

Basic Jurisdiction of State Court to Settle International Trade Disputes Through Electronic Systems

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ABSTRACT

The purpose of this study is to determine the basic jurisdiction of the district court in adjudicating international trade transaction disputes through the electronic system and the application of civil law principles in the settlement of international trade disputes within the jurisdiction of the district court. This study uses normative legal research methods, which examines norms by examining secondary data sourced from legal regulations related to the problem. The results of the study show that the court's jurisdiction is based on violations of the precautionary principle in the use of technology and information systems that are detrimental to Indonesia's interests, while the principle of civil process in the settlement of international trade disputes uses the principle of place and where the assets are located so that it is very possible to be implemented as a principle that determines the authority to adjudicate.

Keywords : Dispute, electronic systems, jurisdiction, international trade.

I. INTRODUCTION

A. Background

According to Article 1 number 1 of Law Number 7 of 2014, concerning Trade, the notion of trade includes all transactional activities for goods and services aimed at transferring rights in exchange for buying and selling, factoring, hubah, licenses, franchising and so on. International trade transactions can be described as trade transactions of goods and or services that occur between parties in different countries in the form of companies with companies, companies with countries, countries with countries, or companies with international organizations.¹ To support smooth trading, it is very important to have complete and easily accessible trade information, as required by Law Number 7 of 2014. In electronic transactions, the parties do not need to meet face to face to carry out trade transactions. Efficiency and effectiveness are offered in electronic transactions because trading can be done without face-to-face meetings and facilitates the development of unlimited forms of trading. However, on the other hand, it can create new legal issues as well as broad legal impacts on the risks posed. This can happen because trading via the internet can be done without knowing national borders. This is a result of the very rapid development and progress of information technology causing changes in life activities in various fields that directly affect legal aspects in the cyber field.

The cyber law aspect is a legal aspect whose scope relates to individuals or legal subjects who use and utilize internet technology that starts online and enters cyber or virtual world. To tackle cybercrime. related to efforts to prevent criminal acts, or handling them receive special attention because the legal consequences arising are not easy to resolve.²

¹ Janus Sidabalok, *HUKUM PERDAGANGAN. Perdagangan Nasional dan Perdagangan Internasional*, (Medan : Yayasan Kita Menulis), 2020, p. 233.

² Kholid, Muhammad. "Kewenangan Pengadilan Negeri dan Arbitrasi dalam Penyelesaian Sengketa Bisnis," *Adliya, Jurnal Hukum dan Kemanusiaan*, Vol. 9 No. 1 (2015) :170. <https://doi.org/10.15575/adliya.v9i1>.

District courts in Indonesia have powers that have been determined within the national jurisdiction, making it difficult to apply in cases that occur in different countries. The authority of the Indonesian District Court will of course be related to the jurisdiction of a country in solving e-commerce problems.

Based on Article 2 of the Electronic Information and Transaction Law, the scope of jurisdiction in electronic transactions (e-commerce) is not solely for legal actions that apply in Indonesia and/or are carried out by Indonesian citizens, but also applies to legal actions that are carried out outside the territory of Indonesia. Indonesian law (jurisdiction) both by Indonesian citizens and foreign nationals or Indonesian legal entities and foreign legal entities that have legal consequences in Indonesia. However, in its application it is not determined in such a way that the settlement is based on the competence of district courts outside the territory of Indonesia.

Considering that the use of information technology can be cross-territorial or universal, the principle of using information technology and electronic transactions is carried out based on the principles of legal certainty, benefit, prudence, good faith, and freedom of choice of technology or technology neutral.

As a legal basis for electronic and computer law enforcement processes, it is only regulated in Article 26 paragraph (2) of the Electronic Information and Transaction Law, that any person whose rights have been violated can file a lawsuit for losses incurred and Article 28 paragraph (1) of the Information and Transaction Law Electronics, which determines that everyone intentionally and without right spreads false and misleading news that results in consumer losses in Electronic Transactions is a prohibited act.

