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The Limitation in Choice of Law and Choice of Forum Within International Business Contract

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Abstract

Clauses on Choice of Law and Choice of Forum are often used in International Trade Contract. Its usage is strongly motivated by cross-jurisdictional parties, allowing them to adhere to the different legal systems. The function of the choice of law and choice of forum is to pro-vide legal certainty among the parties in the creation, implementation, and resolution of disputes that arise in the future. The choice of law concerns the material law imposed by the parties, while the choice of the forum concerns the forum where the dispute will be resolved. The basic principle in the choice of law and the choice of forum is the autonomy of the parties, where the parties are given the freedom to deter-mine the law and the forum in the contract they make. This freedom is not unlimited but has limitations in its application. Limitations within determining the law and the forum used, among others, do not violate public order and mandatory rules, are not carried out for legal smuggling, and must be based in good faith. The validity of the choice of law and the choice of the forum depends on the violation of these restrictions so that the parties can acknowledge and accept the choice of law and the choice of the forum.

Keywords: *Choice of Law; Choice of Forum; Limitation; Con-Tract*

Introduction

Indonesia is a developing country that continually strives to improve and adjust conditions that develop in the international sphere. These developments cover various fields, including legal aspects, especially contract law. In today's era of globalization, business transactions are often carried out by entities from different countries.(Kusumadara, 2013, p. 1) This is due to the growing development of science in all fields of life and the advancement of increasingly sophisticated technology, transportation, and communication. Transactions between transnational business actors are known as "International

Business Transactions."(Badan Pembinaan Hukum Nasional Departemen Hukum dan HAM RI, 2009) More and more business actors in Indonesia, whether individuals, business entities, private legal entities, public legal entities, or state-owned enterprises, conduct international business transactions.(Kusumadara, 2013, p. 1) A foreign element in a contract brings legal consequences regarding what laws will apply to the contract. This is because the parties bound in the contract are subject to laws that differ. The law that applies to contracts can be in the form of law, including the national law of one party or national law of another party, international customary law, and international law.

In international trade contracts, choice of law clauses and forum choices were found. The parties in formulating a choice of law and forum choice are based on a legal principle known in the contract field, namely the principle of the parties' autonomy. The principle of the parties' autonomy is the basis for the parties to choose which laws and forums the parties will apply in the contract that has been made or in the settlement of contract disputes. The choice of law certainly has limitations in its inclusion. Likewise, the choice of forums based on the principle of autonomy of the parties also has limitations. The conflict of law became one of the topics in the extended discussion discussed in the United Nations Commission on International Trade Law's Working Group VI (from now on referred to as UNCITRAL) in September 2005. The purpose of the discussion was to establish a law model for international business, including legal disputes in its implementation, especially relating to the freedom of the parties to determine the law in the resolution of their disputes (choice of law) and the restrictions, which are increasingly developing in their implementation, resulting in the need for broader regulation.

Regarding these restrictions, it is necessary to examine the restrictions imposed on the choice of law and the choice of forums in an international trade contract. This is because the problem of a legal choice is a problem that is hard to resolve. Another party does not necessarily accept a law chosen by one party.(Huala Adolf, 2008, p. 137) Sudargo Gautama stated that the choice of law is a problem that is still controversial, whereas, in the matter of choice of law, there are differences of opinion which do not allow the realization of unanimous legal certainty.(Sudargo Gautama, 2002, p. 2) With this background, it is necessary to examine the limitations of the choice of law and the choice of forums in an international trade contract.

Research Methods

There are two approaches in this normative legal research, the statute approach and the conceptual approach. The conceptual approach was applied to analyse legal norms, concepts, and principles concerning choice of law and forums contained in international trade contracts. The statute approach analyses the suitability and synchronisation of legal rules concerning. This study uses data consisting of primary and secondary data. Primary data obtained from regulations consisting of; 1) The 1980 Vienna Convention, 2) Nieuw *Burgerlijk Wetboek*, 3) Regulation Rome II, 4) Convention on the Law Applicable to Contractual Obligation (1980), 5) the Convention of Choice of Court Agreement in 2005, 6) the 1958 New York Convention, and 7) Law No. 30/1999 concerning Arbitration and Alternative Dispute Resolution. Law books, journals, jurisprudence, and articles on the choice of law and forum in international trade contracts. Were the source of secondary data. The collected data was then studied to find the relevance to this research's topics, then reviewed and implemented to analyse the theory, ideas, and concepts related to this research.

