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Settlement of Default in the Coal Procurement Agreement Between PT. Semen Padang with PT. International Periodical Using Letter of Credit (L/C)

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Abstract: In the Coal Sale and Purchase Agreement Number 39/PJJ/PBR.12/01.2008 between PT Semen Padang and PT Berkala International, payment is made by Domestic Documented Letter of Credit or Letter of Credit. For this reason, SKBDN Number MS 77106009548 was issued by PT Bank Mandiri in the amount of IDR 29,700,000,000.00,- to PT Berkala International. PT Berkala Internasional defaulted on not sending coal according to the agreed time. Using a case approach and normative juridical, primary data was obtained from PT. Semen Padang and secondary data are primary and secondary legal materials. To analyze the first problem, legal protection and contract theory are used, the second problem is dispute resolution theory. According to Article 1338 of the Civil Code, the consent made legally binding on the parties holding it, providing legal protection for PT Semen Padang to demand PT Berkala International, to do something, namely to deliver coal as stipulated in Article 1234 of the Civil Code. According to the contract theory, the agreement occurred after the party that received the offer, namely PT Berkala International, agreed to PT Semen Padang's offer to send coal. By filing a default lawsuit, the Padang District Court, the Padang High Court, and the Supreme Court, won PT Semen Padang.

Keyword: Default, Agreement, Letter of Credit for Domestic.

INTRODUCTION

Trade traffic between cities or between regions requires a guarantee of payment for goods traded. PT. Semen Padang is an Operating (opco) company of PT. Semen Indonesia which is engaged in cement production. The company is the oldest cement producer in Southeast Asia. To support its business activities, until the end of 2023, the company operates five factory units in Padang and one factory unit in Dumai with a total production capacity of 8.9 million tons of cement per year. In carrying out its operational activities, the company needs a supply of materials to support production activities.

One of the needs to support production is coal material which is a material used as fuel. PT. Semen Padang as a buyer needs a payment system to facilitate its production process. One of the payment methods or trading services that can be provided in buying and selling companies to facilitate trade transactions is the Domestic Documented Credit Letter (SKBDN) or often known as the Domestic Letter of Credit (L/C).

A company sale and purchase agreement is a sale and purchase agreement as an act of the company, namely an act of trade or other company, which based on the company or its position carries out a sale and purchase agreement. As in import and export, it can be done directly between the seller and the buyer but can also involve other entrepreneurs.

The company's own buying and selling also occurs within the scope of international trade, which is in the field of export and import. Import and export activities themselves are very unlikely for the parties to interact directly, therefore the payment method used is not cash payment. One of the payment methods in buying and selling companies is Letter of Credit (L/C).

A Letter of Credit (L/C) is an agreement between the importer or buyer that asks the bank of his choice to pay or take over the money order on the basis of the submission of certain documents that have met the requirements in the letter of agreement. Article 1457 of the Civil Code states that buying and selling is an agreement between the seller and the buyer, where the seller binds himself to hand over an item or object and the buyer pays the agreed price. Regulations regarding Buying and Selling are generally regulated in Chapter V, articles 1457 to 1540 of the Civil Code.

The sale and purchase of a company is a sale and purchase agreement that occurs in the business world, namely between people who have done business as their daily work. In buying and selling companies, especially import and export, cash payments are rarely used. Payments in business buying and selling, including export-import, can be made in various ways. One of the payment methods is using a Letter of Credit (L/C).

A Letter of Credit (L/C) is an agreement between the importer or buyer that asks the bank of his choice to pay or take over the money order on the basis of the submission of certain documents that have met the requirements in the letter of agreement. Letter Of Credit or in Indonesia known as debt securities, receivables, or bills is a promise that payment will be made, and if certain conditions submitted have been met. L/C is one of the methods or ways of payers in international trade transactions.

The choice of L/C as a payment method is because L/C is the safest way and provides greater certainty, especially in the international trade system involving exporters and importers. The provisions regarding the Letter of Credit (L/C) are regulated in, as follows:

1. Uniform Customs & Practice for Documentary Credits
2. Bank Indonesia Circular Letter No. 26/34/ULN dated 17 December 1993 regulating the subjection of L/C to UCP-DC 500 which came into effect on 1 January 1994.
3. The ICC Banking Commission approved the rule changes for documentary credit, effectively on July 1, 2007, UCP-600 applies until now. The UCP itself contains provisions and mechanisms for letters of credit that are recognized and followed by countries in the world that are included in international trade.

The parties involved in the opening of the Letter of Credit consist of:

1. Applicant or Importer

The importer is the party who requests to open an L/C. The importer asks the bank for assistance in opening an L/C for and on behalf of the exporter who is the recipient of the L/C.

