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THE IMPORTANCE OF CISG IN INTERNATIONAL TRADE RELATED TO INDONESIAN LAWS

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ABSTRAC

Bonding is a vehicle for someone who allows other people to do something or not do something. Basically, no one in this world can force other people to do or not do something except of their own free will. Someone is willing to do something or not do something that the other party wants, of course, for certain reasons and this is first required in the agreement. In a contract that is bound is a person with a person, a legal bond between a person and a person is at least two people. The rights that arise are the rights of a person. In trading activities, human business actors can cross national borders. In order to gain profits and offer products that are not absorbed in their own country, these activities can be carried out. It can be seen from activities in the field, relations between international trade countries are the basis for the need for a country's economic progress. International trade is a cross-border buying and selling transaction, which involves two parties buying and selling across national boundaries. These parties are often parties who come from different countries or have different nationalities. The international trading phenomenon raises the possibility of a need for generally applicable laws and regulations that uphold the rights and obligations of all participants in international trade. Legal uncertainty and difficulties among traders in making international trade contracts are already under the contents of national laws which differ from one country to another. In particular, the CISG seeks to balance differences between the civil law and common law . systems of law by establishing rules that apply to international sales of goods (opening of the CISG). The CISG specifies the creation of sales and purchase agreements as well as the obligations of buyers and sellers (including legal remedies for them). CISG officially began on January 1st, 1988 for nations that were considered contenders at the time. The purpose of this study is how are the legal principles contained in ciscg, what is the importance of ciscg for Indonesia and how is ciscg as a legal substance in international buying and selling contracts. This study uses a normative method by sharing sources of books and journals. Currently Indonesia has not implemented ciscg in international contracts so it needs ratification because it is considered important.

1. Introduction

The A look at the world's most successful substantive international trade law convention - the United Nations Convention on Contracts for the International Sale of Goods (CISG) from a variety of national and methodological perspectives.¹ Success here is measured by the overwhelming acceptance of the CISG by countries around the world. At the end of 2013, Brazil (4 March 2013) and Bahrain (25 September 2013) became the seventy-ninth and eighth countries to adopt the CISG. As such, the CISG, along with the New York Convention, can be seen as two of the most successful international private law conventions in history. The first deals with the substantive area of selling goods; the latter is procedural law which obliges signatory countries to enforce other countries' arbitration decisions against the Convention. At the current adoption rate, there is little doubt that CISG will reach one hundred adoptions in the near future. The usual measure of the importance of a convention is the number of countries that have adopted, acceded to, or ratified it. Many international conventions or model laws are impressive in name, but of little importance in practice..

Numerous accords, both viable and not so viable, have fallen short of the required number of signatories to become enforceable, while others have become laws but have not yet reached a critical mass since the participating nations do not have much influence in the outside world.

Both of the areas of concern entry into force and critical mass adoption are

undoubtedly impacted by the CISG. But unlike the New York convention, private parties may choose to reject the CISG, making effectively a Third House under the CISG. The CISG is now recognized as the standard for international trade law. The global issue is whether lawyers will become aware of the CISG's substantive rules, appreciate the advantages of single international sales law, and start to accept it as their preferred option. Whether they are accepted as proof of relevant law and international customary law by courts and arbitral tribunals.

The CISG's benefits and drawbacks, as well as important ensuing applications, are examined in this section. The interpretation and application of a text that is chaotic and conflicting are sometimes obscured by a text that is logical. However, its application to division goes against the intention of consistent legal harmonization. Instead of achieving its goal of lowering the degree to which disparities in national law serve as a barrier to international trade, the many applications lead to jurisprudence that operates as a barrier. Because of its ambiguous jurisprudence, the CISG casts doubt on the existence of the system of international private law it intends to supplant. The CISG is currently at a crucial point in its development: Has it attained a level of application uniformity that allows for the designation of true international law?

The borders of free trade, defined as the interchange of commodities between sovereign nations without the use of legal restrictions intended to restrict commerce, are in line with the harmonisation of legislation in the age of globalization.

¹ Larry A. DiMatteo, " *International Sales Law* "

Attempts to ensure guarantees and legal clarity in Indonesia are becoming more crucial as part of this legal harmonization. In this regard, when harmonising the law, the principles of Islamic law must also be taken into account in addition to the general principles themselves.

