

THE LEGAL APPROACH TO THE SALE AND PURCHASE OF GOODS ON BOARD: A COMPARATIVE LEGAL STUDY

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Abstract

This study aims to analyze and understand the legal protection of parties involved in the sale and purchase of goods on board. This research is normative legal research using statutory, conceptual, and comparative approaches. The results showed that legal protection for parties in the sale and purchase of goods on board included legal protection for PT. Garuda Indonesia, PT. Rodamas and legal protection for passengers. PT. Rodamas provided compensation to PT. Garuda Indonesia after PT. Garuda Indonesia has provided compensation to passengers in case of loss. Also, PT. Garuda Indonesia is personally responsible for any loss caused by the company's fault or negligence. The legal arrangement of sale and purchase in the CISG Convention does not apply to the sale and purchase of personal goods between PT. Garuda Indonesia and passengers, because CISG regulates sale and purchase of goods agreements between different countries' business actors.

Keywords

Aircraft, comparative law, liability, trading

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Introduction

As social beings, humans need to interact with fellow and group members to meet their needs of life. One interaction pattern between human beings is buying and selling. The sale and purchase activity are part of civil law, which can be prosecuted or filed before the court. Sale and Purchase activity are often carried out in everyday life, but people do not realize that what is being done is a legal action that can cause legal consequences one of the parties breaks an agreement, or there is fraud among them (R. Soeroso, 2011).

Selling and purchasing are legal acts between the seller and the buyer about an item as the object (Gunawan Widjaja dan Ahmad Yani, 2003). It is an agreement between the seller and the buyer where the seller binds himself to deliver the goods and the buyer to pay the price agreed before (Abdulkadir Muhammad, 1995). In general, buying and selling between countries can be said to be international trade. It means residents of a country carry it out with residents of other states based on mutual agreement. The residents in question can be between individuals (individuals and individuals), between individuals and the government of country or government of a country and government of another country.

To prevent disputes occur, and international trade transactions can be carried out without prejudice to each party's laws, several conventions on some provisions that are applied internationally had been made by international agencies and in official meetings between countries. The establishment of an international convention aims to create harmonization of laws or rules in international trade (Rotua Deswita Raja Guk Guk, 2013). According to Komar Kantaatmadja the harmonization of law is an effort to make the national laws of member countries have the same principles and regulations regarding similar issues in their respective jurisdictions (Pranoto, P., Kholil, M., & Tejomurti, K. 2019).

One international or cross-country sale and purchase activities can be seen from the scheduled airlines in the international flight path. In this case, there is no definition of scheduled airlines in the Act of the Republic of Indonesia Number 1 the Year 2009 on Aviation; however, it can borrow the meaning contained in the Decree of the Minister of Transportation Number SK / 13 / S / 1971. According to the decree, Scheduled Commercial Air Transport is a flight planned according to a fixed and regular aircraft travel schedule.

According to pre-research on one of the airlines which have international flight path, besides providing services based on the above provisions, the airline also provides services, including products for sale on board (sales on board), which are offered and sold directly to passengers by flight attendants as an airline on-duty cabin crews. Products sold on board include merchandise and duty-free goods. The duty-free goods

sold in the aircraft are goods obtained from airlines' cooperation with several national companies that provide products from abroad for sale on the plane by the company.

In case there is a goods transfer from the airline to another party (consumer), there is an indirect relationship between producer and consumer that is indirectly bounded by agreement because there is a party between consumer and producer. The absence of a direct connection in the form of a deal between the producer and the consumer does not mean that the injured consumer is not entitled to claim compensation from the producer with whom he does not have an agreement (Ahmadi Miru, 2013).

The products sold in the aircraft are partly imported products. Based on Act Number 7, the Year 1994 on Ratification of the Agreement in Establishing the World Trade Organization, it is legal to sell and purchase transactions between passengers and companies that sell the product. The ratification allows products from other countries to meet the Indonesian market (Ahmadi Miru, 2013).

Suppose there is a loss from sales and purchase transactions. In that case, uniting the legal relationship and determining the applicable law in the agreement is not a simple matter because one of the parties comes from a different country. This research focuses on legal protection for parties involved in the sale and purchase of goods on board from a legal comparison aspect.

