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LEGAL HORIZONS IN GLOBAL COMMERCE: SOVEREIGN DYNAMICS, STATE-OWNED ENTERPRISES, AND DISPUTE RESOLUTION APPROACHES IN INTERNATIONAL LAW

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Abstract

This research explores the legal standing of a country as a distinct entity in international trade law, endowed with sovereign authority to regulate the inflow and outflow of goods and services across its borders. Emphasizing the multifaceted role of a country as a regulatory entity within the realm of international trade, this study specifically aims to into its position as a buyer. The investigation centers on elucidating the dispute resolution mechanisms available to a country acting in the capacity of a buyer. As an autonomous legal subject in the sphere of international trade, a country possesses the inherent right to oversee and control the movement of goods and services, a prerogative that extends to its role as a buyer in commercial transactions. Notably, the research unveils that a country can function as a buyer through state-owned enterprises (SOEs), which bear the responsibility of reporting their trade activities to the Council for Trade in Goods. This process is instrumental in upholding the principles of non-discrimination and ensuring transparency in trade practices. Consequently, the trade relations between SOEs and individual traders can be characterized as contractual agreements, affording the application of principles such as freedom of contract. This includes the autonomy to select applicable laws and opt for specific forums for dispute resolution, underscoring the nuanced legal dynamics inherent in the interactions between countries and individual traders in the international trade landscape.

Keywords: *International Trade Law, Sovereignty, Dispute Resolution Mechanisms, State-Owned Enterprises (SOEs), Contractual Relationships.*

A. INTRODUCTION

The establishment of relationships between legal entities in international trade yields diverse impacts on the involved countries, with the most prominent positive consequence being a marked increase in economic

growth, propelled by heightened international trade activities.[1] Concurrently, countries experience the positive outcome of augmented foreign exchange resources garnered through customs duties and other fees derived from the export and import of goods. This global trade dynamic enables nations to fulfill various domestic needs by importing goods not locally produced, fostering cooperation, creating job opportunities, and supporting advancements in science and technology.

Despite these positive dimensions, international trade introduces several negative consequences that warrant careful consideration by every country. One such consequence is the disruption of domestic production, particularly due to the influx of imported goods that can compete with local products.[2] This scenario poses substantial risks, leading to significant losses for local businesses and impacting a country's economic resilience. Moreover, international trade can engender dependence on other countries, especially concerning the supply of essential goods. Lastly, the prevalence of unhealthy competition in the context of free trade poses a risk that could impede a country's economic growth if it is unable to compete with cheaper or higher-quality foreign products. Consequently, countries must meticulously assess both the positive and negative impacts of international trade in shaping their economic policies.

Indonesia actively engages in international trade, fostering relationships with diverse countries to meet its domestic needs and contribute goods and services globally. Positioned strategically between two continents and two oceans, Indonesia capitalizes on its geographical advantage in international trade.[3] Noteworthy trade partners include Germany, China, Canada, and others, with longstanding collaborations exemplified by Indonesia's exports of palm oil, machinery, footwear, electronic equipment, rubber, coffee-tea, and spices to Germany. In reciprocation, Indonesia imports manufactured goods, communication equipment, chemicals, and metal products from Germany, showcasing a comprehensive trade relationship that underscores Indonesia's commitment to leveraging its economic potential and expanding its international trade footprint.[4]

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[1] Anne Van Aaken and Jürgen Kurtz. "Beyond rational choice: international trade law and the behavioral political economy of protectionism." *Journal of International Economic Law* 22, no. 4 (2019): 601.

[2] Timothy Meyer and Ganesh Sitaraman. "Trade and the Separation of Powers." *California Law Review* 107, no. 2 (2019): 584.

[3] Siti Awaliyah, Dewa Gede Sudika Mangku, Ni Putu Rai Yuliartini, and I. Nengah Suastika. "Enforcement of Illegal Fishing Laws that was Done by Foreign Ships in the Indonesian Sea Region, Viewed from International Sea Law." *International Journal* 9 (2020): 1165.

[4] Maria GS. Soetopo. "Integrating Law and Economics in Indonesia." *Law Review* 18, no. 3 (2019): 371.