The unification or harmonization of international trade law is a result of economic globalization. The continued efforts of commercial law theorists and practitioners to develop the fundamentals of international business contracts serve as proof of this. The CISG is an international agreement that governs contracts for the sale and purchase of products across international borders and strives to standardize the rules governing international trade. This study is supported by earlier research that demonstrates the significant potential for CISG application in international commerce transportation. The CISG is enforceable against both participating and non-participating nations. The CISG's transnational character is one of the main reasons why so many nations are subject to it.

The type of research in this dissertation is normative legal research, where this research is used to identify the principles and legal norms of various laws governing the contract of sale and purchase of goods. Normative legal research is also known as doctrinal research, as opposed to empirical or non-doctrinal research. In accordance with the type of normative research where the focus is on written legal materials, the

procedure for collecting legal materials is carried out through a literature study using document study techniques. The search for legal materials begins with finding and collecting literature related to the topic being studied. Legal material obtained through research of literature studies, is analyzed juridical qualitatively, namely analysis based on or relying on legal interpretation, legal reasoning, and legal argumentation in a coherent and coherent manner, with the following characteristics: (1) positivity, implies that law must have authority; (2) coherence, meaning that law must manifest as an order of life; (3) justice, contains values that are used to properly regulate human relations.

2. Result and Discussion

The Legal Status of Digital Assets as Objects of Property Rights under Indonesian Civil Law

The CISG is a product of lengthy attempts to unify the law of international sales. Its general aims are set out in the preamble, which state that in the following considerations were taken into account.²

The CISG is not the first international instrument purporting to govern international sales. In 1964, two instruments, a Uniform Law on the International Sales of Goods (ULIS) and a uniform law on international sales of goods (ULFS) were adopted. These instruments however failed to achieve a worldwide unification and were ratified only by a very limited number of states. In the Respect, CISG is far more successful, having

² The Convention on Contracts for the International Sale of Goods was signed in Vienna on 11 April 1980. It entered into force on 1 January 1988. The Convention consists of 101 Articles and is organised into four parts: Part I outlines the Convention's

sphere of application and its general provisions; Part II deals with formation of the sales contract; Part III provides for the substantive rules of the sales contract itself; Part IV contains the Final Provisions on the Obligations of the Contracting States.

been ratified by 70 countries as of this writing. As already mentioned, CISG law sales are regularly used by courts and arbitral tribunals as a source of law for international sales contracts. CISG is a part of international law which is the deepest international agreement. As stated in article 2 of the 1969 Vienna Convention on Contract Law. If the conditions for its application are met and the parties do not exclude its application in their contracts, the applicable CISG will apply to their respective sales contracts. It has often been pointed out that the Convention is full of compromises that must be made in order for representatives from different political, legal, economic and social systems to agree on uniform trade laws.

This affects the CISG in at least two ways, first some of the provisions are inappropriate, standards and rules, such as fairness or fundamental violations and secondly, this CISG can be called a minimal framework or tool that suppresses generality. Structure and spirit. As a legal regime for different situational sales. A key feature of many private law international conventions is the requirement to respect their international character and to adopt uniform application. This indicates that the CISG is "independent," meaning that it just needs to be called using its own terms and nomenclature, like any other agreement. In other words, the meaning and concept of the national legal system cannot be used to translate the Convention.

The following sentences are also significant because they offer advice on what to do in situations where the Convention does not directly address a certain issue: "Questions

concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law."³

Therefore, if a specific issue is not specifically addressed by the CISG, the first step is to determine whether it falls under the purview of the Convention (i.e., if it is within the scope of the Convention). When it comes to specific concerns, it may be quite challenging to resolve them. General guidelines provided by the Convention in this regard state that they "govern solely the creation of the contract of sale and the rights and responsibilities of the seller and the buyer deriving from such a contract."

On April 11, 1980, the CISG was passed. The eleven states, representing "all geographic areas and all major legal, social, and economic systems," directly undercut the CISG. On September 30, 1981, the United Nations Trade Convention was covered by 18 countries. On December 11, 1986, 11 countries issued declarations of agreement to the Secretary-General, fulfilling the requirements of Article 99, which states that the CISG "enters into force on the first day of the month following the date of deposit of the tenth or accession instrument, including the date of deposit of instruments containing statements based on Article 92." The United Nations Convention on Contracts for the International Sale of Goods comes into force on January 1, 1988.

