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The Common Ground between International Trade Contracts and Foreign Investment Contracts in Indonesia

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The objective of the current research paper was to analyze the common ground between international trade contracts and foreign investment contracts in Indonesia. The writer of the present paper conducted a quantitative and cross-sectional study. In order to gather data on the common ground between international trade contracts and foreign investment contracts in Indonesia the researcher of this article used a content based analysis. The literature review for this study included previous articles, documents, reports and laws. On the basis of the past research, documents and laws similarities and differences were identified between international trade contracts and foreign investment contracts in the state of Indonesia. Similarities and differences were established in the legitimate foundations employed in both foreign as well as international contracts of diverse characteristics. The international aspect that might be a pointer of an international contract is an overseas factor that could be one of: diverse populations; the members have legitimate residence in various nations; the principle selected is international rule, comprising the laws or values of international agreements in contradiction to the agreement; differences in reimbursement of contracts is alleged abroad; the implementation of this kind of contracts out of the country; the agreement is contracted abroad; the body of the agreement out of

the country; the language utilized in the agreement is an international language; and the usage of international currency in the agreement. The literature on the common grounds between international trade contracts and foreign investment contract in Indonesia is very limited. Thus this paper will enhance the literature on the topic of common grounds between international trade contracts and foreign investment contract in Indonesia.

Key words: *Differences, Foreign Investment Contracts, International Trade Contracts, Similarities, Indonesia.*

Introduction

The members of international agreements experience trouble in evaluating the rights and duties when they are in diverse cultures or countries. This study explains international trade contracts and foreign investment contracts in Indonesia. After a transformation of contract approval a radical market price failure arose in Indonesia (Serebryakova, Semenenko, Grishchenko, & Ulchenko, 2016). The economy of Indonesia is currently in the stage of the growth with Indonesia placing itself as a main destination for foreign direct investment (FDI). In the beginning of the 2018, the economy of Indonesia had made stable development and its expansion was anticipated to grow in 2019. Numerous research observed that Indonesia currently views itself at a major state in its change from the economy of a low income to middle income, and from key manufacturer to an effective and efficient exporter as well as a knowledge dependent economy (Haseeb, Suryanto, Hariyatie, & Jermsittiparsert, 2019).

These growths can be described by the enhanced expenditure on infrastructure by the government of Indonesia; boosting domestic demand; and increasing foreign direct investment (FDI). Moreover, the growing of foreign investment likelihoods in all segments is likely to permit financiers to take part in a market in the world's largest developing area which demonstrates solid essentials and is prepared to develop (Amalia, Sabrie, & Dian, 2018; Chung, 2006). In addition, Indonesia has in recent times directed international trade negotiations with several nations. Up to the present time, Indonesia has finalized the trade negotiations with the economic communities of Pakistan, Japan, and ASEAN (the Association of South-East Asian Nations).

Indonesia also has forty five dynamic BITs (bilateral investment treaties). While Indonesia has stated a broad declaration that these bilateral investment treaties (BITs) will be withdrawn, they are not able to be mainly uncontrolled. BITs (bilateral investment treaties) are basically dependent upon a justly regular set-up, which establishes a period of validity that is inevitably transformed. The members has to provide notification of their purpose to dismiss at the end of that period. It has been identified that economic globalization increases

the organization of international business law, as commercial individuals amongst various kind of nations will see each other therefore the similar authorized laws are needed. The impact of foreign direct investment law on the establishment of predetermined associations in different nations, including Indonesia, is unavoidable. The representation of the world trade organization (WTO), Asian Free Trade Area (AFTA), and Asia Pacific Economic Cooperation (APEC) will boost the strength of public associations in the kind of numerous business agreements.

Contract law is a highly vital issue in the globalization period specifically to upkeep the actions in the trade segment and international business dealings. Maintaining the linkage of the members within the global domain is not a simple concept (Hutagalung, 2013). Executing the law of good reliance in the preference of law is one of the highly common issues of the international business contract, specifically in the agreements of FDI (foreign direct investment). The application of the law of good conviction in the selection of law progressively decreased by the appearance of some issues in the contract of the business investment, where undeniably, the most distressed objects are local financiers who also host the nation.

This research examines the common ground between international trade contracts and foreign investment contracts in Indonesia. Law of conviction in the selection of principle to recognize the justice between the members with diverse range of laws, particularly on the private as well as public investment agreements amongst the FDI (foreign direct investor) and local financiers in the state of Indonesia, in the procedure of development, execution, or post agreement. An emerging nation like Indonesia also experiences the unevenness of negotiating their place as a host nation. The law of international trade approved, for example the Most Favoured Nation confined in Article 1 paragraph (1) of GATT, which predicts that every nation is treated fairly however the evidences is that there is no fairness between the emerged and emerging nations (Sornarajah, 2017).

