

The Law of Parties Shows a Characteristic Achievement

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The purpose of this research is to analyse and describe that the law of the parties shows a characteristic achievement. This research utilised normative juridical research methods in order to analyse and describe the laws of parties with characteristic achievements. There are two distinct types of legal information. Firstly, primary sources of law which are authoritative legal publications made by parliament and the courts. The parliament in each Australian jurisdiction makes legislation and the courts decide on legal issues. Secondly, secondary sources which are used to find and explain the primary sources of law. An international contract is a national contract with a foreign element meaning that the contract is subject to one of the national legal systems. In the field of international sales, the seller's law is applicable because it contains the most of these characteristics. It is logically evident that the seller faces many buyers so there must be more general provisions, otherwise there will be many claims from multiple buyers. This is one of the few studies which investigate the law of parties and their achievements, especially in Indonesia.

Key words: *Contracts, the law of the parties, the achievements are very characteristic.*

Introduction

Those parties which are directly or indirectly involved in International Trade Law (contract of sale) need to know the source of the law against the validity of the contract in question. This is because the source of the law is the driving force of the contract concerned. Our review firstly explains the scope and the process of the literature review. Improvement of human resources (HR) will determine the progress of a nation because the government is concentrating its attention on the development of HR (Hakim and Fernandes, 2017). This is followed by a synthesis of the findings of the review into a theoretical framework of business model innovation. Finally, avenues for future research will be discussed in relation to the approaches, degree and mechanisms of the business model innovation (Hutahayan, 2019).

Starting from the time of formation of the contract until the execution time if there is wanprestasi certain parties. It is necessary to observe the sources of international trade law that can overcome the underlying legal basis of Indonesian trade law, namely the Book of Commercial Law and the Civil Code (Book III). The essentials of the legal source are as follows:

Contract Provisions. The main source of law and basis for a contract should be well understood, including contracts of international sale with contract provisions, i.e. what has been included in the contract by both parties. Law views contractual agreements as the buyer and seller's responsibility. This means that it is up to the individual parties to each manage their business in the contract. The law only provides guidelines to achieve and protect it from other higher interests, such as achieving justice, public order, the interests of the state, and so on. The rest is left to the individual parties to arrange. Here it is reflected that the "contract" is the "law" for the contracting parties. The successful performance of good public services is largely determined by the involvement and synergy of the three main participants – government, society and the private sector (Fernandes and Fresly, 2017).

However, if the provisions in the contract cannot accommodate the aspirations of both parties, the law will provide its rule of law (optional law) simply to fill the legal vacuum in society. This means that legal terms can be excluded by both parties. Providing flexibility to these parties is known as freedom of contract and is enforced by Indonesian law in the Civil Code Book III and the Book of Commercial Law. Although regression analysis is useful in some research, it cannot facilitate data relating to complex relationships that contain several response variables with a pattern relationship between different variables (Fernandes, 2019).

In addition, because of the applicability of the freedom of contract principle, it is necessary for parties to be prudent when signing contracts because once signed the law is binding (Nghia, 2016). It should be further remembered that in law there is a principle known as 'Release of Freedom'. That is, individuals are free to manage their business in a contract, but once a contract is signed, all freedom has been released for the benefit of the business. After a contract has been signed, freedom is over and replaced with the attachments arising out of the contract. Thus, on the one hand there is freedom of contract, but on the other hand, there is also "non-liberty" or an attachment that is subject to the terms of the contract. The spline estimator approach for longitudinal data can accommodate the correlation between observations within the same subject, which is not found in the cross-section data, so that the autocorrelation assumption problem can be resolved (Fernandes etc., 2015).

Based on the background above, the purpose of this research is to analyse and describe that the law of the parties show a characteristic achievement. Research included the normative

jurisdiction method. This is one of the few studies which investigates the 'The Law of Parties Have A Very Characteristic Achievement', especially in Indonesia.

General Overview of Contract Law

The civil code, which is one of the basic legal sources for a contract provides the rules for general contract law, among others. This means that many provisions in the Third Book of the Civil Code regulate contracts for sales, purchases, leases, exchanges, and so forth.

