

The Strategy of Laws' Harmonisation Underlying National and International Business Law

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The purpose of the study is to describe and analyse strategies for harmonizing laws that underlie national and international business law using normative juridical methods. Research Results: differences in National Business Law and International Business Law. International business law is a special contract law that has a foreign element. Regulating general provisions and specific provisions for certain contracts, for example international contracts are made and governed by Indonesian law, then the articles of the Civil Law Law apply. The existence of the WTO Unification and Harmonisation Policy (World Trade Organization) is an example: where the integration of international trade and legal rules is applied to its member countries. The ICC (International Chamber of Commerce) standard is included in many business contracts, although not binding. Its two legal products, UCP 600 and Incoterms 2015, regulate rights and obligations as well as costs and risks for sellers and buyers in each trading condition to provide a universal definition of standards in international trade transactions, such as FOB and CIF. National and international business contracts, the rights and obligations of each party in accordance with the agreement based on the agreed contract.

Key words: *Legal strategy, harmonisation, underlying business, national and international law.*

Introduction

International business involves transactions in the trading of goods between countries. To protect each trading party, both seller and buyer must agree to the trade via a contract. The details of each specific trade in goods or services between the seller's goods or the buyer's

services must be part of the agreement¹ obligations. ²Until a contract is ready for signature, an *inquiry* is requested for an offer price usually by an importer addressed to an exporter. It provides the offer and terms for delivery and contains all information requested by the importer. Product name, product quality, product price, *delivery terms, trade terms and packing/labelling* are included. A negotiation order is where a second party negotiates about price and includes requisite shipping documents which must list delivery goods. After this bargaining, the principle price has been agreed and both parties continue to develop the contract. A trade product contract is the most common in trade transactions. This form can look like form contract which classic, oldest or traditional. The form contract to use as well as basic for other contracts.

International trade contracts, generally set out and articulate load clauses. These include:

1. The type and quality goods. This clause provides a description of the objects contained in the contract. Another function provides for the description of goods as checklist whether other parties have executed the contract in good faith which allows for the import-export customs process to be accelerated.
2. Price clause and payment method. This clause ensures the buyer has executed their obligations appropriate to the agreement reached (Dirdjosisworo, 2006). In this, a buyer executed obligation will determine whether or not the obligation has been implemented.
3. Shipping goods, date, and shipping method. In an international trade contract, this clause is important as it determines where and when goods will be sent, the method of delivery and where the goods must be received.
4. Risk transition clause is a clause where certain parties must carry risk on damage or lost goods.
5. The choice clause has become common in contracts of international trade goods. This clause ensures that choice of law will be blank if clauses in the contract are apparently not regulated. This clause will be applied by the judiciary, including arbitration to finish the legal action (Muhammed, 2016).
6. The forum clause is similar to the clause above and is where parties anticipate legal action. If legal action is the case, the forum becomes a way for parties to finish legal action and includes legal action by judiciary and/or arbitration.

¹ Moreover, each party can add conditions and obligations to the agreement. In principle, a contract will include a signature for both parties once they have agreed to the conditions and obligations.

This study is informed by and relies on three sources for an analysis of the law: (a) the laws, (b) secondary sources, including relevant documents, journals, and national and international theories, and (c) tertiary level sources, such as the encyclopaedia, dictionary, and Black law. Data analysis will derive from secondary data. This study uses a qualitative approach to achieve more in-depth descriptions from a case study rather than statistical data.

Result and Discussion

Harmonisation, according to Honka, is the uniform regulation or substantive principles of Contract Law. Grace Xavier further suggests that each country's contract law has its own distinctive characteristics. For example, India and Malaysia have their own contract law, while the United Kingdom has none. Therefore it is necessary to find uniformity or common meeting points of existing legal systems and their underpinning fundamental principles.