The objective of the present paper

This paper includes two main objectives which are detailed below:

1. To examine the similarities between international trade contracts and foreign investment contracts in Indonesia.
2. To examine the dissimilarities between international trade contracts and foreign investment contracts in Indonesia.

The current research article covers five parts. In the first part of the study the writer of this article introduces the study. In the second part of this research paper, the literature review on the international trade contracts and foreign investment contracts in Indonesia is referenced.

In the third part of this paper the research methodology is described. In the fourth part of this paper an analysis of the similarities and differences between international trade contracts and foreign investment contracts in Indonesia is made. In the last and fifth part of the article, the study findings are summarized.

Literature review

In the second section of this paper the study of past research papers is presented as an investigation of the concept of contract, Code of law and Laws and sections in contract principle of Indonesia.

The concept of contract in Indonesia

Indonesia is one of the nations whose principles are constantly developing ensuing the growth of the community. One of them is the domain of contract rule that has grown both for foreign as well as local business contracts. The presence of these expansions is because of the growing diversity of contracts conducted by members to fulfil their requirements. The Indonesian community is part of the international community, where legitimate activity is conducted, and thus it is required to pay consideration to worldwide characteristics particularly linked to international business dealings. In accordance with the characteristic and scope of the principle, required contracts are discriminated into international contracts and foreign contracts. A foreign contract is an agreement whose members have no international aspect, whereas an international contract is an agreement in which there is an international aspect.

The part of contract law that is essential to be described it that it is, with the developing product, established by the ensued effort in the rise of the transformation of the investment from one individual to another; and with the rising part of financing institutes more and more motivating individuals are required to carry out the transactions of business and the part of the contract is more and more superficial (Salacuse, 2013). The concept of a contract is a settlement recognized, writer or oral and which is associated with the communal trade or business. The scholar Simpson (1965) explains a contract as a settlement among 2 or more people comprising of an undertaking or joint undertakings that the law will impose, or an enactment of which the law in some manner identifies as an obligation (Dolzer & Schreuer, 2012).

The researcher Minarosa (2018) described the explanation of a contract as a treaty among 2 or more people which forms a responsibility to perform or not to perform a certain thing. Indonesian lawyers such as Yusup and Subekti (2010) explained contract as a promise for an occasion in which there is an assurance to another individual or to an individual's assurance

with one another to do something or not to do it. In international trade, the expansion of contractual law is not actually released from the development of the human with its trade activities therefore the expansion of international trade can't be detached from the progress of contract law (Shmaliy & Dushakova, 2017). Serebryakova et al. (2016) noted that contract law development is actually divided into 4 main stages . 1st, the international law included in (Lex Mercatoria), 2nd, the international agreement law in state-law, 3rd international agreement law as the contract of standard, 4th, international agreement law in virtual reality.

In Indonesia contracts are administered by The Indonesian Civil Code or by the Adat "customary law". In general the law of Adat rules contracts among participants of the native population in a countryside region. It doesn't intended for international transactions or for European transactions. The law of Adat is not constitutional, not written, and not constant all over Indonesia. In accordance with the law of Adat, the requirement of a contract is a definite disbursement i.e. one which is essentially conducted. a. There is no certain age restriction for one to have the capability to enter into an agreement. b. Contracts relating to non-concrete matters are remarkable but likely. c. Comparable the Civil Code, Adat principle needs open determination of the contracting members and legitimate source of the contract (Lev, 1962).

Code of law in Indonesia

In Code of law in Indonesia, there are 4 main prerequisites to the generation of a contract. In accordance to the Article number 1320 declares that a contract is legal only if it meets the subsequent perquisites: a. Settled dependent upon the open determination of the members; b. Proficient members; c. certain unit; and d. legitimate entity and substances. In general code of law, there are 3 main fundamentals to the establishment of an agreement: a. contract; b. prescribed objective; c. contemplation. The primary need of an agreement is that the members ought to have attained an international contract (Lev, 1965). In general terms, a contract is attained when one member provides a proposition, which is identified by another member. In determining whether the members have extended contract, the courts will put on an unprejudiced examination.

In accordance with the legal structure of Indonesia, the factors for an agreement are: The notion of prescribed is fundamentally that a member establishes a proposal presumptuous, which possibly will be created open either to the domain in general or to a person; b. It might be made either vocally, in script or by other ways of communication for example telex, broadcast or by other automated modes; c. Goal to generate legitimate linkages: Members ought to be restricted in the contract, which is legitimate enforceable; d. It has to be somewhat of significance in the judgements of principle, usually in financial terms but not continuously so extended as it is of definite importance and value (Bedner, 2016).

