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Contract Law and Its Impact on Indonesian Contract Law

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Abstract

International commercial contracts are contracts that are concluded by parties who come from different countries or are subject to different legal systems. Because the provisions in the contract can be interpreted differently by the parties, such a contract must contain provisions regarding dispute resolution which also includes a choice of law or a choice of dispute resolution forum. Another available means of preventing disputes and conflicts of law from international commercial contracts is through the harmonization of States' national contract laws. Indonesia as an active member of the international commercial community must immediately take initiatives for that. In other words, Indonesian contract law must be revised immediately

Keywords
Contract Law; Impact; Indonesian

I. Introduction

The development of the global economy and economic integration as well as the high level of trade transactions that have specifically occurred in the ASEAN region have had an impact on the economic growth of each ASEAN country. The high level of trade transactions requires rules that can support trade transactions between ASEAN member countries. Of course, it is inevitable that the relevant rules of national law will be harmonized with the needs and developments of the rapid international trade transactions. In addition to the domestic law of each country issued by the government of a country, other rules that become a reference for business actors are contracts. The contract law of ASEAN countries is to a large extent influenced by both Western law in the form of common law and civil law

One of the most important instruments in international trade transactions is a contract. This (trade) contract is a connecting bridge that contains arrangements for commercial activities or business activities. In other words, there is a need for international commercial contracts2 which function as a behavioral reference that contains the rights and obligations of the parties to the contract. One opinion states that an international contract is a contract in which there are elements of two or more States, and the contract is made between the State and the State, the State and the private sector, or between the private parties. In contrast to that, Sudargo Gautama calls a contract an international contract because there are foreign elements in it (foreign elements). Theoretically, the foreign elements in an international contract are a. Different nationalities;

b. The parties have different legal domiciles;
c. The chosen law is foreign law;
d. Execution of contracts abroad;
e. Settlement of contract disputes abroad;
f. The contract is signed overseas;

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g. The object of the contract abroad;
h. The language used in the contract is a foreign language;
i. The use of foreign currency in the contract.

Differences in the national legal system and the contract law provisions of each country open up opportunities for conflict and dispute to occur. In addition, the difference in national law which is the normative reference for the perpetrators of trade transactions

can also cause doubt and uncertainty for foreign parties. It can even lead to its own disappointment because what was initially understood as the rights and obligations of each party turned out to be interpreted differently in the existing national legal system.

Within the ASEAN regional scope, international trade that occurs is between citizens of fellow ASEAN member countries or from outside them. The next problem is, although the form of international contracts has developed, the legal rules that are formally formulated regarding international contracts have not developed enough. This means that there is a need to adjust the national laws of each country, especially in the field of contract law, one of which is through harmonization.

However, there are differences of opinion among legal experts regarding the benefits of harmonization of national contract law. Some contract law experts, even though they have seen the relevant benefits of harmonization of contract law, remain doubtful about it. In fact, harmonization has been proven to have provided benefits in the development and modernization of national law. Harmonization ultimately supports and not hinders international trade. The same thing can be said about Indonesian national law which is growing in the middle of the ASEAN region.

One of the effective efforts in harmonizing international contract law is carried out by international organizations such as the International Institute for the Unification of Private Law (UNIDROIT). Harmonization is a useful tool in providing a neutral choice of law in determining the validity of a contract and executing a contract and resolving a dispute. The International Institute for the Unification of Private Law (UNIDROIT) has issued the UNIDROIT Principles of International Commercial Contracts (UPICC) or commonly known as with the UNIDROIT Principle. The UNIDROIT principle was first published in 1994, then revised in 2004, and then until now the last revision was carried out in 2010.

Apart from the UNIDROIT Principles, another United Nations convention that has had a major influence on the harmonization of contract law is the United Nations Convention on contracts for International Sale of Goods (CISG 1980). This convention concerning contracts for the sale and purchase of goods internationally was ratified in the city of Vienna in 1980. CISG 1980 is seen as the first comprehensive international agreement in the field of contracts made by countries in the world since the World War.

The UNIDROIT Principles provide a regulatory model for how to resolve disputes related to international trade contracts. As has been shown in several cases where courts have applied The International Institute for the Unification of Private Law(UNIDROIT Principles). The UNIDROIT principle or based on the United Nations Convention on contracts for International Sale of Goods (CISG 1980)14 both as a source of general principles of law and as an instrument, serves as a reference for interpreting and complementing national contract law. In addition, departing from the same UNIDROIT principles, the difference between a legal system and another legal system is no longer an obstacle or obstacle for the parties in conducting international trade transactions.