Analysis and Discussion

Development of International Trade Contract

Indonesian society is part of the international community, where when carrying out legal action, it should pay attention to international aspects, especially those related to international business transactions. Progress towards rapid production of goods, technology, and economics has made the business world more complex, so a legal framework is needed to protect business people. The legal provisions governing transactions of a national boundary nature can no longer be determined by the legal rules of a country, one of the contractants, but leads to international rules as a form of the results of unification or harmonization efforts.(Badan Pembinaan Hukum Nasional Departemen Hukum dan HAM RI, 2009, p. 5) Foreign elements in a contract bring the consequences of the contract, not only referring to the rules of national law but also must pay attention to international aspects. International trade contracts are often overlaid with international agreements, even though they have different meanings. The domains of international trade contracts are for private contracts, meaning they are subject to civil law. In contrast, international agreements on the nature of their content in public, not civil, commercial, or commercial fields, are not subject to civil law rules but to public law.(Huala Adolf, 2008, p. 7) International trade contracts are contracts in private law, where legal subjects are persons and legal entities. Definition of international agreements in Law Number 24 of 2000 concerning International Agreements (from now on referred to as Act No. 24/2000), namely agreements, in certain forms and names, which are regulated in international law which are made in writing and give rise to legal rights and obligations public. The appropriate term for international agreements is treaty law, memoranda of understanding, charters, protocols, exchanges of notes, etc. (Huala Adolf, 2008)

Wiilis Reese, a professor of law from Columbia University, United States (US), provides the category of foreign elements as follows: "*contract with elements in two or more nation-states. Such contracts may be between states, a state, and a private party, or exclusively between private parties*. Reese's stated that in principle that there were two different nationalities. The existence of different nationalities brings the parties also subject to different laws. Theoretically, the foreign element that can be an indicator of an international contract is a national contract with foreign elements, namely:(Huala Adolf, 2008)

1) Different nationalities;
2) The parties have legal domiciles in different countries;
3) The law chosen is foreign law, including the rules or principles of international contracts for the contract;
4) Contract dispute settlement is held abroad;
5) Implementation of the contract abroad;
6) The contract is signed abroad;
7) The object of contract abroad;
8) The language used in the contract is a foreign language; and
9) The use of foreign currency in the contract.

The above elements are indicators of a contract categorized as an international contract. This indicator is the point that becomes an indicator of foreign elements. The existence of foreign elements makes the contract an international contract. However, these criteria are not fully enforced absolutely but must be the most substantial element in determining a contract classified as an international contract. A contract whereby the parties are subject to the same law but use foreign currency or foreign language in the contract is not rational if it becomes a benchmark for contracts made by the parties classified as international contracts. This is excessive if these categories are considered foreign elements in a contract that has consequences on the realm of the contract.

In the law of obligation, the principles that have become the Custom of International Contracts apply, for example,(Nindyo Pramono, 2015, p. 5) *pacta sunt servanda, good faith, dan rebus sic stantibus.* The general principles in contract law all have functions in an international trade contract. A unique character of an international trade contract is the principle of autonomy of the parties, whereby with this principle, the parties determine what laws will be applied to the contract. Foreign elements in the contract are the determinants of whether the contracts are domestic contracts or international contracts. Similarities and differences are found in the legal sources used in both contracts, which are different. The source of domestic contract law indeed uses legal sources that originate in domestic law, but international trade contracts do not only refer to domestic law alone.

