VALIDITY OF INTERNATIONAL SALES CONTRACTS ACCORDING TO THE UNITED NATIONS CONVENTION ON CONTRACTS OF THE INTERNATIONAL SALE OF GOODS 1980

Abstract

This article attempts to shed light on how the United Nations Convention on Contracts of the International Sale of Goods 1980 (CISG) regulates the validity of international sales contracts, using juridical normative research methods through literature studies. According to Article 4(a) of the CISG, the Convention does not govern matters on validity, with certain exceptions. This research shows that CISG governs some matters pertaining to validity: formal validity, initial impossibility of performance, and open-price contracts. As seen from the cases of Forestal Guarani v. Daros International and Geneva Pharmaceuticals v. Barr Laboratories, the CISG allocates those validity issues that do not fall under its purview to the applicable domestic law, as determined by Private International Law. In addition, this research discusses how other international instruments, Indonesian internal law, Indonesian Private International Law, and Indonesia's Draft Law on Private International Law regulate validity issues. This article will delve into the following matters in sequence: (i) the validity of international sales contracts in accordance with Indonesian domestic law, Indonesia's current Private International Law framework, and the Indonesian draft Private International Law; (ii) the validity of international sales contracts according to other international instruments; and (iii) the validity of international sales contracts as regulated by the CISG.

***Keywords**: validity, international sales contracts, CISG, Indonesian law, private international law.*

I. INTRODUCTION

An agreement is an act pursuant to which one or more individuals commit themselves to one another.[1] Agreements are generally known by other terms, namely contracts, so that they can be made to regulate various matters, such as sale and purchase. In accordance with Article 1457 of the Indonesian Civil Code, defines a sale and purchase as an agreement, by which one party is bound to hand over the ownership of a certain object, for which the other party is obligated to pay an agreed price.[2]

An international sales contract is a sale and purchase contract that relates with more than one country by containing international elements.[3] International elements may arise

[1] Indonesian Civil Code, Art. 1313.

[2] *Ibid.*, Art. 1457.

[3] Sudargo Gautama, *Hukum Perdata Internasional Indonesia Jilid III Bagian 2 Buku ke-8*, 8th ed. (Bandung: PT. Alumni, 2013), 2. Hereinafter referred to as "**Gautama (8).**" See also Renzo Cavalieri and Vincenzo Salvatore, *An Introduction to International Contract Law*, (Milan: G Gapphicelli, 2018), 2.

from various factors, including the nationality of the parties, the place where the contract is made, and the place where the obligations are carried out.[4] As an international sales contract is connected to more than one country, it opens the possibility for the application of more than one legal regime for the contract. Consequently, a question arises: which law should apply to international sales contracts?

While the above question may be implemented for the purposes of interpreting and implementing an international sales contract, it is important to first ensure the validity of the said contract.[5] One of the factors that can be used to determine the validity of a contract is the choice of law,[6] or the law that the parties choose to apply to a contract.[7] Nevertheless, when a choice of law clause is present, legal scholars' opinions on its application to determine the contract's validity differ.[8]

To bridge the differences in views that exist in one legal system with another, efforts are being made to achieve harmonization through unification.[9] Unification can be done through the uniformity of the rules of Private International Law that exist in various countries, the uniformity of material principles, or the unification of general law principles.[10] One form of unification in the field of international sales contracts is through international conventions, one of which is the United Nations Convention on Contracts for the International Sale of Goods ("**CISG**").[11]

Regarding the validity of international contracts, the CISG does not regulate all matters concerning the validity of contracts. On the contrary, Article 4 of the CISG explicitly states that the CISG does not regulate the validity of contracts nor the effect of

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[4] *Ibid.*

[5] Joseph H. Beale, "What Law Governs the Validity of a Contract I," *Harvard Law Review* Vol. 23, No. 1 (November 1909): 1. See also Ulrich G. Schroeter, "Contract validity and the CISG," *Uniform Law Review* Vol. 22, Issue 1 (March 2017): 1. Hereinafter referred to as "**Schroeter (Validity).**"

[6] Hague Conference on Private International Law, Convention on the Law Applicable to Contracts for the International Sale of Goods (1986), Art. 10. See also Hague Conference on Private International Law, Hague Principles on Choice of Law in International Commercial Contracts (2015), Art. 9 paragraph (1)(e).

[7] Zulfa Djoko Basuki *et al.*, *Hukum Perdata Internasional,* 3rd ed. (Tangerang Selatan: Universitas Terbuka, 2022), 6.4.

[8] See Sudargo Gautama, Pengantar Hukum Perdata Internasional Indonesia, 5th print, (Bandung: Binacipta, 1987), 207. Hereinafter referred to as "**Gautama (Pengantar).**" See also Gary Born and Cem Kelelioglu, "Choice of Law Agreements in International Contracts," *Georgia Journal of International and Comparative Law* Vol. 50, No. 44 (2021): 46.

[9] Tiurma M. Pitta Allagan, "Unifikasi dan Harmonisasi dalam Hukum Perdata Internasional," *Percikan Pemikiran Makara Merah: Dari FHUI untuk Indonesia* (October 2018): 134.

[10] *Ibid.*

[11] Victor Purba, "Kontrak Jual Beli Barang Internasional-Konvensi Vienna 1980." *Universitas Indonesia Dissertation* (2002): 24. See Peter Winship, "Private International Law and the U.N. Sales Convention," *Cornell International Law Journal* Vol. 21, No. 3 (1988): 487-488. See also Miklós Király, "Specific Performance – and The International Unification of Sales Law," *Acta Universitatis Carolinae – Iuridica* 2 (2023): 128.

contracts on the goods sold. However, Article 4 of the CISG also states that there is an exception, namely in the case that these types of issues are expressly provided in the CISG.[12]

This article will discuss the validity of international sales and purchase contracts under the CISG, especially regarding the extent to which the CISG can regulate the validity of contracts. There are two primary reasons for choosing CISG as the focus of this research. First, most countries engaged in international trading relations with Indonesia have adopted the CISG. To illustrate, more than three quarters (around 77% percent) of Indonesia's trading partners have adopted the CISG, whereas only 23% percent still share non-CISG member akin to Indonesia.[13] Second, Indonesia currently does not have specific laws and regulations governing the rules of Indonesian Private International Law that pertain to the validity of international contracts. Nevertheless, it is noteworthy that a draft (*ius constituendum*) on Indonesian Private International Law is currently under discussion within Indonesia's House of Representative.[14]

Based on the above background, the issues discussed in this research are as follows:

1) How does Indonesian law regulate the validity of international sales and purchase contracts?
2) How does the CISG regulate the validity of international sales and purchase contracts?

The author uses a form of juridical-normative research in studying Indonesian internal law, the Indonesian Private International Law, and the Draft Indonesian Private International Law. For this reason, the author examines not only Indonesian laws and regulations and the opinions of legal scholars, but also Indonesia's *ius constituendum*. To research CISG, the author studied CISG, legal scholars' interpretation of it, as well as court decisions involving CISG. Furthermore, the author also briefly examines international

[12] United Nations, Convention on Contracts for the International Sale of Goods, UNTS 1489 (1980), 3. Hereinafter referred to as "**CISG**."

[13] Surya Oktaviandra, "Indonesia and Its Reluctance to Ratify the United Nations Convention on Contracts for the International Sale of Goods (CISG)," *Indonesia Law Review* Vol. 3 (2018), 246.

[14] Indonesia's House of Representatives, "Program Legislasi Nasional," https://www.dpr.go.id/uu/detail/id/433. Accessed 12 September 2023.

instruments other than CISG which regulate the validity of international sales and purchase contracts.

Based on the background, this article will delve into the following matters in sequence: (i) the validity of international sales contracts in accordance with Indonesian domestic law, Indonesia's current Private International Law framework, and the Indonesian draft Private International Law; (ii) the validity of international sales contracts according to other international instruments; and (iii) the validity of international sales contracts as regulated by the CISG.

II. VALIDITY OF INTERNATIONAL SALES CONTRACT ACCORDING TO INDONESIAN INTERNAL LAW AND INDONESIAN DRAFT PRIVATE INTERNATIONAL LAW

A. Sales Contracts according to Indonesian Internal Law

1. Enforcement of the Indonesian Civil Code as Indonesian Positive Law

After the independence of Indonesia, all legal provisions that were in effect in Indonesia prior to independence will continue to apply as long as there are no new provisions to replace it.[15] In the same vein, Article 1 of Government Regulation of the Republic of Indonesia No. 2 On October 10, 1945 states that the regulations which have existed prior to the establishment of the 1945 Constitution of the Republic of Indonesia remains in effect, so long as it does not conflict with the 1945 Constitution of the Republic of Indonesia. As the Indonesian Civil Code was published in 1847, it remains applicable after the Indonesian independence.[16] There is a consensus from legal scholars that the instrument remains in effect.[17]

[15] Transitional Rules of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), Art. II.

[16] Codification of the Indonesian Civil Code was publicized in 1847 through *Staatsblad* Number 23 and had been effective since 1848.

[17] Rosa Agustina, *et al.*, "Pengertian dan Ruang Lingkup Hukum Perdata," in *Hukum Perdata*, (Tangerang Selatan: Universitas Terbuka, 2014), 1.13. See Akhmad Budi Cahyono and Surini Ahlan Sjarif, *Mengenal Hukum Perdata*, (Depok: CV. Gitama Jaya, 2008), 129. See also Maharani, 3.

2. The Process of Sale-Purchase according to the Indonesian Civil Code

The Indonesian Civil Code defines sale and purchase as a reciprocal agreement, where the seller promises to give up ownership rights to an item, while the buyer promises to pay a price consisting of a sum of money in exchange for the acquisition of property rights.[18] The formulation of the definition of sales according to the Indonesian Civil Code shows that there is one party who makes the sale, while the other party makes the purchase.[19]

A sale and purchase agreement is considered to have been made when both parties have reached an agreement on the goods and prices.[20] Article 1338 of the Civil Code establishes that legally formed agreements hold the status of 'law for those who make them.' This article encapsulates the principle of freedom of contract (*pacta sunt servanda*), which grants parties significant liberty in formulating their own agreements. Nonetheless, there are constraints on this principle in the form of public order and ethical considerations (*kesusilaan*).[21]

After an agreement is made, the parties involved in the sale and purchase agreement carry out their respective obligations. For the seller, he has two main obligations. *First,* the seller must give up the ownership rights of the goods being traded.[22] *Second,* the seller is also responsible for the enjoyment of the goods he sells and the hidden defects in the goods.[23] However, this can be arranged otherwise by the agreement between the relevant parties.