Research Methods

This research is normative legal research using a statutory approach, conceptual approach, and comparative approach (Amiruddin dan Zainal Asikin, 2016). The research approach explains the phenomenon of goods selling and buying on an airplane to explain the relationship between the research variables (Irwansyah. 2020).

Discussion

1. Legal protection in transactions of selling and buying in terms of BW and the CISG Convention

Conceptually, there are three basic concepts of legal responsibility in air transportation: the idea of legal obligation based on fault (based on fault liability), the concept of legal responsibility based on the presumption of liability, and liability without fault (H.K Martono dan Agus Pramono, 2013). In air transportation, the airline has the right to protect itself (exoneration); if the airline, including its employees, agents, or representatives, can prove their innocence, the airline company is free to be responsible and does not pay for losses suffered by passengers or shippers.

Universally, Article 1 of the 1944 Chicago Convention, regulates that every country has complete and exclusive sovereignty over its sovereign territory's air space. The Article provides a view that the manifestation of full sovereignty over air space above the territorial land. Those are 1) Every country has the right to fully and completely manage and control its national air space; 2) Each country must first make agreements

with other countries to obtain permits for activities or businesses in its national air space (Danang Risdiarto, 2016).

Besides, starting from the resolutions of the United Nations (UN), it became "Outer Space Treaty 1967 (OST)" and its interpretation in the form of treaties and/ or international conventions, "*Treaty on Principles Concerning the Activities of State in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies*," which is known as the fundamental law in Space Law basically regulates the status of space, the moon, and other celestial bodies, efforts, and human activities in space and assign rights and obligations to the states (Priyatna Abdurasyid, 1977).

Based on several regulatory provisions described above, according to the author's analysis, in general, it can be used as the basis for all forms of human activities and endeavors in the world of aviation and, in particular, for selling and buying of goods on board. These regulations and provisions state that each country can use airspace and outer space in its various activities based on prior agreements with other countries.

All in-flight activities in Indonesia have been regulated based on Act Number 1 the Year 2009 on Aviation (from now on abbreviated as Aviation Act). As a company that provides air transportation services, one of the scheduled airline activities is to offer passengers on domestic and international flights. In-flight activities include selling products to passengers or better known as sales on board (SOB).

In the sale and purchase of goods on board, the authors conducted research on an airline company; it was PT. Garuda Indonesia, which has a particular route for international flights. The sale and purchase of goods on international flight routes are the author's focus because the sale and purchase transactions are directly related to foreign elements. In this case, the word foreign elements are the flight attendants' salespeople of PT. Garuda Indonesia and passengers who are foreign nationals, then the objects that are goods traded on a Garuda Indonesia plane (sales on board) and then the place of sale and purchase, an airplane that has crossed the territorial boundaries of a country.

The services provided by the airlines are regulated in Article 97 of the Aviation Act. According to the author's analysis, the Article does not explicitly regulate services in sale and purchase transactions of goods on board, but based on the interview results made by the author, the sale and purchase transactions of goods are included in the form of services provided by companies to passengers aimed to help passengers to shop during the flight.

Not all of the products sold on board are owned by PT. Garuda Indonesia, because some of the products sold are obtained from the collaboration of PT. Garuda Indonesia and PT. Rodamas, it is providing duty-free goods company. The cooperation agreement made by PT. Garuda Indonesia and PT. Rodamas is an agreement with a consignment system or a sale deposit. The procedure for selling goods with this consignment system is that first, the consignor of PT. Rodamas entrusted the product

to PT. Garuda Indonesia for sale at the price and amount as stipulated in the cooperation agreement agreed by both parties, and the profit-sharing from the sale can be accumulated during the agreed time. After the handover of goods occurs, the product is transported back on the plane, accompanied by a document of receipt of goods on each flight schedule. After the product is received back by the employees of PT. Garuda Indonesia, there will be a flight attendant or stewardess appointed as a salesperson and responsible for sales during the flight. In this sale, there are only a few products that can be offered directly to passengers, such as perfume, wallets, and watches, then, the product catalog of PT Garuda Indonesia provided other product categories.

Broadly speaking, the agreement with this consignment system was made based on the principle of freedom of contract for the parties who agreed. There is no specific arrangement of an act that regulates the consignment agreement. Based on Article 1319 BW, which holds that all agreements, whether they have a particular name, or are not known by a specific name, are subject to the general regulations in this chapter and other chapters. From the provisions of the Article, both named and anonymous agreements are subject to the existing rules in BW so that the contract with the consignment system made by PT. Garuda Indonesia and PT. Rodamas must follow all the rules in BW so that it is not to violate the regulations therein and can fulfill the rights and obligations of each party.