The fundamental principles of International Business Contract Law are:

- a. The basic principle of contracting freedom (Tineke, 1998).
- b. The basic principle of Pacta Sunt Servanda (in good faith).
- c. The basic principle of Dispute Resolution through Arbitration (Eventia, 2017).
- d. The basic principle of Freedom of Communication (Navigation),

With regards to contracts, national and international businesses must adhere to the rights and obligations of each of the parties appropriate to the agreement reached. The rights and obligations of the contract are consistent with the principle of liberty as expressed in law, such as the Indonesian section 1338 Civil Code, (Supreme Court Justice, 2013) the principle of good faith, (Supreme Court Justice, 2013) and the competition "market" where contracts are freely negotiated and doing legal business (Pham, 2016).

Regarding international business that requires speed and certainty, one critical practice in international trade are harmonisation based on balance, which is the law in all areas of transportation, by sea, land, or air. Harmonisation derives from the Greek word harmonia, which means tied in harmony/accordingly (Dagmar, 2001). And, harmonisation is the effort to find harmony, meaning parties are in the same barrel, harmonious, appropriate, and worth it (Shadily, 2017; Ahmad, Mohamed & Manaf 2017). Concern about unification and harmonisation of international trade laws, international agreements include the General Agreement on Tariff and Trade (GATT) (Agency Development and Fostering of Language Ministry of Education Culture, 2012). (General Agreement on Tariff and Trade, 1986) GATT rules seem to have given participating countries a "balanced" rule between rights and obligations, and "special rules" for developing countries. About two-thirds of GATT member states are developing countries still in the early stages of economic development.

The GATT's essential purpose was to increase harmony and achieve a balance between self- and related interests of opposing parties which, in turn, lead to the harmonisation of global trade laws. The WTO's (Huala, 2005) unification and harmonisation policy is one example: the unification of international trade rules and laws apply to member countries. Section XVI of the WTO holds that: "Each member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed agreements" (Section XVI paragraph 4 of the Agreement Establishing the World Trade Organization). The provisions in this section are an important indicator of how the WTO requires its member states to adjust their trade rules or laws to the rules contained in the WTO agreement's Annex. Even the provisions of Section XVI require member states to adapt administrative procedures (bureaucracy) in accordance with WTO administrative procedures.

The WTO agreement includes additional agreements meant to further harmonise international trade laws, including the Trade-Related Aspects of Intellectual Property Rights (TRIPS), through which the WTO encourages its members to harmonise their domestic product standards (Adolf, 2005). Secondly, the International Institute for the Unification of Private Law (WTO, 2018) is an independent international organization aimed at conducting studies to modernise, harmonise, and coordinate private law, especially commercial law between countries or among a group of countries. Thirdly, the United Nations Commission on International Trade Law (UNIDROIT, 2018) was established by the United Nations' General Assembly and designed to reduce legal differences among member countries that can be a hindrance to international trade. UNCITRAL also promotes progressive harmonisation and unification of international trade.²

The International Chamber of Commerce (United Nations Commission on International Trade Law (UNCITRAL), 2006) serves the global business community to improve trade and investment, open markets for goods and services, and promote capital currently. Other important roles include: acting as a settlement forum especially through arbitration; acting as a forum for the wider dissemination of information and policy rules about international trade law among the world's entrepreneurs; and providing training and techniques in contract design and other practical skills necessary for successful international trade. The ICC provides the rule and standards of the international business law but does not put its efforts into creating unifying legal systems.

