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The Proper Law as a Choice of Law in Contract Design

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ABSTRACT

International Contract Law is a bridge that connects agreements made by the world community. However, cooperation that occurs often encounters obstacles when the disputing parties do not fulfill their achievements. So that the aggrieved party usually resolves disputes through the courts. However, the settlement of international civil contract disputes through the courts often causes dissatisfaction for the defeated party because the judge in the court must determine the lex cause (law that should apply) first. However, sometimes the judge or the party in trouble does not know much about the lex cause in general, not to mention the existence of non-juridical factors that greatly influence the judicial process so that these conditions usually result in unsatisfactory decisions. So that the solution to overcome this matter, the parties can make a choice of law (the choice of law or the choice of forum) so that it is expected to obtain a satisfactory decision in the settlement of disputes arising in International Civil Contracts for the parties to the dispute. The Proper Law in a contract is the legal system desired by the parties, or if the will is not expressly stated or cannot be known from the surrounding circumstances, then the choice of law seen from the most reasonable state law applies to the contract, namely by look for the center of gravity or the link point that is closest to the contract. The Proper Law theory builds on flexibility rather than offering mechanical rules so it provides more certainty than other closest relationship tests. The research method used is normative juridical research, namely legal research conducted by examining secondary data with an emphasis on library research. So that the results of the research and discussion find solutions to problems that use the principles of The Proper Law as a solution to solving problems. namely legal research conducted by examining secondary data with an emphasis on literature studies. So that the results of the research and discussion find solutions to problems that use the principles of The Proper Law as a solution to solving problems. namely legal research conducted by examining secondary data with an emphasis on literature studies. So that the results of the research and discussion find solutions to problems that use the principles of The Proper Law as a solution to solving problems.

1. Introduction

BACKGROUND

The dynamics of contract law in the field of private (private) law is growing rapidly and developing, especially with regard to business and trade transactions. This legal relationship does not only cover legal subjects within the territory of a country, but is growing rapidly to include legal relations between legal subjects that cross borders between countries (transnational).

Likewise in terms of the form of legal relations, it no longer relies on face-to-face meetings, but has developed rapidly in legal relations using (virtual) information technology media, namely electronic media devices that act as connecting links in various international business transactions.
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In the era of free trade, there are legal problems faced by parties in domestic business transactions. According to Ralph H. Polson in his book Syahmin AK, problems that arise in international business transactions are generally closely related to certain additional risks and the application of different regulations.[1]

Seeing international traffic relations that continue to increase and the development of modern trade or business transactions, the need for law regarding contracts becomes real. Contracts also have an important role in international business. This role can be seen from the increasing trade transactions that are now cross-border. These trade transactions are set forth in contract documents. This is intended if at one time there are things that are not expected to happen or one of them commits a breach of contract (default), the aggrieved party can demand the fulfillment of an achievement.[2]Besides that, the contract also has a juridical function, namely it can provide legal certainty for the parties as well as an economic function that moves (property rights) resources from a lower use value to a higher value.[3]

The increasing forms of trade transactions or business relations in the form of buying and selling of goods, delivery of goods, production of goods and services based on a contract and others. All of these transactions are loaded with the potential to give birth to disputes. According to Gerald Cooke in his book Huala Adolf, in general, trade disputes are often preceded by settlement by

[1]Syahmin AK, Commercial Law, 2007, International Commercial Law, PT Raja Grafindo Persada, Jakarta, page 328

[2]Ade Maman Suherman, 2005, Legal Aspects in the Global Economy, Ghalia Indonesia, Bogor, page 17

[3]Salim HS, 2004, Development of Nominated Contract Law in Indonesia, Sinar Graphic, Jakarta, page 35

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negotiation, if this method of settlement fails then other methods are taken, such as settlement through court or arbitration.[4]

An important factor in the settlement of a dispute in the study of international contract law lies in the agreement of the parties. In the end it is the parties who determine how the dispute will be resolved to obtain legal certainty. In order to obtain legal certainty for the parties to the dispute and not to clearly explain in the contract which law will be applied when a dispute occurs, the choice of law is one of the clauses that is quite important in the contract to provide certainty to the parties to direct which law they must use in resolving contractual disputes.

whilst jurisdiction is in dispute, one or extra nation laws might be applicable to the decision-making technique. If the legal guidelines are the equal, there is no problem, however if there are major differences, the selection of which regulation to use will result in a one-of-a-kind judgment. consequently, every rule produces a hard and fast of guidelines to manual the choice of regulation, and one of the maximum vital guidelines is that the law to apply in a given situation is the regulation of right or most not unusual regulation. it is the law which seems to have the closest and maximum real relation to the facts of the case, and so has the first-class declare to apply. The term "right" refers to the older English feel of "right to".