2. Opening Bank or Issuing Bank

The bank is asked for assistance by the importer to open an L/C for the needs of the exporter.

3. Advising Bank or Correspondent Bank

The bank requested by the bank opening the L/C to forward the L/C and pay to the seller. After the opening of the L/C by the opening bank, the bank forwards it to the branch office or one of the Korean banks abroad where the exporter is located.

4. Beneficiary or Exporter (Seller)

The party who receives the opening of the L/C and has the right to withdraw money from the available L/C funds is called the recipient of the L/C. The Letter of Credit has an important role in international trade, including:

- a. Facilitate repayment in export transaction payments.
- b. Securing funds provided by importers in paying for imported goods.
- c. Ensuring the completeness of the shipping documents for all parties.

There are several considerations that cause exporters and importers to prefer to pay for their import and export transactions using L/C, including:

1. The exporter gets a sense of trust in the L/C that has been issued by the bank, so that the exporter feels guaranteed that there will be payment in accordance with the conditions mentioned in the L/C.
2. There is an immediate payment for the exporter, if the agreed documents are in accordance with the L/C and have been submitted to the L/C successor bank (advising bank), even though the importer has not received the documents. Or the exporter can receive payment as soon as the goods are shipped, as long as they are in accordance with the terms of the L/C concerned.
3. Exporters can use L/C for further financing, and obtain Export Credit Facilities (FKE) with low interest and tax incentives.
4. The importer is assured that the bank will refuse payment to the exporter, unless the exporter has fulfilled all the requirements specified by the importer in the letter of credit.
5. For importers with little or no funds, they can buy or import goods and importers will also feel safe.

The Letter of Credit facilitates the payment of payments, secures the funds provided by the importer and the risks that occur can be transferred to the relevant bank. Exporters can rely on a Letter of Credit, as payment can be guaranteed. Meanwhile, for importers, the existence of a Letter of Credit means that with a minimum of funds, they can import goods at least until the goods arrive.

Documents in L/C are an important requirement, because as proof of ownership of goods, shipping (shipping) insurance and so on so that the L/C payment can be disbursed by the bank. Therefore, an L/C must contain clear, precise and complete instructions on the necessary documents as the basic requirements of payment.

The role of L/C in international trade is very important, although L/C is not the only means of payment that can be done in international trade activities (export-import). This is because L/C is a means of payment that can provide a sense of security for exporters and importers. In addition, many countries in the world still recognize the existence and security of the use of L/C.

It is evident from the trust of exporters and importers who make payments still using L/C even though L/C is a traditional payment. Stages of Payment by L/C:

1. The Buyer and the Seller agree on a contract for the sale and purchase of goods.
2. In the contract made, the Seller or Exporter explicitly mentions that payment is made using L/C.
3. If the buyer agrees, then the buyer will contact his bank (the buyer's bank) and ask the bank to issue an L/C for the seller.
4. If the bank agrees to issue an L/C to the seller, then the issuing bank (the bank issuing the L/C) to pay the price of the sale and purchase contract to the seller, as long as the seller can present the documents required in the L/C and in the sale and purchase contract. With payment

by L/C, the obligation to pay the purchase and sale contract shifts to the issuing bank that issues the L/C.

L/C itself has various forms. In practice, various types of L/C that are often used by entrepreneurs, including:

a. Revocable credit dan irrevocable credit

Revocable credit is an L/C that can be canceled by the issuing bank at any time. Meanwhile, irrevocable credit is an L/C that cannot be canceled at any time unless there is an agreement between all parties.

b. Sight credit dan usance credit

Sight L/C type of L/C whose payment date is made at the time the documents are submitted and requires the submission of a receipt or money order (sight draft) attached to the shipping documents. Meanwhile, usance L/C is L/C whose payment date is some time later also requires the delivery of a futures money order with a shipping document attached

c. Red clause credit

d. Confirmed credit

L/C whose payment is guaranteed by advising bank. This happens to the request of beneficiaries who lack trust in the issuing bank. Confirmed L/C occurs a lot in import transactions. Sellers of goods abroad who receive L/C opened by banks in Indonesia and are not sure of the bona fide of the bank in Indonesia

e. Transferable

Credit L/C where the beneficiary is authorized to hand over the shipment of goods to a third party, without relinquishing his own rights and position as the beneficiary of the L/C.

f. Revolving credit

L/C that applies repeatedly, for example, a buyer closes a contract for the purchase of one type of goods in large quantities from the seller.

g. Stand-by credit

h. Commercial documentary L/C .

