Cyber Law Regulatory System in International Trade Transactions

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ABSTRACT
This study aims to determine the system of cyber legal arrangements in international agreements, and the application of contract law principles in international electronic transactions. The legal research conducted is normative in nature using secondary data with analytical-juridical methods. The results of the study show that the system for regulating cyber law in international agreements in Indonesia is contained in the Information and Electronic Transactions Law No. Civil law in electronic transactions, especially the basic principles that apply in international trade because between international trade and agreements in the Civil Code both give birth to legal relations between parties who are both subject to the same legal system and between parties who have foreign elements by using electronic.

Keywords : Cyber law, indonesian legal system, international trade, regulatory system.

I. INTRODUCTION

A. Background

The development of the trading system in Indonesia has progressed greatly as a result of electronic commerce. The existence of electronic commerce can make trade in goods and services more practical, economical and fast because people who want to can easily choose or see the goods to be bought or sold through the internet network. Internet communication has become so important that it causes legal problems in almost every aspect of human life related to electronics. The progress in the development of communication and electronic technology means that sovereign countries no longer have barriers between one country and another.[1]

Physical commercial transactions and business activities have now turned into online or electronic transactions, prompting legislators around the world to follow this development by enacting laws or positive laws to regulate them. One of the issues that need special attention concerns the applicable law and jurisdiction when a conflict arises in a valid and recognized international contract.

Demands for increasing legal certainty and predictability are very important when conducting transactions using electronic technology in international trade. In addition to being the main driver of efforts to harmonize international trade law so as to reduce transaction costs and provide business efficiency throughout the world. The development of trade transactions in modern business relations, the need for legal contracts regarding contracts is increasingly needed. The role of contracts is important because every international trade transaction is contained in various forms of certain contracts with the use of electronic media as a means of forming transactions between business actors. The very rapid dynamics of society in the trading business are very different from the traditional concept of understanding contracts regulated in the Civil Code system.

In international business, the role of contracts is important because every trade transaction is written in various forms. A fundamental change in international business contracts is the use of electronic media as a means of forming transactions between business actors. Thus, it is required that electronic trade contracts or electronic commerce (e-commerce) be made in written form. In contrast to the contract in the Civil Code

[1] Nindyo Pramono, *Bunga Rampai Hukum Bisnis Aktual*, (Bandung : Citra Aditya Bakti), 2006, p. 14

which determines an agreement or contract is not bound to a certain form, or can be made orally and if it is made in writing, then this is a means of proof in the event of a dispute.[2] In Indonesia's positive law system, legal regulations have been formed as a formal legal basis for utilizing electronic transaction information through legal instruments Law Number 11 of 2008 concerning and Law Number 19 of 2016 concerning Amendments to the Electronic Information and Transaction Law.

The reality is that there are developments in society, even though Indonesia already has a Law on Information and Electronic Transactions, the provisions in it are felt to be incomplete and unable to answer various juridical issues regarding the implementation of electronic transactions carried out by the parties. If the parties conducting trade transactions come from the same country and are subject to the same legal system, then there will be no problem with legal settlement.

This condition will be very different if one of the parties is a foreign party who has a legal system that is different from the applicable law in Indonesia, and the implementation of electronic transactions made outside the State of Indonesia, as well as how the legal settlement of juridical problems from electronic transactions is. What's more, until now, Indonesia does not yet have one that specifically regulates cyberspace or e-commerce, because electronic transaction arrangements are only regulated in Chapter V Articles 17 to Article 22 of the Electronic Information and Transaction Law concerning provisions for organizing electronic transactions and electronic transactions that are poured into the contract. This is the reason for deepening the cyber legal regulatory system in international trade transactions so as to provide a better understanding of the relevance of the Electronic Information and Transaction Law as a legal instrument in force in Indonesia so as to provide legal certainty for parties conducting transactions with use electronic technology in international trade.

B. Problem Formulation

In the use of electronic technology facilities in international transactions can cause new problems in their settlement, formulated as follows:

1. What is the cyber law regulatory system in international agreements according to the Indonesian legal system?
2. How is the application of contract law principles in international electronic transactions?