Laws and sections in contract principle of Indonesia

There are few laws and sections in the codes of Indonesia that have to be implemented in international contract for the purpose of evading harm aspects and factors. For example, liberty of an agreement: code of law in Indonesia was embraced in clause number 1338; it declares that the people in Indonesia or parties might make some type of agreement not in conflict with any other principle, tradition, faith, decorum and affability for example franchising, joint venture, licensing, memorandum of understanding (MOU), and renting. This kind of contract is an innominate agreement. Nominate agreement is a contract on the code of Indonesia and dual types of agreement were settled on by the clause number 1229. The resulting are kinds of agreements which are structured distinctly in the international contractual code of law in Indonesia (Butt, 2012). Consensual law is the code that was held on the clause number Article 1320 (1) stated that agreement in broad terms is able to be held legally but adequate with the contract of both the members.

In addition, Pacta Sunt Servada is the law that implies that a magistrate or 3rd party has to be regarded the constituent of the agreement which held the parties as the principle. The good reliance is the law that is confined in the Article number 1338 section three which declares that the international contract have to be in the respectable faith. Personality is a law which sets up that an individual is likely to pledge to make an agreement for his or her own self (Watkin, 2017). The international investment contracts in the public domain are mainly one of the foundations of International law in accordance to the Article number thirty eight (1) of the Decree of the International Law of Justice. In clause number thirty eight (2) of the Decree, there are numerous causes of principle of the international investment decree, for example an accord, accustomed international rule, broad codes of act, and legal verdicts. The accustomed international act, in addition to the international investment contracts, are the foundation of the establishment of the legitimate law of the financier fortification surrounded by the context of the international investment.

As a result, state accountability will be established if host declares interrupt the truths of financiers secured in accordance to the accustomed international law as well as international investment contracts. The International customary principle grows as an international slightest standard of action and International minimum standard of fortification. The outmoded notion of diplomatic safety and conduct of foreigners are duties acknowledged as an international accustomed principle that is the foundation of the safety of the international investment (Sornarajah, 2017). The broad laws that have been acknowledged as patterns are the law of agreement, trade off, and parity of conditions, the conclusiveness of awards and reimbursements, and the legitimate legitimacy of contracts, upright reliance, local authority, and the liberty of the depths.

Additional laws that are also trans-nationally identified are domestic action, furthermost preferred state action, pacta sunt servanda as well as rebus sic stantibus. The substances of considerable international investment contracts in two-pronged, local and many-sided kinds offered greater safety for the welfares of financiers (Dumberry, 2012). The construction of the defence of practical financier rights for example NT, security, MFN, complete safety and subsidiary expropriation is highly liberal and not ultimately described. This offers an occasion for judges within the negotiation unit to offer a highly wide elucidation that will lead in widening the extent of the safety for the welfares of financiers.

In some situations, the Government of Indonesia allotted by the international financiers by means of Investor-State Dispute Settlement lead in conflict amongst the host nation and home nation and in accordance with the international financiers, the rules settled on by the government of Indonesia are damaging them. Regarding the government of Indonesia, pleas by international financiers to the international court of law have requested reasonable and impartial action code of law. The code of practicality is a significant law in the Reasonable Action Law. In the law of fairness, the beneficiary nation needs to have strong cause and purpose in creating a policy (Subedi, 2016).

Research Methodology

In order to know the similarities among foreign trade contracts and international trade contracts, this research used content based analysis. So as to collect data on the similarities among foreign trade contracts and international trade contracts in Indonesia, a review of past papers and laws was conducted. In nature, this paper is quantitative. To collect data on the subject of the present paper the researcher explored past articles and studied foreign and international trade contracts so as to explain the similarities among foreign and international trade contracts. On the basis of the past papers and on the basis of different international and foreign laws and contracts, similarities and differences among foreign trade contracts and international trade contracts were drawn. The current paper follows the cross-sectional time horizon. As the data on the similarities among foreign trade contracts and international trade contracts was collected just once, while conducting and writing this paper the investigator of this article kept in mind ethical research approaches.

Similarities and Differences between International Trade Contracts and Foreign Investment Contracts in Indonesia

The international aspect that might be a pointer of an international contract is an overseas factor could be: diverse populations; the members have legitimate residence in various nations; the principle selected is international rule, comprising the laws or values of international agreements in contradiction to the agreement; differences in reimbursement of

contracts is alleged abroad; the implementation of this kind of contracts out of the country; the agreement is contracted abroad; the body of the agreement out of the country; the language utilized in the agreement is an international language; and the usage of international currency in the agreement. The stated aspects are signs of a bond characterized as an international agreement. The sign is a connection factor that is a foreign aspect. The international facet enables the contract an international agreement. The foreign aspect in the bond is the cause of such an agreement is a local agreement or an international agreement (Dolzer & Schreuer, 2012).