L/C that requires the exporter to receive the L/C to submit shipping documents proving ownership of the goods and other supporting documents as a condition to obtain payment from the funds available in the L/C.

i. Clean L/C

Types of L/C that can be disbursed by hand over money order or just ordinary receipts

j. Back-to-back L/C

k. Merchant L/C

The L/C opened by the importer for the exporter, which gives the right to the exporter receiving the L/C to withdraw the money order against the importer, and the importer who opens the L/C guarantees to pay off the money orders at the time of maturity.

l. Irrevocable and confirmed L/C

m. Irrevocable unconfirmed L/C

The coal sale and purchase agreement between PT Semen Padang and PT Berkala International, where the parties agreed to bind themselves into an agreement. The agreement is as stated in a document of the Coal Sale and Purchase Agreement Number 39/PJJ/PBR.12/01.2008. In that agreement, a coal purchase order was placed to PT Berkala Internasional to supply approximately 60,000 tons of coal.

It was emphasized in the agreement that the payment would be made by opening a Letter of Credit (LC) SKBDN Number MS 77106009548 for the benefit of PT Semen Padang in the amount of IDR 29,700,000,000.00. to PT Berkala International. However, PT Berkala Internasional failed to fulfill its obligation to hand over coal in accordance with the agreement. Thus, it can be said that PT. Bergia Internasional has defaulted on its promise in fulfilling its obligation to supply coal to PT. Semen Padang.

METHOD

Type of Research

The type of research used in this study is normative law. Normative legal research is also called literature research. Normative legal research is carried out by researching library materials or secondary data. The approach carried out is a legislative approach by examining all laws and regulations related to research problems.

In addition to the approach to laws and regulations, a conceptual approach is also used, namely views and doctrines that develop in legal science. By studying the views and doctrines in legal science, the researcher will find ideas that give birth to legal understandings, legal concepts, and legal principles relevant to the research problem. An understanding of these views and doctrines is a basis for the researcher in building legal arguments in answering research problems.

Nature of Research

The nature of the research used is descriptive analysis, namely by describing the applicable laws and regulations associated with legal theories and their implementation practices. This research aims to provide a detailed, systematic and comprehensive picture of the problems mentioned above.

Types and Data Sources

The type of data of this research is secondary data consisting of:

1) Primary Legal Materials

Primary legal materials are laws and regulations related to research issues, namely:

- a) Civil Code;
- b) Bank Indonesia Regulation No. 5/11/PBI/2003 concerning Payment of Import Transactions;
- c) Uniform Customs & Practice for Documentary Credits 600;
- d) Sale and Purchase Agreement No.39/PJJ/PBR.12/01.2008 dated February 18, 2008.

2) Secondary Legal Materials

Provides an explanation of primary legal material and can help and analyze. This legal material consists of literature related to this research as well as obtained from other sources such as books discussing Corporate Law, papers, articles, journals, the internet.

3) Tertiary Legal Materials, namely

Legal materials that can provide explanations about primary and secondary legal materials. Includes Legal Dictionaries, and encyclopedias.

The data obtained in this study based on the source consists of:

a. Library Research

Literature data obtained through literature research sourced from legislation arrangements, books, official documents, publications, and research results and reviewing legal materials related to research.

b. Field Research

The field data needed as supporting data was obtained through information and opinions related to this research.

Data Collection Techniques

1) Literature Studies can help researchers in various research purposes of this thesis as follows:

- a. Getting an overview or information about similar research and the problem to be researched;

- b. Obtain the problem-solving methods and techniques used;
- c. As a secondary source of data;
- d. Knowing the history and perspective of the research problem, obtaining information on how to evaluate or analyze data that can be used;
- e. Enriching new ideas;
- f. Knowing who are other researchers in the same field and who are the users of the results.

2) Subscription, Free, dan Print Resources

Hukum materials are available from a variety of sources both through online and print sources, Some of which can be accessed with free websites, government websites and other sources, Other sources can also be obtained from subscription publications and commercial publications, such as Westlaw.com, Scencedirect, Publish or Perish, Google Scholar, and other Sources.

Data Processing and Analysis

1) Data Processing

In this study, after successfully obtaining the necessary data, the researcher then processes the data by editing, namely re-examining the records, files, and collected information, which is expected to improve the quality of the reliability of the data to be analyzed.

2) Data Analyst

Data analysis as a follow-up to the data processing process, to be able to solve and describe the problems to be researched based on the legal materials obtained, it is necessary to have a legal material analysis technique. After obtaining the necessary data, the researcher conducted a qualitative analysis. Namely by assessing the data obtained in the field with the help of literature or materials related to the research, then conclusions are drawn that are described in the form of descriptive writing.