In this consignment agreement, the owner of the goods (consignor), PT. Rodamas remains fully responsible for these products from the time of delivery until PT. Garuda Indonesia succeeded selling the goods to the passenger unless the agreement stipulated otherwise. In practice, there is an indirect relationship between the owner of the goods (consignor) and the passenger because the passenger only knows that the sale and purchase transaction is made only with PT. Garuda Indonesia, so that if there is a loss from the sale and purchase, the passenger will demand compensation from the company. Also, the difference in citizenship status is an important matter to pay attention to because it can cause different legal system interpretations for both parties in resolving their cases.

Legal protection is essential for each party to feel that their rights and obligations have been protected by law. Legal protection by these parties must be in the same position and willing one to another and not favors to which purpose of the law to provide justice, certainty, and benefit. Based on the theory of legal protection by Satjipto Raharjo, legal protection must be able to protect human rights from others and given to the community so that they can enjoy the rights granted by law and provide a sense of security both in mind and physical threats from any party.

Based on the results of the author's interview with Mr. Meiza, in the sale and purchase transactions of goods on the plane (sales on board), conflicts rarely occur. Suppose a passenger experiences a conflict that causes loss from the sale and purchase transaction; in that case, the company is willing to compensate the passenger on

condition that the passenger can prove that the loss was caused by the negligence of PT. Garuda Indonesia, if the passenger cannot prove that there is a loss from the sale and purchase, then the company cannot provide compensation to the passenger; the loss referred in this sale and purchase transaction is the condition where the product defect or difference from the price of the goods. Besides, according to Mr. Meiza, it is not only the company that is fully responsible for the losses suffered by passengers because the company, in this case, is the distributor of the goods being sold, but also the company tries to accept complaints from passengers and forward the complaints to PT. Rodamas as the owner of the goods, so that PT. Rodamas can also provide compensation to passengers through PT. Garuda Indonesia.

Thus, if there is a loss experienced by passengers from the sale and purchase transactions, PT. Garuda Indonesia can provide compensation to passengers, as long the loss was caused by negligence on the company's part. The company's compensation was not provided directly before the passenger had proven that the goods purchased caused him a loss. According to the author's analysis, the consignment cooperation agreement creates rights and obligations for PT. Garuda Indonesia and PT. Rodamas, as in Article 1728 BW which stipulates that:

"The person who entrusts goods is obliged to reimburse the recipient of all costs incurred to save the goods deposited, as well as compensate him for any losses caused by the safekeeping."

From the provisions of the Article above, the agreement with the consignment system made by PT. Garuda Indonesia and PT. Rodamas is following the provisions of the applicable laws, especially Article 1728 BW. In this case, PT. Garuda Indonesia is willing to provide compensation in advance to the passenger who purchased the goods, and then Garuda Indonesia can have reimbursed from PT. Rodamas following the costs incurred previously.

Theoretically, claims for compensation based on the reasons for violating the law can only be made if it meets the four elements below, those are (Ahmadi Miru, 2016):

- a) There is an action against the law;
- b) There are losses;
- c) There is a causal relationship between loss and illegal actions; and
- d) There was an error.

The airline company's responsibility must fulfill the elements of an error, there is a loss, and the loss must have something to do with the error. As in the concept of legal liability, if there is a loss, but there is no mistake, in this case, the airline is not responsible; likewise, if there is an error but does not cause a loss, the airline company is also not responsible ((H.K Martono dan Agus Pramono, 2013).

Besides, PT. Garuda Indonesia must be able to maintain the security and safety of these items to avoid losses. As in Article 1706, which regulates that "The recipient of the safekeeping is obliged to take care of the goods entrusted to him, maintaining it with the same interest as he maintains his goods." Based on the results of the author's interview with Mr. Meiza, the company always controls the quality and quantity of goods entrusted to them because these goods are still the property of PT. Rodamas, which in this case is still fully responsible for these items. According to the author's analysis, the above is related to Article 1365 BW, if PT. Garuda Indonesia was unable to maintain the security and safety of the goods entrusted to them and caused losses to PT. Rodamas, in this case, PT. Garuda Indonesia must be responsible for any losses incurred.