The dynamics of business relations involving international business actors, especially international commercial contracts, have brought about the development of contract law that adopts universal principles developed in customary practice (lex mercatoria).(Hernoko, 2014, p. 9) Lex Mercatoria is also called "*the Mercantile Law*" or "*the Law of Merchant*," which is formulated in Black's Law Dictionary as follows: "*... a system of customary law that is developed in Europe during the Middle Ages and regulated the dealings of marines and merchants in all commercial countries of the world until the 17th century. Many of the Law Merchants' principles came to be incorporated into the common law, forming the bassist of the Uniform Commercial Code.* Lex Mercatoria is a custom in business practice (unwritten) that was initially applied among traders. The development of lex mercatoria makes these oral trading habits written through the decisions of commercial judges, arbitrators, and standard contract clauses, and even institutionalized through international organizations, such as the ICC (International Chamber of Commerce), FIDIC (Federation Internationale Des Ingeniuers Counsels), UNCITRAL (United Nations Conference on International Trade Law) and UNIDROIT (International Institute for the Unification of Private Law).

Parties' Autonomy in International Trade Contract

This principle has been generally recognized by most countries, such as Europe (Italy, Portugal, Greece), Eastern Europe (Poland, Czechoslovakia, Austria), Asian-African countries, including Indonesia, and American countries, especially Canada.(Sophar Maru Hutagalung, 2013) The parties' autonomy principle is needed and relevant because it protects the parties' wishes or hopes in conducting their trading business. Explanatory Notes of The 1980 Vienna Convention on the International Sale and Purchase Contract confirms and recognizes the principle of party autonomy as the basic principle of the convention, and this is stated as follows:(Huala Adolf, 2008, p. 21)

> *"The basic principle of contractual freedom in the international sale of goods is recognized by the provision that permits the parties to exclude the application of this Convention or derogate from or vary the effect of any of its provisions. The exclusion of the Convention would most often result from the choice by the parties of the law of a non-contracting State or of the domestic law of a contracting State to be the law applicable to the contract Derogation from the Convention would occur whenever a provision in the contract provided a different rule from that found in the Convention".*

The parties to the trade agreement have autonomy in negotiating, choosing, determining, or agreeing on which legal rules will be included in the trade agreement and applicable to legal consequences or settlement of disputes that may arise in the future.(Basuki Rekso Wibowo, 2004, p. 157)

The principle of the parties' autonomy is explicitly recognized in the International Institute for Unification of Private Law (from now on referred to as UNIDROIT), which states: "*The parties are free to enter into a contract and to determine its content*." In principle, every party has the right to decide freely with whom they will offer products or services, with whom they will get the products they need,

and the right to determine the conditions that apply to the transactions they make.(Huala Adolf, 2008, p. 22) The parties have autonomy in choosing law and forum choices on contracts and all the consequences.

Applying the principle of autonomy of the parties made the law of international trade contracts grow. International trade contracts are dynamic because their experience developed over time. This development is broadly characterized by four forms of contract law development as follows: international contract law, which is realized in Lex Mercatoria; international contract law in national law; international contract law in the form of a standard contract; and international contract law in cyberspace (e-contract). The parties to the trade agreement have autonomy in negotiating, choosing, determining, or agreeing on which legal rules will be included in the trade agreement and applicable to legal consequences or settlement of disputes that may arise in the future.(Basuki Rekso Wibowo, 2004, p. 157)

According to Schmitthoff: "*the autonomy of the parties will in the law of international trade be built. The national sovereign has, as we have seen, no objection that in that area an autonomous law of international trade is developed by the parties…".*(Huala Adolf, 2008, p. 20) This principle is essential to create a need for certainty in trade relations. The principle of party autonomy, if juxtaposed with the principle of freedom of contract, has a different role. The principle of the parties' autonomy is the basis for the contracting parties to choose what laws are applied in the contract. The law was chosen based on the agreement of the parties that underlies the parties to pour their business wishes into a contract. These wills exist based on the principle of freedom of contract in which the parties are free to make the form or contents of the contract.