RESULTS AND DISCUSSION

Judging from the contract theory, the agreement occurred when the party receiving the offer, namely PT Berkala International, stated that it received an offer from PT Semen Padang to provide coal with the volume according to the contract mentioned above. Until the time limit agreed upon by PT Berkala Internasional could not meet it, PT Berkala Internasional had committed a default, namely not delivering coal to PT Semen Padang at the time agreed in the agreement.

According to Article 1338 of the Civil Code, legally binding agreements are binding on the parties who make them. The Sale and Purchase Agreement No.39/PJJ/PBR.12/01.2008 dated February 18, 2008 has fulfilled the validity of the agreement according to Article 1320 of the Civil Code. The agreement that was made legally binding the parties that made it, namely PT Semen Padang and PT Berkala International.

Agreements give birth to covenants, engagements give birth to rights and obligations for the parties who hold them. The rights and obligations of each party reciprocally are called Achievements. Achievements according to the provisions of Article 1234 of the Civil Code are distinguished by: giving something, doing something, and not doing something. If one of the parties does not meet its achievements, then that party is in default. In the above problem, PT Berkala Internasional has defaulted on PT Semen Padang for not delivering coal by the promised deadline.

According to PT Bank Mandiri, the Domestic Documented Credit Letter (SKBDN) No. MS77106009548 cannot be canceled unilaterally. Therefore, PT Semen Padang filed a lawsuit for Default and cancellation of the sale and purchase agreement at the Padang District Court on October 23, 2008.

The Padang District Court's Decision is: granting the Plaintiff's lawsuit in part, stating that Defendant I PT Berkala Internasional and Defendant II PT Eksplorasi Mantap Indonesia have committed acts of default to the Plaintiff, canceling the sale and purchase agreement No.39/PJJ/PBR.12/01.2008, declaring the cancellation of SKBDN No. MS77106009548, punishing Defendant I and Defendant II to compensate the Plaintiff for damages in the amount of Rp.147,315,000

Dispute resolution carried out by PT Semen Padang is through the court. Settlement through the court makes one of the parties the losing party who is sentenced to pay losses. In this civil dispute of default, the losing party is PT Berkala International.

CONCLUSION

Legal Protection for PT Semen Padang related to PT Berkala Internasional Default

According to the theory of legal protection, legal protection is seen by legal apparatus and law enforcement officials. Based on the study of laws and regulations related to the research issue, that the Sale and Purchase Agreement No.39/PJJ/PBR.12/01.2008 dated February 18, 2008 made by PT Semen Padang and PT Berkala Internasional has fulfilled the validity of the agreement as stipulated in Article 1320 of the Civil Code, namely: a. agreed by the parties making the agreement; b. the statement of the party making the agreement; c. a certain thing; and d. a halal cause.

The agreement has occurred since PT Berkala Internasional stated that it accepted PT Semen Padang's offer to provide coal as agreed in the agreement. At the time specified by PT Berkala Internasional does not fulfill it, then PT Berkala Internasional has defaulted, namely not doing something as agreed.

An agreement that is legally made in accordance with the provisions of Article 1338 of the Civil Code binds the parties who make it to carry out the contents of the agreement it makes. The provisions of Article 1338 of the Civil Code provide legal protection for PT Semen Padang to demand achievements from PT Berkala International, doing something as stipulated in Article 1234 of the Civil Code.

Judging from law enforcement, the Padang District Court, the Padang High Court, and the Supreme Court have provided legal protection to PT Semen Padang with its decision that won the Plaintiff in the civil case of default and cancellation of agreement No.39/PJJ/PBR.12/01.2008 dated February 18, 2008.

The solution to the problem of PT. International Periodicals to PT. Semen Padang.

The resolution of the problem of PT Berkala International's default against PT Semen Padang according to the dispute resolution theory can be pursued through negotiation and litigation. The settlement taken by PT Semen Padang is litigation or through the courts. The settlement through the court determined that PT Berkala Internasional had defaulted to PT Semen Padang. The losing party, PT Berkala International, was sentenced to pay losses to PT Semen Padang. The settlement through the court has made the break of civil relations between PT Semen Padang and PT Berkala International.

Legal Protection for PT Semen Padang related to PT Berkala Internasional Default

There was a default by PT Berkala Internasional against PT Semen Padang, because previously PT Berkala Internasional was not satisfied with the capacity to meet the amount of coal agreed in the agreement. In order to avoid legal problems in the future, it is recommended before entering into an agreement to study the condition of each party.

The solution to the problem of PT. International Periodicals to PT. Semen Padang

Dispute resolution through the court places one party as the losing party, thus making it difficult to break the civil relationship and restore the relationship. To be able to restore the relationship before the dispute occurred and the continuation of the business relationship, it is recommended to resolve the dispute through negotiation and making a mutual agreement.

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