however the hassle with accepting any country's claim for its legal guidelines to maintain is that the results may be relatively arbitrary. So, in the example given, if neither motive force has in-state residence, and each automobiles are maintained out-of-kingdom, the laws of another country might also have the identical or better claim to apply. The advantage of the proper law is that it builds flexibility in preference to providing mechanical guidelines. as a consequence, if the agreement does now not provide for an explicit desire of regulation to use (see desire of law clause), the events are deemed to have selected to be sure by means of the regulation with which the agreement has the maximum reasonable and maximum actual relationship.

To examine the problems in this study, a normative juridical research method was used, namely legal research conducted by examining secondary data with an emphasis on literature studies. Apart from researching the literature in the field of international contract law, research was also carried out on various international instruments, both soft law and hard law in that field. This research is descriptive-

[4]Huala Adolf, 2006, International Trade Law, PT Raja Grafindo Persada, Jakarta, p. 191

analytical in nature, namely research that aims to explore, find, study and analyze secondary data to find the concept of The Proper Law as a Choice of Law in International contract dispute resolution.

In conducting legal research and writing, the authors focus on a conceptual approach. The study was carried out by conducting research on primary and secondary legal materials such as books, international journals, especially regarding the concept of The Proper Law as a choice of law, the internet, dictionaries and everything that is still closely related to this topic. In addition, the author also conducts research with an approach to statutory regulations (statute approach) by studying various international conventions or agreements that apply in international trading related to the concept of The Proper Law as a Choice of Law. Thus, this study also uses a qualitative analysis method, namely by conducting legal discovery or legal analysis through library materials.

The purpose of this paper is to describe the concept of The Proper Law as a Choice of Law for disputing parties who have not explicitly determined their choice of law in a contractual agreement.

2. Results and Discussion

2.1 Choice of Law

The choice of law is a separate teaching or discussion and is an important teaching from the general theoretical field of HPI because the choice of law is one of the main issues of all civil law, namely the meaning of human will for the field of law. Therefore, the issue of choice of law in HPI shows elements of legal philosophy and also contains aspects of legal theory, legal practice and legal politics.[5]

In standard, there are styles of law alternatives, which include:

• Choice of Law, in this example the events decide in the contract which law applies to the interpretation of the contract.

• Choice of Forum (Choice of Jurisdiction), specifically the events determine for themselves in the settlement which court docket or discussion board applies in the event of a dispute among the parties to the contract.

•Domicile Party (Choice of Domicile), , in this case each birthday celebration designates wherein the prison home of that birthday celebration is.

The choice of law as one of the principles in International Private Law (HPI) is limited by provisions including:

[5]Sudargo Gautama, Introduction to Private International Law, Volume III Part II (Book 8). Alumni, Bandung, 2002, page 16.

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- Not violating public order
- Only allowed in the field of contract law
- Not related to employment contract law
- It is not permissible regarding civil provisions with a public nature
- The choice of law must be made bona fidely (in good faith) and must not be chosen deliberately with the intention of smuggling law.[6]

Limitations in determining the choice of law Although basically the parties in preparing and implementing a contract are free to determine the choice of law, there are some limitations, namely:[7]

a. The choice of law is only justified in the field of contract law. In the field of family law, there cannot be a choice of law, because this field of law is not seen as a wirtschaftseinheit for the benefit of the whole community and family.
b. The choice of law should not be about coercive law. Choice of law may not be made for pacht agreements, lease agreements for immovable objects, agreements held on stock exchanges, and work agreements, because agreements in these fields are ordeningsvoorschriften in nature which are made by the government to regulate civil law with the characteristics - characteristics of public law.
c. The choice of law must not turn into legal smuggling. The choice of law may not be made if the contract contains other ties that are much stronger than the choice of law. This choice of law can only be made with a bona fide intention, there is no specific choice of a particular place for the purpose of smuggling other regulations, therefore it must be not fictitious, based on a normal relation. and must show the existence of a natural and vital connection, a substantial connection between the contract and the law chosen.

Several ways of determining the choice of law The choice of law can be done in several ways, including:[8]

[6]Sudargo Gaautama, Indonesian Private International Law, op cit, p. 18-24.