Indonesia assumes a significant role in global trade, exporting diverse products to countries like Canada, including rubber, apparel, electronic equipment, machinery spare parts, nickel, cocoa, and coffee. Concurrently, Indonesia imports cereal products, fertilizers, aluminium, and iron ore from Canada, reflecting the country's pursuit of mutually beneficial economic partnerships on a global scale. Strengthening economic ties with China is another facet of Indonesia's international trade strategy. Despite challenges posed by the COVID-19 pandemic, Indonesia and China have collaborated on various fronts, such as vaccination efforts, travel corridor arrangements, and national economic recovery, highlighting their commitment to sustained cooperation.

Numerous prior investigations have explored diverse facets of international trade law, particularly examining the roles played by states within this framework. Rabbani[5] research delved into the implementation of the Trade Facilitation Agreement (TFA) within the World Trade Organization (WTO) and its repercussions on Indonesia's international trade policies. Emphasizing normative aspects, the study highlighted the assimilation of TFA provisions into various Indonesian legal instruments, including laws and presidential regulations, influencing the governance of foreign trade policies and import-export controls. Widiatedja[6] scrutinized the WTO's role in mediating disputes centered around palm oil between Indonesia and the European Union, underscoring the WTO's pivotal position as an international dispute resolution body in addressing trade conflicts between the involved parties. Darajati[7] examined state compliance with international trade law, delving into the reasons compelling states to adhere to these legal frameworks in their trade engagements. These studies collectively contribute valuable insights into the roles and responsibilities of states within the domain of international trade law.

This current research seeks to identify, analyze, and expound upon the legal standing of a state as a buyer within the ambit of international trade law. Additionally, it aims to discuss diverse modalities of dispute resolution applicable when a state encounters losses related to the procurement of goods under international trade law. To accomplish this objective, the research will systematically elucidate pertinent aspects with a concentrated focus on the issue at hand. The first segment will explore regulations pertaining to the

[5] Deden Rafi Syafiq Rabbani. "A Critical Study of TFA WTO (World Trade Organization): Analysis of the Implementation of International Trade Policies in Indonesia." *Jurnal Hukum Lex Generalis* 2, no. 1 (2021): 17.

[6] I. Gusti Ngurah Parikesit Widiatedja. "The evolution of the dispute settlement mechanism in preferential trade agreements [PTAs]: The case of Indonesia." *Asian Journal of International Law* 10, no. 2 (2020): 346-374.

[7] Muhammad Rafi Darajati. "Ketaatan Negara terhadap Hukum Perdagangan Internasional." *Refleksi Hukum: Jurnal Ilmu Hukum* 5, no. 1 (2020): 25.

legality of a state acting as a buyer in international trade law. Subsequently, the study will examine various mechanisms for dispute resolution that a state can employ in situations where losses are incurred due to the purchase of goods within the framework of international trade.[8]

B. RESEARCH METHODS

This research employs a qualitative method with a normative legal approach, seeking to comprehensively understand and analyze legal aspects concerning the state's role as a buyer in international trade. The research methodology focuses on exploring dispute resolution strategies applicable in instances of losses arising from the state's procurement of goods under international trade law. The approach involves an in-depth analysis of various pertinent legal sources, encompassing primary law (laws and international agreements), secondary law (implementing regulations), and tertiary legal materials (legal documents, court decisions, and relevant legal literature).[9] The research aims to intricately delineate the legal provisions governing the state's position as a buyer in international trade. The focus will delve into understanding the state's role, its rights and obligations in international trade transactions, and the dispute resolution procedures applicable in cases of disputes between the buying state and the selling party.

C. RESULT & DISCUSSION

1. The Sovereign Dynamics of Countries in International Trade Law

The realm of international trade law has undergone rapid evolution in response to the increasingly diverse needs of humanity.[10] This evolution has resulted in the establishment of diverse trade relationships between nations, ranging from basic barter systems to intricate buying and selling transactions. The overarching objective of these international trade relationships extends beyond satisfying a country's immediate needs; it encompasses market expansion, augmented production of goods, and the accrual of foreign exchange through exports to other nations. Additionally, international trade plays a pivotal role in bolstering economic growth, fostering job creation, and nurturing the development of human skills across various domains, including

[8] Alan O. Sykes. "Comparative advantage and the normative economics of international trade policy." *J. Int'l Econ. L.* 1 (1998): 52.