Furthermore, based on Article 1367 BW's provisions, legal liability to a person who suffers a loss is limited to his actions and the actions of employees, agents, and its representatives as long as that person acts following the duties and obligations charged to the person. According to the author's analysis, the activity of sale and purchase of goods on board by flight attendants is the responsibility of PT. Garuda Indonesia because flight attendants are company employees who are given the task of serving passengers and being salespeople on the plane, so this is an essential concern for PT. Garuda Indonesia to protect the rights of every employee, where all activities carried out by flight attendants based on the duties assigned by the company; therefore, the company will not allow its employees to bear their losses even though the losses are caused by the employees alone.

2. Conflict Resolution for Sale and Purchase Transactions in terms of BW and the CISG Convention

When a country faced a legal issue involving foreign citizens, it is certainly not an ordinary case because the settlement involves a different legal system between each state, which has created problems in International Civil Law (HPI). The choice of law is the most crucial thing to determine in a cooperation agreement with another country because, in the agreement's implementation, conflicts frequently occurred and cannot be avoided. Moreover, one of the parties is a foreign citizen, so that in resolving the conflict, the parties must determine the laws of which country will be used to resolve disputes between them. Controversy might occur when it deals with the common law legal system adopted by Anglo Saxon countries such as the United States, Britain, Malaysia, Singapore, and other countries so that in resolving a conflict, everything depends on the freedom and agreement of the parties at the initial implementation of the contract.

Besides the choice of law that must be determined, the choice of forum is also the main thing to determine which judicial institution is authorized to examine or adjudicate disputes that occur. In theory, the choice of law dispute resolution and choice of the forum are two different things. The forum in a country does not mean that the law of the jurisdiction will be used in dispute resolution; on the other hand, the choice of law

that falls on the law of a country does not always mean that the court of that country is authorized to examine or adjudicate the dispute (Muhammad Ilham, Muhammad Rifa'i, dan Adamsyah Koto, 2019). Based on the author's opinion, it is better before entering into a cooperation contract; the parties must set the choice of law clause or forum in the agreement because including the choice of law clause and forum will provide more legal certainty for the parties who enter into the contract or agreement.

Every country has its international civil law (HPI), which is part of national law as BW as Act, whose role as a source of formal law and a basis of material law for treaty law in Indonesia (Billy Dicko Stepanus Harefa, 2016). In HPI, some known-connection points can be used to determine the applicable laws for the parties. This link or point of connection will determine the application of the legal system (Sudargo Gautama, 1986).

In determining the legal system's effectiveness, it can be seen from the provisions of the Primary Linkage Point (from now on abbreviated as TPP) and the Secondary Linkage Point (from now on abbreviated as TPS. TPP itself is factors or circumstances or a set of facts that create a relationship in HPI ((Sudargo Gautama, 1986); nationality; the flag of a ship or aircraft; domicile or place of residence; and place of domicile or legal status based on the background of sale and purchase transactions on the plane (Sudirman H. Nainggolan, 2014).

Originally, the sale and purchase transaction on the plane (sales on board) has the same legal basis as the sale and purchase transaction in everyday life. What distinguishes it is that one of the legal subjects is a foreign citizen who, if in the future, can claim compensation if he feels disadvantaged. In sale and purchase transactions on the plane, both parties, PT. Garuda Indonesia and passengers do not have to sign an agreement or other document in writing to prove that there has been delivery and receipt of goods from the sale and purchase and do not have to determine which law regulates the sale and purchase transaction between them. In this case, an agreement has been made orally between two parties without any written evidence stating there has been an agreement between Garuda Indonesia and the passenger. Still, the oral form agreement remains valid, as long as it has fulfilled the validity requirements of the agreement stated in Article 1320. BW. As in the principle of freedom of contract, which gives the parties the freedom to determine the agreement's form in written or oral (Salim H.S, 2006). An oral agreement is also valid as long as no law stipulates that the agreement to be made must be in writing (Billy Dicko Stepanus Harefa). It means that in sale and purchase transactions between flight attendants and passengers, they have met the provisions in Article 1320 BW based on the requirements.