CISG has been translated into six official languages (Arabic, Chinese, English, French, Russian, and Spanish) as well as

³ Article 7(2) CISG.

dozens of unofficial languages. The contract wording is broken into four sections. The first three parts offer broad rules and concepts for sales transactions: Part I, Articles 1-13 (Complexity of application, principles of interpretation, and formal requirements), Part II, Articles 14- 24 (Conclusion of contract), Part III, Sections 25-88 (Contractual obligations of buyer and seller). penalty, risk transfer, breach of contract and advances, compensation, interest, and waivers) and Part IV (ratification, acceptance, or accession by CISG). Countries and their Application - Articles 91 and 100; CISG and Other International Contractual Relations - Sections 90s and 99s; State declarations and reservations - Articles 92, 94-98; regional unit application - Article 93; denunciation – Article 101).

IMPACT OF THE CISG ON NATIONAL LAW REFORM

The current norms of the United Nations Sales Convention will aid international trade as it goes beyond what Ernst Lovell referred to as the "great relics of the past" found in many previous sales codifications. The CISG extensive adoption, as well as its influence on changes in international, regional, and domestic law, shows international efforts to advance the CISG. UNCITRAL, for example, established a technical assistance and coordination unit inside the Secretariat in 2004 to promote UNCITRAL documents. One of the unit's initiatives will be to support various conferences throughout the world to commemorate CISG's 25th anniversary.⁴

Since then, UNCITRAL has made the majority of the CISG awareness calls. UNCITRAL has also created the CLOUT database, which contains summaries of cases and arbitral awards and is translated into United Nations official languages: "The goal of this system is to promote international knowledge of the Commission's legal documents and to facilitate the uniformity of multiple interpretations and their applications." UNCITRAL also publishes the CISG Report, which contains CISG rulings from throughout the world. Pace's CISG database, as a member of the network, is one of the most comprehensive databases of legal documents for international sales, merging domestic legal resources into a global reporting database. There are currently over 2,900 arbitral procedures and awards in the database, 9,469 bibliographical entries in 31 languages, and 1,440 full texts of the CISG. The United Nations Sales Convention has a long history as a powerful legal instrument influencing international trade law and national and regional trade law and national and regional trade law reforms. Collecting and disseminating cisg materials will increase their impact in the future.

The Process Of Converting International Contract Law Into Indonesian Law

Indonesia law regarding international contracts in the legal system in indonesia is still not well developed and practical problems often occur in implementing the international agreement system. I carrying out its performance, until now indonesia has not been able to determine the direction to adopt a system of monism, dualism or combination of the tow and has not yet

⁴ Castellani, "Promoting the Adoption," 244.

developed in political development. In a speech by the vice president of Indonesia, Mohammad Hatta on August 11, 1950 in a conference speech, Indonesia said that, based on the assumption received in relations between countries, an agreement is higher than a constitution. So Utrecht stated that Indonesia adheres to a monism legal system with the primacy of international law.

The final step in bilateral discussions to ratify the terms of international agreements that have been agreed upon by both parties is signature, as per Law Number 24 of 2000 respecting Article 6 of international agreements. The signature of a multilateral agreement is not a party's obligation to abide by terms of the agreement.

Legalization has the potential to bind international agreements (ratification, accession, acceptance, approval). This situation, regardless of its name, Indonesia will ratify the agreement (internally) if it needs (external) approval. On the other hand, regardless of the agreement's terms, Indonesia will not ratify it if it does not need to be ratified (externally). Due to the requirement that these documents be ratified, Indonesia effectively ratified the MOU, Exchange of letters, and acceptance protocol. This suggests that, in accordance with Articles 10 and 11 of the Law of Indonesia respecting international agreements, the agreement's withdrawal is acknowledged. As long as the agreement does not call for ratification, Section 24 of 2000 may be waived. In making and incorporating or harmonizing international trade contract law into Indonesian law, one must first look at how the relationship between the two is construed, because in the Indonesian legal system legal products

produced by Indonesia digitally may come out of Pancasila which is a *staatsfundamentalnorn*.