Although the price must be determined by both parties, the parties may mandate the determination to a third party. If this third party is unwilling or unable to do so, then there is no sale and purchase.[24] Therefore, it can be reaffirmed that a valid sale and purchase agreement under Indonesian internal law is formed only after the price is set.

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[18] Indonesian Civil Code, Art. 1457.

[19] *Ibid*. See also R. Subekti, *Aneka Perjanjian*, (Bandung: PT.Citra Aditya Bakti, 1995), 2. Hereinafter referred to as "**Subekti (Aneka).**"

[20] Indonesian Civil Code, Art. 1458.

[21] Subekti, *Hukum Perjanjian*, (Jakarta: PT. Intermasa, 2008), 13. Hereinafter referred to as "**Subekti (Hukum Perjanjian).**" See also Yunanto, "Hakikat Asas *Pacta Sunt Servanda* dalam Sengketa yang Dilandasi Perjanjian," *Law, Development, and Justice Review* Vol. 2 (May 2019): 38.

[22] Indonesian Civil Code, Art. 1491.

[23] *Ibid*., Art. 1474.

[24] *Ibid*., Art. 1465.

B. The Validity of International Sales Contracts according to Indonesian Internal Law

If determined by Private International Law, whether by choice of law or otherwise, Indonesian internal law may apply to the validity of an international sales contract.[25] Indonesian internal law regarding the validity of contracts can be found in the Indonesian Civil Code.[26] The Indonesian Civil Code does not differentiate the rules for international sales and purchase transactions from other sales and purchase contracts.

1. Provisions on the Validity of International Sales Contracts in Indonesian Civil Code

a. Material Validity

Article 1320 of the Civil Code states that there are four conditions that must be met for an agreement to become a valid agreement, namely as follows:

1) Agreement between the parties

This condition is often referred to as the principle of consensualism. Consensualism is rooted in the word "consensus," denoting a state of agreement.[27] An agreement itself means that the parties have reached a conformity of will. Each party must agree on what is desired from the other party(ies).[28] Such an agreement must be made in good faith,[29] and therefore should not be carried out by coercion.

Coercion may become the reason for the cancellation of an agreement if it is carried out by one of the parties to the agreement, or a

[25] Basuki *et al.*, 6.29.

[26] For certain types of contracts, there exists *lex specialis* which governs both its formal and material validity.

[27] Bambang Sutiyoso and Indah Parmitasara, "Application of the Principle of Consensuality and its Legal Implications in Electronic Contracts at Shopee, *International Journal of Environmental, Sustainability, and Social Science* Vol. 4 (2023): 1083.

[28] Munir Fuady, *Hukum Perjanjian (Dari Sudut Pandang Hukum Bisnis)*, (Bandung: PT. Citra Aditya Bakti, 2001), 10. See also Sutiyoso and Parmitasara, 1086.

[29] Indonesian Civil Code, Art. 1338 para. (3).

third party.[30] Article 1324 of the Civil Code defines coercion as an act carried out in such a way that it can frighten a person who has a sound mind, that he, his people, or his wealth are threatened with clear and real losses.[31]

2) Capacity to conclude an agreement

Everyone is assumed to be competent to make an agreement, unless stated otherwise by law.[32] Based on Article 1330 of the Indonesian Civil Code, people who have not reached adulthood, as well as those who are under guardianship, are classified as incompetent. Certain parties who have been named by law as incompetent to conclude an agreement are also included in the category.[33]

3) Specific subject

The object of a sale-purchase contract must be tradeable.[34] The party entitled to transfer ownership is only required to have the right to do so at the time the transfer is to be made.[35] In other words, there exists no problem if the seller has not acquired ownership over the object before the agreement is made. Based on this explanation, it can be stated that the Indonesian Civil Code allows the parties to make a sale-purchase agreement in conditions of initial impossibility of performance.

Impossibility of performance refers to a condition where the fulfillment of an obligation is not physically possible. Initial impossibility refers to the impossibility at the time the contract was made.[36] Therefore, it can be concluded that the Indonesian Civil Code recognizes the validity of the contracts made during initial impossibility of performance.

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[30] *Ibid*., Article. 1323.

[31] See also J. Satrio, *Hukum Perikatan, Perikatan yang Lahir dari Perjanjian: Buku I*, (Bandung: PT. Citra Aditya Bakti, 1995), 344-345.

[32] Indonesian Civil Code, Art. 1329

[33] Subekti (Hukum Perjanjian), 17-18. See also Danang Wirahutama, Widodo Tresno Novianto, and Noor Saptanti, " Kecakapan Hukum dan Legalitas Tanda Tangan Seorang Terpidana dalam Menandatangani Akta Otentik." *Masalah-Masalah Hukum* Vol. 47 (April 2018): 119.

[34] Indonesian Civil Code, Art. 1332.

[35] *Ibid*., Art. 584.

[36] Richard A. Posner and Andrew M. Rosenfield, "Impossibility and Related Doctrines in Contract Law: An Economic Analysis," *Journal of Legal Studies* Vol. 6, No. 1 (Januari 1977): 85. See also Schroeter (Validity), 64.

4) Admissible cause

A cause is not lawful if it is prohibited by law, contrary to public morals, or against public order.[37] In other words, the term 'admissible' here refers to something that is permissible.

The first two conditions (agreement and competence of the parties), are known as subjective conditions. If one of them is not fulfilled, then one of the parties has the right to cancel the agreement. However, in the event that the last two conditions are not fulfilled, then the agreement is null and void.[38]

b. Formal Validity

In Indonesian civil procedural law, valid evidence is needed to prove a claim before a judge.[39] According to Article 164 H.I.R., there are five kinds of evidence: (i) written evidence; (ii) witness testimonies; (iii) suspicions; (iv) confessions, and (v) oaths. In addition, "knowledge of the judges" is also categorized as evidence.[40] Written evidence refers to any text designed to communicate a party's intentions or ideas and is utilized as proof.[41] Written evidence can also be divided into three broad categories: letters, authentic deeds, and private deeds.[42]

2. Provisions on the Validity of the International Electronic Sales Contract

Contracts made through electronic media is regulated by Law Number 11 of 2008 on Electronic Information and Transaction as amended by Law Number 19

[37] Indonesian Civil Code, Art. 1337.

[38] Subekti (Hukum Perjanjian), 20. See Rosa Agustina, *Hukum Perikatan (Law of Obligations)*, (Denpasar: Pustaka, 2012), 89. See also Sri Lestari Poernomo, "Perlindungan Hukum Nasabah dalam Perjanjian Telemarketing Bank," *Jurnal Hukum & Pembangunan* Vol. 49, No. 4 (December 2019): 809.

[39] Retnowulan Sutantio and Iskandar Oeripkartawinata, *Hukum Acara Perdata dalam Teori dan Praktek*, 11th print, (Bandung: CV. Mandar Maju, 2009), 60-61. See Fernando Kobis, "Kekuatan Pembuktian Surat Menurut Hukum Acara Perdata," *Lex Crimen* Vol. VI, No. 5 (July 2017): 105. See also Disriani Soroinda and Anandri Nasution, "Kekuatan Pembuktian Alat Bukti Elektronik dalam Hukum Acara Perdata," *Jurnal Hukum & Pembangunan* Vol. 52, No. 2 (June 2022): 385.

[40] Sutantio and Oeripkartawinata, 61-62.

[41] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, 1st print, (Jogjakarta: Liberty, 1977), 100-101. See Lilik Mulyadi, *Hukum Acara Perdata Menurut Teori dan Praktik Peradilan Indonesia*, 3rd print, (Djambatan: Jakarta, 2005), 160. See also Soroinda and Nasution, 386.

[42] Ali Imron and Muhamad Iqbal, *Hukum Perdata*, 1st print, (Tangerang Selatan: Universitas Pamulang Press, 2019), 81.

of 2016 ("**Law 11/2008**"). This is based on Article 2 of Law 11/2008, which states that Law 11/2008 applies to:[43]

1) Everyone who carries out a legal act regulated in Law 11/2008;
2) Both within and outside the jurisdiction of Indonesia;
3) Which has legal consequences within and/or outside the jurisdiction of Indonesia and is detrimental to the interests of Indonesia.

Based on the above provision, Law 11/2008 is applicable to those who carry out legal actions outside the jurisdiction of Indonesia, with one condition. The act in question must be detrimental to the interests of Indonesia.[44] Indonesia's interests in this context include the national economy, strategic data protection, national honor and dignity, national defense and security, state sovereignty, interests of its citizens, and interests of Indonesian legal entities.[45]

a. Material Validity

Article 17 paragraph (2) of Law 11/2008 states that in conducting electronic transactions, the parties must have good faith in interacting and exchanging information and/or electronic documents. Prior to the agreement, the business actor offering the product must provide complete and accurate information regarding the terms of the contract and the product being offered.[46] The electronic transaction is deemed to have occurred after the offer has been electronically approved by the recipient of the transaction offer.[47] These provisions align with the elements of agreement set in the Indonesian Civil Code.

[43] Law 11/2008, Art. 2.

[44] *Ibid*. See also Ahmad S. Daud, "Kebijakan Penegakan Hukum dalam Upaya Penanggulangan Tindak Pidana Teknologi Informasi," *Lex Crimen* Vol. II, No.1 (January-March 2013): 108.

[45] Law 11/2008, Elucidation of Art. 2. According to various decisions, the requirements in Article 2 of Law 11/2008 result in the applicability of Law 11/2008 "…to Indonesian citizens, foreign citizens, or legal entities, whether within the territory of Indonesia, outside the territory of Indonesia, or in connection with the interests of the Indonesian state." This principle has been mentioned in several decisions involving unauthorized access to credit and debit card data of foreign citizens. See Watansopeng District Court, Decision Number 100/Pid.Sus/2020/PN Wns, 31. See also Watansopeng District Court, Decision Number 107/Pid.Sus/2020/PN Wns, 28.