Indonesian contract law was initially strongly influenced by customary law (Adat Law). namely the rules that develop in accordance with the customs of each tribe in Indonesia that regulate their daily lives. One characteristic of contracts based on

customary law, namely a contract becomes binding when the object of the contract has been submitted and accepted. This is different from European law. Contracts become binding at the time of acceptance, whether made only orally or in writing without a panjer as a sign of acceptance.18 The Dutch colonial government then enacted two laws (Burgerlijke Wetboek and Wetboek van Koophandel), based on the principle of concordance, and both of these until now have had a great influence on the development Indonesian contract law. This Civil Code was enforced in the Dutch East Indies based on the announcement on April 30, 1847 (Stb. 1847 number 23), and in Indonesia it was then promulgated through Stb. 1848 (entered into force January 1, 1848).

Currently, as a consequence of the open system (from book III of the Civil Code) in Indonesia, Contract Law provides an opportunity for everyone to freely enter into contracts, even foreign contracts, including those related to foreign investment or international trade transactions. -There can also be differences between contracts made under Indonesian contract law and foreign contracts. Also, in this case there may be a need to harmonize contract law in Indonesia in the context of developing international trade transactions.

II. Review of Literature

UNIDROIT Principle, CISG 1980And the Civil Code

As indicated above, it can be said that today the most important regimes for international trade contracts are The United Nations Convention on Contracts for the International Sale of Goods 1980 (CISG 1980) and The Unidroit Principles for International Commercial Contracts (UNIDROIT Principles). The CISG 1980 and the UNIDROIT Principles apply to all types of commercial contracts, but they are two different regimes in the process of their formation. The CISG 1980 is an international convention between sovereign states, while the UNIDROITP Principles are a set of rules codified, developed and recommended by the International Institute for Unification of Private Law (UNDROIT) which is an intergovernmental organization of 63 member countries.

III. Result and Discussion

3.1 Systematics and Scope

The NIDROIT Principles consist of a preamble and 11 (eleven) chapters governing General Provision, Formation and Authority of Agent, Validity, Interpretation, Content and Third Party Rights, Performance, Non Performance, Sett off, Assigment of Rights, Transfer of Obligation, Assigment of Contracts, Limitation of Period and Plurality of Obligors and Obligees. The systematics of the UNIDROIT Principles 2010 differ greatly from the revision in 2004 which consisted of only 10 (ten) chapters. Changes to the UNIDROIT Principles 2010 by adding chapters related to the Plurality of Obligors and Obligees and separating the Limitation Period settings into separate chapters.

The scope of matters regulated in the Civil Code is wider than the UNIDROIT Principles and CISG 1980. This can be seen from the UNIDROIT Principles which only regulate trading contracts. The third book of the Civil Code also regulates reconciliation, leasing, borrowing, borrowing, granting power of attorney and others.

In addition, the third book of the Civil Code does not separate trade contracts or contracts in other civil relations. However, if you want to understand it in terms of a trade

contract as a sale and purchase, then it is regulated in Article 1457 of the Civil Code24 and which states that buying and selling has occurred since there was an agreement on goods and prices.25 Like the 1980 CISG which only regulates international buying and selling, the Civil Code regulates sales purchase in Article 1457 of the Civil Code, but does not separate international and national elements.

The validity of a 1980 CISG Contract only regulates the process of forming a sales contract along with the rights and obligations of the seller and the buyer arising from the contract. The contract was made for an annual period from February 1, 1994 to January 31, 1995 through a Supply agreement. After completion, the contract was extended for a period of 28 February 1995 to 29 February 1996. However, before the contract was executed, the government terminated the contract on the grounds that the contract was invalid because it was against Austrian national law.

Almost the same as the UNIDROIT Principle which accommodates and provides freedom for the parties to make, modify and terminate the contract and does not require other terms or conditions.31 The validity of a contract is related to the agreement of the parties based on the principle of freedom of contract. The UNIDROIT Principles aim to provide solutions to problems that arise when it is not possible to using the relevant legal sources of the applicable law in a country. Therefore, the UNIDROITP Principles are used as a source of law that is used as a reference in interpreting unclear contract law provisions. 32 If there are no applicable rules in the applicable law and governing contracts made (governing law), then the UNIDROIT Principles can be used as a reference. This means that the existing principles become additional legal instruments which are also considered valid and binding. The reason is that the principles are drawn from internationally uniform custom and practice. In short, for the most part the UNIDROITP Principles are intended as a balancing set of rules to be used throughout the world regardless of legal tradition and political economy conditions. From a formal point of view, this principle of UNIDROITP avoids the use of special terminology used in certain legal systems.