So in making legal products that cannot be separated from Pancasila, a legal product is needed that is based on certain norms, principles, rules and conditions that must be obeyed and implemented by citizens, what is meant is the Indonesian state constitution which is the 1945 constitution of the Indonesian state. A constitution is the foundation or foundation of a state. There are two kinds of constitution, written and unwritten. Indonesia's constitution contains the values of the basic legal norms that live in carrying out the constitutional system within the state with a philosophical, sociological, political and historical background in the formulation of making laws. According to the explanation of convergent legal theory, it can be seen that law will always have a tendency to converge. Although each legal system addresses various legal issues from a unique angle, these various legal systems all ultimately lead to the same functional outcome realizing economic benefits with other people. In order to analyze the process of legal transition in the area of international trade contracts to Indonesian positive law, the researcher contends that the use of the political law approach and convergent legal theory is appropriate. It is also appropriate to draw on the nation's intellectual foundation, specifically Pancasila as the fundamental rule of the state and constitution of the Republic of Indonesia as the blueprint and guiding principles of the Indonesian people.

The Reason CISG Can Not Be Applied In Indonesia

Until now, Indonesia has not used CISG,

because Indonesia still adheres to the old heritage law from the time of the Dutch government in Indonesia. Indonesia usually adheres to an autonomous legal system in relation to international conventions. In the legal system of international trade contracts in Indonesia, it is still not organized in a manner that is conducive to change. So that at this time companies that carry out international trade often use the laws that apply to countries invited to carry out international trade cooperation.

Differences In Selling And Purchase Agreements According To Cism And The Data Civil

The CISM does not specifically regulate the definition of agreements and buying and selling. It's just that the CISM regulates the limits of application convention in the provisions of article 1 CISM and the concept of offer and acceptance as a process of buying and selling in the provisions of article 15 CISM. Whereas the civil code regulates the definition of an agreement in the provisions of article 1313 and buying selling in the provisions of article 1457 of the civil code. Terms of legal agreements or contracts in the CISM only regulate the process of making trade contracts and the rights and obligations of the seller and the purchaser arising from the contract. whereas in the civil code it is regulated in the provisions of Article 1320.

Choice of law in contracts in the CISM Strictly regulated in the provisions of article 6 given freedom for the parties to choose a choice of law and methods of dispute resolution. While the civil code does not strictly regulate freedom of choice of law. The doctrine of *pacta sunt servanda* in the CISM it is expressly regulated in the

provisions of article 1338 paragraph 2 of the civil code. The CISM's international scope is specifically defined in its Article 1 requirements. whereas there are no regulations or distinctions made between domestic and foreign purchasing and selling transactions in the Civil Code. The CISM restricts the subject of the Agreement/Contract to business actors and entrepreneurs who are permitted to enter into sales and purchase transactions under the Convention. It can be anyone, without restriction, as long as they are completely qualified to engage in legal transactions for buying and selling and are recognized as legal subjects. The use of customary international law and customary international law in the CISM is regulated in the provisions of Article 9 of the CISM. Meanwhile, Indonesian law is regulated in Articles 1339 and 1347 of the Civil Code, but only implicitly and not strictly regulated.

The legal options open to both sellers and buyers under the CISM are as follows:

- a.) legal remedies for buyers include :
 - performance of the contract in the event that the goods delivered are non- conforming, which includes sending replacement goods if it qualifies as a fundamental contract breach of repair.
 - The application of the avoidance of contract doctrine in cases where the seller's fundamental obligations are not met or a fundamental contract breach and

- Proportionate price reduction.
- b.) The seller's legal opinions include :
 - Executing the contract, which entails meeting the buyer's fundamental requirements
 - Applying the avoidance of contract theory in cases where the buyer's fundamental obligations are not met or there are other serious contract violations.
- c.) Legal remedies available to sellers and buyers are in the form of :
 - Compensation that adheres to full compensation
 - Restitution through the use of the avoidance of contract doctrine.

While in Indonesian law legal remedies for both parties are in the form of compensation and interest. The basis is stated in the provisions of articles 126 and 1267 of the civil code.

The Importance Of The CISG For Indonesia's International Contracts

CISG is a law that regulates contracts in international buying and selling which are contained in the international legal system. CISG is often used by various countries that have adopted CISG into their legal systems which also contract or partner with the Indonesian state. CISG can be said to be successful in overcoming various problems of trade dispute or international. Indonesia currently needs a legal regulation

specifically dealing with international trade contract issues. Indonesia also has to develop what has been regulated in the civil code regarding contract matters.

In current international law, CISG is present and provides good contribution in handling international contract, both in buying and selling agreements and disputes in international contracts. Many countries have adopted CISG into their legal system and CISG has succeeded in handling cases of international buying and selling contract disputes. Indonesia is a developed country and is a trade route for Indonesia. Indonesia is also active in international trade activities. However, Indonesia's progress in entering into Indonesian trade contracts has not been accompanied by current developments in international law. Even at this time, Indonesia does not yet have specific arrangements regarding international sale and purchase contract agreements. Agreements regarding contracts are regulated in the third book of the Indonesian civil code.