[46] Law 11/2008, Art. 8

[47] *Ibid*., Art. 19.

b. Formal Validity

When conducting electronic transactions, it is essential to utilize the electronic system and procedures that have been mutually agreed upon by all parties involved or are embedded within the electronic system used.[48]

Electronic information and/or electronic documents and/or their printed results are valid legal evidence.[49] However, written agreements which must be made in written form, a notarial deed, or agreement which must be made by deed making officials based on prevailing laws and regulations may not be evidenced through electronic information and/or electronic documents and/or their printed results.[50] Aside from these exceptions, information or electronic documents can be used as written evidence, as long as the contents can be accessed, displayed, proven to be intact, and accounted for.[51]

C. Validity of International Sales Contracts in Indonesian Private International Law

1. Indonesian Positive Law

Indonesia does not yet have specific rules regarding the validity of international sales contracts. However, a draft on Indonesian Private International Law is being proposed.[52] According to the provisional draft, international contracts shall be regulated under Indonesian Private International Law.[53]

At present, the rules of Indonesian Private International Law are encapsulated in Articles 16-18 of *Algemeene Bepalingen van Wetgeving voor Nederlands Indië* ("**A.B.**"). A.B is applicable based on Article 1 Transitional Rules of the 1945 Constitution of the Republic of Indonesia.

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[48] Law 11/2008, Art. 19 and Elucidation of Art. 19.

[49] Law 11/2008, Elucidation Art. 5 (1) *jo.* Art. 6.

[50] Law 11/2008, Art. 5 para. (4).

[51] Law 11/2008, Art. 6. See also Emilda Kuspraningrum, "Keabsahan Kontrak Elektronik Dalam UU ITE Ditinjau dari Pasal 1320 KUHPerdata dan UNCITRAL Model Law On Electronic Commerce," *Risalah Hukum Fakultas Hukum Unmul* Vol. 7, No. 2, (December 2011): 70.

[52] House of Representatives of the Republic of Indonesia, "Program Legislasi Nasional," last updated on 3 October, 2023, https://www.dpr.go.id/uu/detail/id/433.

[53] See the Association of Indonesian Lecturers and Observers for Private International Law, *Draft Awal Rancangan Undang-Undang Hukum Perdata Internasional* (APPIHPI, December 2020). Hereinafter referred to as "**December 2020 Draft on Indonesian PIL.**"

Article 16 A.B. is used in matters relating to personal status, namely the legal status and authority of a person.[54] The ability to enter into an agreement is determined by the personal laws of the parties.[55] This provision contains the principle of nationality,[56] which determines a person's ability to carry out a legal act based on his nationality. Therefore, Article 16 A.B. can be used to determine the competence of the parties in an international sale and purchase agreement.

In conditions where there is an international sale and purchase contract involving immovable property, Article 17 A.B. applies. In accordance with Article 17 A.B., the law of the state or place where the immovable goods are located shall apply to such goods. The rationalization behind the implementation of the *lex rei sitae* (law of the place where the immovable objects are located) is that it is necessary to enforce the sale and purchase agreement in the place where the object is located.

Article 18 A.B. regulates, among others, *formae extrinsecae*. *Formae extrinsecae* are matters relating to the formal requirements required for the validity of an act. Consequently, Article 18 A.B. can be used to determine the law that applies to the formal validity of an international sales contract. According to Article 18 A.B., the formal requirements of an act are regulated according to the law of the place where the act is carried out (*locus regit actum*).[57]

2. Scope of International Sales Contracts in the Draft Indonesian Private International Law

The interim text of the draft Indonesian Private International Law defines international treaties as follows:[58]

> Agreements regarding certain matters in the civil or commercial sector that contain transnational elements, which are made by two or more civil law subjects as parties, with the aim of issuing legal rights and obligations that bind the parties.

[54] Sudargo Gautama, *Hukum Perdata Internasional Indonesia Jilid III Bagian I Buku ke-7*, 2nd ed., 1st print, (Bandung: Alumni, 1995), 3. Hereinafter referred to as "**Gautama (7).**" See also Basuki *et. al*, 3.5.

[55] Basuki *et. al*, 3.5.

[56] Basuki *et. al*, 8.10.

[57] Gautama (7), 454-459.

[58] December 2020 Draft on Indonesian PIL, Art. 47 para. (2).

Transnational elements in the above definition refers to elements in the civil sector that goes beyond the territorial boundaries of Indonesia and is related to foreign law.[59] This definition is in accordance with the concept of an international contract expressed by Sudargo Gautama. Gautama defines an international contract as a contract which possesses a foreign element(s).[60]

In determining which law applies to the validity of the agreement, the draft Indonesian Private International Law divides the issue into two parts: (i) the validity of the agreement in general; and (ii) the validity of the choice of law clauses made by the parties.

a. Validity of Contracts

The validity of the agreement and the legal consequences due to the invalidity of the agreement are regulated by the law applicable to the contract (governing law).[61] Regulation of the validity of the contract through the choice of law is also embraced in Hague Principles on Choice of Law in International Commercial Contracts. If the choice of law is used to ensure the validity of the contract, the disputing parties will not choose a forum with certain Private International Law that will benefit their claim regarding the validity of the contract. The law chosen will always govern the validity of the contract, regardless of which forum resolves the dispute.[62]

The choice of law can be made through an agreement or by mutual consent outside of the agreement, or after a dispute occurs.[63] In making a choice of law, it is permissible to have *dépeçage*. *Dépeçage* is a situation where different provisions of a contract can be regulated by different laws.[64] In this regard, the interim draft of the Indonesian

[59] *Ibid*., Art. 1 para. (15).

[60] Sudargo Gautama, *Hukum Perdata Internasional Indonesia Jilid II Bagian 2 Buku ke-8*, 8th print, (Bandung: PT. Alumni, 2013), 2. Hereinafter referred to as "**Gautama (8).**"

[61] December 2020 Draft on Indonesian PIL, Art. 48.

[62] Hague Conference on Private International Law, *Principles on Choice of Law in International Commercial Contracts*, (Den Haag: HCC, 2015), 64. Hereinafter referred to as "**HCCH Discussion on PICC 2015**."

[63] *Ibid.*

[64] Symeon C. Symeonides, "Issue-by-Issue Analysis and Dépeçage in Choice of Law: Cause and Effect," *University of Toledo Law Review* 45 (2013): 6. See also Basuki *et al.,* 6.23

Private International Law confirms that it is permissible to make different legal choices for different parts of the agreement.[65]

In the event that there is no choice of law, or if it is invalid, or cannot be determined, the law of the place that shows the most tangible and substantial points of connection applies.[66] This provision recognizes the theory of the proper law of the contract, which applies the law which has the closest connection to the contract as the applicable law.[67]

The factors which must be considered in determining the law with the most tangible and substantial relevance according to the December 2020 Draft on Indonesian PIL are as follows:[68]

1) The place where the agreement is made, or the place where the final action is taken to reach an agreement;
2) The place where the obligation of the agreement is carried out;
3) Nationality of one of the parties deemed to have carried out the most significant obligation, and if nationality cannot be determined, the party's habitual residence;
4) Place of establishment or incorporation or concentration of corporate business activities, which are parties or parties to the contract; or
5) The place where the object is located and/or registered at the time the case is filed.

If the proper law of the contract cannot be determined, the court can determine that the agreement of the parties to have a case in the Indonesian Court may be considered as a choice of law towards Indonesian material law.[69] This provision is an embodiment of the theory of using judge's law (*lex fori*) as a substitute. This can only occur when the applicable foreign law cannot be ascertained.[70]

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[65] December 2020 Draft on Indonesian PIL, Art. 51. Syamsul Ma'arif *et. al.*, "Naskah Akademik tentang Rancangan Undang-Undang Hukum Perdata Internasional," *Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia* (2020): 279. Hereinafter referred to as "**2020 Draft Indonesian PIL Academic Manuscript**."

[66] December 2020 Draft on Indonesian PIL, Art. 54 para. (1).

[67] Kurt Lipstein *et. al.*, "The Proper Law of the Contract," *St John's Law Review* Vol. 12, No. 2 (April 1938): 246. See also Basuki *et al.*, 6.34.

[68] December 2020 Draft on Indonesian PIL, Art. 54 para. (2).

[69] *Ibid.,* Art. 54 para. (3).

[70] Basuki *et al.*, 9.19.

In the event that each party offers their respective standard provisions regarding the choice of law, where the provisions refer to different legal systems, the last proposed standard provision shall be used.[71] This provision reflects the theory of the last shot (*theorie des letzten wortes*). This theory posits that a contract is established solely when there is a concurrence between the terms presented by both parties. Therefore, the conditions that must be used are the provisions in the offer that were last launched before the deal occurred. The 'offer' herein includes a modification of the terms already presented.[72]

Article 53 paragraph (5) of the draft of Indonesian Private International Law states that where the use of the last shot theory leads to a legal system with principles differing from the last shot theory, the judge in court is allowed to determine that no legal choice has been made. The is often called the knockout theory. Knockout theory asserts that if the parties cannot reach an agreement on the choice of law, the choice of law is considered non-existent. As a result, the applicable law is determined through the principles of prevailing Private International Law.[73]

b. Validity of Choice of Law

The validity of the parties' choice of law will be assessed separately from the validity of the agreement in general.[74] This is also known as the severability principle.[75] As the consequence of this principle, the invalidity of the main contract does not necessarily make a choice of law invalid.[76]

Judges are also allowed to recognize the validity of the parties' choice of law in the direction of customary law principles. Customary refers to practices which are widely used at regional and international levels. Such application entails the existence of a significant relationship between customary law and the agreement in question.[77]

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[71] December 2020 Draft on Indonesian PIL, Art. 53 para. (4).