II. RESEARCH METHODS

Legal research is defined as an attempt to seek or find legal truth. As a legal research, which is normative legal research using secondary data so that the method of analysis is descriptive qualitative, then the method of research is applied. Analysis of research like this can be freer, because normative legal research places more emphasis on the aspect of abstraction.[3] In this research, the juridical-analytical approach is used, which is defined as the study of an event or event by relating it to applicable law.[4]

III. DISCUSSION

A. Cyber Legal Regulatory System in International Trade

Implementation of electronic transactions carried out by the parties, in the event that one of the parties comes from a foreign party subject to its own law. Likewise, if the implementation of electronic transactions is made outside the State of Indonesia, as well as how the legal settlement of juridical problems from electronic transactions is.

It must be understood that the terms international agreements and international contracts are not the same where international agreements are public agreements based on Law Number 24 of 2000 concerning

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[2] Elisabeth Nurhaini Butarbutar, *Hukum Harta Kekayaan, menurut Sistematikan KUH Perdata,* Cetakan Pertama, (Bandung : PT Refika Aditama), 2012, p. 133.

[3] Maria , S.W. Sumardjono, 1990, *Pedoman Pembuatan Usulan Penelitian,* (Yogyakarta : FH Universitas Gadja Mada), p. 7.

[4] Elisabeth Nurhaini Butarbutar, *Metode Penelitian Hukum. Langkah-langkah untuk Menemukan Kebenaran dalam Ilmu Hukum,* Cetakan Pertama, (Bandung : PT Refika Aditama), 2018, p. 44.

International Agreements, while international contracts are civil agreements whose rules apply internationally. Unlike the terms agreement and contract in Chapter I Book III of the Civil Code, they are the same, namely an agreement between two or more people to do something commercial.[5] If we review the history of the birth of international agreements based on the desire of the world community to improve people's welfare as a result of the World War, which prompted the United Nations to participate in efforts to facilitate economic and trade activities. The first attempt was to form the World Bank and the International Monetary Fund (IMF). formed the unit the United Nations Commission on International Trade-Law (UNCITRAL) and the United Nation Convention on Contracts for the International Sale of Goods (UN-CISG Convention 1980).

The World Bank encourages the formation of international agreements in the field of economy and trade, such as the International Central for Settlement of International Dispute (ICSID) or known as the 1965 World Bank Convention. The convention on international contract principles, namely the Principles of International Commercial Contracts in The International The Institute for the Unification of Private (Unidroit) is a general principle for international commercial contracts applicable to national legal rules as a choice of law.

International agreements in the field of trade are cooperation in the World Trade Organization (WTO) Forum which is a world trade organization. The Asean Free-Trade Area (AFTA) Forum, namely the Asean Free Trade Cooperation, the Asia Pacific Economic Cooperation (APEC) Forum is an Asia Pacific economic cooperation.[6]

A national contract is a contract made by two legal subjects in a country where there are no foreign elements, while an international contract is a contract in which there is or is a foreign element. International contract law is a provision that regulates matters relating to agreements made by two or more parties relating to the application of the legal basis and legal requirements, procedures, techniques for its formation, implementation and settlement which as a whole there are foreign elements to the contracts made. . So the essence of the international contract is an agreement.

International contract law was originally a national law that was used as the basis for regulating international contracts, so that every country has its own international contract law, meaning that there are a lot of international contract laws, depending on the number of countries around the world, so legal unification is needed. international contract. As an indicator of the existence of an international agreement are different nationalities, different legal domiciles of the parties, the law chosen, one of the country's rules will be the choice of law in the event of a dispute over the international contract, the signing of the contract is carried out abroad, the object of the contract is abroad, the language used in the contract is a foreign language, and the use of foreign currency in the contract.[7]

International contract law is embodied in lex mercantoria (customary trade law) to harmonize various legal systems in the world. Lex mercantoria is a legal institution that grows to meet the needs of merchants.[8]

The characteristic of an international contract is that the value contained in the contract usually mentions a relatively large number of figures, so it is often in foreign currency.[9] The contents of the contract usually contain quite a lot or complex rules or clauses. Technological developments can make trade transactions efficient and effective which gives rise to legal aspects of cyber law, namely legal aspects whose scope relates to individuals or legal subjects who use and utilize internet technology which starts when online and enters cyber or virtual world.

