

## **BAB IV**

### **PENUTUP**

#### **4.1. Kesimpulan**

Mengenai sikap diam, dapat ditarik kesimpulan bahwa sikap diam memiliki makna yang berbeda dalam setiap tahap pembentukan kontrak internasional. Dalam tahap penawaran awal dan penawaran kembali yang bersifat materiel (*counter-offer*), sikap diam umumnya tidak cukup diartikan sebagai penerimaan. Namun, sikap diam terhadap penawaran dan *counter-offer* dapat diartikan sebagai penerimaan jika terdapat: (1) kesepakatan antara para pihak, (2) praktik antara para pihak, atau (3) kebiasaan dagang tertentu yang mengindikasikan bahwa sikap diam sebagai penerimaan. Hal ini juga berlaku untuk perubahan atau pengakhiran kontrak. Akan tetapi, sikap diam dalam pengakhiran kontrak yang bermakna penerimaan wajib disertai indikasi dari keengganan pihak penerima tawaran untuk melanjutkan kontrak. Di sisi lain, sikap diam terhadap perubahan imateriel dapat secara otomatis dianggap sebagai suatu penerimaan. Dengan demikian, makna sikap diam dalam pembentukan kontrak perdagangan internasional dapat berbeda-beda sehingga harus diinterpretasikan secara kasus per kasus.

Mengenai jangka waktu yang wajar, dapat ditarik kesimpulan bahwa jangka waktu suatu penerimaan suatu kontrak perdagangan internasional merujuk pada jangka waktu yang sudah ditetapkan oleh pemberi penawaran. Jika tidak ada waktu yang ditetapkan, penerimaan harus dilakukan dalam jangka waktu yang wajar. Meskipun UPICC dan CISG secara eksplisit mengatur bahwa penentuan waktu yang wajar dapat mempertimbangkan jenis komunikasi yang digunakan, peran jenis komunikasi dalam menetapkan waktu yang wajar di era modern menjadi kurang signifikan. Alat komunikasi elektronik yang cenderung instan menyebabkan pertimbangan jangka waktu yang wajar berfokus pada aspek-aspek yang dibutuhkan para pihak sebagai pertimbangan dalam memasuki suatu kontrak. Dengan demikian, pola pikir tentang jangka waktu yang wajar berubah dari tiga elemen (waktu untuk memberikan penawaran, pertimbangan, dan memberikan penerimaan) menjadi satu elemen: waktu yang dibutuhkan untuk memberikan pertimbangan.

#### **4.2. Saran**

Secara keseluruhan, sikap diam dan jangka waktu yang wajar membutuhkan interpretasi yang cukup rumit dalam pembentukan kontrak internasional. Oleh sebab itu, penulis berpendapat bahwa penerima penawaran dalam kontrak perdagangan internasional sebaiknya mengomunikasikan penerimaan atau penolakan secara jelas terhadap penawaran, modifikasi imateriel, modifikasi materiel, maupun pengakhiran kontrak. Dengan menunjukkan penerimaan atau penolakannya secara jelas, pemberi penawaran dapat mengantisipasi langkah berikutnya yang harus ia ambil dan terhindar dari kesalahpahaman. Di sisi lain, mengingat komunikasi penerimaan atau penolakan harus diberikan dalam jangka waktu wajar, pemberi penawaran sebaiknya memberikan jangka waktu yang jelas dalam penawaran. Dengan demikian, para pihak dapat terhindar dari interpretasi jangka waktu wajar yang juga cukup rumit.

Selain itu, penulis menyadari masifnya perkembangan dalam hukum Indonesia mengenai pembentukan kontrak melalui pernyataan atau tindakan. Akan tetapi, hukum Indonesia masih belum cukup memerhatikan pembentukan kontrak melalui sikap diam. Oleh sebab itu, penulis berharap interpretasi sikap diam beserta jangka waktu yang wajar dalam kontrak perdagangan internasional ini dapat menjadi pertimbangan bagi perkembangan yurisprudensi dan hukum di Indonesia.

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