[72] Gisela Ruhl, "The Battle of Forms: Comparative and Economic Observations," *University of Pennsylvania Journal of International Law and Economics* Vol. 24, No. 1 (2003), hlm. 201-202. See also Michael P. Van Alstine "The Unified Field Solution to the Battle of the Forms Under the U.N. Sales Convention," *William & Mary Law Review* Vol. 62, Issue 1 (2020): 241-242

[73] Ruhl, 198-199. See also Alestine, 243-245.

[74] 2020 Draft Indonesian PIL Academic Manuscript, 278.

[75] December 2020 Draft on Indonesian PIL, Art. 49 para. (3).

[76] HCCH Discussion on PICC 2015, 58.

[77] December 2020 Draft on Indonesian PIL, Art. 52.

It should be emphasized that the draft of Indonesian Private International Law does not specify which law should be used in determining the validity of international sale purchase contracts. The rationale being, the draft was prepared as a guideline for judges. The draft Indonesian Private International Law is not intended to impose the use of certain points of connection on judges, but to provide guidance.[78] It is noteworthy that the preliminary draft of the Indonesian Private International Law lacks provisions pertaining to the legality of the formal contract.

In summary, Indonesia's validity of international sales contracts regulatory regime is undergoing a transformation. At present, Indonesia's Private International Law relies on 16-18 A.B. which have existed prior to Indonesia's independence. With regards to international sales contracts, Article 16-18 A.B. may be utilized to regulate: (i) parties' competence; (ii) applicability of *lex rei sitae*; and (iii) applicability of *locus regit actum* for formal validity.

Moving forward, the draft for Indonesian Private International Law aims to provide a more detailed guideline for judges in courts. It distinguishes between the validity of the contract itself and the validity of choice of law made by the parties. In terms of contract validity, the law chosen by the parties governs regardless of the forum used to resolve disputes. If no choice of law is made or is invalid, the law with the most substantial connection applies. For choice of law clauses, their validity can be assessed independently, and judges may recognize them based on customary law principles. With regards to formal validity, it is notable that the December 2020 Draft on Indonesian PIL lacks provision to regulate such matters.

III. VALIDITY OF INTERNATIONAL SALES CONTRACTS ACCORDING TO INTERNATIONAL INSTRUMENTS

A. Rome Convention on the Law Applicable to Contractual Obligations 1980 and Rome I Regulation

[78] Author's interview with Mr. Ahmad Haris Junaidi, Legislation Drafter at the National Law Development Agency of the Republic of Indonesia, 18 June 2021.

The Convention on the Law Applicable to Contractual Obligations 1980 ("**Rome Convention**") is a convention that aims to unify the choice of law system for contracts within the European Union.[79] The convention contains Private International Law Rules which are used to determine which law applies to the formal validity and material validity of contracts.[80] As a hard law instrument, it acts as a binding document for countries which opt to commit to the Rome Convention.[81]

1. Material Validity

According to Article 8 of the Rome Convention, the issue regarding contract validity will be resolved using the applicable law if the contract is valid.[82] This also applies to the issue of the validity of of choice of law.[83]

2. Applicable Law according to the Rome Convention

According to Article 3 of the Rome Convention, the parties are allowed to make a choice of law in the contract.[84] In the event that the parties did not make a choice of law, Article 4 of the Rome Convention confirms that the contract is subject to the laws of the country that has the closest connection to the contract.[85]

Based on Article 4 paragraph (2) of the Rome Convention, the country with the closest connection refers to the habitual residence of the party carrying the most characteristic performance in the contract.[86] In the event that the contract is made by a legal entity, the habitual residence will be replaced with a place for the central administration of the legal entity. For contracts made by competent parties due to

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[79] European Union, Convention on the Law Applicable to Contractual Obligations, *OJ C 27* (1980), Preamble. Hereinafter referred to as the "**Rome Convention**."

[80] Jón Stefán Hjaltalín Einarsson, "The Law of Contract under the Rome Convention," (Thesis of University of Akureyri, Akureyri, 2008), 3. See also Francisco Garcimartín Alférez, "Rome Convention and Rome I Regulation (contractual obligations)," in *Encyclopedia of Private International Law,* ed. Jürgen Basedow, Giesela Rühl, Franco Ferrari, and Pedro de Miguel Asensio (EE, 2017), 1561.

[81] Kenneth W. Abbott and Duncan, "Hard and Soft Law in International Governance," *International Organization* Vol. 54, No. 3 (2000), 421. See Gregory C. Shaffer and Mark A. Pollack, "Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance," *Minnesota Law Review* Vol. 94, Issue 706 (2010), hlm. 717. See also Alférez, 1553.

[82] Rome Convention, Art. 8 para. (1).

[83] European Union, Report on the Convention on the law applicable to contractual obligations by Mario Giuliano, Professor, University of Milan, and Paul Lagarde, Professor, *University of Paris I, C 282* (1980), 28.

[84] Rome Convention, Art. 3 para. (1).

[85] *Ibid.,* Art. 4 para. (1).

[86] If the party with the greatest performance cannot be determined, this provision shall not be enforced. See Art. 4 para. (5) Rome Convention.

their profession, the law of principal place of business or *lex loci solutionis* is used. If the contract concerns immovable property, or the right to use it, it can be assumed that the most close connection is in the place where the immovable object is located.[87]

3. Formal Validity

Formal validity is regulated through Article 9 of the Rome Convention, which states that:

a. A contract made by the parties residing in the same country, is formally valid if it fulfills the formal provisions in the law applicable to the contract, or the law of the country where the contract is made;
b. A contract made by parties residing in different countries is formally valid if it fulfills the formal provisions of the law applicable to the contract, or the law of one of the countries;
c. If the contract is made by an agent, the contract must meet the formal requirements of the law in the place in which the agent acts;
d. Contracts relating to immovable property must comply with the provisions contained in the *lex situs* (the law where the immovable property is located).

As time has progressed, the European Union has recognized the need to update the rules on the applicable law in contracts, as outlined in the Rome Convention. This awareness was driven, in part, by the necessity to adapt to the proliferation of contracts made through the internet. The surge in internet-based contracts was not considered when the Rome Convention was drafted.[88] Therefore, since 2008, the Rome Convention is no longer in effect for the European Union. It has been replaced by Regulation (EC) No. 593/2008 of the European Parliament and of the

[87] *Ibid*., Art. 4 para. (3).
[88] M. Bogdan, "Contracts in Cyberspace and the Regulation "Rome I"," *Masaryk University Journal of Law and Technology*, (2009): 219. See also Zhen Chen, "Internet, consumer contracts and private international law: what constitutes targeting activity test," *Information & Communications Technology Law* Vol. 32, No. 1 (2023): 24.

Council of 17 June 2008 on the law applicable to contractual obligations, known as the Rome I Regulation.[89]

Similar to the Rome Convention, the Rome I Regulation divides the rules on validity into two parts: substantive and agreement-related validity, as well as formal validity. Nevertheless, several differences can be noted between the Rome I Regulation and its predecessor. *First,* the Rome Convention distinguishes between conflict of law rules governing the formal validity of contracts made through an agent, [90] while the Rome I Regulation treats the conflict of law rules for formal validity the same way for contracts made through an agent and those made without one. [91]

Second, the Rome I Regulation includes provisions specifically addressing the conflict of law rules for consumer contracts. [92] This is because consumers typically have a weaker position compared to businesses when entering into agreements. [93] This situation differs significantly from contracts between businesses, which is why consumer contracts require special attention.

In summary, the Rome Convention aimed to unify choice of law principles for European Union contracts, governing their formal and material validity. However, evolving contract practices, especially online contracts, led to the Rome Convention's replacement by the Rome I Regulation. The Rome I Regulation maintains the division between substantive and formal validity rules but treats contracts made through agents and consumer contracts differently. This reflects the evolving legal landscape, adapting to the digital age and addressing the unique challenges posed by various contract types within the European Union.

B. UNIDROIT Principles of International Commercial Contracts

[89] Antoni Anasz, "From Rome Convention to Rome I Regulation -- could the evolution be a revolution? Some aspects of the new Regulation," *Dr. Thomas Marx Award* (2010), para. 2. See also Chen, 24.

[90] Rome Convention, Art. 11

[91] Rome I Regulation, Art. 11.

[92] *Ibid.*

[93] Francesca Ragno, "The Law Applicable to Consumer Contracts under the Rome I Regulation," in *Rome I Regulation: The Law Applicable to Contractual Obligations in Europe*, 1st print, (Berlin and New York: Sellier European Law Publishers, 2009), 129-130. See also Maria Joao Mimoso and Maria do Rosario Anjos, "Consumer Protection in Transnational Relations: The Contribution of the EU ," *37th International Scientific Conference on Economic and Social Development* (February 2019): 730.

PICC was created with the intention of harmonizing the law related to international commercial contracts.[94] The PICC was first published in 1994, and was amended three times, namely in 2004, 2010 and 2016.[95] As a soft law document, this instrument is not legally binding. However, the parties to an international sales contract can choose which principles in the PICC are used to govern their contract, either in whole or in part.[96] This is achieved by the parties by stipulating implicitly or explicitly in the contract the PICC provisions to be waived.[97] In this regard, it should be emphasized that there are several provisions that cannot be waived, such as Article 1.7 of the 2016 PICC which requires parties to act in good faith.[98]

Generally, Article 3.1.2 of PICC 2016 regulates the validity of an agreement as the basis for the formation of a contract.[99] Article 3.1.3 paragraph (1) of PICC 2016 states that if the performance of performance is not possible at the time the contract is made, it will not affect the validity of the contract. There is an exception to this permissibility, namely if initial impossibility occurs due to legal prohibitions. In such scenarios, the validity of the contract depends on whether the contract will be annulled or simply prohibited from its execution according to the prohibiting law.[100]

Related to initial impossibility, Article 3.1.3 paragraph (2) of PICC 2016 handles cases where a party who excels in delivering certain assets does not have the right to make such delivery/delivery at the time the contract is made. The situation does not affect the validity of the contract. PICC 2016 provides space for the parties to acquire the necessary rights to execute the contract after the contract has been concluded. As

[94] Stefan Vovgenauer, *Commentary on the UNIDROIT Principles of International Commercial Contracts* (PICC), 2nd print, (Oxford: Oxford University Press, 2015), 1. See also Tiurma M. Pitta Allagan, Dinda R. Himmah, Tazqia Aulia Al-Djufri, "Supervening Events in Indonesian Commercial Contracts and Notes on the UNIDROIT PICC in relation to COVID-19 Health Crisis, " *Journal of Central Banking Law and Institutions* Vol. 1, No. 2 (2022): 254-255.