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[5] Elisabeth Nurhaini Butarbutar, 2012, *Op Cit,* p. 45.

[6] Janus Sidabalok, *HUKUM PERDAGANGAN. Perdagangan Nasional dan Perdagangan Internasional,* (Medan : Yayasan Kita Menulis), 2020, p. 201

[7] Huala Adolf, *Dasar-Dasar Kontrak Internasional,* (Bandung : Refika Aditama), 2000, p.4.

[8] Ricardo Simanjuntak, *Hukum Kontrak, Teknik Perancangan Kontrak Bisnis* (Jakarta : Kontan Publishing), 2011. p. 3

[9] Huala Adolf, *Loc cit.*

The Birth of Trading through electronic systems (e-commerce) is a business activity involving consumers and traders who use computer networks, namely the internet.[10] The existence of the Electronic Information and Transaction Law is the legal basis for law enforcement processes in electronic and computer facilities.

The Act on Information and Electronic Transactions defines electronic transactions as legal actions carried out using computers, networks or other electronic media. While electronic contracts are agreements contained in electronic documents or other electronic media, and electronic documents are any electronic information that is created, forwarded, sent, received or stored in analog, digital, electromagnetic, optical or the like.

A contract or transaction that contains foreign elements, such a contract is called an international trade contract. In conducting electronic trading transactions, there is often a lot of unrest in the community, especially public trust in producers (sellers) of goods via the internet. Sometimes what consumers have purchased is not in accordance with what is seen through the internet (online shop), and can be regarded as an act of fraud. This is one example of a crime that occurs on the internet in electronic commerce transactions. Therefore, here the role of the Government is needed in regulating and making a regulation or Regulations and Laws that can make producers more deterrent and afraid if they commit a crime in electronic transactions.[11]

Article 18 paragraphs (3) and (4), the Electronic Information and Transaction Law, only stipulates that if the parties do not determine the choice of law and the choice of forum that will apply to the parties, then the principles of international private law will apply in the implementation of electronic transactions, including settlement of disputes between the parties. The problems that arise from the choice of law and the choice of forum in electronic transactions in the field of international trade are apparently not regulated clearly and unequivocally.

The fundamental principles and principles of contract law contained in international trade contracts are the principle of freedom of contract, and the principle of agreement. The principle of agreement of the parties is a fundamental principle in the settlement of international trade disputes. This principle is the basis for whether or not a dispute resolution process is implemented. This principle can also be the basis for whether an ongoing dispute resolution process is terminated.

The principle of freedom of contract is that the parties are free to close the contract. The parties are free to determine the form and content of the contract based on their agreement. The principle of *pacta sunt servanda* is that business actors carry out the agreements that have been agreed upon or set forth in the contract. The principle of good faith must exist at the time of negotiation, contract execution, and dispute resolution.

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Electronic transactions have a multidisciplinary scope and field, covering technical fields in the form of networks and telecommunications, security, storage and retrieval of data from multi-media; marketing, sales, payment, billing and other aspects, namely information privacy, taxation, intellectual property rights, making agreements and other legal settlements.[12] Electronic transactions that contain foreign elements or one of the parties is a foreign citizen or the place where the transaction is made is outside Indonesia, then to

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[10] Mariam Darus Badrulzaman, *Kompilas Hukum Perikatan*, (Bandung : Citra Aditya Bakti), 2001, p. 283.

[11] Sadino, Liviana Kartika Dewi, "Internet Crime dalam Perdagangan Elektronim," *Jurnal Magister Ilmu Hukum*, Vol. I No. 2 (July Tahun 2016) : 16, http://dx.doi.org/10.36722/jmih.v1i2

[12] Karel Wowor, dan Grenaldo, "Analisis Hukum Aternatif Penyelesaian Sengketa dalam Praktek Perdagangan Internasional," *Lex Crimen*, Vol.IX No. 2 (April-June 2020) : 210, https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/33973/32102.

determine which law will apply to the electronic transaction.[13] The Information and Electronic Transaction Law does not explain in detail the fields or types of electronic transactions. The use of electronic transactions is used for trading activities, both nationally and internationally, which use electronic systems (electronic commerce). Therefore, to deal with very few and incomplete cyberspace regulations, it is carried out by referring to or applying legal theories relating to electronic commerce.