[7]Sudargo Gautama, Introduction to Private International Law, op cit, h. 204-20

[8]Ibid., h. 173-181

a. Strict choice of law

In this strict choice of law, the parties to the contract expressly and clearly determine which country's law they choose. This usually appears in the clauses of governing law or applicable law, which for example reads: "this contract will be governed by the laws of the Republic of Singapore."

b. silent choice of law

In addition to the explicit choice of law, the parties can also choose the law tacitly (stilzwijgend, implied, tacitly). In order to find out whether there is a certain choice of law that is stated tacitly, it can be concluded from the intent or provisions, and the facts contained in the contract.

For example: if the parties choose domicile at the District Court Office in country X, then it can be concluded that the parties secretly want the law of country X to apply. The objection to this silent choice of law is if the judge wants to see that there is a choice that actually does not exist (fictional). Therefore, the judge only emphasizes the will of the alleged parties (vermoedelijke partijwil) and what is put forward is the will of the fictitious parties.

c. Presumed choice of law

This choice of law is considered to be only a presumption iuris, a rechtsvermoeden. That is, the judge accepts that a choice has occurred based on mere legal assumptions. In such a choice of law, it cannot be proven according to existing channels. The judge's allegation is a guide that is considered sufficient to maintain that the parties really have wanted a certain legal system to apply.

d. Hypothetical choice of law

In the choice of law, hypothetically, the judge works with fiction: if the parties have thought about the law to be used, which law will they choose in the best way possible. So, actually there is no choice of law from the parties, instead the judge chooses the law.

The Function of Choice of Law in an International Contract. There are several reasons why many legal choices are made and are important in international contracts, including:

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a. The reason fulfills the principle of freedom of contract

The parties to international business contracts have their own interests. These interests form the basis for negotiations in determining the content/substance of the contact. Free will is a human right, so each party is given the freedom to determine the will according to their interests. Freedom to express one's will is the implementation of the principle of freedom of contract or freedom of contract which has been stated in Article 1338 of the Civil Code, as long as it does not conflict with the law, decency and public order (Article 1337 of the Civil Code).

b. Practical reasons

By making a choice of law, the parties to an international business contract can agree to determine the contents of the agreement so that in practice they regulate their own legal relationship and legal consequences. By making a choice of law and choice of forum, the legal relationship will be easier because each of them already knows the law used to interpret the contents of the contract and knows the forum that will be used to resolve the dispute, so that the parties can better prepare everything before things happen. which are inconsistent with the terms of the contract.

c. The reason for legal certainty

All contracts/agreements that have been legally made apply as laws to those who make them (Article 1338 Paragraph 1 of the Civil Code), therefore the agreement is binding on the parties and must be obeyed (Pacta Sunservanda principle). This shows that there is legal certainty, this legal certainty is very much needed in an international business contract. Legal certainty regarding the legal rights and obligations of each party in the transaction, legal certainty also includes certainty over the choice of law used to settle cases in the event of a dispute, the parties already know the legal provisions for certain so that alternatives can be predicted in the event of a dispute dispute.

d. To determine the certainty of lex cause (the law that should apply)

A case of international business contract dispute is related to two different legal systems so that in

order to resolve the case a lex cause must be determined (the law that should apply). For international business contracts where there is a choice of law, to resolve the dispute the judge/arbitrator does not need to bother with the process of determining the lex cause using the law that has been chosen by the parties.

There are several theories in private international law (HPI) that can be used to find the law that should apply (lex cause) to a party relationship where there is no choice of law. Those theories are[9]:

- Lex Loci Contractus Theory

According to this theory, the applicable law is the law of the place where the contract was made. This theory is a classic theory that is not easy to apply in the practice of forming modern international contracts because the contracting parties are not always present face to face to form a contract somewhere (a contract between absent persons). They may contract by telephone or other means of communication. The alternatives available for the weaknesses of this theory are, firstly, the post box theory, and secondly, the acceptance theory. According to Post Box theory, the law that applies is the law where the post box recipient of the offer sends acceptance of the offer. According to the theory of acceptance, the applicable law is the law of the place where the sender of the offer accepts the acceptance of the offer.

- Lex Loci Solutionis Theory

As a variation on the theory of lex loci contractus, the theory of lex loci solutions is also put forward. According to this theory, the law that applies to a contract is the place where the contract is executed.[10]

But it cannot be denied that this theory often brings various difficulties if it is to be used in practice. This can be seen if there is not one place, but several places where the contract is executed. In general, these contracts contain obligations that must be carried out by the parties in different places. What is to be done in this case, is it

[9]Ida Bagus Wiyasa Putra, aspects of International Civil law in international business transactions, Rafika Aditama, Bandung, pp. 67- 68.

