

## CHAPTER I

### INTRODUCTION

#### A. Background

International trade or export-import trade is called as the document trade because almost all activities are proven with the document, for example in the sales contract which uses *Letter of Credit (L/C)*. For an exporter, documentation system means that there is a right to get payment, so the delivery process from an exporter to an importer should be proven by the appropriate and legal document.<sup>1</sup>

*Letter of Credit* is a bank statement for the importer order as a client of bank to give finance and pay the debts up to a certain limit to the exporter. An opening bank or issuing bank is opening L/C that is done by the importer through a bank. Payment using Letter of Credit gives security for both exporter and importer because there are certain commodity payments that will be sent to the buyer.<sup>2</sup>

The importer feels secured because of the certain acceptance of commodity ordered. Bank will check the legalization of the document as the requirement on Letter of Credit before they do the payment; because of that

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<sup>1</sup>Amir, MS, 2002, *Kontrak Dagang Ekspor*, Jakarta, PPM, p. 13.

<sup>2</sup> *ibid*

exporter will get their payment after they give legal documents.<sup>3</sup>

In Letter of Credit, exporter will not get the payment if they did not give Bill of Lading as the evidence that commodity export has been sent based on the contract.

The following legal of Letter of Credit (L/C):

1. L/C was lined in Uniform Customs and Practice for Documentary Credit (UCP) International Chamber of Commerce (ICC) publication no. 600 legal on 1<sup>st</sup> July 2007.
2. The legal principal of L/C in Indonesia is based on the government policy no. 1 year 1982. UCP produced 1/c policy in order to avoid disagreement and as a reference if there are any disagreement about the process and law that will be used to make the transaction well done without any injure for both sides.
3. Bank Indonesia rules on circulars No. 26/34/ULN on 17<sup>th</sup> December 1993 rules L/C is published by public bank/bank devisa allowing to follow UCP or not. Bank Indonesia in formal juridical gives the right to public bank in Indonesia to decide their decision.
4. “*Surat Kredit Berdokumen Dalam Negeri*” (SKBDN)/L/C DN is used for domestic trade.

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<sup>3</sup>Hartono Hadisoeparto, 1991, *Kredit Berdokumen ( Letter of Credit ) Dalam Jual Beli Perniagaan*, Yogyakarta, Liberty, p. 73.

## 5. Trade Usages.<sup>4</sup>

The use of *Letter of Credit* (L/C) in export and import trade, especially in Indonesia becomes one of the safest system or mechanism. Considering that Indonesia is one of the biggest market in Asian community after Thailand and the other Asian countries, it is very important to have safety system and mechanism about export and import trade and legal ruling in resolving the process of disagreement/dispute between each correspondent, on the use of Letter of Credit (L/C).<sup>5</sup>

One example of the case occurred is the case of PT Bank Central Asia versus NV Perseroan Dagang Setia:<sup>6</sup>

- *Case*

PT bank Central Asia published L/C to beneficiary in Singapore based on client order NV Dagang Setia in Jakarta. Beneficiary submits the documents to the negotiating bank in Singapore. There was not any problem with the documents. Negotiating bank pays the debts with negotiating process of specified documents.

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<sup>4</sup> *ibid*

<sup>5</sup> *ibid*

<sup>6</sup> <http://lawcovered.wordpress.com/2011/07/31/letter-of-credit-lc-ucp-600/> access on Nov'2,2014 at 1:00 p.m

After paying the debts, the negotiating bank gives the same documents to PT Bank Central Asia as the publisher bank and ask the previous payment from the public bank.

Then, PT bank Central Asia will get reimbursement from NV Perseroan Dagang Setia as the client. NV Perseroan Dagang Setia refused paying the reimbursement to PT Bank Central Asia. The reason is that NV Perseroan Dagang Setia did not get commodities based on the specified documents in L/C. Based on this refusal; PT Bank Central Asia takes a legal action against NV Perseroan Dagang Setia in district court of Central Jakarta.<sup>7</sup>

The district court of Central Jakarta investigates the dispute based on the principle of the contract separation and the imbedded principle of documents known as L/C. The adjudicator referred to the regulation in UCP 500, Article 3 and 4. The adjudicator implemented both principle based on the expert reference in the investigation process in the District Court of Central Jakarta. Based on both principales, adjudicator decides to appease PT bank Central Asia. NV Perseroan Dagang Setia is asked to do the reimbursement to PT Bank Central Asia on the certain payment of bank to the negotiating bank in Singapore.

In the appraisal of law, the District Court of Central Jakarta

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<sup>7</sup> *ibid*

decided that PT Bank central Asia just has business with no document in the commodity. Considering that the documents submitted by negotiating bank was proper with the L/C requirement, PT Bank Central Asia is obligated to pay the debt to negotiating bank in line the with L/C requirement, Because of that PT Bank Central Asia is obligated to pay the debt to negotiating bank out of actual shipment of commodity from beneficiary. As the consequence, PT Bank Central Asia has the right to get reimbursement from NV Perseroan Dagang Setia as the client that ordered L/C.<sup>8</sup>

In this case, the District Court of Central Jakarta has applied the principle of contract separation based on UCP 500, Article 3 or UCP 600, Article 4, and the principle of dependence on the documents based on UCP 500, Article 4 or UCP 600, Article 5. The practice of both principles was suitable with the L/C regulation having earlier existence than UCP.<sup>9</sup>

Even though L/C is secure enough with the certain regulation both in receiving commodity process and resolving disagreement/dispute, in the reality, there are many people who feel reluctant to use L/C in the export and import trade. As what the writer catches, when he had a study tour to one of Factory Outlets running in handicraft commodity export in Bali, the

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<sup>8</sup> *ibid*

<sup>9</sup> *ibid*

writer interviewed the owner about the export and import trade. From the interviews, the writer found that the owner did not use L/C in the export and import trade because of the old tradition. Bali has a principle of trust in their export and import trade, importer did not want to use L/C because there is uncertain situation in receiving the payment from their trade.<sup>10</sup>

From the above background, the writer was curious about the obligation of importer and mechanism applied in the transaction using *Letter of Credit* according to Law and UCP 600. Because of this case, this encourages the writer to do research with the title ;<sup>11</sup>

***“THE ISSUING OF (L/C) LETTER OF CREDIT ON EXPORT AND IMPORT TRADE IN PT. SINAR KENCANA MAKMUR JAYA***

**B. Research problem**

Based on the thesis background, the researcher investigates two cases, as the followings ;

1. How is the mechanism of L/C payment in supporting the export and import trade?
2. How is the right and obligation of the parties involving in L/C?

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<sup>10</sup> *ibid*

<sup>11</sup> *ibid*

**C. Research purpose**

1. To identify the mechanism of L/C payment in supporting the export and import trade.
2. To analyze the obligation and responsibility of the customer in the trade using L/C.

**D. Research benefit**

This research can hopefully give the significant contributions in every scientific and practical aspect, as the following:

1. In the scientific aspect, this research can hopefully give some suggestions to the development of using L/C in trade in order to create a safety transaction.
2. In the practical aspect, this research can hopefully give practical guidance to the society or entrepreneur in the trade using L/C.