[9] Andrew T. Guzman. "International tribunals: a rational choice analysis." *University of Pennsylvania Law Review* (2008): 173.

[10] Panagiotis Delimatsis. "International trade law and technical standardization." *The Cambridge handbook of technical standardization law. Cambridge University Press, Cambridge* (2019): 7.

technology.[11] Wagner[12] asserts that a myriad of legal entities is integral to international trade transactions, with the state emerging as a central player. The state assumes a critical role in regulating and overseeing diverse forms of international trade, including transaction-related regulations. State involvement in the regulation of international trade serves as a fundamental pillar for preserving equilibrium, fairness, and security in international trade relations. It ensures that the economic, social, and political needs of the country are effectively addressed.[13]

In the context of these international trade endeavours, the Theory of State Sovereignty holds significance, emphasizing that law serves as the foundational framework for regulating interactions between sovereign states.[14] Indonesia's active participation in international trade is a manifestation of its adherence to legal principles and efforts to navigate the complexities of global commerce within the framework of state sovereignty. The Theory of State Sovereignty, introduced by George Jellinek, posits that law emanates from the will of the state, positioning it as the ultimate authority. Jellinek's assertion emphasizes that law is not divinely ordained or dictated by a monarch but is a product of the state's own agency. Consequently, the state is vested with the authority to govern its territory, enforce laws, and act in the interest of the security and welfare of its citizens. This conceptualization serves as the cornerstone for nations in formulating regulations and managing their international trade relations. As the highest authority, a state is obligated to consistently uphold the principle of non-discrimination, particularly in the realm of governmental policies that can impact the export and import activities of private traders.[15] The application of the non-discrimination principle is crucial as it ensures equal opportunities for all entities engaged in trade within the country, encompassing state-owned enterprises actively participating in international trade.

Within the framework of international law, a state, as a legal subject, possesses sovereignty that confers the authority to regulate the entry and exit of goods or services from its territory. This sovereignty empowers the state to

[11] Edouard Adelus. "Global law-making in insolvency law: the role for the United Nations Commission for International Trade Law." *Uniform Law Review* 24, no. 1 (2019): 175.

[12] Markus Wagner. "Regulatory space in international trade law and international investment law." *U. Pa. J. Int'l L.* 36 (2014): 5.

[13] Anthea Roberts, Henrique Choer Moraes, and Victor Ferguson. "Toward a geoeconomic order in international trade and investment." *Journal of International Economic Law* 22, no. 4 (2019): 655.

[14] Nur Fareha Binti Mohammad Zukri, Ong Argo Victoria, and Fadli Eko Apriliyanto. "Dispute International Between Indonesia And Malaysia Seize on Sipadan and Lingitan Island." *International Journal of Law Reconstruction* 3, no. 1 (2019): 3.

[15] Endra Wijaya, Kikin Nopiandri, and Habiburrokhman Habiburrokhman. "Dinamika upaya melakukan sinergi antara hukum perdagangan internasional dan hukum lingkungan." *Jurnal Hukum dan Peradilan* 6, no. 3 (2017): 488.

enact regulations binding on legal subjects, objects, and legal events occurring within its borders. However, complexities arise when a state assumes the role of a buyer in international trade, introducing issues of authority and dispute resolution.[16] Consequently, clarity is imperative regarding the state's position as a buyer in international trade law, encompassing the resolution of disputes that may arise from losses associated with the purchase of goods in international trade. Elucidating this aspect becomes pivotal to ensuring the appropriate application of legal mechanisms in situations where a state functions as a buyer.

Countries occupy a distinct and sovereign position in international trade law, being recognized as legal entities with Full Legal Personality, endowing them with comprehensive rights and obligations in the international arena. This bestowed sovereignty empowers countries to regulate and supervise the inflow and outflow of goods and services across their borders. According to Ramadhan, a country possesses the authority to determine the permissibility of foreign items entering its territory and has the autonomy to establish conditions governing the importation or exportation of goods, illustrating the discretionary power each country wields in regulating trade conditions.