[10]Sudargo Gautama, Indonesian Private International Law, op cit, page 16.

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necessary to apply the laws of each place where this contract is to be executed. These are scholastic and unsound results which greatly undermine the reputation of the lex loci solutionis theory.

Another difficulty that arises in this theory of lex loci solution is that sometimes it happens that the parties cannot be sure at the time they contract, at which place the obligations must be carried out. For example, in insurance agreements or payments, ijfrente, which must be made to the domicile of the creditor, it can be seen that the place of performance cannot be determined because it is determined by changes in the domicile.

The reasons for chance that have been put forward as an objection to the lex loci contractus also apply to the lex loci solutionis. This happens when the place where the agreement is carried out may only be accidental/incidental and completely irrelevant, for the choice of law to be used, it is as meaningless as other places involved in the contract in question. For example, a handlesreiziger (traveling salesman) has been hired to carry out official tours to various countries.

- Theory of The Proper Law of Contract

According to Morris, the proper law of a contract is the legal system desired by the parties, or if the will is not expressly stated or cannot be known from the surrounding circumstances, then the proper law for the contract is the legal system that has the closest and most obvious connection. with transactions that occur. The same thing was said by Lord Atkin that[11]:

"The legal principles which are to guide an English Court on the question of the proper law are now well settled, It is the law which the parties intend to apply. Their intention will be ascertained by the intention expressed in the contract if any, which will be conclusive. If no intention is expressed, the intention will be presumed by the court from the terms of the contract and the relevant surrounding circumstances"

The way to go is to base it on the grouping of the various

[11]Sudargo Gautama, op.cit, ...Book 8, p. 21.

elements of the contract as they are reflected in its formation and its terms. So, pay attention to all forms and contents as well as the circumstances surrounding the formation of the relevant contract, so that it can be determined which elements are the most important (pre dominant).

- The Most Characteristic Connection Theory

According to Rabbel, if the parties to an international contract do not determine their own choice of law, then the law of the country where the contract in question shows the most characteristic connection will apply.[12]

In this theory, the obligation to carry out an achievement that is most characteristic is a benchmark for determining the law that will govern the agreement. In each contract it can be seen which party performs the most characteristic performance and the law of the party performing the most characteristic achievement is considered the law that must be used. In the Big Indonesian Dictionary, what is meant by characteristics are having distinctive characteristics according to certain traits, while in the HPI Indonesia book (Volume III Part 2 Book 8), Sudargo Gautama suggests that characteristics can mean typic or functional. 28 In this case it is seen how the function of the contract in question is, and with which legal system this contract is seen functionally, so that it does not only look at the place where the achievement is made. In addition, characteristics can also mean the most difficult achievements, which means which side's achievements are considered the most difficult. In fact, characteristic achievements can mean specific achievements, namely achievements that are special or typical, so there is a special or unique relationship between the achievements made and the place where the achievements are made. Furthermore, characteristics can also mean the strongest achievement to master the contract in question. so there is a special or unique relationship between the achievements made and the place where the achievements are made. Furthermore, characteristics can also mean the strongest achievement to master the

[12]Sudargo Gautama, op.cit, ...Book 8, p.32

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contract in question. so there is a special or unique relationship between the achievements made and the place where the achievements are made. Furthermore, characteristics can also mean the strongest achievement to master the contract in question.

There is also a connection between the choice of law and public order. As it is understood that the concept of Public Order in the HPI is an "emergency brake" that can stop the enactment of foreign law. This also applies in the making or execution of a contract against the use of the parties' autonomy too freely. Public Order maintains that the law that has been chosen by the parties is not in conflict with the fundamental principles of law and the community of the judge (lex fori).

2.2 Development, Theory, and Concept of The Proper Law Doctrine in Contracts

The mid-20th century is an opportune time to review the achievements of the last fifty years, and to re-examine the solidity of the foundations of legal doctrine which have naturally turned in the spirit of this reflection. The details, always subject to change and development, certainly remain beyond the scope of medieval quests.[13]

It ought to be admitted that subjective principle is the law product of an age that proclaimed and embraced the liberal maxim of freedom of contract, an concept and a perfect which for many people has lost its appeal. The state of affairs in which the nation plans and determines, however the person is allowed to settlement from that which has been decreed for him, includes a paradox who isn't always prepared to compromise, and from which those who opt for law making plans with freedom. those are usually subconscious and possibly vague reactions to basic conceptions of coverage and are therefore outside the attain of a law approach. but even mere attorneys lately on sound felony grounds direct their crucial powers to the principles of the proper law.[14]

The strongest opinion was carried out by Dr. Cheshire who, since his focus on private international law, has shown skepticism of established practice[15], and who has recently restated his view that the law governing contracts is not what the parties intend, but those to which they have

[13]FA Mann, The Proper Law of the Contract, The International Law Quarterly, Vol. 3, No. 1 (Jan., 1950), p. 60-73.