For international Contract Law in the form of standard contracts, governments maintain the importance of trade in promoting economic growth, which leads global traders to question the relationship of trade to business. The existence of these trade associations, among others, aims to facilitate trade and one avenue is to introduce standard contract forms. Another aspect to note in relation to the standard contract is its offering. Standard contracts may be listed through

a declaration in contract documents or by appointment. The latter is the incorporation of terms by reference, for example, the obligation of trade i.e. free on board (FOB). The standards issued by the ICC have been widely incorporated into commercial contracts made by business people, although they are non-binding. However, Hondius maintains that the case for a standard for agreements as binding has been strengthened because it is now a habit that has taken hold in environmental society and trade. Two ICC legal products – the Uniform Customs and Practice for Documentary Credits (UCP) 600 (The World Business Organization, 2017) and the International Commercial Terms (Incoterm)16– regulate the rights and obligations as well as the costs and risks to each seller and buyer during trade by terms (The World Business Organization, 2008) established to provide standard universal definitions for terms used in international trade transactions, such as FOB or cost, insurance, and freight (CIF).

Example: The Case of Fob Price

The responsibility of the law under FOB trading can be shown by the example of the export-import case of PT Pusri Fertiliser and FOB price. PT Pusri is an exporter of urea fertiliser to the Philippines, Australia, China, Vietnam, and Korea. Pupuk Sriwijaya chooses the terms of trade and is established when the seller must fulfil its obligations to deliver the physical goods to the buyer.

The delivery point is important because it involves the seller's risk of the goods (against loss, damage, further transport, and cost stockpiling) and is the location at which the buyer assumes the risk for the goods. The legal responsibility of Pupuk Sriwijaya, Ltd (as a liability) is to take care of the export license and deliver the goods to the landing port (loading port) to the point or place of delivery, which has physically and jurisdictionally moved from Pupuk Sriwijaya, Ltd to the buyer. The factors affecting Pupuk Sriwijaya, Ltd's choice are obligations related to FOB trade because (a) the difficulty with finding the ship or the number of vessels is reduced and; (b) Pupuk Sriwijaya, Ltd does not want to risk damage or a loss of goods. As a seller (exporter), Pupuk Sriwijaya, Ltd's selling price of urea fertiliser is cheaper so the buyer has the obligation to bear all costs and risks damage and loss from the point of delivery. FOB price includes the price of the goods, the cost of transportation to the dock, as well as the cost of transportation on the ship (Detik, 2007).

Business trade transactions are challenge international business law. The challenge to this area of law is to accommodate this rapid development through legal rules. But it is indispensable to business people who need to operate with legal certainty as well as legal protection. The concept of a uniform application, however, requires elaboration:

1. For international contracts, uniform means rules and principles of law at least the same or almost the same ('similar or almost similar rules').

2. Uniform is the application of the rules of contract law internationally that do not result in a difference.²

Difference of National Business Law and International Business Law

Table 1: National Business Law

No	National Business Law
1	Contractual General
2	Article 1320 Civil Code. The matters stipulated in the contract must be agreed upon by the parties.
3	The parties are free to determine to whom they will enter into an agreement (contract) or the parties are free to determine their business opponents. As in Indonesia article 1338 of the Civil Code
4	The principle of good faith Article 1338 (3) Civil Code This principle must be considered to exist, at the time of negotiation, contract implementation until dispute resolution
5	Principles of Reciprocity (Reciprocal) The parties to the contract must exercise their respective rights and obligations reciprocally

Table 2: International Business Law

No	International Business Law
1	Specific contract
2	National contract law with foreign elements
3	International Contract Law regulates general provisions, also regulates special provisions that are pleasing to certain contracts, for example when an International contract is made and governed by Indonesian law, the articles of the Civil Law Act apply.
4	Business Habits Habit is a source of law and this also applies to international business law and this business practice can be a guide in regulating the achievements of international business contracts with the following conditions: a). The habit is repeated b). What is done repeatedly is accepted as law so that it is called custom law (accepted as law)
5	The WTO (World Trade Organization) Unification and Harmonisation Policy is one example: where the unification of international trade rules and laws is applied to its

	member countries. TRIPS (Trade Related Aspects of Intellectual Property Rights) agreement
6	The ICC standards have been incorporated into many business contracts made by business people, although not binding. The two legal products of the ICC, UCP 600 and Incoterms 2015, regulate rights and obligations as well as costs and risks for sellers and buyers on each of the trade conditions set to provide standard universal definitions for terms used in international trade transactions, such as FOB and CIF
7	UNIDROIT (The International Institute for Unification of Private Law) is an independent government organization whose purpose is to conduct studies to modernise, harmonise and coordinate private law, particularly commercial (trade) law between countries or between groups of countries.