If the implementation of e-commerce has crossed national boundaries in accordance with the provisions contained in Article 18 paragraph (4) of the Electronic and Information Technology Law, it will relate to the jurisdiction of the country, namely related to the authority of a country to enforce the law in its territory. As a result of e-commerce disputes, there are obstacles faced by law enforcement in a country to take action against guilty parties who are in the jurisdiction of other countries. Therefore, there is a need for research related to the authority of the District Court in Indonesia to enforce to resolve international electronic transaction disputes within the jurisdiction of Indonesia.

B. Problem Formulation

The problems to be discussed in this study are formulated as follows:

1. What is the basis for setting the authority to adjudicate international trade transaction disputes through the District Court in Indonesia?
2. How is the application of the principle of civil law in the settlement of international trade transaction disputes through Indonesian courts?

II. RESEARCH METHODS

In general, legal research is interpreted as an attempt to find or find legal truth. According to Istanto,³ legal research aims to reveal the truth, namely the conformity of something with the provisions of positive law (truth based on positive law), and the suitability of the contents of positive law with the reality of people's lives (truth of positive law).

In this regard, this study uses normative legal research, which examines the rule of law in the sense of norms or *das Sollen*. Normative legal research is carried out by examining library materials or secondary data.⁴ Because the notion of law for most legal scholars is a set of regulations governing all activities of human life accompanied by sanctions against violators, the target or object of legal research is basically law or rule in the sense of norms or *das Sollen*, not events, or behavior in the sense of fact or *das Sein*.⁵

III. DISCUSSION

A. Basis for Arranging Court Authority

³ F.Sugeng Istanto, *Penelitian Hukum*, Edisi Pertama, Cetakan kesatu, (Yogyakarta : CV Ganda), 2007, p. 31.

⁴ Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta : UI Press), 2012, p. 5.

⁵ Elisabeth Nurhaini Butarbutar, *Metode Penelitian Hukum. Langkah-langkah untuk Menemukan Kebenaran dalam Ilmu Hukum*, Cetakan Pertama, (Bandung : PT Refika Aditama), 2018, p. 53.

The settlement of international business transaction disputes through the District Courts in Indonesia regarding electronic transactions is regulated in the Electronic Information and Transaction Law. In the General Explanation of the law, it is stated that the use of information, media and communication technology has changed both the behavior of society and human civilization globally. The development of information and communication technology has also made world relations borderless and caused significant social, economic and cultural changes to take place so quickly. Information technology is a double-edged sword because apart from contributing to the improvement of human welfare, progress and civilization, it is also an effective means of acting against the law.

In line with that, the presence of the internet in electronic commerce has changed consumer patterns to be more critical and selective in choosing the desired product without the need to be attended by parties, but on the other hand, the absence of the parties increases the possibility of confusion with goods or the possibility that services rendered unsatisfactory manufacturer.⁶

The birth of cyber law, which can be enforced internationally, is expected to be a solution to legal impacts that may occur in trade transactions related to the use of information and communication technology. This legal term is also known as telematics law which is an embodiment of the convergence of telecommunications law, media law, and informatics law. Also used are the terms information technology law (law of information technology), cyber law (virtual world law), and mayantara law.

The legal problems that are often encountered are related to the delivery of information, communication and/or transactions electronically, especially in terms of evidence and matters related to legal actions carried out through the electronic system. Activities through the media of electronic systems or cyber space, even though they are virtual, are categorized as real legal actions or actions.

Problems occur when one of the parties is a foreign party who has a legal system that is different from the applicable law in Indonesia, because Indonesia does not yet have legal instruments that regulate cyberspace or e-commerce, especially electronic transactions that can be generally accepted. Is it resolved through a judicial body or arbitration in Indonesia or a foreign court?

Concrete events in legal action activities carried out through the electronic system cannot always run well, but there is a possibility of rights violations in them, therefore they must be resolved immediately in the legal system itself. Article 38 (1) jo. Article 39 (1) of the Electronic Information and Transaction Law, stipulates that everyone can file a lawsuit against the party operating the electronic system and/or using information technology which causes losses and civil lawsuits are filed in accordance with the provisions of the Laws and Regulations.