[95] International Institute for the Unification of Private Law, "UNIDROIT Principles of International Commercial Contracts 2016 - Overview," https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016/overview/, Accessed 9 October 2023.

[96] International Institute for the Unification of Private Law, *UNIDROIT Principles of International Commercial Contracts 2016*, Art. 1 para. (5). Hereinafter referred to as "**PICC 2016**."

[97] The International Institute for the Unification of Private Law, *UNIDROIT Principles of International Commercial Contracts 2016*, (Rome: UNIDROIT, 2016): 14. Hereinafter referred to as "**UNIDROIT Commentary on PICC 2016**."

[98] *Ibid.*

[99] Article 3.1.2 of the PICC 2016 reiterates the provision in Article 1.2 of the PICC 2016, which states that there are no specific formal requirements that need to be met in creating a contract.

[100] UNIDROIT Commentary on PICC 2016, 98.

stipulated in Article 3.1.3 paragraph (1) of PICC 2016, if the party concerned fails to do so, provisions related to default may apply.[101]

Article 3.1.5 PICC 2016 regulates that provisions regarding illegality in Chapter III PICC 2016 are absolute and mandatory. Parties using PICC 2016 are not allowed to waive or modify such provisions in their contracts. Those who contract still hold the right to invalidate contracts that contain fraud, threats, and other illegal acts.[102]

Furthermore, it should be emphasized that only provisions regarding illegality are mandatory. Provisions relating to the binding force of an agreement or initial impossibility are not mandatory. Therefore, the parties may waive such provisions, or 'supersede' them with existing provisions of domestic law.[103]

IV. VALIDITY OF INTERNATIONAL SALES CONTRACTS UNDER THE CISG

A. Provisions in the CISG regarding the Validity of International Sales Contracts

1. Interpretation of Article (4)a CISG

With regards to validity, Article 4(a) of the CISG rings as follows:

> *This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with: (a) the validity of the contract or of any of its provisions or of any usage; (b) the effect which the contract may have on the property in the goods sold.*

Based on this article, the CISG generally does not deal with matters relating to the validity of international sales contracts. The exception to this provision comes when the problem is "expressly provided" in the CISG.

In interpreting the meaning of "expressly provided," there is a consensus which states that the provisions referred to are not articles that explicitly mention the concept of validity in their formulation. If "otherwise expressly provided" here

[101] *Ibid.*
[102] UNIDROIT Commentary on PICC 2016, 99.
[103] *Ibid.*

must be interpreted as an explicit mention of validity, even though there are no provisions that meet this criterion, that interpretation would contradict the purpose of the provision itself.[104]

Many criticize that the drafters of the CISG merely tosses the question of validity to the judges in court.[105] The forum adjudicating disputes must determine for itself whether there is an issue of validity and cause of invalidity in a dispute, as well as its consequences.[106] In fact, there are no express guidelines as to how they can determine what falls within the scope of validity.[107] As a result, judges find it difficult to distinguish which issues of validity are regulated in the CISG, and which issues are not.[108]

Article 7 paragraph (1) CISG acts as a guide in interpreting Article 4(a) CISG.[109] It asserts the necessity to take into account the "international character" of the CISG, the importance of uniformity in the implementation of the CISG, as well as good faith in international sales contracts.[110] The emphasis on uniformity in the implementation of the CISG indirectly guides judges to look at existing decisions, even though these decisions are not necessarily binding.[111]

Further, according to Article 7 paragraph (2) of the CISG, issues regulated in the CISG but not directly resolved, must be resolved by a judge using the general principles that underlie the CISG.[112] For issues unregulated by the CISG, they will

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[104] A treaty must be interpreted in accordance with its object and purpose. See United Nations, Vienna Convention on the Law of Treaties, *UNTS* 1155 (1969), Art. 31.

[105] Atanas D. Atanasov, "Why Do Uniform Rules Not Always Deliver Uniform Outcomes?–A Closer Look at Article 4 (a) CISG and the Issues of Validity," *SSRN* (2016): 6.

[106] Ulrich Drobnig, "Substantive Validity," *The American Journal of Comparative Law* Vol. 40, Issue 3 (1992): 636-637. See also Małgorzata Pohl-Michałek, "CISG Exclusion during Legal Proceedings," *The Chinese Journal of Comparative Law*, (2023): 4.

[107] John A. Spanogle and Peter Winship, *International Sales Law, A Problem-Oriented Coursebook*, 2nd edition, (Minnesota: West Academic Publishing, 2000), 131-132. See also Jadranka Petrovic, Beatric Hamilton, and Cindy Nguyen, "The Exclusion of the Validity of the Contract from the CISG: Does it still Matter?" *Journal of Business Law* Issue 2 (2017): 106.

[108] Helen Elizabeth Hartnell, "Rousing the Sleeping Dog: The Validity Exception to the Convention on Contracts for the International Sale of Goods," *Yale Journal of International Law* Vol. 18, No. 1 (1993): 8. See also Petrovic, Hamilton, and Nguyen, 111.

[109] Pasal 7 para. (1) CISG dirumuskan sebagai klausul yang mengandung aturan interpretasi CISG. Lihat André Janssen and Olaf Meyer, *CISG Methodology*, (Berlin and New York: Otto Schmidt/De Gruyter European Law Publishers, 2009), 51. See also Małgorzata Pohl-Michałek, 14.

[110] Nir Bar and Natanella Har-Sinay, "Contract Validity and the CISG: Closing the Loophole," *Israel Bar Association* (2007): 3. See Herbert I. Lazerow, "Uniform Interpretation of CISG," *The International Lawyer*, Vol. 52, No. 3 (2019): 377.

[111] Joseph Lookofsky, "Walking the Article 7(2) Tightrope Between CISG and Domestic Law," *Journal of Law and Commerce* Vol. 25, No. 87 (June 2005): 90. See Lazerow, 366-367.

[112] CISG, Art. 7 part. (2). See also Janssen and Meyer, 265.

be resolved through the law enacted through Private International Law. The CISG specifically stipulates that the Private International Law be used, to avoid a judge baselessly enforcing the internal law of the place where the dispute is resolved.[113]

2. Validity Issues Regulated by CISG

a. Formal Validity

Article 11 of the CISG provides flexibility for the parties regarding the formal validity of the contract, as it asserts that "a contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form." Specifically, a contract does not need to be made or proven in writing. Writings in this context include telegrams and telex.[114] The existence of a contract can be proven through any means, including through witnesses.[115] Further, Article 29 paragraph (1) of the CISG states that changes and modifications in the contract can be made through the agreement of the parties. It does not require the approval to be in a certain form such as writing.[116] Thus, where the CISG is applied, it is no longer necessary to investigate which internal law applies to the formal validity of the contract. The issue has been regulated through Articles 11 and 29 paragraph (1) of the CISG.

Article 96 CISG allows states parties to the CISG to make declarations against Articles 11 and 29 paragraph (1) of the CISG. Reservations can only be made if the country party has domestic laws that confirm certain formal requirements.[117]

b. Initial Impossibility of Performance

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[113] UNCITRAL, *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods: 2016 Edition*, (New York: United Nations: 2016), 4. Selanjutnya disebut sebagai "**UNCITRAL CISG Digest 2016**."

[114] CISG, Art. 13.

[115] *Ibid.*, Art. 11.

[116] Ulrich G. Schroeter, "The Cross-Border Freedom of Form Principle Under Reservation: The Role of Articles 12 and 96 CISG in Theory and Practice," *Journal of Law and Commerce* Vol. 33, (2014): 40. Hereinafter referred to as "**Schroeter (Cross-Border)**". See also UNCITRAL CISG Digest 2016, 123.

[117] CISG, Art. 96.

Article 68 of the CISG stipulates that if at the time the contract was made the seller knew or should have known that the goods being traded had been lost or damaged, and did not notify the buyer, then the risk of loss is borne by the seller. In addition, Article 79 paragraph (1) of the CISG is also often interpreted as allowing conditions for initial impossibility of performance when making international sales contracts,[118] as it contains provisions that exclude a party from liability for defaults that occur.

Evidently, the CISG provides flexibility for the parties to conclude a contract under conditions of initial impossibility. This demonstrates that the CISG shares similarities with Indonesian domestic law, as it also permits the validity of sales contracts under circumstances of initial impossibility of performance.

c. Validity of Open-Price Contracts

Article 14 paragraph (1) of the CISG stipulates that a contract offer to one or more parties is valid if it fulfills several elements. Offer must be made clearly and indicate the intention to be bound by the contract if the contract is agreed. A clear offer is an offer that contains three elements: goods traded, the number of goods traded, and the transaction price. Provisions regarding the price and quantity of goods can be expressed explicitly or implicitly.[119] The parties do not need to set the quantity of goods and the transaction price in the offer, an offer is considered valid if there are provisions governing the determination of the number of goods and the transaction price.[120]

The CISG does not strictly require an exact price at the time the contract is made. This rule is clearly different from the Indonesian view, where Indonesian internal law stipulates that a sale-purchase agreement is deemed to be made if the parties have agreed on the goods and the price.[121]

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[118] Ingeborg Schwenzer and Pascal Hachem, "The CISG—Successes and Pitfalls" *The American Journal of Comparative Law* Vol. 57, No. 2 (2009): 472-473. See also Schroeter (Validity), 64.

[119] CISG, Art. 14 para. (1).

[120] United Nations Commission on International Trade Law, *United Nations Convention on Contracts for the International Sale of Goods,* (New York: United Nations, 2010), 37. Hereinafter referred to as "**UN Explanatory Note**."