This state sovereignty intricately intertwines with international trade activities, encompassing the exchange of goods, services, or capital across national borders. This involves both exports, where a country sells goods or services abroad, and imports, where a country acquires goods or services from foreign sources. With the attributes of sovereignty, a country can enact regulations binding various legal entities, including individuals and companies, and governing goods and legal events within its territory, extending to regulations related to domestic trade relationships. Additionally, countries indirectly contribute to the formulation of rules for international trade through their participation in the creation of international organizations. The concept of sovereignty fosters an equitable and coordinative structure among nations, enabling them to engage in international agreements that regulate trade relations and transactions.[17] This coordinative framework allows countries to collaborate on mutually beneficial terms, emphasizing the pivotal role of sovereignty in shaping international trade dynamics.

[16] Chisa Onyejekwe and Eghosa Ekhator. "AfCFTA and lex mercatoria: reconceptualising international trade law in Africa." *Commonwealth Law Bulletin* 47, no. 1 (2021): 94.

[17] Dina Sunyowati. "Hukum Internasional Sebagai Sumber Hukum dalam Hukum Nasional (Dalam Perspektif Hubungan Hukum Internasional dan Hukum Nasional di Indonesia)." *Jurnal Hukum dan Peradilan* 2, no. 1 (2013): 72.

2. Legal Frameworks and Transformations for Enabling State-Owned Enterprises in International Trade Contracts

The initiation of international trade agreements often commences with broader international economic pacts, which can manifest either as bilateral or multilateral agreements. Bilateral trade agreements, involving two countries, are exemplified by the Economic Partnership Agreement (EPA) formed between Indonesia and Japan. This specific bilateral accord, inked on August 20, 2007, under the title "Agreement between the Republic of Indonesia and Japan for an Economic Partnership," serves as the cornerstone for tariff preferences governing the trade and investment realms of their relationship. The ratification of this agreement by the Indonesian government transpired through Presidential Regulation No. 36 of 2008, specifically addressing the "Agreement between the Republic of Indonesia and Japan on an Economic Partnership." Further implementation details were elucidated through various Minister of Finance Regulations, including PMK No. 94/PMK.011/2008, which delineates Modalities for Tariff Reduction.

Conversely, multilateral agreements, like the World Trade Organization (WTO) Agreement, involve multiple member countries, including Indonesia.[18] The WTO Agreement serves as a legal foundation for international trade agreements established by its member countries, whether in bilateral, regional, or multilateral formats.[19] The WTO's General Council emphasizes the necessity of transparency in the formation of Regional Trade Agreements (RTAs) among member countries.[20] Article XVI:3 of the Marrakesh Agreement, which laid the foundation for the WTO, asserts that, in the event of a conflict or contradiction between the WTO Agreement and the WTO Multilateral Agreement or other international agreements, the provisions of the Marrakesh Agreement shall take precedence. This principle also applies to Indonesia when forming agreements with other countries, ensuring that the substance of the agreements made aligns with the WTO Agreement, given that both entities are WTO member countries.[21] The aforementioned economic and international trade agreements serve as legal sources when countries engage in international trade transactions structured as international contracts. Consequently, in the realm of international trade relations, a country assumes the multifaceted roles of regulator, seller, and buyer. Specifically, in the

[18] Cristiane Lucena Carneiro. "Alternative Dispute Resolution and the WTO." *The WTO Dispute Settlement Mechanism: A Developing Country Perspective* (2019): 146.

[19] Rafael Leal-Arcas. "Proliferation of regional trade agreements: Complementing or supplanting multilateralism." *Chi. J. Int'l L.* 11 (2010): 599.

[20] Joel P. Trachtman. "The domain of WTO dispute resolution." In *International Economic Regulation*. London: Routledge, 2018. 403.

[21] Robert Koopman, John Hancock, Roberta Piermartini, and Eddy Bekkers. "The Value of the WTO." *Journal of Policy Modeling* 42, no. 4 (2020): 830.

capacity of a buyer, a country, often in collaboration with its state-owned enterprises, actively participates in trade transactions with other nations, aligning with the fundamental principle of freedom in international trade transactions.[22] This intricate involvement underscores the dynamic and multifunctional roles that countries play in shaping and participating in the exchange of goods and services on the global stage.