[14]Cheshire, International Contracts, Glasgow: Jackson, Son & Company (1948), p. 7.
[15]JHC Morris, Private International Law, Oxford: The Clarendon Press (1939), p. 335.

the most substantial relationship[16]. This objective theory and all its implications were barely formed when it was received by Denning LJ" Lord Justice's learned observation was, it is true, an obiter dictum of the purest kind and, apparently, made without full argument on point or complete investigation of the authorities, but their weight should not be underestimated.Finally, in the sixth issue of Dicey's Conflict of Laws, Dr Kahn-Freund, although he has not yet discarded any of the original authors' major contributions to the subject, has reformed the rules in at least such a way as to demonstrate that the question of the capacity of the contracting parties must be governed by law substantially related to the contract.

It is in these circumstances that a dissenting legal expert feels provoked to try to defend a principle which he believes deserves constant respect and support because of its inherent authority, fairness and soundness. Unfortunately, this effort was not carried out without a strong legal basis, so that it can be applied for mitigation, it has been good enough to say beforehand that the pardon can be relied upon. As will emerge later, the defense will make use of a number of points of a technical and analytical nature. Serious though they may be found, they will still be unsatisfactory, unless they are supported by fundamental reasons, by the arguments of this principle.

No objective theorist can deny that the amount of support he can get from the authorities is meager. The court has never refused to strictly enforce the parties' choice of law. On the other hand, in all cases reported many courts have accepted the parties' choice of law without questioning it. In cases where the parties fail to determine the law, do courts ask themselves with which legal system the contract is most closely connected: they always see it as their duty to ascertain the parties' implied intent.

It was conveyed that the prevailing practice must be defended by legal experts. There are four main technical reasons that can be put forward to support the legal principles of The Proper Law[17]:

1. In the event that the parties have made a statement of choice of contract, subjective theory achieves one of the main objectives of law, namely achieving legal certainty. Objective theory exposes parties to the risk that what they have agreed to is often after many failed bargains and that their contract is subject to a legal

[16]Falconbridge, Conflict of Laws, Toronto : Canada Law, Book Company (1947), p. 351.

[17]FA Mann, 1950, p. 60-73.

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system that either of them may not have prepared or may be expected to submit to one particular legal system. As experience shows, the number of cases where the parties make a firm choice is growing. There is nothing to be done that could disrupt the tendencies that tend to facilitate trading.

The advantage of legal certainty is left out by objective theory in a way that introduces a very dangerous kind of uncertainty. This happens because of the requirement for the most substantial relationship, namely a definition that involves degrees, estimates, evaluations in matters that normally cannot be measured or weighed.

2. These difficulties are not so great that the parties do not make a firm choice. In these cases, as has been shown, both objective and subjective theories will usually arrive at the same result, the weight of the argument against objective theory not in the uncertainties it creates, but in the difficulty of its application.

Objective theory emphasizes the objective elements of contracts. Therefore, judges expect something that is not only foreign, but also very difficult for them instead of asking themselves what certain parties want to do, they have no other guide than what the parties have actually done. For the purpose of interpreting the contract, to ascertain the intent of the parties, the judge may consider many circumstances which may also hear evidence about them; for the purpose of finding the most substantial relationship, the judge must limit himself to an investigation of the elements that have location effect. Therefore, he cannot take into account the previous actions or views expressed by the parties in the negotiation process,

3. This may be a short and small point in favor of subjective theory, but for some it will be a weighty point, that objective theory will introduce the doctrine of renvoi into private international contract law. Subjective theory excludes renvoi based on the fact that the

parties can reasonably be assumed to have intended to refer to domestic rules, not to the conflict of laws of their chosen legal system. This line of reasoning does not seem open to objective theory. A doctrine that Dr. Cheshire[18]. (These actual words do not seem to be repeated in the third edition, but the author's views as expressed there are no less pronounced) considered to be contrary to common sense and abhorrent to the true nature of any international private law system, and even in the eyes of its adherents should not be given a space that is too wide, will control a field currently closed to it.