In the case of an international sale and Indonesian law, the general provisions of the third book of the civil code must also be applied, as national law is the principal legal source of international contract law. An international contract is a national contract with a foreign element meaning that the contract is subject to one of the national legal systems.

Provisions exist that can be disregarded by the parties and others that cannot be disregarded. These provisions in the civil code vary from country to country. Therefore, in contracts between individuals of different countries, each is expected to understand the laws that affect the contract, even if the contract has the freedom for both parties to hold it. This fact again proves that the solidity of the freedom of contract is fully preserved.

Methods

In this paper normative juridical research methods were used to analyse and describe the laws of the parties who show characteristic achievements. There are two distinct types of legal information. Firstly, primary sources which are authoritative publications of law made by parliament and the courts. Parliaments in each Australian jurisdiction make legislation and the courts decide on legal issues. Secondly, secondary sources of law are used to find and explain primary sources of law. Secondary sources include legal encyclopedias, case citators, case digests, textbooks, specialist commentary services and journal articles. Government documents are also a major source of secondary legal information and include those documents written in the course of making legislation such as second reading speeches, explanatory memoranda and parliamentary reports.

Results and Discussion

An international contract is a national contract with a foreign element meaning that the contract is subject to one of the national legal systems (Hernoko et al., 2017). In the field of international sales, the seller's law is applicable because it contains the most of these characteristics.

The Most Characteristic Connection Rule:

According to this theory, the applicable law is the law of the parties who have highly characteristic achievements. It is logically evident that the seller faces many buyers so there must be more general provisions, otherwise there will be many claims from multiple buyers.

Consent is an act that occurs between one person or more and binds these parties (article 1313 Civil Code). The engagement comes from the treaty (articles 1313 to Article 1352 of the Civil Code). Agreement refers to a legal act between two or more parties, in which either party or both parties' pledges or promises to give something, do something or do nothing. In order to make the agreement lawful, according to Article 1320¹ of the Civil Code, it must fulfill the requirements of the validity of the covenant:

- a. Agree to commit ourselves
- b. Proficient to create an engagement
- c. A certain thing
- d. A lawful cause.

Article 1320 paragraph (1), or licensing, means that two subjects who have entered into an agreement shall agree on the principal matters of the treaty. What one party wants may also be desired by the other. They want the same thing in return: the seller wants money, while the buyer wants something from the seller. The principle of consensuality refers to the agreements and engagements that have arisen from the moment the agreement is reached. In other words, the agreement is valid if it has been agreed upon in principal and does not need any formalities. Consensus means unanimous agreement. The first and second requirements are called subjective requirements, while the third and fourth requirements of objective conditions are met. If the subjective requirements are not met then the agreement can be cancelled, while if the objective conditions are not met then the agreement is null and void.

Types of Agreements

Agreements may be distinguished in any of the following ways:

- a. Reciprocal agreement
- b. Free Agreement and Load Agreement
- c. Agreement named (specified) and unnamed agreement (unspecified).
- d. Mixed agreements
- e. Material agreement
- f. Consensual agreements and real agreements

¹ Article 1320 of the Civil Code fulfills the requirements of the validity of the Covenant:

a. Agree to commit ourselves, b. Proficient to create an engagement, c. A certain thing, d. A lawful cause.

g. Special agreements are in character (Badrulzaman, 1994)

Theory of Agreement

There is a need to understand the Law of Contract (Agreement) of a legal system of the parties (Yuanitasari, 2017).

For Example: Indonesian national law. An understanding of Indonesian national law is relevant because national law is one of the main legal sources chosen by the parties to govern the contract. Terms used are choice of law, governing law, or law that is applicable to the contract. Sources of international trade law are the main and most important source, such as a contract or agreement for the party that created it (Huala, 2007). Therefore, the agreement or contract is essential; the contract acts as a necessary legal source and becomes an important reference for exercising rights and obligations in international trade. The essence of a contract is a set of promises that can be enforced. In contract law we recognise, respect and give recognition to the principle of consensus and the freedom of contracting to the parties and to the laws which respect this agreement.