B. Application of Contract Law Principles in International Trade

As a result of the flow of globalization has implications for the development of legal relations in international trade. The main feature of international trade is having foreign elements. In the field of e-commerce contracts, Indonesia is experiencing very rapid development, especially transnational trade transactions. There is a principle of anticipation in resolving disputes. So far, the choice of law has always been shown expressively as a manifestation of the contracting freedom of the contractors, but in the consumer sector there has been a paradigm shift where the consumer has always been positioned as the weak party in the contract.

The development of the internet led to the formation of a new world called cyberspace. In this virtual world, every individual has the right and ability to interact with other individuals without any restrictions that can prevent them. Perfect globalization has actually taken place in cyberspace that connects all digital communities. Of all aspects of human life affected by the presence of the internet, the business sector is the sector most affected by developments in information technology and telecommunications and is growing the fastest.

Through e-commerce, for the first time all people on earth have the same opportunities and opportunities to be able to compete and succeed in doing business in cyberspace. In cyberspace, virtualization is the main concept that underlies the form and structure of a company. In a virtual company, physical assets are eliminated wherever possible. Customers around the world do not deal with institutions through physical transactions involving buildings, people and other real objects, but only deal with an electronic site.

The applied business model tends to eliminate all forms of mediation. This is possible because through the internet, individuals can easily make transactions with other individuals (or between companies) quickly. This phenomenon is a simple form of a free market in which both parties who transact consciously exchange services or products with a jointly realized risk. The business model that exists in cyberspace allows someone to be a producer and consumer at the same time

Electronic trade contracts or e-commerce is one aspect of cyber law, which lies within the scope of civil law. Therefore the principle of choice of law was born on the basis of freedom of contract. The choice of law can be born out of state intervention as a form of legal protection and general welfare. The principle of country of reception is an important part of consumer settlement, namely regulations that allow end users to apply the Consumer Protection Act of each party's country.[14]

As is known, several legal principles in contract law, namely the principle of freedom of contract, the principle of consensual, the principle of good faith, the principle of balance, the principle of decency, the principle of habit, the principle of compensation, the principle of coercive circumstances, the principle of legal certainty, the principle of trust, the principle of binding force, the principle equality of law, the principle of balance, the principle of morality, and the principle of decency.

As a system, electronic trade contracts have the same principles as contract law.[15] The principle of freedom of contract (autonomous party) is the freedom of the parties making the contract to determine the

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[13] Soedjono Dirdjosisworo, *Pengantar Hukum Dagang Internasional,* (Bandung : Refika Aditama), 2006, p. 5.

[14] Moh Ali, "Prinsip Pilihan Hukum dalam Penyelesaian Sengketa pada Kontrak E Commerce Transnasional," *Adhaper Jurnal Hukum Acara Perdata*, Vol. 2, No. 2, (July– December 2016) : 344, 10.36913/jhaper.v2i2.39.

[15] Sudargo Gautama, *Indonesia dan Konvensi-Konvensi Hukum Perdata Internasional*, (Bandung : Alumni), 2005, p. 281.

law that applies to the contract made by them. The principle of freedom of contract also means that the parties are free to close the contract. This principle then gives rise to a choice of law (*choice of law or rechtskeuze*). The law chosen by the parties is recognized as the proper law of contract.

Regulations regarding international e-commerce in the characteristics of consumer contracts are widely adopted by developing countries, such as in most European Union countries. In the Information and Electronic Transaction Law, it has been determined regarding the use of the basic principles of international private law. These basic principles are the principle of the freedom of contract, the principle of binding or pacta sunt servanda, and the principle of choice of law. choiche of law). In making electronic transactions, namely if the parties do not make a choice of law from a particular legal system or if the parties do not make a choice of forum, determination of court authority, arbitration or alternative dispute resolution institutions.

In order to realize stable international trade, and avoid national trade policies and practices, the application of the basic principles in the pacta sunt servanda which determine binding contracts as laws with due observance of mandatory rules as exceptions is something that is absolutely necessary. Mandatory rules will limit the freedom of the parties in international transactions.