Result

With the existence of differences in National Business Law and International Business Law: international business law is a special contract law that has a foreign element. Regulates general provisions and special provisions which are pleasing to certain contracts, for example when international contracts are made and governed by Indonesian law, then the articles of the Civil Law Act apply. This business habit can be a guide in regulating the achievements of international business contracts. The existence of the WTO Unification and Harmonisation Policy (World Trade Organization) is one example: where the unification of international trade rules and laws is applied to its member countries. TRIPS agreement (Trade Related Aspects of Intellectual Property Rights). ICC standards have been incorporated into many business contracts made by business people, although not binding. The two legal products of the ICC, UCP 600 and Incoterms 2015, regulate rights and obligations as well as costs and risks for sellers and buyers on each of the trade conditions set to provide standard universal definitions for terms used in international trade transactions, such as FOB and CIF. UNIDROIT (The International Institute for the Unification of Private Law) is an independent government organization whose purpose is to conduct studies to modernise, harmonise and coordinate private law, especially commercial (trade) law between countries or between groups of countries.

Conclusion and Recommendations

In terms of the differences in national and international business law, the latter is a special contract law that has a foreign elements. It regulates general and special provisions which are attractive to certain contracts, for example when international contracts are made and governed by Indonesian law, and then the articles of the Civil Law Act apply. This business habit can be a guide in managing the achievements of international business contracts. The existence of the WTO Unification and Harmonisation Policy (World Trade Organization) is one example where



the unification of international trade rules and laws is applied to its member countries. Another example is the TRIPS agreement (Trade Related Aspects of Intellectual Property Rights. UNIDROIT (The International Institute for Unification of Private Law) is an independent government organisation whose purpose is to conduct studies to modernise, harmonise and coordinate.

Recommendation

ICC (International Chamber of Commerce) standards have been incorporated into many business contracts made by business people, although they are not binding. The two legal products of the ICC - UCP 600 and Incoterms 2015 - regulate rights and obligations as well as costs and risks for sellers and buyers on each of the trade conditions. They are set in order to provide standard universal definitions for terms used in international trade transactions, such as FOB and CIF



REFERENCES

Adolf, H. (2005). *Hukum Perdagangan Internasional*, Jakarta: PT RajaGrafindo Persada.

Agency Development and Fostering of Language Ministry of Education Culture, (2012). *Harmonisasi* (2012), <https://kbbi.web.id/harmonisasi> (accessed 25 January 2017).

Ahmad, R. B., Mohamed, A. M. B., & Manaf, H. B. A. (2017). The relationship between transformational leadership characteristic and succession planning program in the Malaysian public sector. *International Journal of Asian Social Science*, 7(1), 19-30.

Butir-butir ini bersifat fundamental karena karakternya, yaitu kebebasan berkontrak sebagai penghargaan atas aspirasi mereka yang berkontrak. Prinsip setiap janji yang diikat dalam sebuah kontrak (perjanjian) harus ditaati, penyelesaian sengketa melalui arbitrase yang bermuatan cepat dan adil, dan tentunya, komunikasi yang bebas dan terbuka.

Commercial Law and Tecnology, 8(4).

Dagmar, C-W. (2001). Constitutional Asects of Party Autonomy and its Limits- The Prospective of Law Stephen Grundman & Wolfgang Kerber & Stephen Weatherill, *Party Autonomy and the role of Information in the internal Market*, Walter de Gruyter.