[121] Indonesian Civil Code, Art. 1458

B. Case Study: Geneva Pharmaceuticals v. Barr Laboratories (2002) and Forestal Guarani v. Daros International (2010)

1. Case Study of Geneva Pharmaceuticals v. Barr Laboratories

On February 6, 1998, Invamed/GTPC filed several claims in New York Court, one of which was a claim against ACIC/Brantford regarding contract default. In the lawsuit, Invamed/GTPC stated that there was an implied-in-fact contract[122] for the sale of chemicals. Invamed/GTPC argued that ACIC/Brantford should have sold chemical supplies to Invamed/GTPC. In contrast, ACIC/Brantford states that it never promised to provide chemicals to Invamed/GTPC.

a. Connecting Factors

In this case, there are several Primary Connecting Factors originating from different countries, namely, as follows:

1) While there are multiple parties (legal entities and an individual) originating from various counties in this case, it is notable that crux of the dispute revolves around Invamed/GTPC and ACIC/Brantford. Invamed/GTPC primarily operates in New Jersey, while ACIC/Brantford primarily operates in Brantford, Ontario.
2) The chemical supplied by ACIC/Brantford was manufactured in Ontario, Canada. Chemicals supplied by ACIC/Bratford were requested by Invamed/GTPC to be shipped to New Jersey, USA.
3) The contracting process took place in New Jersey, United States of America.

b. *Teiler de Hauptfrage*

The issue of the validity of the contract in this case constitutes as *Teiler de Hauptfrage* (part of the main issue). An issue may be categorized as *Teiler de Hauptfrage* if it involves the legal relationship that is being used as the subject of

[122] *An implied-in-fact* contract is a contract that contains an agreement that is not explicitly expressed. George P. Costigan, Jr., "Implied-in-Fact Contracts and Mutual Assent," *Harvard Law Review* Vol. 33, No. 3, (January 1920): 381. See also Frederick Wilmot-Smith, "Express and Implied Terms," *Oxford Journal of Legal Studies*, Vol. 43, No. 1 (2023): 61.

the dispute.[123] In this case, the subject of the dispute is the request for compensation submitted by Invamed/GTPC against ACIC/Brantford. The request for compensation is based on the implied-in-fact contract between the two. Conclusively, the question regarding the validity of the contract is classified as *Teiler de Hauptfrage.*

c. CISG Applicability

The contract in this case has complied with the applicable requirements of the CISG. The following is an analysis of the applicability of the CISG in this case, based on the requirements in Article 1 (1) of the CISG:

1) There is a contract that has been made

To establish the formation of a contract, two elements must be met: offer and acceptance. An offer must be sufficiently definite:[124] targeted to a specific party, have an intention to enter into a contract, and be conveyed to the party who should accept.[125] In addition, the offer must also directly or indirectly determine the quantity of goods and the price (or at least include a provision for the determination).[126]

First, with regards to the existence of an offer. *In casu*, Invamed/GTPC provided a certificate formed by ACIC/Brantford to the United States Food and Drug Administration ("**FDA Reference Letter**") which clearly states the object being traded. Invamed/GTPC also states that the parties have agreed on the price and quantity of the goods.

On the other hand, ACIC/Brantford states that the offer must also contain the date of delivery of the requested goods. However, Invamed/GTPC stated that they had discussed the delivery date. Due to the conflicting facts of the ACIC/Brantford argument, the New York judge held

[123] Basuki *et. al,* 8.24.

[124] CISG, Art. 14 para. (1).

[125] Belkis Vural, "Formation of the Contract According to the CISG," *Ankara Bar Review* Vol. 1, (2013), hlm. 130-131. See also UNCITRAL CISG Digest 2016, 55.

[126] CISG, Art. 14 para. (1).

that the defense could not be construed as legal fact and stated that an offer had been made.

Second, there must be an acceptance, which can be done through explicit affirmation, or by directly executing the offer made.[127] Invamed/GTPC argued that there is a custom in the pharmaceutical industry, where a certificate such as the FDA Reference Letter is considered as confirmation of agreement. The judge considered the existence of an industry custom and acknowledged the FDA Reference Letter as acceptance.

2) The contract regulates the sale and purchase of objects

Article 2 of the CISG confirms that the CISG does not apply to, *inter alia*, goods purchased for personal, family or household consumption, auction goods, goods sold through execution or legal proceedings, shares, investment securities, money, ships, vessels, hovercraft, aircraft, electricity. Objects that are traded in this case are not exempt from Article 2 of the CISG, namely chemicals used for drug production.

3) Between parties whose places of business are in different States

ACIC/Brantford is in Ontario, Canada, whereas Invamed/GTPC is a Delaware-based company primarily operating in New Jersey.

4) Countries where the parties do business are CISG participating countries

Canada and the United States are both CISG contracting states,[128] hence fulfilling this element.

d. Applicable Law for the Validity of Contracts

The New York judge first considered Article 4(a) of the CISG. The New York judge defined the scope of validity issue referred to in the article as any issue

[127] UN Explanatory Note on CISG, 37.

[128] Institute of International Commercial Law, "CISG: List of Contracting States," https://iicl.law.pace.edu/cisg/page/cisg-list-contracting-states, accessed on 9 October 2023.

where domestic law can render a contract null and void, voidable, or unenforceable. The judge determined that the issue of validity in this case (ACIC/Brantford's argument that there is no reciprocity in the contract) was not addressed in the CISG.

The New York judge stated that a court must use Private International Law principles in determining which domestic law governs the validity of a contract. Although the New York judge did not mention the CISG provisions in this point of consideration, this is an implementation of the provisions of Article 7 paragraph (2) of the CISG. Article 7 paragraph (2) of the CISG itself stipulates that issues that are regulated but not resolved by the CISG will be resolved using the general principles of the CISG.[129] For unregulated issues, applicable law will be determined based on Private International Law principles.[130]

Utilizing *lex fori,* the judge considered that the New York Court prioritizes the proper law of the contract in determining validity issues. In this case, the place for contracting, negotiations, contract implementation, as well as the domicile of the plaintiff (Invamed/GTPC), is situated in New Jersey. However, ACIC/Brantford conducts the manufacture chemical supplies in Canada. Based on these facts, the judge determined that New Jersey law applies to the validity of the contract.

Invamed/GTPC contended that the FDA Reference Letter is proof of ACIC/Brantford obligations to Invamed/GTPC. They argued that, with no other government-approved suppliers at the time, it was implied that Invamed/GTPC would keep buying from ACIC/Brantford, which had expressed its willingness to supply. The judge agreed that due to the constraints on other suppliers, ACIC/Brantford's FDA Reference Letter constituted a promise to Invamed/GPTC. Consequently, it fulfilled the requirements of a reciprocal agreement under New Jersey law, rendering the contract valid.

While the author broadly agrees with the overall approach taken by the New York judge in addressing the issue of validity, there is a regrettable omission. The

[129] See Laura Lassila, "Comments: General Principles and Convention on Contracts for the International Sale of Goods (CISG) - Uniformity Under an Interpretation Umbrella," *Russian Law Journal* Vol. V, Issue 2 (2017): 118.

[130] UNCITRAL CISG Digest 2016, 4.

judge does not explicitly reference the CISG in several crucial points of consideration. For instance, in determining that domestic law applies to the issue of validity in this case, the New York judge should have been guided by Article 7 paragraph (2) of the CISG. Considering the interpretative rules in Article 7 paragraph (1) of the CISG, which prioritize uniformity in CISG application, a judge applying the CISG is expected to consider previous decisions.[131] The absence of a clear mention of the legal basis (CISG provision) considered by the New York judge may complicate matters for other judges dealing with contract validity issues related to the CISG. [132]

2. Case Study: *Forestal Guarani v. Daros International* (2010)

a. Connecting Factors

In this case, there are several connecting factors originating from different countries, namely, as follows:

1) The place of administration of the two legal entities[133] in this case are different. Daros International is from the United States, while Forestal Guarani is from Argentina.
2) The place of execution of obligations may become as a primary connecting factor.[134] In this case, the performance promised in the contract is carried out across borders. Forestal Guarani will produce the goods requested by Daros International in Argentina, while shipments will be made cross-border to United States of America.
3) The contract has been made between absent persons from different places,[135] as the parties did not meet face to face in the process. Forestal Guarani negotiated from Argentina, while Daros International negotiated from the United States.

[131] See Purba, 58.
[132] Bar and Har-Sinay, 3. See also Lookofsky, 90 and Lazerow, 369.
[133] Basuki *et al.*, 2.18.
[134] Gautama (Pengantar), 41-42. See also Prince Obiri-Korang, "Primary Connecting Factors Considered by South African Courts to Determine the Applicable Law of International Contracts on the Sale of Goods," *Lex Portus,* Vol. 8, Issue 5, (2022): 10.
[135] Sonia Viejobueno, "Private International Law Rules Relating to the Validity of International Sales Contracts," *The Comparative and International Law Journal of Southern Africa* Vol. 26, No. 2 (July 1993): 184. See also Basuki *et al.,* 6.47.

b. *Teiler de Hauptfrage*

The crux of the dispute is the request for compensation filed by Forestal Guarani against Daros International. The request for compensation is based on an oral contract between Forestal Guarani and Daros International. Based on these facts, the issue of contract validity in this case is categorized as a part of the main issue, or *Teiler der Hauptfrage*. The rationale being, the issue of legitimacy in this case contains a legal relationship that is being used as the subject of the dispute.[136]

ii. CISG Applicability

The contract in this case has complied with the requirements of the CISG. The following is an analysis of the applicability of CISG in Forestal Guarani and Daros International contracts, based on the criteria in Article 1 paragraph (1) of the CISG:

1) There is a contract that has been made

   CISG provisions regarding the formulation of a contract do not apply to this case. This is due to a reservation under Article 96 of the CISG by Argentina. As a result, Part II of the CISG cannot be applied.[137]

2) The contract regulates the sale and purchase of objects

   The object being traded in this case (wooden furniture joints) is not exempted from the CISG based on Article 2 of the CISG. Therefore, this element is fulfilled.

3) There are parties whose places of business are in different states

   Forestal Guarani is a furniture company from Argentina, while Daros International is an import-export company from New Jersey, United States of America.

[136] Basuki *et al.*, 8.24.

[137] CISG Advisory Council, *CISG-AC Opinion No. 15, Reservations under Articles 95 and 96 CISG*, 20. Hereinafter referred to as "**CISG Advisory Council Opinion No. 15**."