In accordance with the enforcement system in Indonesia, if a legal issue occurs due to default or fraud in domestic e-commerce, it will be resolved based on Article 118 paragraph (1) HIR/142 paragraph (1) Rbg through a judicial institution whose competence is based on the principle actor sequitur forum rei (forum domicile). If the defendant is outside the international contract area including Indonesia, the lawsuit can be filed electronically, namely in the jurisdiction of the District Court of the forum chosen by the parties in Central Jakarta.⁷

The basis for the birth of a civil lawsuit is the result of a violation of civil rights in accordance with the principle that anyone who feels his rights have been violated can file a claim in court (*point d'interet point d'action*). After receiving a lawsuit, the court is obliged to try all cases and is prohibited from rejecting cases on the grounds that the law is incomplete or unclear in accordance with the *rechtsweiger*ing principle contained in Article 10 of the Judicial Powers Law.

Article 18 paragraphs (3) and (4) of 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,

⁶ Dikdik M. Arief Mansur dan Elisatris Gultom, *Cyber Law Aspek Hukum Teknologi Informasi*, (Bandung : Refika Aditama), 2009, p. 145.

⁷ Ria Tri Vinata, "Penggunaan Teori Hukum Perdata Internasional Terhadap Conflict Of Law Dalam Transaksi Elektronik," *Perspektif* Vol. XV No. 1 (January 2010): 73, <https://doi.org/10.30742/perspektif.v15i1>.

then the principles of international private law will apply in the implementation of electronic transactions, including settlement of disputes between the parties.

Based on the arrangements for resolving international business transaction disputes through the District Court in Indonesia in Article 18 paragraph 4 of the Electronic Information and Transaction Law, the District Court can resolve international electronic transaction cases because it is still the duty and authority of the District Court to resolve civil cases.⁸ In the event that the jurisdictional clause for dispute settlement in international trade is not specified in electronic transactions, then the principle of freedom of the parties, the principle of bonafide, the principle of predictability and effectiveness and the principle of exclusive jurisdiction is used in addition to the principle of basic presence, namely the court's authority to adjudicate is determined by the location of the defendant. is located, and the principle of effectiveness, which is determined by where the defendant's assets are located so that it is very likely that he will be executed.⁹ For the choice of forum, judicial bodies in examining or resolving disputes are still guided by Article 2 of the Electronic Information and Transaction Law.¹⁰

According to Article 2 of the Electronic Information and Transaction Law, this law applies to anyone who carries out legal actions, both within the jurisdiction of Indonesia and outside the jurisdiction of Indonesia, which have legal consequences within the jurisdiction of Indonesia and/or outside the jurisdiction of Indonesia. Indonesian law and detrimental to the interests of Indonesia.

Thus the jurisdiction for the application of this law is legal actions that apply in Indonesia and outside the territory of Indonesia, those legal actions are carried out by Indonesian citizens, Indonesian legal entities, foreign nationals, foreign legal entities; the legal action has legal consequences in Indonesia and harms Indonesia's interests, namely national economic interests, strategic data protection, state defense and security, state sovereignty, Indonesian citizens and legal entities.

B. Application of the Principles of Civil Procedure in International Trade

In international trade law, it is also based on principles regarding the settlement of international trade disputes, namely the principle of agreement of the parties (consensus). The principle of agreement of the parties is a fundamental principle in the settlement of international trade disputes.

This principle is the basis for implementing or not a dispute resolution process. The principle of freedom to choose the method of dispute resolution is the freedom to determine and choose the method or mechanism by which the dispute is resolved (principle of free choice of means). The principle of freedom to choose law, namely the freedom of the parties to determine for themselves what law will be applied (if the dispute is resolved) by the judiciary (arbitration) to the subject matter of the dispute.

The principle of good faith requires and obliges the parties to have good faith in resolving disputes both in preventing disputes from arising, and in resolving disputes through methods known in international trade law, namely negotiation, mediation, conciliation, arbitration, court or other methods chosen by the parties.

The principle of exhaustion of local remedies is based on the principle of the application of customary international law (*lex mercatoria*) which stipulates that before the parties submit their dispute to the international court, the dispute resolution steps available or provided for by the national law of a country must first be taken.¹¹

Possible methods for resolving disputes other than the methods mentioned above are through national and international courts. The use of this method is usually taken when existing solutions are not successful. Settlement of trade disputes through a court of law is usually possible when the parties agree, which is stated

⁸ Isdiyana Kusuma Ayu. "Peran Pengadilan Negeri Indonesia dalam Penyelesaian Sengketa Transaksi Elektronik Internasional," *Legality*, Vol.26, No.1, (March-August 2018) : 52, <https://ejournal.umm.ac.id/index.php/legality/article/view/6613/5771>.

