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CHALLENGES IN IMPLEMENTING OPTIONAL CLAUSES IN INTERNATIONAL SALE OF GOODS AGREEMENTS(CHALLENGES IN APPLYING CHOICE CLAUSES IN INTERNATIONAL SALE OF GOODS CONTRACTS)

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Abstract

This research analyzes the application of choice of law and choice of forum clauses in international sale of goods contracts by Indonesian courts. It highlights the inconsistencies in juridical decisions which often confuse or ignore these concepts, causing legal uncertainty. Using a juridical-dogmatic method, the study explores four contractual clause conditions: both clauses present, only choice of law, only choice of forum, and neither. By examining several court decisions, the study reveals conceptual confusion and misapplication of private international law (PIL). It concludes that courts should distinguish these clauses clearly and apply relevant PIL principles. The study recommends ratifying the Draft Bill on PIL by adopting HCCH principles to guide judges in transnational disputes.

Keywords: ***Choice of Law, Choice of Forum, Private International Law, International Sale of Goods, Court Decisions***

INTRODUCTION

Globalization has driven the intensity of cross-border transactions in the form of international sales agreements. In practice, international contracts generally include choice of law and choice of forum clauses to anticipate disputes. These two clauses grant the parties autonomy to determine the applicable law and the authorized dispute resolution institution. However, ambiguity in drafting or ignoring these clauses often triggers complex legal issues, particularly in Indonesian jurisdiction. The main problem that arises is when courts in Indonesia do not consistently distinguish between choice of law and choice of forum, thus giving rise to legal confusion and legal uncertainty. In a number of decisions, judges equate the two concepts or even override clauses agreed upon by the parties. This demonstrates a weak understanding and application of the principles of Private International Law (IPL), such as the proper law of contract, forum non conveniens, res judicata, the principle of comitas gentium, and other IPL principles in determining the applicable law and the competent court to resolve the dispute. This study aims to analyze how the theory and doctrine of the Indonesian Criminal Code (HPI) can be applied to resolve issues arising from the presence or absence of option clauses in international sales and purchase agreements. Furthermore, this study examines how Indonesian courts should approach international agreements containing foreign elements, as well as the urgency of ratifying the Draft HPI Law as a normative guideline for judges. This research is relevant due to the high intensity of international trade involving businesses from various jurisdictions. Consistent law enforcement guided by the principles of the Indonesian Trade Union (HPI) will create legal certainty and increase the competitiveness of international contracts in Indonesia.

RESEARCH METHODS

This research uses a juridical-dogmatic approach, emphasizing the analysis of relevant norms, doctrines, and principles of the Indonesian Civil Code. The aim of this approach is to evaluate the application of choice of law and choice of forum clauses in international sales contracts by Indonesian courts.

The types of data used are as follows:

1. Primary legal materials, including statutory regulations, the HPI Bill, Court Decisions (national and international), and international conventions such as the HCCH Principles on Choice of Law and the HCCH Choice of Court Agreements.
2. Secondary legal materials, including books, scientific journals, and academic writings that discuss the concepts, theories, and principles of HPI.

3. Tertiary legal materials, such as legal dictionaries and legal encyclopedias, are used as supplements.

Data collection was conducted through literature review, while data analysis was conducted descriptively and qualitatively, using deductive reasoning and legal interpretation. This study links applicable legal norms with jurisprudential practice, and then draws conclusions regarding the consistency and effectiveness of the application of choice of law and forum in the context of international contracts.

RESULTS AND DISCUSSION

International sales contracts generally contain choice of law and choice of forum clauses to determine the applicable law and the forum for dispute resolution. However, in practice, these clauses are often drafted unclearly, incompletely, or even completely ignored, giving rise to various legal issues when disputes arise. This study identifies four main situations that commonly occur in international sales and purchase agreements, and examines their application by courts in Indonesia through concrete case studies:

1. There are Choice of Law and Choice of Forum Clauses
   In the Supreme Court Decision Number 365 K/Pdt/2016 and the DKI Jakarta High Court Decision Number 288/PDT/2015/PT.DKI, the case between PT. Bumi Semesta Satria against Toepfer International Asia shows that the parties have agreed to a choice of law clause that refers to English Law and a choice of forum that designates FOSFA Arbitration in London in the event of a dispute. However, the Supreme Court and the DKI Jakarta High Court still stated that the Central Jakarta District Court has the authority to adjudicate based on another agreement that designates Indonesian law. The decisions of the DKI High Court and the Supreme Court in this case set aside the specific arbitration clause and violate the principle of pacta sunt servanda.
2. There is a Choice of Law, No Choice of Forum
   In Supreme Court Decision No. 1935 K/Pdt/2012, in the case between PT. Pelayaran Manalagi and PT. Asuransi Harta Aman Pratama, the agreement stipulated the use of English law without specifying a choice of forum. The court of first instance declared itself competent and applied English law as substantive law, but at the cassation level, the lawsuit was declared inadmissible.
   The Supreme Court, on appeal, considered that the "subject to English law and practice" clause automatically assigned jurisdiction to English courts. This cassation decision clearly confused the judicial authority with the applicable law, which is a fatal flaw within the Indonesian Criminal Justice System (HPI) framework.
3. There is Choice of Forum, No Choice of Law
   In the case of PT. Symrise (Singapore) against PT. Megasurya Mas (Indonesia) in the South Jakarta District Court under Case Number 571/Pdt.G/2010/PN.Jkt.Sel, the parties agreed to SIAC Singapore Arbitration as the chosen forum to resolve the dispute. However, the exception of absolute competence submitted was rejected by the judge because the clause was deemed to have been explicitly agreed upon by both parties. The judge considered that the clause contained in the invoice was not legally binding.
   The judge's attitude or consideration in this case becomes problematic because the domestic court takes over the authority to determine the validity of the arbitration agreement, something that should be the authority of the arbitration itself to determine its authority.
4. There is no Choice of Law and Choice of Forum
   In Supreme Court Decision Number 633 K/Pdt/2007, the case between Chin Hsiang Electricity & Machinery Co. Pte. Ltd (Singapore) and PT. Loka Rahayu Plywood Industries (Indonesia) did not include the choice of law and choice of forum. Although the agreement is international, the judge still resolved the dispute based on national law and Indonesian jurisdiction.
   In this case, the judge's decision can be justified by the principles of the Indonesian Criminal Code (HPI), such as the principle of actor sequitur forum rei (a lawsuit filed at the defendant's domicile) and the location of the object of the dispute. However, a review of the judges' deliberations from the first instance to the cassation instance shows that there is not a single mention or use of the HPI framework. This correct decision appears to have arisen by chance, not from a systematic application of the HPI doctrine, further strengthening the argument that the understanding of HPI has not been evenly internalized among judges.

CONCLUSION

The application of choice of law and choice of forum clauses by Indonesian courts in international sales disputes remains riddled with inconsistencies and serious conceptual confusion. Judges often fail to clearly distinguish between adjudicating jurisdiction and applicable law, ignore valid arbitration clauses, and fail to consciously and systematically apply the fundamental principles of the International Criminal Court (ICC). This results in legal uncertainty and undermines the principle of freedom of contract. The correct judicial stance is to

respect the parties' autonomy by validating and applying agreed-upon clauses. If a clause is absent or invalid, judges are obligated to explicitly use the ICC framework to determine jurisdiction and applicable law. To address this issue, it is strongly recommended that Indonesia immediately ratify the ICC Bill, adopting the harmonization principles of the International Criminal Court (HCCH), and conduct ongoing training to improve judges' competence in handling transnational disputes.

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