To fulfill its role as a purchaser, a nation can employ state-owned legal entities, such as State-Owned Enterprises (SOEs). The significance of SOEs, or State Enterprises, has undergone considerable evolution in the landscape of international trade. The nation's stance as a buyer is intricately tied to two fundamental principles: jure imperia and jure gestion is. The jure imperia principle stipulates that actions undertaken by a legal entity are shielded by state immunity if these actions are of a governmental or executive nature. Conversely, immunity is relinquished when the entity partakes in commercial activities, aligning with the jure gestion is principle.[23]

In broad terms, the state, through SOEs, bears the responsibility of serving the public interest by furnishing high-quality and sufficient goods and/or services to meet societal needs. This mandate is codified in Law No. 19 of 2003 concerning State-Owned Enterprises (SOEs Law). With the objective of catering to public needs and thriving in the market, SOEs are expected to deliver high-quality and competitive goods and/or services, both domestically and internationally. Consequently, SOEs, or State Enterprises, can actively participate in international trade transactions as buyers, with a focal point on addressing public needs and bolstering the national economy. However, adherence to the rules and tenets of international trade law is imperative, encompassing the jure gestion is principle, which mandates a commercial approach in their trade endeavors. The primary objective of SOEs, as representatives of the state, revolves around serving the public interest by providing goods and/or services for the welfare of the public. Consequently, the operational focus of SOEs often prioritizes delivering goods and services that benefit society over pursuing profit within the framework of international trade. This social objective frequently takes precedence in the modus operandi of SOEs.

The regulation governing the activities of State-Owned Enterprises (SOEs) in the context of international trade is rooted in Article XVII of the General Agreement on Tariffs and Trade 1994. This article delineates the obligations of GATT 1994 member countries in overseeing the operations of

[22] Thomas Kadner Graziano. "The Hague solution on choice-of-law clauses in conflicting standard terms: paving the way to more legal certainty in international commercial transactions?." *Uniform Law Review* 22, no. 2 (2017): 354.

[23] Manfred Elsig and Sebastian Klotz. "Digital trade rules in preferential trade agreements: Is there a WTO impact?." *Global Policy* 12 (2021): 25.

State Trading Enterprises (STEs) and underscores the pivotal role of implementing the non-discrimination principle. Particularly, it emphasizes the need for conformity with the said principle concerning government policies that may impact the import and export activities of private traders. GATT 1994 member countries are mandated to ensure that policies influencing international trade, whether pertaining to STEs or the private sector, adhere strictly to the non-discrimination principle. This principle, vital for fostering a fair and impartial trade environment for all participants, ensures equal opportunities for conducting trade transactions within the territories of GATT 1994 member countries without any form of discrimination. The significance of these provisions lies in their role in promoting fairness and balance among market participants.

The outlined regulations indicate that GATT 1994 member countries are obligated to report or notify the presence of STEs to the Council for Trade in Goods. Subsequently, these reports are subjected to evaluation by a Working Party.[24] The primary objective behind this obligation is to in still transparency in international trade, providing member countries with a clearer understanding of how STEs may impact the volume or direction of imports and exports through their policies or actions. This approach aligns seamlessly with the principles of the World Trade Organization (WTO), fostering equitable treatment of member countries in international trade practices. As subjects of international trade law, states bear the responsibility to report and ensure transparency regarding the existence and activities of their STEs. This aligns with the overarching non-discrimination principle and contributes to the establishment of a more equitable and transparent trade environment for all entities engaged in international trade.

When a nation assumes the role of a private legal entity, State-Owned Enterprises (SOEs) can, within the framework of international contracts, function as parties to civil transactions and be subject to corresponding civil law regulations. The alteration of status is often deemed necessary to facilitate the involvement of the country and SOEs in civil relationships, encompassing transactions like leasing, international buying and selling, and other civil acts. This adjustment aligns with corporate law in Indonesia, particularly as stipulated in Law No. 40 of 2007 concerning Limited Liability Companies (*Perseroan Terbatas*/PT). By transitioning to the status of a PT, SOEs attain the classification of private legal entities engaged in business activities, where their entire capital is divided into shares. This transformation permits SOEs to partake in international transactions in compliance with relevant civil law,