4. Objective theory leads to certain discrepancies that are not only dogmatically unappealing, but also uncomfortable in practice. This arises, first, from the concessions that objectivists have to make to subjective theory. So Dr. Cheshire acknowledges that, where the parties have agreed to submit to arbitration or the courts of a particular country, and thereby decide on the application of the laws of that country, effect shall be given to this choice. Other confessions yet, but must be made by him.

In Anglo-Saxon as well as in Latin countries foreign law is a matter of fact not only in the sense that it must be proven by the parties, but also in the sense that, unless requested, it cannot be applied by a court. The UK conflict rules are, therefore, largely of the nature of additional or optional law, the relevance of which is subject to the will of the parties or one of them. Even where foreign law is invoked, but not substantiated, it is presumed to be the same as English law. It would therefore be inconsistent if the parties were restricted in their freedom to refer their contract to English law or, in other words, to do under the contract what they could do with their defence.[19]

However persuasive these objections to objective theory

[18]Cheshire, Private International Law, New York and London : Oxford University, 2nd ed, (1938), p. 65.

[19]M. Wolff, Private International Law, Oxford : Oxford University Press, 1950 p. 480

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> may be, they cannot, it is respectfully suggested, carry the same weight as the main arguments against them and which can be summarized very briefly. For the most part the controversy is purely verbal or essentially academic'." Where practical differences of approach or results arise (i.e., especially in the case of an unequivocal choice of law), any gains to be gained from objective theory are so small, and the disadvantages are so great that , on balance, there is no justification for concentrating on his stance rather than on the elaboration and refinement of subjective theory.[20]

According to the theory of the proper law of contracts, the regulation that applies is the law of the country that maximum evidently applies to the settlement, specifically with the aid of locating the center of gravity or the closest link point to the agreement.

According to Morris,the proper law of a contract is the legal system desired by the parties, or if the will is not expressly stated or cannot be known from the surrounding circumstances, then the proper law for the contract is the legal system that has the closest and most obvious connection with the transaction happen.[21]The same thing was said by Lord Atkin that:[22]

"The legal principles which are to guide an English Court on the question of the proper law are now well settled, It is the law which the parties intend to apply. Their intention will be ascertained by the intention expressed in the contract if any, which will be conclusive. If no intention is expressed, the intention will be presumed by the court from the terms of the contract and the relevant surrounding circumstances".

Besides that, according to Cheshire, the proper law of contract is "... a convenient and succinct expression to describe the law that governs many of the matters affecting a contract. It has been defined as that law which the English or other court is to apply in determining the obligations under the contract.

The way to go is to base it on the grouping of the various elements of the contract as they are reflected in its formation and its terms. So, pay attention to all forms and contents as well as the

[20]Nussbaum, Principles of Private International Law, Toronto : Oxford University Press (1943), p. 161.

[21]JHC Morris, 1939, p. 256

[22]Sudargo Gautama, op.cit, ...Book 8, p. 21.

circumstances surrounding the formation of the relevant contract, so that it can be determined which elements are the most important (pre dominant).

Canadian courts adopted the proper law doctrine which was later modified by Dicey and Morris, namely as a legal system desired by the parties. Then, if the good parties that are expressly disclosed cannot be known from the surrounding circumstances, then a legal system that has the closest, strongest, and real connection with the transactions that occur is used. This is what is referred to as the proper law of contract.

There are three rules of The Proper Law doctrine[23]. those three regulations had been developed to help courts in determining the proper law of a settlement. The first rule is for the judge to first ask whether there was an express choice of appropriate law by the parties (Rule 1), second, if not, whether there was an implicit choice of law (Rule 2), and third, if not, by the legal system. which transaction has the closest and most obvious relationship (Rule 3). The concept of The Proper Law tries to make this third general principle more precise by using the most reasonable presumption in determining the choice of law.

In the European Convention on the Law applicable to Contractual Obligations 1980[24]explains a little about the theory of Choice of Law The Proper Law namely in Article 4 (2) states that "... it will be presumed that the contract has the closest relationship with the country in which the party that will carry out the implementation which is characteristic of the contract, at the time termination of the contract, his usual place of residence, or in the case of a legal entity... his central administration...."

However, the European Convention does not define the concepts accompanying the legal theory, citing only examples of what is considered the most reasonable presupposition. before considering this example, it should be cited that the maximum affordable presupposition does no longer observe if it can not be decided or if it seems from the occasions as a whole that the agreement is more carefully related to every other usa. As no choice help is given as to what type of situation wishes to be analysed.[25]

it's been argued that the principle aim of The proper regulation theory is to offer compromises between people who seek truth and predictability in figuring out the applicable law and those who, like

[23]Nicky Richardson, The Concept of Characteristic Performance and Proper Law Doctrine, Bond Law Review : Vol. 1, 1989, p.2.