4) Countries where the parties conduct business are CISG contracting states

Argentina and the United States are both contracting states of the CISG.[138]

iii. Applicable Law for the Validity of Contracts

In this case, one of the countries of origin of the parties utilizes the 'opt-out' option in the CISG.[139] This opt-out option is regulated under Article 96 of the CISG, where the parties are allowed to make reservations on the provisions regarding the terms of the contract, the formal validity of the contract, as well as the formal validity of changes to the contract. Consequently, these provisions will not apply to contracts made by businesses domiciled in countries making the reservation.[140]

The United States has not made the declarations provided for in Articles 12 and 96 of the CISG. However, Argentina has made the declaration.[141] As a result, the New Jersey judge considered Article 7 paragraph (2) of the CISG, which states that matters that are handled but not resolved directly in the CISG can be resolved using the general legal principles that underlie the CISG.[142] In this case, Article 11 of the CISG (regarding the formal validity of contracts) no longer applies to Forestal Guarani and Daros International contracts.

The New Jersey judge has stated that issues not regulated in the CISG will be resolved using applicable law according to the forum's Private International Law. Nonetheless, the New Jersey judge, without taking Private International Law into account, declared that both New Jersey and Argentinean legal systems mandated written contracts for Forestal Guarani and Daros International.

After Forestal Guarani appealed and took the case to the United States Court of Appeals, the Court of Appeals judge ruled that New Jersey judges should have used the forum's Private International Law to determine the law that applies

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[138] Institute of International Commercial Law, "CISG: List of Contracting States," https://iicl.law.pace.edu/cisg/page/cisg-list-contracting-states, accessed on 9 October 2023.

[139] Camilla Baasch Andersen, Francesco G. Mazzota, and Bruno Zeller, *A Practitioner's Guide to the CISG*, (New York: Juris, 2010), 855. See also CISG Advisory Council Opinion No. 15, 16.

[140] CISG Advisory Council Opinion No. 15, 20.

[141] Jeffrey F. Beatty, Susan S. Samuelson, and Patricia Abril, *Essentials of Business Law*, 6th ed., (Boston: Cengage, 2019), 72.

[142] UN Explanatory Note on CISG, 36.

to the validity of the contract. Private International Law of the forum (New Jersey) in this case requires the judge to consider the law that has a close relationship with the parties and the contract, also known as the proper law of the contract theory. The theory examines the intentions of the parties,[143] by determining the law of the place most connected to the contract as the applicable law.[144]

The author concurs with the U.S. Court of Appeals judge's perspective that the New Jersey judge should apply the applicable law based on the principles of New Jersey Private International Law (the proper law of the contract). Failure to do so, as occurred in the New Jersey court, would indirectly deviate from the 'guidelines' provided in Article 7 paragraph (2) of the CISG. This deviation would lead to inconsistency in the application of the CISG, resulting in uncertainty and inconsistency in its implementation. [145]

V. CONCLUSIONS

1) Broadly speaking, Indonesian internal law does not distinguish international sales contracts from other transactions. Material validity is regulated in Article 1320 of the Civil Code, while there are no formal requirements.
2) The provisions regarding severability and governing law in the draft Indonesian Private International Law Bill broadly align with international best practices. However, it is advisable for Indonesia to consider including provisions regarding formal validity, which are currently absent.
3) The CISG primarily addresses a limited subset of international sales contract validity issues, such as formal validity, initial impossibility of performance, and open-price contracts. It leaves other aspects, such as specific clause validity, subject matter, party capacity, and contract formation, unregulated.

[143] Lipstein, 249. See also Basuki *et. al.*, 6.34.
[144] Basuki *et. al*, 6.48.
[145] Uncertainty and non-uniformity contradict the purpose of the CISG, which is to create uniformity in international buying and selling rules. See CISG, Preamble and Art. 7 paragraph (1).

4) When dealing with validity issues not covered by the CISG, judges should still follow the CISG's guidelines, which involve applying principles of Private International Law.

Based on the above conclusions, several recommendations can be made for Indonesia. *First*, concerning the validity of international sales contracts, there is no urgent need for accession to the CISG. Most validity issues are left ungoverned by the CISG, and there exists issues regarding judges' enforcement of CISG in courts. *Second*, Indonesia should promptly finalize and enact its Private International Law. To enrich the current draft of Private International Law, it is advisable to clarify the distinction between material and formal validity concepts and specify which Private International Law principles govern each.

BIBLIOGRAPHY

Laws and Regulations

Indonesia. *Law on Amendment of Law Number 11 of 2008 on Electronic Information and Transaction*. Law 19 of 2016. State Gazette Number 251 of 2016. Supplementary State Gazette Number 5952.

_____. *Law Number 11 of 2008 on Electronic Information and Transaction*. Law 11 of 2008. State Gazette Number 58 of 2008. Supplementary State Gazette Number 4843.

_____. Civil Code [*Burgerlijk Wetboek*]. Translated by Subekti. Jakarta: Balai Pustaka, 2009.

_____. General Rules of the Law for Indonesia [*Algemene Bepalingen van wetgeving voor Indonesie*]. Published through S. 1847-23.

Books

Agustina, Rosa. *Hukum Perikatan (Law of Obligations).* Denpasar: Pustaka, 2012.

Agustina, Rosa. *Et. al.* "Pengertian dan Ruang Lingkup Hukum Perdata." In *Hukum Perdata*. Tangerang Selatan: Universitas Terbuka, 2014.

Andersen, Camilla Baasch, Francesco G. Mazzota, and Bruno Zeller. *A Practitioner's Guide to the CISG*. New York: Juris, 2010.

Alférez, Francisco Garcimartín. "Rome Convention and Rome I Regulation (contractual obligations)," in *Encyclopedia of Private International Law,* ed. Jürgen Basedow, Giesela Rühl, Franco Ferrari, and Pedro de Miguel Asensio. EE, 2017.

Basuki, Zulfa Djoko. *Et. al.* Hukum Perdata Internasional, 3rd ed. (Tangerang Selatan: Universitas Terbuka, 2022.

Beatty, Jeffrey F., Susan S. Samuelson, dan Patricia Abril. *Essentials of Business Law*. Ed. 6. Boston: Cengage, 2019.

Cahyono, Akhmad Budi dan Surini Ahlan Sjarif. *Mengenal Hukum Perdata*. 1st print. Depok: CV. Gitama Jaya, 2008.

Cavalieri, Renzo and Vincenzo Salvatore. *An Introduction to International Contract Law*. Milan: G Gapphicelli, 2018.

Fuady, Munir. *Hukum Perjanjian (Dari Sudut Pandang Hukum Bisnis)*. Bandung: PT. Citra Aditya Bakti, 2001.

Gautama, Sudargo. *Hukum Perdata Internasional Indonesia Jilid II Bagian 2 Buku ke-8*. 8th print. Bandung: PT. Alumni, 2013.

_____. *Hukum Perdata Internasional Indonesia Jilid III Bagian I Buku ke-7*. 2nd edition, 1st print. 1.Bandung: Alumni, 1995.

_____. *Pengantar Hukum Perdata Internasional Indonesia*. 5th print. Bandung: Binacipta. 1987.

Hague Conference on Private International Law. *Principles on Choice of Law in International Commercial Contracts*. Den Haag: Hague Conference on Private International Law, 2015.

Imron, Ali and Muhamad Iqbal. *Hukum Perdata*. Cet. 1. Tangerang Selatan: UNPAM Press, 2019.

International Institute for the Unification of Private Law. *UNIDROIT Principles of International Commercial Contracts 2016*. Rome: UNIDROIT, 2016.

Mertokusumo, Sudikno. *Hukum Acara Perdata Indonesia*. 1st print. Jogjakarta: Liberty, 1977.

Mulyadi, Lilik. *Hukum Acara Perdata Menurut Teori dan Praktik Peradilan Indonesia.* 3rd print. Djambatan: Jakarta, 2005.

Ragno, Francesca. "The Law Applicable to Consumer Contracts under the Rome I Regulation." In *Rome I Regulation: The Law Applicable to Contractual Obligations in Europe*. 1st print. Berlin and New York: Sellier European Law Publishers, 2009.

Satrio, J. *Hukum Perikatan, Perikatan yang Lahir dari Perjanjian: Buku I.* 1st print. Bandung: PT. Citra Aditya Bakti, 1995.

Spanogle, John A. dan Peter Winship. *International Sales Law, A Problem Oriented Coursebook*. 2nd edition. Minnesota: West Academic Publishing, 2000.

Subekti, R. *Aneka Perjanjian*. Bandung: PT. Citra Aditya Bakti, 1995.

_____. *Hukum Perjanjian.* 21st print. Jakarta: PT. Intermasa, 2008.

Sutantio, Retnowulan dan Iskandar Oeripkartawinata. *Hukum Acara Perdata dalam Teori dan Praktek*. 11st print. Bandung: CV. Mandar Maju, 2009.

Stefan Vovgenauer. *Commentary on the UNIDROIT Principles of International Commercial Contracts* (PICC). 2nd print. Oxford: Oxford University Press, 2015.

United Nations Commission on International Trade Law. *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods: 2016 Edition*. New York: United Nations, 2016.

United Nations Commission on International Trade Law. *United Nations Convention on Contracts for the International Sale of Goods.* New York: United Nations, 2010.

Articles

Abbott, Kenneth W. and Duncan. "Hard and Soft Law in International Governance." *International Organization* Vol. 54, No. 3. (2000).

Allagan, Tiurma M. Pitta. "*Unifikasi dan Harmonisasi dalam Hukum Perdata Internasional." Percikan Pemikiran Makara Merah: Dari FHUI untuk Indonesia* (Oktober 2018).

Allagan, Tiurma M. Pitta, Dinda R. Himmah, and Tazqia Aulia Al-Djufri. "Supervening Events in Indonesian Commercial Contracts and Notes on the UNIDROIT PICC in relation to COVID-19 Health Crisis. " *Journal of Central Banking Law and Institutions* Vol. 1, No. 2 (2022).