Protection of trade activities is a way to build a country's economy, taking into account these basic principles, namely the principle of freedom in dispute resolution, the principle of freedom of communication for trade purposes, so that all countries involved in international contracts can have the same rights and obligations and avoid injustice and fraud through the application of the basic principles of law.

International contract law embodied in lex mercantoria (customary trade law) is intended to harmonize various legal systems in the world. As a result, Indonesia has ratified the UNIDROIT Statute with Presidential Regulation (Perpres) Number 59 of 2008 concerning Ratification of the Statute of The International Institute for The Unification of Private Law, meaning that Indonesia is subject to the substance contained in UNIDROIT.

The application of the principle of freedom is manifested in the form of freedom to determine the contents of the contract, freedom to determine the form of the contract. The principle of legal recognition of trade customs is a principle known as openness and is based on the consideration that trade customs are not only legally binding but also because they develop from time to time. The principle of good faith and fair dealing. The parties are free to determine the form and content of the contract based on their agreement. The principle of pacta sunt servanda is that business actors carry out the agreements that have been agreed upon or set forth in the contract. The principle of good faith must exist at the time of negotiation, contract implementation, and dispute resolution.

The principles of good faith and honest transactions are the basic principles that underlie contracts and are coercive in nature. The application of this principle is highly emphasized in international trade practices. The principle of force majeure is a principle that is also known in the Civil Code system, namely a situation that causes losses to creditors due to events that are beyond the ability of the debtor which causes the debtor to be unable to carry out its obligations properly. However, the existence of these events requires the party experiencing it to notify the other party about the occurrence of force majeure.

In electronic transactions, parties originating from two different countries subject to their respective laws, have the freedom to expressly determine the choice of law clause or choice of forum in electronic transactions made. This is necessary to avoid legal issues that can arise in the implementation of electronic transactions as well as in legal settlements through a predetermined court or arbitration body.

In the Information and Electronic Transaction Act, it has been determined regarding the use of international private law principles for parties in making electronic transactions, namely if the parties do not make a choice of law from a particular legal system or if the parties do not make a choice of forum, determination of court authority, arbitration or an alternative dispute resolution institution. In accordance with this provision, it means that the parties in making electronic transactions first determine certain legal

choices in making electronic transactions between them, then determine the choice of forum in resolving disputes.

The principle of freedom of the parties, is the agreement of the parties in determining the law that will apply to the parties. The bona fide principle, namely the choice of law is based on good faith. The principle of real connection, namely the agreed choice of law must have a relationship or link with the parties. The function of a choice of law clause is to determine what law will be used or prescribe the terms of the contract or law that will define and govern the contract; avoid legal uncertainty that applies to the contract during the implementation of the contractual obligations of the parties; as a source of law when the contract does not regulate it.

The various choices of law include the choice of law explicitly specified in the choice of law clause contained in the contract; silent choice of law, in the event that the parties do not specifically make a choice of law clause in the contract, the choice of law is left to the court, if the parties submit their dispute case to the court and there is no choice of law, in the sense that the parties do not include a choice clause contract law. Not including the choice of law will not affect the status and validity of the contract, only contracts like this are incomplete or defective.

Such conditions indicate that there is a close relationship between electronic transactions and international private law, especially in determining the law that applies to the parties conducting the transaction and determining the competence of the forum to resolve legal issues arising from the parties. Even so, the ambiguity of international contracts can be supplemented by several theories that are generally accepted in trade contracts.

To answer questions regarding the law that will apply to a contract or transaction that does not explicitly determine the choice of law, international private law theories recognize the theory of lex loci contractus, mail box theory, theory of declaration, lex loci solutionis, the proper law of contract, the most characteristic connection. In determining which theory will be used to determine the law that applies to a contract, it varies greatly from each international private law of each country, depending on the points of connection it adheres to.

The most characteristic connection, is a theory pioneered by Rabel and A. Schnitzer. According to this theory, the proper law of contract is the legal system of parties who are considered to provide a unique performance in a contract. The theory of declaration, adopted in civil law countries, states that in an agreement the acceptance of the offer by the party being offered must be stated. The statement of acceptance of the offer must reach the party who offered and the acceptance of the offer must be known by the party offering. Meanwhile, according to the mail box theory, which is widely adopted in common law countries, that one party sends a letter containing acceptance of the offer submitted by the other party.