Although the freedom of the parties is essential, it has its limits. It is subject to the various restrictions that surround it. Firstly, such limitations of freedom shall not be contrary to law, and in certain tariffs with public order, morality and decency. Secondly, in relation to the status of the contract itself, the contract in international trade is none other than the existing national contract with foreign elements (Gautama, 1976). This means that the contract is subject to, and limited by, the national laws of a particular country (Sanson, 2002). There are compulsory rules, which determine the behaviour of human beings in society, that is, by authorities, and the violation of these rules can result in actions governed by relevant laws (Kansil, 2001). Thirdly, the binding restriction of the parties is in accordance with the agreements of the parties concerned. The binding powers of earlier agreements are not written, but binding.

Basis of Securities Bonds between Issuers and Holders is "an agreement". In the theory of this agreement there are general principles set forth in the Civil Code, namely:

a. The Principle of Personality constitutes: the determination that a person will commit or make a contract for the benefit of the sole person only. This can be seen in Article 1315 and Article 1340 of the Civil Code. According to Article 1315 of the Civil Code: in general, a person cannot enter into an engagement or agreement for anybody other than themselves.

According to Article 1340 of the Civil Code: The agreement applies only between the parties that make it.

b. The principle of consensuality pursuant to Article 1320 paragraph (1), also called licensing, means that the two subjects who enter into the agreement shall agree on the principal matters of the treaty held. What one party wants may also be desired by the other. They want the same thing in return: the seller wants money, while the buyer, in turn, wants something from the seller. The principle of consensuality is basically the agreements and engagements that have arisen from the moment the agreement is reached. In other words, the agreement is valid if it has been agreed upon by the principal and does not need any formalities. Consensus refers to a unanimous agreement.

c. In relation to the principle of Freedom of Contract (Fu, 2013), according to Article 1338 (1) of the Civil Code, treaty law provides the widest possible freedoms for the public to enter into an agreement.

d. Public Order and Decency. The Law of Treaties embraces an open system which contains the principle of freedom to make the covenant.

e. The principle of 'pacta sunt servanda' (Salim) is also called the legal certainty principle which relates to the effect of the covenant. The principle of pacta sunt servanda is the principle that judges, or third parties, must respect the substance of contracts made by the parties, as they are law, and they shall not intervene in the substance of contracts made by such parties. The principle of pacta sunt servanda is summarised in Article 1338 (1) of the Civil Code: all legally made agreements act as laws for those who make them. The word "all" contains a declaration to the public that: we are allowed to make the covenant in this form and the treaty binds those who make it like the law. The principle of pacta sunt servanda was originally known in the laws of the church which mentioned that: a covenant exists if there is agreement between the two sides and it is reinforced by oath. This implies that every covenant held by both parties is a sacred act and is associated with religious elements. However, in its development, the principle of pacta sunt servanda is given the meaning of pactum which means to agree not to be reinforced by oath and other formalities.

f. The principle of good faith can be summarised in Article 1338 (3) of the Civil Code: The agreement must be executed in good faith. The principle of good faith is the principle that the parties, namely the creditor and the debtor, must implement the substance of the contract based on a firm belief or conviction or goodwill of the parties. The principle of good faith is divided into two: the principle of relative good faith whereby people pay attention to the attitude and real behaviour of the subject, and the principle of absolute goodwill whereby judgement lays in reason and justice, made with an objective measure of judgement (impartial judgement), according to objective norms (Subekti, 1987).

Habit in International Trade

In law science, habit is recognised as one source of law (Harrieti, 2018). Likewise, with customs in business or trade. Trade usage or custom has been one of the sources of commercial law and is one of the guidelines in interpreting business contracts, including international trade law. For example, if there is a purchase order for 1000 letterheads by the purchaser of the printing party, and 960 letterheads are sent it, does not mean that the seller or printer has broken an agreement. This is because it has become a custom in business that a deficiency or an excess of no more than 5% can be tolerated.