In my research, I found that the civil law code in Indonesia is the reference or basis for the contract system in Indonesia, but the civil law code in Indonesia currently does not sort out or specialize in domestic or foreign contractual arrangements. So far, contract makers or companies that wish to enter into agreements or partner with foreign parties or outside Indonesia use the principle of freedom of contract which is contained in the Indonesian Civil Code. However, in my view Indonesia must continue to provide special arrangements regarding agreements or contract at the international level in order to provide legal certainty from the international legal system itself.

Therefore, Indonesia itself must provide of focus attention on international agreements or contracts by ratifying the CISG which provides or bridges international agreements. Because CISG itself is now widely used by other countries and has a big contribution in making international contracts. Of course, before carrying out ratification, the parties must review it so that does not conflict with the norms and principles contained in other national legal systems. If Indonesia can adopts the CISG into Indonesian national law, then Indonesia can provide a new color or offer a wider range of international contracts. Indonesia has also made various efforts to be able to ratify the CISG so that it can enter into the Indonesian national legal system. However, until now there has been no further clarity regarding this matter so, until now Indonesia has not experienced developments in contract law. There is a lot that Indonesia will gain if Indonesia can ratify the CISG, Indonesia itself can develop and improve its contract law system to the international level.

The field of law will be more strictly regulated if the Indonesian government ratifies the CISG, which governs international purchasing and selling. As a

result, Indonesian contract law and international commercial law will be safer, and cross border risks will decrease, which will boost national income and balance trade. In accordance with article 29 contained in the CISG, Indonesia will benefit because the parties can terminate or change the contents of the contract according to the agreements.

By ratifying the CISG, it is hoped that Indonesia will be able to provide clear legal certainty regarding international trade issues. Then it will minimize Indonesia using the laws that apply in other countries when making international contract. With this it is also hoped that Indonesia can reach a wider network of partners in international trade contracts. If there is a dispute regarding an international contract, it is also hoped that the inclusion of the CISG into the national legal system can help judges resolve the problem. Indonesia can provide access to modernization of contract law at the international level. However, besides that, CISG also has drawbacks, namely CISG is only regulates international contract in the field of buying and selling trade. The CISG also regulates contract formation and fixes it so that many countries use it. This right is regulated in article 4(a) of the CISG.

3. Conclusion

Contract law is the law that regulates agreements with several related parties that can give rise to legal consequences.

Contract law contained in the Indonesian legal system is regulated in book III of the Civil Law Code. However, at present, the national legal system, especially contract law, does not yet regulate contractual sale and purchase agreements at the international level. So in this study the authors found that there is a law or rule that can be enforced by countries to regulate a sale and purchase agreement at the international level. The author also finds out why until now Indonesia has not used the CISG, because Indonesia still uses the old legal system or Indonesia still uses the civil law system used in the Dutch era. Indonesia has not modernized its civil law to regulate sale and purchase contract agreements at the international level. In fact, if the CISG can be implemented or ratified, it can benefit Indonesia in an international sale and purchase contract agreement. There are several advantages if Indonesia uses the CISG in the Indonesian civil law system, namely the use of the CISG into the Indonesian legal system will make it easier for judges to resolve disputes related to international contract network because now many other countries use CISG. CISG also has update contract formations so that the contract formations contained in CISG have been improved and many other countries have used them. However, before ratifying the CISG so that it enters the Indonesian legal system, Indonesia must also pay attention to principles or norms so that they do not conflict with the principles and norms contained in the Indonesian legal system. Therefore, before ratifying the CISG into the Indonesian legal system, the differences between civil law and CISG must be known so that they do not conflict. There are differences between Indonesian

civil law and CISG which have been described above by the author.

In my opinion, the Government of Indonesia must immediately ratify the CISG so that Indonesia has special arrangements for international sales and purchase contracts. With the development of the era, Indonesia must also immediately modernize the contract law system at the international level in order to provide or realize certainty in the law itself and provide legal protection for contract buying and selling activities at the international level. Ratification efforts have been made by the Indonesian government but until now there has been no clarity or continuation on this matter. It is hoped that in the near future Indonesia will be able to ratify the CISG on the national legal system. So that Indonesia has special or significant rules regarding the issue of buying and selling contracts at the international level.

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