⁹ Arsensius, "Aspek-Aspek Hukum Perdata Internasional dalam Transaksi Elektronik di Indonesia," *Jurnal Varia Bina Civika*, No, 78 (2009) : 16, <https://jurnal.untan.ac.id/index.php/civika/issue/view/83>.

¹⁰ *Ib id.*

¹¹ Huala Adolf, *Hukum Perdagangan Internasional*, (Jakarta : Rajawali Pers), 2011, p. 196.

in the contract clause. This principle means that the place where the agreement is executed is also a point of secondary affinity.¹²

The principles of international trade dispute resolution can be resolved if both parties determine their agreement at the beginning. However, if it is not specified, problems arise when discussing trade that crosses a country's borders, because this is directly related to the jurisdiction of a country's territory, namely regarding the authority of a country to enforce the law in its territory.

The issue of jurisdiction in solving e-commerce problems often creates other problems, as a result of the place and time of implementation of international e-commerce it is difficult to prove if the electronic contract does not regulate the dispute resolution forum and the contract. According to Edmon,¹³ e-commerce is a trade transaction that uses the internet, so the jurisdictional theory that emphasizes locus and tempus delicti can no longer be used.

Based on the provisions of Article 2 of the Information and Electronic Transaction Law, the scope of jurisdiction for acts that violate the law in the law, not only applies to legal actions that apply in Indonesia and/or are carried out by Indonesian citizens, but also applies to acts. This very broad application is due to the use of information technology in the form of the internet which can be universal.

Purna Citra Nugraha,¹⁴ stated that in line with the notion that cyberspace requires regulation both inter-community and between communities, starting from norms to law (cyberlaw) and if it is linked to the authority of a state in making arrangements, this is of course directly related to state jurisdiction. for example regarding the authority of a country to enforce the law in its territory or in this case cyber space.

In Article 3 of the Electronic Information and Transaction Law, it is determined that the use of information technology and electronic transactions is carried out based on the principles of legal certainty, benefit, prudence, good faith, and freedom of choice of technology or technology neutral. The elucidation of the article defines the principle of legal certainty as the legal basis for the use of information technology and electronic transactions and everything that supports their implementation which obtains legal recognition inside and outside the court. The principle of benefit means that the principle for the use of information technology and electronic transactions is sought to support the information process so that it can improve the welfare of society, and the principle of caution means that the basis for the parties concerned must pay attention to all aspects that have the potential to cause harm, both for themselves and for other parties in use of information technology and electronic transactions.

The principle of good faith means that the principle used by the parties in conducting electronic transactions is not intended to deliberately and without rights or unlawfully cause harm to other parties without the other party's knowledge. Meanwhile, the principle of freedom of choice of technology or neutral technology is defined as the use of information technology and electronic transactions that are not focused on the use of certain technologies so that they can keep abreast of developments in the future.

E-commerce problems should find a way out of the consequences that arise, one of which is related to jurisdiction. In its completion, it can compare with other countries in solving the same problem. With the existence of e-commerce, consumers do not only transact within the country but can cross borders across countries. As a result, it cannot provide legal certainty for dispute resolution and the risk is that e-commerce cannot reach its potential. This indicates that e-commerce still has weaknesses, especially in terms of resolving disputes that occur in two different countries in terms of jurisdiction issues and in their settlement when disputes arise during the implementation of the contract, as well as other problems when determining the dispute resolution forum it turns out that the judge's decision of a country does not can be implemented because it relates to the enforceability of the judge's decision.

Perpetrators of violations are often difficult to be charged because Indonesian law and courts do not have jurisdiction over perpetrators and legal actions that occur, considering that legal violations are

¹² Sudargo Gautama, *Hukum Perdata Internasional*, (Bandung : PT. Eresco), 1986, p. 54.

¹³ Edmon Makarim, *Kompilasi Hukum Telematika*, Raja Grafindo Persada, Jakarta, 2003, p. 304.