Unless the buyer has notified the business that accuracy is an essential factor it is often interpreted that trade usage is not binding in the contract in question. Sometimes what is contained in everyday trading practices is confirmed by what is known as jurisprudence, which is decided by a court with the decision becoming permanent. Indeed, in the Indonesian legal system, as in countries with continental European legal systems, the power of jurisprudence is not as strong in countries that embrace the Anglo-Saxon legal system, with its precedent theory.

However, in countries with the continental European law system jurisprudence remains, especially regarding matters not covered by law, or which require interpretations of a law. In the field of international commercial law, the role of jurisprudence as a source of law is less pronounced due to many cases that have not been served by the court or decided by a non-court body, such as arbitration. Such a decision is not open to the public, so it is not known by many people. It is therefore not used as a legal source of jurisprudence.

For Indonesia and other civil-law states, jurisprudence is called persuasive jurisprudence, while in England and the common-law there jurisprudence is absolute. Therefore, rarely does jurisprudence play a part in the practice of international trade.

International Civil Code Law

Many international civil law rules are also used against an international contract of sale. As with other transactions involving parties from various countries, the possibility of a conflict between the laws of one country and the law of another is great. This is especially so in the case of a regular trading contract that uses a simple contract, so the arrangement in the contract is not at all clear.

Regarding whether law should apply when there is a dispute if the contract is not expressly determined for it: In international civil law, in the field of business, several theories have evolved. One widely accepted theory is known as the most characteristic connection rule. According to this theory, the applicable law is the law of the parties who have highly

characteristic achievements. In the field of international sales, the seller's law is applicable because it contains the most characteristics (Gautama, 1996).

It is logically evident that the seller faces many buyers so there must be more general provisions, otherwise, there will be many claims from buyers.

The theory of the most characteristic connection can help in finding the links that have the most characteristic or functional characteristics in the agreement. The most characteristic example of the link point is in the sale and purchase agreement, and the seller's law applies. Gautama (1996, page ref) claims that this theory is most appropriate for Indonesia: "In our view it would be this conception which is best used in determining the law which must be treated in international contracts where the parties have not made a choice of law".

According to this theory, the court will determine the choice of law based on the law of one of the parties performing the most characteristic achievement (centre of gravity) in a transaction. It is also called the Theory of Nearest Relationship and Most Real. According to this theory, the tendency of national law applicable to **Letter of Credit (L/C)** is the law of the country in which the issuing bank is located. The reason is that the closest and most real linkage is found in the issuing bank country where the L/C is issued, where the L/C changes are being made, where the L/C documents are conducted and where the L/C payments are performed. However, the trend also applies to the country where there may be demand for L/C payments, document research and L/C payments.

Example: International Offshore Case Illustration SA vs Banco Central SA

The judge determines the national law applicable to the Letter of Credit (L/C) case based on the closest and most obvious theoretical relationship, and the result of the judge chooses the law of the country to which the bank concedes as a national law applicable to L/C. In this case the recipient or plaintiff is a Panama legal entity but operates in Texas. The applicant is a legal entity of Spain, as well as the issuing bank. The L/C issued with the US dollar amount implies that the payment is made in the event of cancellation of the construction contract located in Spain. The L/C is transmitted through the successor bank in New York. The recipient is requested in the L/C to file the documents to the successorbank in New York. The recipient sued the Issuing bank in a British court. The subject matter is the determination of the L/C due date and is determined under Spanish or New York state law. The court ruled that the law of the state of New York is an applicable law because this law has the "closest and most obvious linkage" to the L/C transactions. In this case the L/C does not contain any provision in the country where the L/C is due, so the court must determine it. Since the L/C does not contain a legal choice clause the judge must determine the law applicable to the L/C as a legal basis in order to determine in which country the L/C is due (Ginting, 2002).



Conclusion

An international contract is a national contract with a foreign element meaning that the contract is subject to one of the national legal systems. In the field of international sales, the seller's law is applicable because it contains most of these characteristics. According to the theory of the most characteristic connection, the applicable law is the law of the parties who have highly characteristic achievements. It is logically evident that the seller faces many buyers so there must be more general provisions, otherwise there will be many claims from multiple buyers.

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