[24] Pierre Sauvé. "To fuse, not to fuse, or simply confuse? Assessing the case for normative convergence between goods and services trade law." *Journal of International Economic Law* 22, no. 3 (2019): 355.

thereby enabling them to fulfill their role in the realm of international trade and engage in international contracts with entities worldwide.[25]

Through the transformation of State-Owned Enterprises (SOEs) into private legal entities, they acquire the capacity to enter into international trade contracts. The recognition of SOEs as legal entities, particularly in the form of a PT, empowers a country to actively participate in international trade by engaging in buying and selling transactions with other nations and foreign private legal entities. In Indonesia, SOEs are acknowledged as legally recognized entities in international transactions, allowing these entities to enter into international trade contracts with entities from other countries, irrespective of whether they are state-owned or private, in adherence to the pertinent international civil law regulations.

3. Dispute Resolution in International Business: Principles and Choices in Resolution Mechanisms

Principles of international civil law and conventions such as the United Nations Convention on Contracts for the International Sale of Goods (CISG) establish the legal framework governing the relationship between a country and a private legal entity in international transactions. These principles contribute to the facilitation of international trade activities, ensuring that both contracting parties are subject to the same legal standards in their agreements. The elucidation of fundamental principles within international trade relationships, translated into contractual agreements, holds significant relevance. These principles provide a crucial framework for the establishment and execution of international trade contracts, particularly in scenarios where a country functions as the buyer.[26] The following is a detailed explanation of these principles:

a. Principle of Freedom of Contract:

   This principle underscores the autonomy of parties engaged in international trade to formulate contracts based on their preferences. As the buyer, the state enjoys the flexibility to determine the contract's contents and provisions, encompassing the rights and obligations that both parties must adhere to. This principle supports the creation of contracts tailored to the specific needs and preferences of the countries involved.

[25] Desak Putu Dewi Kasih, Ni Ketut Supasti Dharmawan, Made Suksma Prijandhini Devi Salain, and Putri Triari Dwijayanthi. "Kedudukan Negara sebagai Pembeli dalam Perspektif Hukum Perdagangan Internasional." *Jurnal Pembangunan Hukum Indonesia* 3, no. 3 (2021): 355.

[26] Sara Zokaei. "Dispute Resolution Commercial Transactions Along the Belt and Road: Creating Fair and Consistent Judgments." *Hastings LJ* 73 (2022): 562.

b. Pacta Sunt Servanda Principle (Agreements Must Be Obeyed):

This principle asserts that valid and legally sound agreements must be honored by all involved parties. Consequently, when an international trade contract is established, each party is obligated to adhere to the agreed-upon terms and conditions. This principle fosters legal certainty throughout the implementation of the contract.

c. Principles of Use of Arbitration:

This principle advocates for the utilization of arbitration as an alternative method for resolving disputes arising in international trade contracts. Parties entering into a contract have the option to choose arbitration as a means of addressing future disputes. Arbitration, being a dispute resolution mechanism outside traditional court litigation, is frequently favored in international trade due to its perceived efficiency and expediency compared to courtroom proceedings.

The transformation of State-Owned Enterprises (SOEs) into private legal entities, such as Limited Liability Companies, facilitates their active participation in international trade contracts. This transition aligns with corporate law in Indonesia, allowing SOEs to engage in various civil transactions, including international buying and selling. Recognized as legal entities, particularly in the form of Limited Liability Companies, SOEs enable countries to partake in international trade by conducting transactions with foreign entities. The principles of international civil law and conventions like the United Nations Convention on Contracts for the International Sale of Goods (CISG) play a crucial role in governing the relationships between countries and private legal entities in international transactions. These principles, including the Freedom of Contract, Pacta Sunt Servanda, and the use of arbitration, establish a robust legal framework. They grant countries the autonomy to structure contracts, ensure compliance with agreed-upon terms, and offer alternative dispute resolution methods.[27] The elucidation of these principles provides a pertinent framework for international trade relationships and contractual agreements. It underscores the significance of legal standards in fostering fairness, transparency, and efficiency in global commerce. As

[27] John F. Coyle and Christopher R. Drahozal. "An empirical study of dispute resolution clauses in international supply contracts." *Vand. J. Transnat'l L.* 52 (2019): 326.

countries act as buyers, these principles contribute to the creation and execution of international trade contracts, emphasizing the importance of adherence to established legal norms for a harmonious and equitable international trade environment.