[24]Herein after called the European Convention

[25]Morris and North, Cases and Materials on Private International Law, London : Butterworths (1984) p. 466.

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British lawyers, see benefits within the flexibility of the overall regulations. a few see little desirable in presumptions and consider that, if presuppositions exist, they have to be disproved, (which, however, may also defeat their personal object).

While some legal experts consider that concept adoption is a commendable exercise in trying to formulate rules it should provide more certainty than other tests of closest relationships, and many agree that it is more convincing to suggest that overall The Proper Law theory for localizing contracts through 'mysterious concepts' , almost mystically, is nothing but 'unconvincing production of prophecies rather than investigations'. Because it focuses on the laws of either party's home country, rather than their common concerns, the examination cannot easily be reconciled with the exact legal approach it purports to clarify.

The advantage of The proper regulation principle is that it builds flexibility rather than imparting mechanical guidelines. think there's a settlement between an Italian employer and a British partnership for the sale of products made in Greece to be shipped from Belgium by using Panama-flagged ships to Swedish ports. Adopting a rule such as lex loci contractus, that is applying the law where the contract is made, can actually choose a law that has nothing else to do with the substance of the bargain made by the parties. further, choosing a lex loci solutionis, i.e. the regulation of the location in which the agreement might be accomplished, can prove equally inappropriate, assuming that there is most effective one location in which performance will take area: in the example, there is production in Greece, transport to Belgium, loading in Belgium, delivery on the high seas, and demolition in Sweden. hence, if the contract does not offer for an specific choice of regulation to use (see desire of law clause), the events are deemed to have selected to be bound by means of the regulation with which the agreement has the maximum affordable and most real.

Consider a case like Evans Marshall & Co v Bertole, which involved a contract for the distribution of sherry in England. Sherry is produced in Spain and will be marketed in England. Under European Convention Article 4(2), the contract shall be ruled by using Spanish law (regulation of the Spanish principal management and organisation places of commercial enterprise) if the manufacturing and transport of the sherry displays the overall performance characteristic of the agreement, and by using English regulation (the regulation on the significant management of vendors and the relevant place of work) if popularity and promotion

of sherry is considered a performance function of the agreement.

It seems a valid criticism[26]or the weakness of the concept of The Proper Law to say that the more complex a transaction is, the less it helps these criteria. Furthermore, the concept gives the privilege of choice of law to the parties to the contract. Certainly it is sellers and buyers in general who are better able to evaluate the risks of doing business internationally and hedge against them by using choice of law clauses or choice of forum or arbitration clauses. So far it can be said that the concept contradicts the theory in favor of the economically disadvantaged. This theory protects consumers and employees. For example, in certain circumstances a consumer or employee may not be exempt from the protection laws in force in the country of residence.

A similarly drawback worries restrictions that exclude contracts from presumption. problems inevitably rise up if this concept does now not practice to all varieties of contracts. Any try and break up the agreement into companies is doomed to failure, grey regions will continually seem. similarly, the regulation has grow to be too tough. If the concept of feature overall performance is to be implemented, it should have prevalent utility.

A further weakness is that judges do now not have tips, the touch between the transaction and the law chosen is doubtlessly too numerous and the weight to receive to every contact is hard to determine. The policies meant that each case had to be considered again which became a time eating exercising. there may be no logical or prison vital to frame the regulations in their current phrases. The truth of introducing one of these concept as 'the overall performance feature itself indicates dissatisfaction with this rule, certainly the record accepts that the rule of the law of the right is 'too indistinct'.

2.3 Implementation of The Proper Law Concept (Case Study)

An example of using the theory of the proper law of the contract can be seen in

- The Hof Amsterdam decision (1946) in the case of Jacobs v. Van der Horst,

as follows:

The Jacobs & Moerman Firm which is domiciled in London has entered into an agreement with Van der Horst from Amsterdam. In this case, Van der Horst is obliged to hand over the down to the Jacobs & Moerman Firm, which will resell it and then share the profits between the two.

[26]By North in Contract Conflicts: The EEC Convention on the Law Applicable to Contractual Obligations. A comparative study (ed PM North) (1980) p. 15.