The Limitation in Choice of Law and Choice of Forum in International Trade Law

Legal choices usually involve agreements between party's subject to different legal systems, so it is necessary to ascertain what laws are chosen by the parties to the agreement and the legal consequences resulting from it. The choice of law in international civil law shows elements of legal philosophy, legal theory, legal practice, and politics.(Sudargo Gautama, 1987, pp. 168–209) International trade contracts are 'cross border' because they involve several national (civil) legal systems.(Basuki Rekso Wibowo, 2004, p. 169) The tendency will be a lengthy discussion between the parties regarding the choice of the law in which each party will strive to choose the use of its national law. The reason for the parties is that they tend to choose their national law. That is, besides the substance being more accessible to understand than the laws of the trading partner countries, it is also intended to protect their interests better.(Setiawan, 1994) The existence of a choice of law causes one of the parties involved in the international business contract to understand what "entrails" his choice of law.(Sophar Maru Hutagalung, 2013, p. 18)

International trade contract contains boilerplate elements, namely the contents of the contract section that regulates technical elements. The following is an example of the choice of law clause in a boilerplate contract:

a) *The substantive laws of the Republic of Indonesia govern all matters arising out of or relating to this agreement.*
b) *This agreement is constituted and interpreted following the substantive laws of the Republic of Indonesia.*

The above clause clearly expresses Indonesian law as the choice of law in the contract. This means that the law chosen by the parties is not only to regulate matters agreed upon by the parties in the contract but also to regulate everything that is not agreed upon by the parties but still has to do with their business contract.(Kusumadara, 2013, p. 81)

The choice of law can be analogized to an eyeglass. If we use glasses with green lenses, everything will appear green. This shows that when the choice of law has been determined, the law

applied to the contract is the choice of law. The parties in a clause can expressly state the choice of law, the choice of law secretly or implied, or the choice of law based on the agreement of the parties to submit the choice of law to the court. If the parties do not determine the choice of law in the contract they make, then there are several theories that the judges, among others, can use: the lex loci contractus; lex loci solutionis, the lex loci executionis, the proper law of the contract, and the most characteristic connection. International civil law is the basis for deciding the choice of law that applies to the parties. Indonesia is still lagging behind the rules of international civil law. The Netherlands has made progress with the existence of NBW Book 10, which regulates Private International Law. Article 157 NBW states that contracts that include international civil law scope are subject to Regulation Rome II.

Recognition of the principle of choice of law also appears in hard and soft international agreements, for example, in the Convention on the Law Applicable to Contractual Obligation (1980), known as the Rome Convention. Article 3, paragraph 1 of the convention states, "*the law chosen by the parties shall govern a contract. The choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. By their choice, the parties can choose the law applicable to the whole or a part only of the contract* ".(Handajani & Bakarbessy, 2009, p. 142) Differences of opinion occur among scholars regarding the importance or importance of the choice of law to be regulated in a contract. There is an opinion that says that the choice of law is not important because the parties consider business transactions to be routine and without legal choice (choice of law), for every legal system of a particular country already has an arrangement in international civil law that determines what laws will be applied in resolving international business disputes.(Handajani & Bakarbessy, 2009, p. 143) Interestingly, there is an opinion that likens the law of "international sale of goods" to the rules of badminton matches, namely, if each country has its own rules, then not only must different racquet, ball, and field be provided but also different rules which result not only expensive but even the match itself cannot be held.(B.M. Kuncoro Jakti, 1998, p. 97; Handajani & Bakarbessy, 2009, p. 143)

One of the principles underlying the choice of law is that the principle of choice of law is generally accepted.(Sudargo Gautama, 2002, p. 169) The choice of law is a common thing and is accepted. Thus everyone can determine the law in their contract, and the choice must be respected. The parties controlled by the same legal provisions automatically are also subject to the same law, so the law choice principle does not apply.(Basuki Rekso Wibowo, 2004, p. 16) In principle, the parties who want to make a contract are free to arrange anything in the contract they make.