Detik, F. (2007). *Sriwijaya Fertiliser Export 40000 Tons of Urea to Malaysia and Thailand*, <https://finance.detik.com/berita-ekonomi-bisnis/773637/pusri-ekspor-40000-ton-urea-ke-malaysia-dan-thailand-> (accessed 25 January 2017).

Dirdjosisworo, S. (2006). *Introduction to International Trade Law*. Bandung: PT Refika Aditama. p. 33.

Eventia, R. C. (2017). *Legal Principles in Function and Performance Of Bot Contract*, *Jurnal Yuridika Fakultas Hukum Universitas Airlangga*, P-ISSN (0215-840X). E-ISSN(2528-3103), 32(3).

General Agreement on Tariff and Trade, (1986).

Grace, X. (2004). *Global Harmonisation of Contract Laws Fact, or Fincitons*, 20:1 *construction LJ*.

<https://en.m.wikipedia.org/wiki/incoterm> diakses tanggal 10 Juli 2017

<https://id.m.wikipedia.org/wiki/harm...>

<https://kbbi.web.id/harmonisasi>



<https://iccwbo.org/about-us/who-we-are/> diakses tanggal 10 juli 2017

Incoterms 2015: The incoterms rules or international commercial

Kitab Undang-undang Hukum Perdata

Muhammed, Z. (2016). *Due process of Law in International Commercial Arbitration With Special Reference to production of Documents*, Journal of Law and Criminal Justice, 4(1), ISSN: 2374-2674 (Print), 2374-2682 (Online).

Ni Ketut, S.D., Desak, P. D. K., I Gede, A. K. & Putu, A. S. (2018). *The Guiding Principles on Business and Human Right ; national Action Plans Toward Corporation Responsibility*, Journal Hasanudin Law Review, 4(2): 128.

Penyelesaian Sengketa Bisnis, Sinar Grafika, Jakarta.

Pham, D. N. (2016). *From Marx TO market: The Debates on The Economic System in*

Shadily, H. (2017). *Ensiklopedia Indonesia* (2017), <https://id.wikipedia.org/wiki/Harmoni> (accessed 25 January 2017).

Supreme Court Justice, (2013). *Indonesia's Civil Code Article 1338 about The Consequences of An Agreement*, <http://www.kuhper.com/> (accessed 25 January 2017).

Taryana, S., (2004). *Prinsip-prinsip UNIDROIT Sebagai Sumber Hukum Kontrak dan*

The World Business Organization, (2008). *Uniform Customs and Practice for Documentary Credits*, <http://store.iccwbo.org/icc-uniform-customs-and-practice-for-documentary-credits> (accessed 25 January 2017).

The World Business Organization, (2015). *Incoterms 2015*, http://www.one-ill.com/downloads/incoterms_2015.pdf (accessed 25 January 2017).

The World Business Organization, (2017). *International Chamber of Commerce*, <https://iccwbo.org/> (accessed 25 January 2017).

Tineke, L. T. L. (1998). *Asas Ketertiban Umum dan Konvensi New York, 1958*, Bandung: PT. Citra Aditya Bakti, hlm. 22.

UCP 600 (*The Uniform Customs and Practice for Documentary Credits 600*)

UNIDROIT, (2018). (*The International Institute for the Unification of Private Law*). <https://www.unidroit.org/about-unidroit/overview> (accessed 1 February 2018).



United Nations Commission on International Trade Law (UNCITRAL), (2006). *United Nations Commission on International Trade Law, Model Law on International Commercial Arbitration*, (2006), <http://www.uncitral.org/> (accessed 25 January 2017). ICC (International Chamber of Commerce)

Vietsnam's Revised Constitution. Asian Journal of Comparative Law, 11.

WTO, (2018). (*World Trade Organization*). https://www.wto.org/english/tratop_e/trips_e/tripfq_e.htm (accessed 1 February 2018).

Yunwei, F. (2013). *Freedom of Contract in the EU and China*. Journal of International