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However, because he was deemed not fulfilling his obligation to share profits, in the end Van der Horst sued the Jacobs & Moerman Firm. In his decision, Hof considered Dutch law as the applicable law in the contract, with the following considerations:

a. That Van der Horst is a Dutchman and lives in the Netherlands;
b. Whereas the holding companies of the Jacobs & Moerman Firm consist of Dutch people;
c. That this agreement occurred because the correspondence was partly conducted in the Netherlands and partly in London, but was carried out in the Dutch language;
d. Whereas because the objects of the agreement are Dutch goods, which are produced in the Netherlands, and have also been purchased in the Netherlands by Van der Horst, to then send them to the Jacobs & Moerman Firm for resale, the implementation of this agreement for the most part has taken place in the Netherlands. .

From the examples above, it is Dutch law that is considered applicable because all of the factors above point to the use of Dutch law. Therefore, the law that applies to a contract where there is no choice of law according to the proper law of contract is the law of a country where a contract has the closest and most real relationship with that contract. This means that the judge must pay attention to all subjective and objective elements or factors in the contract in question in order to determine the point of gravity (zwaart-punt).

Another example is the contract between WFP and Yasmina, so in this case the characteristics of the parties making the contract will be analyzed, all incidents at the time of its formation, the terms used, and the goals to be achieved. Thus a factual weight is found and this is where the center of gravity of the contract in question is located, the application of which is as follows:

a. That Yasmina is a legal entity established under Indonesian law and domiciled in Indonesia. Thus Yasmina's legal status is an Indonesian legal entity.
b. WFP is a UN agency engaged in the provision of food assistance, headquartered in Rome, Italy and has several representative offices, one of which is in Jakarta, Indonesia.
c. Whereas this cooperation contract occurred because correspondence was partly conducted in Jakarta, Indonesia, but was held in English and Indonesian;

d. Whereas Yasmina's achievement was making public sanitation in RT 04 and RT 05-RW 04, Teluk Pinang Village, Ciawi, Bogor, Indonesia, so the implementation of this achievement has taken place in Bogor, Indonesia. Apart from that, Yasmina's party also had to raise funds of Rp. 30,150,000.- which was carried out in Indonesia, for the continuity of the public sanitation development project which was obtained from the assistance of the community and other NGOs in Indonesia.
e. Whereas WFP's achievement was in providing financial assistance for the construction of public sanitation, through interbank transfers made in Indonesia, from Citibank (Jakarta) to Bank Syariah Mandiri (Bogor branch).

1. Conclusion

International Contract Law is a bridge that connects agreements made by the world community. However, cooperation that occurs often encounters obstacles when the disputing parties do not fulfill their achievements. So that the aggrieved party usually resolves disputes through the courts. However, the settlement of international civil contract disputes through the courts often causes dissatisfaction for the defeated party because the judge in the court must determine the lex cause (law that should apply) first. However, sometimes the judge or the party in trouble does not know much about the lex cause in general, not to mention the existence of non-juridical factors that greatly influence the judicial process so that these conditions usually result in unsatisfactory decisions. So that the solution to overcome this matter, the parties can make a choice of law (the choice of law or the choice of forum) so that it is expected to obtain a satisfactory decision in the settlement of disputes arising in International Civil Contracts for the parties to the dispute.

Choice of law is a separate teaching or discussion and is an important teaching from the field of general theory of Contract Law because choice of law is one of the main issues of all civil law, namely the meaning of human will for the field of law. In general there are types of choice of law namely, Choice of Law, Choice of Forum (Choice of Jurisdiction). However, there are also limitations in determining the choice of law, although basically the parties in preparing and implementing a contract are free to determine the choice of law

The proper law of a contract is the legal system desired by the parties, or if the will is not expressly stated or cannot be known from the surrounding circumstances, then the proper law for the contract is the country that most naturally applies to the contract,

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namely by seeking the center of gravity or the closest link to the contract. The Proper Law theory builds flexibility rather than offering mechanical rules so as to provide more certainty than other closest relationship tests so that this theory is widely used and has received support from legal experts in the choice of law.

An example of the use of the proper law of the contract theory can be seen in the Hof Amsterdam Decision (1946) in the Jacobs v. van der Horst. From the examples above, it is Dutch law that is considered applicable because all of the factors above point to the use of Dutch law. Therefore, the law that applies to a contract where there is no choice of law according to the proper law of contract is the law of a country where a contract has the closest and most real relationship with that contract. This means that the judge must pay attention to all subjective and objective elements or factors in the contract in question in order to determine the point of gravity (zwaart-punt).

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