Similarities and differences are established in the legitimate foundations employed in both foreign as well as international contracts of diverse characteristics. The foundation of foreign contract principle has to utilize a cause of rule obtained from the foreign rule of law, on the other hand international trade agreements are not merely inclined to the international law only. The basis of the law can be categorized into seven main legitimate kinds which are: the nine national law (comprising the legislature of a nation whether openly or indirectly linked to the trade agreement); documents of the agreement; taxes in the domain of international trade linked to agreement; wide-ranging legitimate laws of agreement; court presiding; policy; and international contracts (regarding the foreign agreements).

Such of foundations might be utilized as a position in the procedure of developing an international agreement. The subtleties of trade associations that involve foreign trade individuals, specifically, international trade agreements, have inclined to the growth of the trade agreement law that approves the worldwide codes established in the custom practice (Amalia et al., 2018). In addition, the doctrines in the international contracts also put on to the foreign trade agreements. The central difference between the both is the presence of a code of independence of the members where it causes the selection of the rule and the preference of the medium pertinent to the contract they create. The codes of contract rule are the code of autonomy of agreement; the code of pacta sunt servanda; the code of parity; the code of privacy of agreement; the code of consensual; and the code of moral reliance. The values motivate the establishment of agreements in Indonesia, both foreign investment contracts as well as international trade contracts (Bedner, 2016; Aparajita, 2018).

Similarities between International Trade Contract and Foreign Investment Contracts	Differences between International Trade Contract and Foreign Investment Contracts
1. The members have legitimate residence in various nations.	1. The foreign aspect in the bond is the cause of such an agreement is a local agreement or an international agreement.
2. The principle selected is international rule.	2. The foundation of foreign contract principle have to utilize a cause of rule obtained from the foreign rule of law.
3. It comprises the laws or values of international agreements.	3. International trade agreements not merely incline to the international law only.
4. Differences in reimbursement of contracts is alleged abroad.	4. The central difference between the both is the presence of a code of independence of the members where it causes the selection of the rule and the preference of the medium pertinent to the contract they create.
5. The agreement is contracted abroad.	5. The subtleties of trade associations that involve foreign trade individuals, specifically, international trade agreements, have inclined to the growth of the trade agreement law that approves the worldwide codes established in the custom practice.
6. The differences in reimbursement of contracts is alleged abroad.	
7. The usage of international currency in the agreement.	

Conclusion

The objective of the current research paper was to analyze the common ground between international trade contracts and foreign investment contracts in Indonesia and to that end a quantitative and cross-sectional study was conducted. In order to gather data on the common ground between international trade contracts and foreign investment contracts in Indonesia the researcher used content based analysis and previous articles, documents, reports and laws were reviewed. On the basis of the past research, documents and laws similarities and differences between international trade contracts and foreign investment contracts in the state of Indonesia were drawn. The following similarities between international trade contracts and foreign investment contracts were found. 1) The members have legitimate residence in various nations. 2) The principle selected is international rule. 2) It comprises the laws or

values of international agreements. 3) Differences in reimbursement of contracts is alleged abroad. 4) The agreement is contracted abroad. 5) The differences in reimbursement of contracts is alleged abroad. 6) The usage of international currency in the agreement.

In addition to the similarities the discovered differences between international trade contracts and foreign investment contracts are: 1) The foreign aspect in the bond is the cause of such an agreement is a local agreement or an international agreement. 2) The foundation of foreign contract principle have to utilize a cause of rule obtained from the foreign rule of law. 3) International trade agreements not merely incline to the international law only. 4) The central difference between the both is the presence of a code of independence of the members where it causes the selection of the rule and the preference of the medium pertinent to the contract they create. 5) The subtleties of trade associations that involve foreign trade individuals, specifically, international trade agreements, have inclined to the growth of the trade agreement law that approves the worldwide codes established in the custom practice. In short, there are a number of similarities and as well as dissimilarities between international trade contracts and foreign investment contracts in Indonesia.

This article initiates a range of research implications. Primarily it highlights that literature on the common ground between international trade contracts and foreign investment contract in Indonesia is very limited and thus this paper will enhance the literature on the topic. Future researches can benefit from this study in that researchers of business law could conduct a study on the common ground between international trade contracts and foreign investment contracts based on these study findings.

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