of its formation and can be directly used to create law. Formal sources of law include statutory regulations such as the 1945 Constitution, laws, government regulations, presidential decrees, and regional regulations; treaties, namely agreements between countries made in a specific form; doctrines from legal experts; and jurisprudence, namely judges' decisions.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on the analysis and research findings described above, it can be concluded that trade law plays a vital role in supporting current economic growth and creating legal certainty and public welfare. Trade law acts as a regulatory tool that provides the legal basis for buying and selling activities, both domestically and internationally, thus creating a fair, orderly, and supportive business climate. Regulations such as the Commercial Code (KUHD), the Civil Code (KUH Perdata), and various specific laws in the trade sector demonstrate the state's commitment to

protecting the interests of businesses and consumers.

This study also shows that contracts are a very important component in trade law, because they are the foundation of legal relationships between business actors that create rights and obligations. Fulfillment of the valid requirements of an agreement as stated in Article 1320 of the Civil Code, as well as the application of the principles of good faith and *pacta sunt servanda*, are key to creating legal certainty and avoiding trade disputes. If a dispute occurs, the existence of a settlement mechanism through litigation and non-litigation, including alternative methods for dispute resolution such as negotiation, mediation, and arbitration, provides effective and efficient settlement options according to the needs of the parties involved. Furthermore, trade law also has a significant role in national economic development as regulated in Article 33 paragraph (1) of the 1945 Constitution, which aims to achieve equitable social welfare. In this regard, strengthening micro, small, and medium enterprises (MSMEs) is one of the main priorities, given their important role in strengthening the national economy.

Based on this, it can be concluded that the continuous implementation of commercial law not only guarantees legal certainty and protection for business actors, but also plays a role as a driver of economic development and sustainable social welfare for the community.

B. Suggestion

Based on the results of the study and the conclusions outlined, it is recommended that the government and policy makers continue to update and refine trade law regulations to keep pace with national and global economic developments. Harmonization between the Commercial Code (KUHD), the Civil Code (KUH Perdata), and various specific laws in the trade sector needs to be strengthened to create more effective and comprehensive legal certainty for all business actors. Furthermore, business actors are expected to increase their awareness and understanding of

trade law provisions, particularly in the preparation and implementation of contracts, by consistently applying the principle of good faith and fulfilling the valid requirements of agreements as stipulated in Article 1320 of the Civil Code, so that the potential for disputes can be minimized.

On the other hand, strengthening micro, small, and medium enterprises (MSMEs) needs to be a primary concern in the implementation of trade law, considering their strategic role in national economic development as mandated in Article 33 paragraph (1) of the 1945 Constitution. This effort can be carried out through regulatory simplification, increasing access to legal assistance and protection, and providing simpler, faster, and more affordable dispute resolution mechanisms. Furthermore, optimizing the use of non-litigation dispute resolution mechanisms such as negotiation, mediation, and arbitration also needs to be continuously encouraged because they are considered more effective and efficient in resolving trade disputes without disrupting the sustainability of business relationships. Thus, the continuous implementation of trade law is expected to not only guarantee legal certainty and protection for business actors, but also be able to encourage economic growth and realize sustainable community welfare.

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