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However, at the end of the UNIDROIT Principles, we find arrangements regarding anything that can lead to a flawed agreement, namely mistakes (mistakes) both in the form of errors in facts and errors in law, fraud (fraud), threats (threats), and gross disparities (gross disparity). Regarding the error (mistake), the UNIDROIT Principles do not distinguish between errors of fact and errors related to existing legal provisions. In general, errors can occur in facts or in existing legal provisions. This means that if errors regarding facts and law occur, it can result in the parties being no longer willing to bind themselves to the contract. The error must be a serious error and not an error that can be avoided by the parties who under reasonable circumstances read and conclude the contents of the contract. Furthermore, gross disparity is the implementation of the principles of good faith and fair dealing as well as the principles of balance and justice. This is based on the fact that there is a large disparity in society. Therefore, it is necessary to form rules that can protect parties who have an unfavorable position. One party can cancel all or part of the provisions contained in the contract, if the provisions of the contract provide excessive

benefits that are against the law. Excessive profits that are considered unjustified are caused by:
a. unbalanced bargaining position;
b. the nature and purpose of the contract;
c. other factors,

giving rise to the right to cancel or amend the contract. The illegally excessive profits must occur or arise at the time of making the contract. Or at least by paying attention to the contents of the provisions of the contract it can be assumed that one of the parties will get excessive profits. However, this cannot be attributed to the risks arising from the execution of the contract itself. If in the implementation of the contract, one of the parties gets a large advantage by not violating the law, then it cannot be said that there has been a significant difference (gross disparity). If a contract does not meet the objective elements in Article 1320 of the Civil Code, the contract is null and void . This is also confirmed in the Decision of the Supreme Court of the Republic of Indonesia No. 4091 K/PDT/1989 (30 November 1991) which considers:

The deed of relinquishment of rights with the provision of compensation is declared null and void because it does not meet the provisions of the objective element in Article 1320 of the Civil Code, in this case The NIDROIT Principles consist of a preamble and 11 (eleven) chapters governing General Provision, Formation and Authority of Agent, Validity, Interpretation, Content and Third Party Rights, Performance, Non Performance, Sett off, Assigment of Rights, Transfer of Obligation, Assigment of Contracts, Limitation of Period and Plurality of Obligors and Obligees. The systematics of the UNIDROIT Principles 2010 differ greatly from the revision in 2004 which consisted of only 10 (ten) chapters. Changes to the UNIDROIT Principles 2010 by adding chapters related to the Plurality of Obligors and Obligees and separating the Limitation Period settings into separate chapters.

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the waiver party does not have the slightest right to sell, pledge, and or own the object of the case so that the waiver agreement is considered to have never occurred.

In the event that an agreement is based on or reached due to violence or coercion as well as threats, then it must be unlawful, such as being threatened with death, kidnapped, tortured. A threat that is not against the law cannot be considered as violence, namely a threat to be sued in court or to be reported to the police. In the UNIDROIT Principles there is no question of skill or authority. On the other hand, in the Civil Code, the second element, namely the capacity which is part of the subjective element, has an important meaning. The non-fulfillment of the subjective element causes the contract to be cancelled. According to Article 1329 of the Civil Code, basically everyone has the authority to make an engagement except those who are declared incompetent for it.

IV. Conclusion

Harmonization of contract law is a middle way that can be taken in the context of renewing Indonesian contract law. Harmonization means not imposing a provision or rule of contract law from the State to apply to other countries, and vice versa. In addition, through the harmonization of contract law, in particular, Indonesia is still able to renew Indonesia's contract law. At the same time, when Indonesia is facing the development of modern transactions or trade, it is necessary to provide contract law that is in line with the standards set by the UNCITRAL Principles and CISG 1980. In In addition, it is necessary to pay attention to advances in information technology, which clearly have a large influence on the variety of forms of international trade transactions. The provisions of the Indonesian Contract Law (KUHPerdata, especially Article 1320) are still worth defending and fighting for so that they become a common reference when making business contracts or international transactions. The principle contained therein, freedom of contract, should still guarantee the freedom for the parties to determine the mechanism or provisions for the validity of a contract.

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