

Ketidakpastian hukum dalam penggunaan Letter of Credit akibat perbedaan penerapan prinsip pemeriksaan dokumen oleh perbankan = Legal ambiguity in Letter of Credit usage due to differing principles in document examination by banks

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Abstrak

Letter of Credit (L/C) merupakan salah satu metode pembayaran yang paling sering digunakan dalam dunia perdagangan internasional. Namun, pada praktiknya masih muncul berbagai permasalahan, salah satunya adalah terjadinya penolakan penerimaan dokumen yang diunjukkan oleh beneficiary karena perbedaan penerapan standar pemeriksaan dokumen. Skripsi ini membahas mengenai alasan perbankan tetap menerapkan standar pemeriksaan dokumen berdasarkan prinsip strict compliance meskipun UCP 600 mengatur mengenai prinsip substantial compliance dan akibat hukum dari perbedaan penafsiran tentang "international standard banking practice" sebagaimana diatur dalam UCP 600.

Hasil penelitian yang menggunakan metode penelitian yuridis normatif ini menunjukkan bahwa bank tetap menerapkan standar pemeriksaan dokumen berdasarkan prinsip strict compliance meskipun UCP 600 mengatur mengenai prinsip substantial compliance setidaknya disebabkan oleh dua (2) alasan yaitu pertama, adanya praktik perbankan di Amerika Serikat yang menerapkan Article 5 Uniform Commercial Code yang memuat pengaturan prinsip strict compliance, yang mewajibkan issuing bank selaku special agent dari applicant menjalankan tugas berdasarkan duty of good faith. Kedua, dalam hal terjadi sengketa (disputes) transaksi L/C, pengadilan internasional cenderung menerapkan prinsip strict compliance dibandingkan menerapkan prinsip substantial compliance dalam menyelesaikan sengketa L/C tersebut.

Prinsip strict compliance sebagai standar pemeriksaan dokumen Surat Kredit Berdokumen Dalam Negeri juga diterapkan di dalam praktik perbankan di Indonesia berdasarkan Peraturan Bank Indonesia Nomor 5/6/PBI/2003 tentang Surat Kredit Berdokumen Dalam Negeri. Adapun perbedaan penafsiran mengenai international standard banking practice karena UCP 600 tidak memberikan penjelasan maksud dari international standard banking practice sehingga menimbulkan dua (2) pendapat di kalangan perbankan, yaitu pendapat pertama yang menyatakan bahwa international standard banking practice di UCP 600 mengacu kepada International Standard Banking Practice (ISBP) yang merupakan pedoman aplikasi dari ketentuan-ketentuan sebagaimana tercantum dalam UCP 600 yang dibentuk oleh International Chamber of Commerce (ICC), sedangkan pendapat kedua menyatakan bahwa international standard banking practice yang dimaksud hanya mengacu kepada praktik yang biasanya dilakukan oleh bank-bank secara umum. Perbedaan pendapat tersebut menyebabkan ketidakpastian hukum bagi pengguna L/C dalam transaksi L/C.Letter of Credit (L/C) is one of the most widely used method of payment in international trade. But even with such widespread use, in practice, L/C transaction is still riddled with issues, notably the rejection of document submitted by the beneficiary due to differences in interpreting L/C regulations. This thesis is to explain why banks still prefer to use the strict compliance principle over the substantial compliance principle referred within UCP 600, and the legal consequences that arise due to the vagueness of the term "international standard banking practice" in L/C transaction as mentioned in UCP 600.

This research which was put together using the juridical normative research method revealed that banks still

prefer to use the strict compliance principle over the UCP 600-referenced substantial compliance because of two reasons. First, the existence of the banking's practice in the United States which refers to Article 5 Uniform Commercial Code that contains the settings for the principle of strict compliance, which is issuing banks acts as a special agent of the applicant therefore they must act based on duty of good faith. Second, in the case of an L/C dispute, international courts tend to apply the strict compliance principle for dispute resolution. The reason international courts use the strict compliance principle is because they refer to banking practices that have been generally practiced and accepted.

This is also true in Indonesia where strict compliance is the principle of choice in examining SKBDN documents. This preference is caused by the lack of clear definition of the term "international standard banking practice" in UCP 600 which spawned 2 (two) different interpretations within the banking community. The first interpretation assumes that the term "international standard banking practice" refers to ICC's (International Chamber of Commerce) ISBP document which acts as an implementation guideline for UCP600. While a second interpretation assumes that the term refers to banking practices that have been generally practiced and accepted. It is due to those differences in interpretations that gave to such ambiguity in L/C transactions.