According to the author's opinion, the use of the laws on sale and purchase in BW always emphasizes the freedom principle of contract originates in Articles 1320 and 1338 BW, which respectively explain the agreement as one of the legal conditions of freedom for the parties in the agreement as it is known. The principle of freedom of contract is universal, which applies to all countries in the world. The civil law legal system provides two kinds of ways to resolve civil disputes that arise between parties;

first is dispute resolution through the court (litigation), and second is dispute resolution out of court (non-litigation) of which is through arbitration (Kunti Kalma Syita, 2014).

As contracts develop across countries, Book III of BW is no longer able to cover business contracts, cross-border business interests, and technological developments as a means of trade (Tejomurti, K., & Widyantari, P. 2018). In dispute resolution, there is often ambiguity about what legal remedies should be used to make international arbitration more frequent (Chrisstar Dhini, Novika Maharani, dan Reza Amarulloh, 2015). Even though arbitration is a solution in settling disputes in sale and purchase, PT. Garuda Indonesia does not use arbitration in resolving problems in it. Mr. Meiza also conveyed that if problems are arising from sale and purchase, the company would prefer that the problem be resolved based on each party's goodwill, which was previously based on an agreement between the two (. According to the author's analysis, this statement provides an explanation that the company of PT. Garuda Indonesia wants the problem to be resolved amicably without going through a long process in court. Dispute resolution based on each party's wishes and goodwill is the same as settling disputes outside the court. According to Jimmy Joses Sembiring, out of court dispute resolution can only be pursued by the parties based on the parties' agreement based good faith from each party (Jimmy Joses Sembiring, 2011).

Judging from the CISG Convention, in minimizing the obstacles that arise in sale and purchase, legal efforts are made to create harmonization and unification in the field of international sale and purchase of goods that contain more universal rules is the CISG Convention. The background of the presence of the CISG is due to the increasing number of international trade transactions that require a comprehensive convention (Samuel Hutabarat, 2016). The CISG Convention regulates the sale and purchase of international goods, which is quite comprehensive and describes various legal systems' harmonized results. The CISG Convention tries to define the parties' rights and obligations in the international sale and purchase of goods in a transparent manner (Chrisstar Dhini, Novika Maharani, dan Reza Amarulloh).

As the CISG Preamble, it states, the objectives for the establishment of the CISG Convention are as follows:

Believing that the adoption of uniform rules that govern contracts for the international sale of goods and consider the different social, economic, and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade.

From these provisions, the matters that regulate international sales and purchase contracts between parties with differences in social, economic (Putri, M. 2020), and legal systems, where the existing arrangements in the CISG can remove legal barriers from an international perspective.

One of the essential things in cooperating with foreign parties in selling and purchasing international goods is a contract. This trade contract is a bridge that contains arrangements for commercial activities or business activities (Ricardo Simanjuntak, 2008). Therefore, each party in making a contract must not forget the choice of law clause, which is very important for determining the applicable law if a dispute arises from the sale and purchase contract.

According to Schmitthoff, that international contracts without the choice of law clauses are flawed contracts. Besides, the United Nations Commission on International Trade Law (UNCITRAL) recommends that international business parties make international contracts should include a choice of law clause as an anticipatory step to prevent legal uncertainty at the time of dispute resolution (Huala Adolf, 2007).

The CISG Convention has been used by the International Chamber of Commerce (ICC) Arbitrators and other arbitral institutions in resolving international sale and purchase contract disputes. CISG's status as a de facto international commercial law has been widely accepted in countries worldwide and international arbitrations (Afifah Kusumadara, 2006).

Conclusion

Legal protection for the parties in the sale and purchase of goods on board includes legal protection for PT. Garuda Indonesia, PT. Rodamas and legal protection for passengers. PT. Rodamas provided compensation to PT. Garuda Indonesia after PT. Garuda Indonesia has provided compensation to passengers in case of loss. Besides, PT. Garuda Indonesia is personally responsible for passengers if the loss is caused by the company's fault or negligence, and this is following to Articles 1365 and 1367 BW. Besides, the sale and purchase took place verbally between PT. Garuda Indonesia, with passengers of foreign nationals, remains valid as long as it fulfills Article 1320 BW provisions and the legality in Article 1338 BW.

The legal arrangement for sale and purchase in the CISG Convention does not apply to the sale and purchase of personal goods between PT. Garuda Indonesia with passengers because CISG regulates goods sale and purchase agreements between business actors of different countries related to civil relations, the most important one is formal truth. Therefore, in a sale and purchase transaction on board, a written agreement or written evidence should be made.

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