Regarding the choice of law in principle, the parties are free to determine what laws will be applied in a contract. This freedom comes from the principle of the autonomy of the parties applied in selecting a law in the choice of law. In essence, the parties are free to choose the law they want, but this freedom does not mean it is arbitrary.(Sudargo Gautama, 1987, p. 170) The existence of restrictions on the choice of law is still in question, and scholars have no unanimous opinion. The following will be explained the limitations of the choice of law, among others:

1. Public Order

The virtue in the matter of choice of law is regarding the balance between the principles of autonomy vs. public policy principle.(Basuki Rekso Wibowo, 2004, p. 180) Setiawan quoted Rene van Roey Maruice Polak stated that: *"choice of law in civil and commercial matters is characterized by two contradictory phenomena: party autonomie and mandatory rules of public nature."*(Setiawan, 1993, pp. 109–121) A choice of law must not conflict with public order, namely that the law chosen by the parties must not conflict with the legal and community principles; the law of the judges who will adjudicate disputes that public order (public order) is the first limitation of one's will in choose law.(Sophar Maru Hutagalung, 2013, p. 81) Legal choices can only be made if they do not violate what is known as "public order."(Sudargo Gautama, 2002, p. 170) This public order institution can only be used as a preventive

tool that is as an emergency brake, "*not as a sword, but merely as a shield*."(Sudargo Gautama, 2002, p. 172) Public order is an emergency brake that can stop the enactment of foreign law or the use of the principle of autonomy of the parties that is too free. The role and position of public order as a barrier to the freedom of the parties in determining the choice of law is stated by Schmitthoff in the sentence as follows:

> *"The autonomy of the parties will in the law of contract is the foundation on which autonomous law of international trade can be built. The national sovereign has, as we have seen, no objection that in that area, an autonomous law of international trade is developed by the parties, provided that that law respects in every national jurisdiction the limitations imposed by public policy.*(Huala Adolf, 2008, p. 154)

The nature of public order is relative. The relative nature is determined by time, place, and intensity (inlandsbeziehungen). Public order ensures that the law the parties have chosen is not contrary to the basic principles in the law and society of the judge.(Sudargo Gautama, 1987, p. 172) So if the legal choice violates public order (public policy) from lex fori, the contract cannot be implemented because it is invalid. There are three kinds of concepts of public order, namely Italian-French Italian concept, German concept, and Anglo-Saxon concept.(Badan Pembinaan Hukum Nasional Kementrian Hukum dan Hak Asasi Manusia, 2014) The Italian-French concept emphasizes that public order as merely as a sword will apply to foreign legal rules that are contrary to national law; the German concept of more to order is commonly used if foreign law is entirely contrary to national law that is only as an emergency brake or merely as a shield, while the Anglo Saxon concept emphasizes that public order is used with consideration and is known as the Act of State Doctrine.

2.Legal Smuggling

The choice of law must be made bona fide; there is no specific choice for a particular place for smuggling other regulations. Parties who are given the freedom to make legal choices should not use that freedom for arbitrary purposes for their benefit.(Sophar Maru Hutagalung, 2013, p. 80) In legal smuggling, the individual follows the provisions he has made himself.(Sudargo Gautama, 2002, p. 172) Legal smuggling is more directed to "unechte rechtswahl" which is interpreted as an unauthorized choice of law, while the legal choice is "rechtswahl echte" where there are points of connection in choosing the law. Legal smuggling is not permitted in the choice of law; in this case, the choice of law cannot deviate from the compelling legal provisions generally issued by a country to protect social and economic interests, for example, regulations on consumer protection, environment, security and national defense, labor, monetary, import and other exports.(Handajani & Bakarbessy, 2009, p. 144)

3.Certain Contract Areas

The choice of law can only be made in contract law, which is a regulating law (regelend recht) and not a compelling law (dwingen recht). Legal relationships that are subject to civil law that is public. Such as a person's citizenship status, legal relations in family law, inheritance problems, etc. In this regard, the choice of law cannot be made.(Huala Adolf, 2008, p. 155) The choice of law only exists in contract law with foreign elements, not constitutional law, international law, and transactions concerning land or rights to immovable property.