In electronic transactions that contain foreign elements or one of the parties is a foreign citizen or the place where the transaction is made is outside Indonesia, it is to determine which law will apply to the electronic transaction. Contract law or the provisions of electronic transactions governed by Indonesian law or foreign parties. The main principle in international private law regarding agreements or contracts is the law that is chosen and agreed upon by the parties to the agreement or contract. The choice of law as an embodiment of the principle of freedom of contract is limited by public order (public policy) and the choice of law is not about coercive rules (dwigen recht).). The choice of law in a cross-border transaction is indispensable when a conflict of law arises, namely when a dispute arises between parties with different legal systems.

Restrictions on the choice of law are also adapted to the socio-economic conditions of modern life, such as consumer protection, prevention of abuse of authority by economic authorities and maintaining a climate of fair business competition in a market economy. The choice of law must be clear and explicit in the contract made, usually with a governing law or applicable law clause.

The definition of choice of law and governing law has quite fundamental differences. Choice of law means the choice of law for the parties in determining the law governing the relationship and implementation of the agreement between the parties. While the notion of governing law (applicable law) is the law that applies to regulate certain legal relations, either because of the choice of law of the parties (choice of law)

or because of the enactment of international private law. So the meaning of governing law is broader than choice of law.

The validity of the contract is based on the choice of law agreed upon by the parties to the contract. Likewise, if a dispute arises between the two parties, the judge or arbitrator who will decide the case will refer to the law chosen by the parties. If the choice of law is not specified in the contract or transaction, this is where various juridical problems will arise.

The regulation of electronic transactions in the Electronic Information and Transaction Law is still incomplete, such as in terms of electronic funds transfers, online contracts, electronic payments, responsibility for making homepages, e-mail, chat, privacy. The law still needs to be completed and is absolutely necessary to adapt to developments and needs in business transactions, both nationally and in international trade, in order to create legal certainty and make it easier for the parties to settle the law that arises.

In making electronic transactions, it must be strictly regulated in a contract or agreement made to include clauses on choice of law and choice of forum. This is necessary to avoid juridical problems that may arise in the implementation of electronic transactions. The principle of good faith is also needed from both parties to comply with what has been mutually agreed upon.

Online business, which is increasingly favored by internet users, both as consumers and owners of online business sites, will cause a lot of fraud. With the increasing number of frauds that will or have been caused, legal protection is needed for both consumers and honest online buying and selling site owners. Online business in Indonesia has not been specifically regulated in law.

In an effort to minimize crime in online business, the government has made the Electronic Information and Transaction Law. Recognition of electronic transactions and electronic documents within the legal framework of engagement and evidentiary law, so that online business legal certainty can be guaranteed. Qualification of actions that qualify as legal violations related to misuse of information technology so that there will be strict sanctions for those who violate the ITE Act.

The Electronic Information and Transaction Law is expected to create a new regulation in the field of electronic transactions. that all this time. Even though the rules regarding online business are not specifically regulated in a law, their existence is very important to provide protection and legal certainty for online business users.

IV. CONCLUSION

After analyzing the problems, it was concluded that the system for regulating cyber law in international agreements in Indonesia is contained in the Information and Electronic Transaction Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions . Even though the law does not explain in detail the use and impact of electronic transactions for trade activities, both nationally and internationally, that use electronic systems (electronic commerce), this ambiguity can be overcome by referring to or using legal theories relating to trade. electronics to explain things that are not or have not been regulated.

The application of the legal principles of agreement according to the Civil Code system in electronic transactions, especially the basic principles that apply in international trade, namely the principle of the freedom of contract, the principle of binding or pacta sunt servanda, and the principle of good faith and the principle of choice. law (choiche of law) because between international trade and agreements in the Civil Code both give birth to legal relations between parties who are both subject to the same legal system and between parties who have foreign elements by using electronics.

V. RECOMMENDATION

In making international trade transactions through electronic systems, it should be made explicitly in contracts or agreements by including clauses on choice of law and choice of forum. This is necessary to avoid juridical problems that may arise in the implementation of electronic transactions, in addition to the principle of good faith from both parties to comply with what has been mutually agreed upon.

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