The resolution of disputes arising among business entities, including states, is a crucial aspect requiring careful consideration. Typically, trade disputes commence with negotiations, where the involved parties endeavor to reach a mutually acceptable agreement. Should negotiations prove futile, alternative dispute resolution methods, such as arbitration or litigation, become viable options. The choice of the dispute resolution method is commonly stipulated in the agreement clause formed by the parties. This clause typically encompasses the selection of the applicable legal system (choice of law) or the designation of the dispute resolution institution (choice of forum). Additionally, parties may opt to submit the resolution process to Alternative Dispute Resolution (ADR) methods.[28]

Kunarto[29] proposes fundamental principles guiding the resolution of international trade disputes, including the consensus principle, the freedom to choose dispute resolution methods (principle of free choice of means), the freedom to select applicable law, the good faith principle, and the mandate for parties to attempt national law resolution before resorting to international dispute resolution institutions. Adhering to these principles empowers parties involved in international trade to pursue equitable and efficient dispute resolution in line with their preferences, thereby ensuring legal certainty in international business relationships.[30]

A dispute resolution forum serves as a platform for parties entangled in disputes to seek resolution for their disagreements. Various dispute resolution methods, such as negotiation, mediation, conciliation, arbitration, and litigation, are available for this purpose. The governing principles of dispute resolution are akin to those observed in international dispute resolution at large. In the context of international trade, a state assuming the role of a buyer possesses the liberty to choose the dispute resolution method employed in international sales contracts with its trading partners. This decision encompasses two pivotal aspects: the choice of law governing the contract

[28] David Lewis. "The Adoption of International Arbitration as the Preferred ADR Process in the Resolution of International Intellectual Property Disputes." *Białostockie Studia Prawnicze* 5, no. 26 (2021): 44.

[29] Kunarto Kunarto and Gautam Kumar Jha. "Legal Reconstruction in Risk-Based Business Licensing Procedures for Indonesia's Economic Growth." *Jurnal Akta* 9, no. 4 (2022): 543.

[30] Ajendra Srivastava and Ajendra Srivastava. "International Cooperation in Dispute Settlement." *Modern Law of International Trade: Comparative Export Trade and International Harmonization* (2020): 316.

and the selection of a dispute resolution institution, known as the choice of forum.

The choice of law, determined by the contracting parties, significantly influences the process of dispute resolution. However, the freedom to make this choice is constrained by general principles in international civil law, which include:

a. Lex Loci Contracts: The legal system where contracts are signed.
b. Lex Loci Solutionism: The legal system where contracts are executed.
c. Theory of The Proper Law of Contract: The legal system with the closest connection to transactions in contracts.
d. Theory of The Most Characteristic Connection: The legal system of contracting parties that demonstrates the most characteristic achievements.

The selection of a dispute resolution method in international trade involves critical decisions regarding the choice of law and the dispute resolution institution. The principles of international civil law place constraints on this freedom, ensuring that these choices align with established legal norms and maintain fairness and equity in resolving disputes.

The selection of a forum refers to the designation of the venue or dispute resolution institution within a contractual agreement. This choice is guided by principles of international civil law, such as the actor sequitur forum rei principle, which dictates that a case or dispute should be filed in the territory of the defendant state. Integrating clauses regarding the choice of law, dispute settlement, and forum in commercial or international sales contracts holds paramount importance, offering legal certainty to the involved parties. In the event of a dispute, a pre-established agreement delineates how the dispute will be addressed, the applicable law, and the jurisdiction where the dispute will be adjudicated.

Arbitration emerges as a preferred method for resolving contract disputes, chosen for its attributes such as party autonomy, flexibility in determining legal instruments and arbitrators, cost and time efficiency, and confidentiality. When parties opt for arbitration and select a specific arbitration body, like the Singapore International Arbitration Centre (SIAC), they can specify the international legal instrument governing the arbitration procedure rules. Examples of such instruments include the International Chamber of Commerce (ICC) Rules of Arbitration 2021 and the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration 2006.