4.Relation with the Contract

The choice of law must be related to the parties or the contract (real connection). American law uses the term " reasonable relations." Some legal systems require a fundamental relationship between the law chosen and the legal event to be subdued or based on the law chosen.(Sophar Maru Hutagalung, 2013, p. 80)

5. Violating the Good Faith Principle

The main limitation of the freedom of the parties in choosing their law is the exception of the fraus legis (not contradicting in good faith), including the choice of law that is contrary to the purpose of the law (legal purpose).(Huala Adolf, 2008, p. 155)

Legal choices and forum choices are different, but both have relationships that are closely related. Both are born from the principle of the parties' autonomy, where the parties are given the authority to choose the law and a forum for settling contract disputes. There are no uniform rules regarding the choice of forums, but various efforts have been made by producing a Convention on the Choice of Court Agreement in 2005.(Huala Adolf, 2008, p. 163) National law also regulates forum choices which can be seen in Article 24 BW, which regulates the freedom to choose a place of residence (domicile) where it can be used as a rule regarding the choice of forum. The three conditions in the forum selection based on that article are:(Huala Adolf, 2008, p. 165) the parties must express their choices firmly; forum choices must be stated before the dispute is born, and the parties cannot determine the choice of the forum if the case has occurred.

The choice of forum is an authority given by the parties to the contract to choose the forum that will be applied in the contract. The choice of forum, choice of jurisdiction, and choice of court clause are the terms used for forum choices for parties in the making of a contract to determine the certainty of the forum to be used in resolving contract disputes. Forums that the parties can choose include but are not limited to non-litigation forums, namely negotiation, mediation, and arbitration, while for litigation forums, namely the courts. One example of a forum selection clause in a contract is:

> *"All disputes between any buyer or buyers on the hand and seller, on the other hand, relating to his contract or the interpretation or performance hereof shall be finally settled by arbitration conducted in accordance with Rules of Arbitration of the International Chamber of Commerce, effective at the time, by their arbitrators appointed in accordance with such Rules. Arbitration shall be held in Paris, France unless another location is selected by mutual agreement of the parties concerned. The award rendered by arbitrators shall be final and binding upon the parties concerned".*

Choice of law clauses and forum choices are two different fields. If the parties determine the choice of law, it is not necessarily the choice of the law is the choice of the forum. Several legal systems state that the choice of the forum means legal choice. Thus, if the parties choose a court forum in their country in an international contract, it also means that the parties are suspected or indicated to have chosen the law from a court forum in that country. One jurisprudence in Indonesia states that choice of domicile is not choice of forum means. The domicile of a specific (state) court does not mean that the party has chosen the court forum to examine the dispute.

The importance of the choice of forums in international trade contracts is because if a dispute occurs, it is possible to open more than one jurisdiction claiming to be the forum authorized to settle a dispute. This can be avoided by determining the forum choice firmly on the contract made. The selection of a forum in the contract will benefit the parties who, on the one hand, have certainty in settling the dispute. International trade contracts that are complicated require a dispute resolution forum that has the high capability.

There are many choices of forums in international trade contracts designating forums outside the court, namely arbitration where the reasons for choosing an arbitration forum include: there is no international court to try international business/trade disputes; avoid national court forums because each party is not familiar with the judicial process and the legal system of its trading partners; arbitration decisions are fast, cheap and informal; worried about the neutrality of national court judges; knowledge of

judges is general; avoid controversy against national courts; and the binding power of the arbitration clause is absolute if the parties come from member countries of the 1958 New York Convention concerning the Recognition and Implementation of Foreign Arbitration Decisions.

Article 37 1 Law No. 30/1999 regulates the possibility of the selection of arbitration places by the arbitrator or the arbitral tribunal unless determined by the parties. Based on these provisions, it means that the parties have the autonomy to choose and determine the place of arbitration, whereas if the parties do not choose and determine the place of arbitration, it will be determined by the arbitrator or by the arbitral tribunal. In its explanation, it is stated that the provisions concerning the place of arbitration are significant, especially if there are elements of foreign law and disputes become a dispute in international civil law. William W. Park said that the freedom of the parties to choose a court forum or arbitration as a form of dispute resolution could provide a sense of justice and a more efficient process to reduce the number of instruments that can hinder the parties' rights.(William W. Park, 1995, p. 136)

