

**NORMATIVE STUDY OF UNIDROIT PRICIPLES AND CISG
AS THE CHOICE OF LAW OF AN INTERNATIONAL
COMMERCIAL CONTRACT**

THESIS

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TINJAUAN YURIDIS PRINSIP-PRINSIP UNIDROIT DAN CISG SEBAGAI PILIHAN HUKUM DALAM SUATU KONTRAK KOMERSIAL INTERNASIONAL

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ABSTRAK

Internasional komersial kontrak adalah suatu kesepakatan tertulis yang dibuat oleh para pihak dari berbagai negara atau antara pihak dari negara yang berbeda dalam transaksi komersial internasional. Kita tidak lagi dapat menghindari penggunaan kontrak komersial internasional karena kini kita mulai menghadapi era globalisasi dimana orang-orang dapat melakukan transaksi lintas batas negara. Tiap negara mempunyai sistem hukumnya masing-masing. Peningkatan yang pesat dari penggunaan kontrak komersial internasional membuat penyeragaman hukum perdata internasional diperlukan. *International Institute for the Unification of Private Law (UNIDROIT)* pada tahun 1994 mengeluarkan prinsip-prinsip dalam hukum perdata internasional yang dikenal dengan *UNIDROIT Principles*, sedangkan PBB mengeluarkan *United Convention on Contract for the International Sale of Goods (CISG)* pada tahun 1980.

Peraturan-peraturan ini bertujuan untuk menentukan aturan umum bagi kontrak komersial internasional yang dapat memberikan solusi terhadap masalah yang timbul ketika ternyata bahwa tidak mungkin menggunakan sumber hukum yang relevan dengan hukum yang berlaku di suatu negara. Prinsip-prinsip ini juga dapat digunakan sebagai sumber hukum yang dijadikan acuan dalam menafsirkan ketentuan hukum kontrak yang tidak jelas. Alasan ini menyebabkan penulis ingin menulis tentang masalah ini mengingat kebutuhan akan informasi mengenai bagaimana prinsip-prinsip ini dapat menjadi pilihan hukum bagi para pembuat kontrak komersial internasional. Dan apakah ada kesesuaian antara hukum kontrak Indonesia (KUH Perdata Pasal 1233-1864 tentang perikatan) dengan UNIDROIT Principles dan CISG.

Penyelesaian skripsi ini dilakukan melalui penelitian dengan menggunakan metode pendekatan masalah yuridis normatif dan menggunakan bahan hukum primer dengan menambahkan bahan hukum sekunder dan tersier. Bahan-bahan hukum ini kemudian dianalisa dengan memaparkan hal-hal yang relevan dengan permasalahan dan dibuat dalam bentuk skripsi.

Hasil penelitian memaparkan bahwa para pihak menggunakan UNIDROIT Principles dan CISG sebagai pilihan hukumnya untuk menghindari wanprestasi dari pihak lain. UNIDROIT Principles dan CISG memasukkan ketentuan yang mengatur para pihak secara umum tanpa harus mencemaskan perbedaan kewarganegaraan, karena prinsip-prinsip ini telah menyeragamkan dua atau lebih sistem hukum yang berbeda. Selain itu, antara KUH Perdata Indonesia dengan UNIDROIT Principles dan CISG terdapat kesesuaian dalam prinsip kesepakatan. Prinsip kesepakatan ini adalah prinsip dasar dari UNIDROIT Principles dan CISG.

CHAPTER I

INTRODUCTION

1.1. Background

Economics growth in a society is not only determined by economic level society itself, but also by the efforts that being conducted by all economic perpetrators to develop and improve it. One of efforts in economics improvement and development is cooperation with other party from within itself society and also from outside. Such cooperation is often made in a contract or an agreement which can protect each party from action which can harm the parties. The making of cooperation contract or agreement is done as one of preventive efforts from each party.

States are the most dominant contract or agreement subjects nowadays. Despite of that, everyone also can make cooperation agreement or contract with those who have or have not the same citizenship. In making cooperation agreement or contract in which the parties have the same citizenship, we have to be bent down to the domestic law to the pertinent state. In Indonesia's national law, the form of contract or agreement is not defined permanently in a regulation. But, the valid requirement of an agreement or contract, determined in Article 1320 of the Third Book of Civil Code.¹

¹ In article 1320 Civil Code, stated that the valid requirements of a treaty are:

1. the parties agree to be bound;
2. able to make a treaty;
3. certain things;

The agreement which is made by a different citizenship parties, has to follow the rules of international law. In this agreement, the parties can determine by themselves or free to choose which law to be obtained to this agreement. Agreement that intended here is commercial agreement. In order to speed up the economic growth, state has to motivate the appearance of all kinds of form of commercial agreement. If in a trade/commerce agreement there is foreign element, it is progressively needed a set of law which can guarantee orderliness trade and also guarantee justice for all parties or each state, according to their or its obligations.

A trade agreement which has a foreign element is mean to talk it from international commercial law facet representing the part of international private law. In international private law, a contract maker subject to the choice of law by the parties. This choice of law will be very useful for the parties in the case of the happening of dispute. If the parties have determined by themselves which rules to be obtained, when the dispute happened, then the choice of law will go into effect. This choice of law can be conducted before dispute happened (at the time of contract is being made), but it is also possible to be conducted by the parties at the time of that dispute have been happened.²

4. for legal reasons.

² Munir Fuady, *HUKUM BISNIS Dalam Teori dan Praktek-Buku Ketiga*, Cetakan ke I, PT. Citra Aditya Bakti, Bandung, 1996, p. 147.

CHAPTER IV

CLOSING REMARKS

4.1. SUMMARY

1. There are many reasons why the UNIDROIT Principles and CISG are chosen as the choice of law of international commercial contract. One of them is that these principles are very useful to help them preventing the non-performance of other party. UNIDROIT Principles and CISG include the provisions which are generally governing the parties without having to worry about the nationality of each party, whether they belong to the same country or not. UNIDROIT Principles help the parties find the solutions of the difference of legal system problems as terminologies reference and uniform principles. The other advantages are the disputes between parties are easier to be settled; avoid the application of improper international private law; and as the references for the parties in facing the difference in legal systems and terminologies.
2. UNIDROIT Principles which are usually used are the freedom of contract principle; good faith and fair dealing principle; the acknowledgement of business transaction custom in one state principle; the agreement through offer and acceptance or conduct principle; the prohibition of negotiation in bad faith principle; duty of confidential principle; the protection of weak parties in standard terms principle; the validity of contract principle; the revocation of a contract

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