Alstine, Michael P. Van. "The Unified Field Solution to the Battle of the Forms Under the U.N. Sales Convention." *William & Mary Law Review* Vol. 62, Issue 1 (2020).

Anasz, Antoni. "From Rome Convention to Rome I Regulation -- could the evolution be a revolution? Some aspects of the new Regulation." *Dr. Thomas Marx Award 2010* (2010).

Atanasov, Atanas D. "Why Do Uniform Rules Not Always Deliver Uniform Outcomes?–A Closer Look at Article 4 (a) CISG and the Issues of Validity." *SSRN* (2016).

Bar, Nir and Natanella Har-Sinay. "Contract Validity and the CISG: Closing the Loophole." *Israel Bar Association* (2007).

Beale, Joseph H. "What Law Governs the Validity of a Contract I." *Harvard Law Review* Vol. 23, No. 1 (November 1909).

Bogdan, M. "Contracts in Cyberspace and the Regulation "Rome I"." *Masaryk University Journal of Law and Technology* (2009).

Born, Gary and Cem Kelelioglu. "Choice of Law Agreements in International Contracts." *Georgia Journal of International and Comparative Law* Vol. 50, No. 44 (2021).

Chen, Zhen. "Internet, consumer contracts and private international law: what constitutes targeting activity test." *Information & Communications Technology Law* Vol. 32, No. 1 (2023).

Daud, Ahmad S. "Kebijakan Penegakan Hukum dalam Upaya Penanggulangan Tindak Pidana Teknologi Informasi." *Lex Crimen* Vol. II, No.1 (January-March 2013).

Drobnig, Ulrich. "Substantive Validity." *The American Journal of Comparative Law* Vol. 40 Issue 3 (1992).

Hartnell, Helen Elizabeth. "Rousing the Sleeping Dog: The Validity Exception to the Convention

on Contracts for the International Sale of Goods." *Yale Journal of International Law* Vol. 18, No. 1 (1993).

Janssen, André and Olaf Meyer. *CISG Methodology.* Berlin and New York: Otto Schmidt/ De Gruyter European Law Publishers, 2009.

Jr, George P. Costigan. "Implied-in-Fact Contracts and Mutual Assent." *Harvard Law Review* Vol. 33, No. 3 (Januari 1920).

Király, Miklós. "Specific Performance – and The International Unification of Sales Law," *Acta Universitatis Carolinae – Iuridica* 2 (2023)

Kobis, Fernando. "Kekuatan Pembuktian Surat Menurut Hukum Acara Perdata." *Lex Crimen* Vol. VI, No. 5 (July 2017).

Kuspraningrum, Emilda. "Keabsahan Kontrak Elektronik Dalam UU ITE Ditinjau dari Pasal 1320 KUHPerdata dan UNCITRAL Model Law On Electronic Commerce." *Risalah Hukum Fakultas Hukum Unmul* Vol. 7, No. 2 (December 2011).

Lassila, Laura. "Comments: General Principles and Convention on Contracts for the International Sale of Goods (CISG) - Uniformity Under an Interpretation Umbrella." *Russian Law Journal* Vol. V, Issue 2 (2017).

Lazerow, Herbert I. "Uniform Interpretation of CISG," *The International Lawyer* Vol. 52, No. 3 (2019).

Lipstein, Kurt. *Et. al*. "The Proper Law of the Contract." St John's Law Review *Vol. 12, No. 2* (April 1938).

Lookofsky, Joseph. "Walking the Article 7(2) Tightrope Between CISG and Domestic Law." *Journal of Law and Commerce* Vol. 25, No. 87 (June 2005).

Oktaviandra, Surya. "Indonesia and Its Reluctance to Ratify the United Nations Convention on Contracts for the International Sale of Goods (CISG)." *Indonesia Law Review* Vol. 3 (2018).

Pohl-Michałek, Małgorzata. "CISG Exclusion during Legal Proceedings." *The Chinese Journal of Comparative Law* (2023).

Posner, Richard A. dan Andrew M. Rosenfield. "Impossibility and Related Doctrines in Contract Law: An Economic Analysis." *The Journal of Legal Studies* Vol. 6, No. 1 (January 1977).

Mimoso, Maria Joao and Maria do Rosario Anjos. "Consumer Protection in Transnational Relations: The Contribution of the EU." *37th International Scientific Conference on Economic and Social Development* (February 2019)

Obiri-Korang, Prince. ”Primary Connecting Factors Considered by South African Courts to Determine the Applicable Law of International Contracts on the Sale of Goods.” *Lex Portus* Vol. 8, Issue 5 (2022).

Petrovic, Jadranka, Beatric Hamilton, and Cindy Nguyen. “The Exclusion of the Validity of the Contract from the CISG: Does it still Matter?” *Journal of Business Law* Issue 2 (2017).

Poernomo, Sri Lestari. ”Perlindungan Hukum Nasabah dalam Perjanjian Telemarketing Bank.” *Jurnal Hukum & Pembangunan* Vol. 49, No. 4 (December 2019).

Ruhl, Gisela. “The Battle of Forms: Comparative and Economic Observations.” *University of Pennsylvania Journal of International Law and Economics* Vol. 24, No. 1 (2003).

Schoeter, Ulrich G. “Contract validity and the CISG.” *Uniform Law Review* Vol. 22 Issue 1 (Maret 2017)

_____. “The Cross-Border Freedom of Form Principle Under Reservation: The Role of Articles 12 and 96 CISG in Theory and Practice.” *Journal of Law and Commerce* Vol. 33 (2014).

Schwenzer, Ingeborg dan Pascal Hachem. “The CISG—Successes and Pitfalls.” *The American Journal of Comparative Law* Vol. 57, No. 2 (2009).

Shaffer, Gregory C. dan Mark A. Pollack. “Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance.” *Minnesota Law Review* Vol. 94, Issue 706 (2010).

Soroinda, Disriani and Anandri Nasution. ”Kekuatan Pembuktian Alat Bukti Elektronik dalam Hukum Acara Perdata.” *Jurnal Hukum & Pembangunan* Vol. 52, No. 2 (June 2022).

Sutiyoso, Bambang and Indah Parmitasara. “Application of the Principle of Consensuality and its Legal Implications in Electronic Contracts at Shopee.” *International Journal of Environmental, Sustainability, and Social Science* Vol. 4 (2023).

Symeonides, Symeon C. “Issue-by-Issue Analysis and Dépeçage in Choice of Law: Cause and Effect.” *The University of Toledo Law Review* 45 (2013).

Wilmot-Smith, Frederick. “Express and Implied Terms.” *Oxford Journal of Legal Studies* Vol. 43, No. 1 (2023).

Winship, Peter. "Private International Law and the U.N. Sales Convention." *Cornell International Law Journal* Vol. 21, No. 3 (1988).

Wirahutama, Danang, Widodo Tresno Novianto, and Noor Saptanti. “Kecakapan Hukum dan Legalitas Tanda Tangan Seorang Terpidana dalam Menandatangani Akta Otentik.” *Masalah-Masalah Hukum* Vol. 47 (April 2018).

Viejobueno, Sonia. “Private International Law Rules Relating to the Validity of

International Sales Contracts." *The Comparative and International Law Journal of Southern Africa* Vol. 26, No. 2 (July 1993).

Vural, Belkis. "Formation of the Contract According to the CISG." *Ankara Bar Review* Vol. 1 (2013).

Yunanto. "Hakikat Asas Pacta Sunt Servanda dalam Sengketa yang Dilandasi Perjanjian." *Law, Development, and Justice Review* Vol. 2 (May 2019).

Thesis and Dissertation

Einarsson, Jón Stefán Hjaltalín. "The Law of Contract under the Rome Convention." University of Akureyri Undergraduate Thesis. 2008.

Purba, Victor. "Kontrak Jual Beli Barang Internasional-Konvensi Vienna 1980." Universitas Indonesia Dissertation. 2002.

International Documents

CISG Advisory Council, *CISG-AC Opinion No. 15, Reservations under Articles 95 and 96 CISG.*

Hague Conference on Private International Law, *Convention on the Law Applicable to Contracts for the International Sale of Goods* (1986).

Hague Conference on Private International Law, *Hague Principles on Choice of Law in International Commercial Contracts* (2015).

International Institute for the Unification of Private Law, *UNIDROIT Principles of International Commercial Contracts 2016*.

European Parliament and of the Council, Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations, *L* 177 (2008).

European Union, Convention on the Law Applicable to Contractual Obligations, *OJ C* 27 (1980).

European Union, Report on the Convention on the law applicable to contractual obligations by Mario Giuliano, Professor, University of Milan, and Paul Lagarde, Professor, University of Paris I, *C* 282 (1980).

United Nations, Vienna Convention on the Law of Treaties, *UNTS* 1155 (1969).

***Travaux Preparatoires* and Draft Regulations**

Association of Indonesian Lecturers and Observers for Private International Law. "Draft Awal Rancangan Undang-Undang Hukum Perdata Internasional." *APPIHPI* (December 2020).

Ma'arif, Syamsul *Et. al.* "Naskah Akademik tentang Rancangan Undang-Undang Hukum Perdata Internasional." *Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia* (2020).

Internet

Indonesia's House of Representatives, "Program Legislasi Nasional," https://www.dpr.go.id/uu/detail/id/433. Accessed 12 September 2023. Accessed 9 October 2023.

Institute of International Commercial Law, "CISG: List of Contracting States," https://iicl.law.pace.edu/cisg/page/cisg-list-contracting-states. Accessed 9 October 2023.

International Institute for the Unification of Private Law, "UNIDROIT Principles of International Commercial Contracts 2016 - Overview," https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016/overview/. Accessed 9 October 2023.

Court decisions

Indonesia, Watansopeng District Court, Decision Number 100/Pid.Sus/2020/PN Wns (2020).

Indonesia, Watansopeng District Court, Decision Number 107/Pid.Sus/2020/PN Wns (2020).

United States of America, Court of Appeals, Third Circuit, 08-4488 (2010).

United States of America, District Court for the District of New Jersey, 03-4821 JAG (2008).

United States of America, Federal District Court for Southern District of New York, 98CIV861 (RWS), 99CIV3607 (RWS) (2002).