The principle of the parties' autonomy cannot be separated from the choice of forums based on the parties wishes. The principle of choice for this forum can be done before or after a dispute. The parties have the freedom to determine the forum and change the forum they previously agreed on. The principle of the parties' autonomy in choosing a forum is binding law. Therefore the parties must respect a forum choice. Respect must not only be reflected by the parties but also by the court. The parties can choose the forum based on an agreement that reflects the will of the parties. Bonafide principles or good faith must also underlie the choice of this forum. Respect for this bona fide principle lies in respecting the expectations and beliefs of the parties that the forum he chooses is a neutral and fair forum for resolving disputes, including the court's expertise in resolving disputes.(Huala Adolf, 2008, p. 167) The principle of predictability and effectiveness must also follow good faith as a fundamental principle. The parties in choosing a forum must base their consideration on determining the authority of the forum in deciding the dispute. The doctrine of propagation of jurisdiction is a doctrine whereby the inclusion of a forum clause must explicitly state an exclusive jurisdiction to handle a dispute.(Huala Adolf, 2008, p. 169)

The Hague Convention of 1965 restricts the parties' freedom in choosing the court forum. Article 2 This Convention states that the Convention does not apply to disputes concerning:

1) Status and authority of people or issues related to family law, including obligations or personal or financial rights between parents and children or between husband and wife;
2) Issues regarding alimentation that are not included in number 1 above;
3) Disputes concerning inheritance;
4) Disputes regarding failures and homologations or similar events concerning the legitimacy of the actions of a debtor; and
5) Rights to immovable objects.

The parties' agreement in making forum choices cannot be done by violating the forced law (dwingen recht). Compelling laws cannot be deviated by anyone and under any circumstances. Coercive laws must be carried out according to the instructions and prohibitions. The freedom given to the parties in determining forum choices is certainly not unlimited. These restrictions include the following:

1. There Must Be no Fraud

The determination of forum choices must be based on good faith, which is based on the absence of fraud.

2. Forum *Non-Conveniens*

The choice of the forum must be made in a forum that relates to the contract. The reason for the non-convenient forum will be used when the chosen court body considers that another court will be more

appropriate to try the dispute. Sornarajah believes there must be an element of reasonableness between the parties' freedom in choosing a forum to resolve the dispute.(M. Sornarajah, 1992, pp. 109–110)

3. Public Order

A forum choice clause is contrary to public order if the choice of the forum aims to eliminate a court's jurisdiction objectively. Folsom stated that the judiciary in the US would not respect the choice of a foreign country forum if the choice were contrary to public order in the US.(Huala Adolf, 2008, p. 172)

4. Forum Shopping

Forum shopping is the choice of a forum or a particular judicial body by a party that, according to the party, will give a decision that (very or more) benefits him. This certainly cannot be used in determining forum choices. The principle of predictability and effectiveness of forum choices does not mean making parties free to determine forums that provide benefits in settling a contract dispute. Forum shopping occurs more if a claim arises from a relationship that is not contractual. The choice of law in international trade contracts is also not possible to use forum shopping. Therefore this can be used as a limitation in determining the choice of the forum.

Restrictions in the choice of the forum are needed so that the parties do not abuse freedom which is the basis for determining the forum, whatever the form of the forum that has become the agreement of the parties should be based on good faith and not against the limits that have been determined.

Conclusion

Legal choices and forum choices are two different things, but both are interrelated with each other. Legal choice clauses and forum choices constitute an essential clause in international trade contracts wherein the contract involves the law of different parties. The basis for determining the choice of law and the forum choice of an international trade contract is the agreement of the parties, which is the realization of the principle of the parties' autonomy. Determining the choice of forums and choice of law is not unlimited but has certain limitations, including public order, mandatory rules, relation with contracts, and good faith. International trade contracts are part of international civil law, so there needs to be an update in regulations in international civil law. In addition, renewal in the field of contract law that is dominated by contracts also needs to be hastened. There needs to be full support for immediately realizing the rules regarding engagement law and new international civil law so that the problems that arise along with developments in the international sphere have a reference in their resolution.

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