In the domain of a state functioning as a buyer in international trade, the established commercial relationships with traders are essentially contractual. These contracts encapsulate agreed-upon dispute resolution methods as a manifestation of contractual freedom principles. This encompasses selecting the dispute resolution method (choice of dispute settlement), determining the applicable law (choice of law), and designating the dispute resolution forum (choice of forum). The inclusion of these clauses in international contracts provides a robust legal foundation for addressing disputes within the realm of international trade, facilitating a smoother resolution process aligned with the parties' preferences and contractual agreements.

The resolution of disputes in international business, whether among private entities or involving states, is a critical and complex process that demands careful consideration. Negotiations often mark the initial phase, where parties aim to reach a mutually agreeable resolution. If negotiations falter, alternative dispute resolution methods such as arbitration or litigation come into play, with the choice of method typically outlined in the agreement clause formed by the parties. Kunarto proposed principles, emphasizing consensus, freedom in choosing dispute resolution methods, the selection of applicable law, good faith, and initial attempts at national law resolution, provide a solid framework for navigating international trade disputes. Adhering to these principles empowers parties to pursue equitable and efficient dispute resolution, fostering legal certainty in their international business relationships.

A dispute resolution forum, offering methods like negotiation, mediation, conciliation, arbitration, and litigation, serves as a platform for resolving disagreements. The principles governing dispute resolution align with those observed in international dispute resolution in general. For a state acting as a buyer in international trade, the liberty to choose the dispute resolution method, encompassing the choice of law and forum, becomes crucial. However, the freedom to select the applicable law is constrained by general principles in international civil law, ensuring alignment with established legal norms. The selection of a forum is guided by principles such as actor sequitur forum rei, indicating that cases should be filed in the territory of the defendant state.

The inclusion of clauses in commercial or international sales contracts, specifying the choice of law, dispute settlement, and forum, is paramount. This pre-established agreement offers legal certainty, outlining how disputes will be addressed, the applicable law, and the jurisdiction for adjudication. Arbitration emerges as a preferred method due to its attributes of party autonomy, cost and time efficiency, and confidentiality. The choice of a specific arbitration body and the corresponding legal instrument governing the

procedure rules further enhance the clarity and effectiveness of the dispute resolution process. In the context of a state functioning as a buyer, contractual relationships with traders involve agreed-upon dispute resolution methods, encapsulating the principles of contractual freedom. This encompasses the selection of dispute resolution methods, determination of applicable law, and designation of the dispute resolution forum. These clauses provide a robust legal foundation for addressing disputes in international trade, facilitating a smoother resolution process aligned with parties' preferences and contractual agreements.

D. CONCLUSION

In the context of international trade law, the State assumes a significant role as a key legal entity. Operating as a buyer in international trade, the State commonly utilizes state-owned enterprises (SOEs) or similar entities categorized as state enterprises. This approach allows the State to participate in international trade transactions, engaging with private parties or other nations. Upholding the principles of non-discrimination and transparency, the State often bears the responsibility of reporting or notifying entities such as the Council for Trade in Goods about the presence and activities of SOEs or state enterprises involved in international trade. Contracts serve as a crucial legal foundation in international trade, particularly when the State assumes the role of a buyer. The contractual relationship between the State and the trader is governed by a binding agreement that not only regulates aspects like price, quantity, and technical details of traded goods or services but also incorporates essential clauses related to dispute resolution. The principles of contract freedom play a pivotal role in shaping these agreements, allowing parties the autonomy to select their preferred dispute resolution method (choice of dispute settlement). Moreover, contracts include choice of law clauses, determining the applicable law for contract interpretation and execution, and choice of forum clauses, specifying the venue for dispute resolution in case conflicts arise. The State's involvement in international trade extends beyond economic transactions to encompass legal aspects governing these interactions. Adhering to fundamental principles such as non-discrimination and transparency, the State, through contractual clauses, can establish legal certainty in its relationships with international traders. This process ensures the efficient and equitable progression of international trade, with dispute resolution conducted in accordance with established legal standards and agreements between the involved parties.

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