¹⁴ Purna Cita Nugraha, *Konsepsi Kedaulatan Negara Dalam Borderless Space*, Jurnal Opini Juris, Volume 13, (May-August 2013) : 27, <https://adoc.pub/purna-cita-nugraha-sh-mh-opinio-juris.html>.

transnational in nature but the consequences actually have legal implications in Indonesia. however, problems that occur in e-commerce must still be resolved in order to obtain justice and legal certainty.¹⁵

The selection of the forum is based on the authority given to the parties to vote. plaintiff or based on the country of business actor or from the buyer. Elucidation of Article 18 paragraph (5) of the Electronic Information and Transaction Law, states that if the parties do not make a choice of forum, then the applicable authority is based on international private law principles, namely the basis of presence of the defendant and effectiveness which emphasizes the place of property. the object of the defendant is located (principle of effectiveness).

Other principles in International Private Law relating to international electronic transactions are *lex loci solutions* and *lex loci executions*. This principle means that the place where the agreement is executed is also a point of secondary affinity. Based on this principle, as long as the agreement is made in Indonesia, Indonesian law can be used to resolve international electronic transaction disputes, especially those that will be resolved by the District Court in Indonesia and agreements that do not specify a legal forum.

The principle of *lex loci contractus* is a legal principle that determines the law of the place where the contract is made, including the place where the last action required to form the contract is carried out. The characteristics of electronic contracts that apply are based on a link point that uses the internet as a medium. It is very difficult to determine where the contract occurs, because it is not made by meeting the parties somewhere.

The principle of *lex loci solutionis* is the principle that determines where the implementation of the agreement is a place that is more relevant to the contract. The use of this theory to determine which law applies in electronic contracts is experiencing difficulties, because the implementation of electronic contracts includes real/conventional contract implementation, buying and selling on the internet, the contract is not determined where the place is but the implementation is in the form of delivery of goods and delivery of goods is carried out in real time. but there are also electronic contracts whose implementation is via the internet.

The most characteristic connection theory, this theory states that determining the applicable law is based on the most characteristic connection point. In this view, it is necessary to pay attention to which party in an agreement relationship has the obligation to perform the most characteristic performance. E-commerce dispute resolution which is a problem related to the business world has the potential to want a solution that is fast, effective, fair, low cost, and doesn't take up a lot of time. Dispute resolution in e-commerce can be resolved through an adjudication process, which includes court and arbitration or through a consensus process, which includes negotiation, mediation, and conciliation.

Based on these two mechanisms, it is possible to use an alternative dispute resolution mechanism in the form of arbitration. This is because the process offered by arbitration is able to provide a quick and fair settlement. When using a judiciary there are several drawbacks, namely slow dispute resolution, expensive case fees due to long case settlements, unresponsive judiciary, court decisions do not resolve problems, the ability of judges is generalist.

The existence of the District Court is required before, during and after the arbitration process takes place. Before the arbitration process takes place, the court has a role in determining which court is authorized to resolve the dispute, the court recognizes the binding power of the arbitration clause in the agreement made by the parties, plays a role in the appointment of an arbiter if the second arbiter cannot appoint a third arbiter, granting a specific time period for problems that only concern both parties.

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¹⁵ Rina Arum Prastyanti, "Evaluasi Efektivitas Undang-Undang No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik dalam Pelaksanaan E-Commerce," *Duta.Com*, Vol. 5 No. 1, (2013) :26, <https://ojs.uadb.ac.id/index.php/dutacom/article/view/638/600>.

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IV. CONCLUSION

After discussing the problems raised in this study, it can be concluded that the jurisdiction of the court to adjudicate international trade transaction disputes through electronic systems is based on violations of the precautionary principle in the use of technology and information systems that can harm Indonesia's interests as stipulated in Article 2 jo. Article 3 of the Information and Electronic Transaction Law, and the application of the principle of civil proceedings in the settlement of international trade disputes within the jurisdiction of the district court is carried out by using the principle of the basic presence of the defendant and the place where the property or object of the case is located (the principle of effectivity)) so that it is very likely to be executed as a principle of determining the authority to adjudicate.

V. RECOMMENDATION

In connection with the authority of the district court in resolving international trade transaction disputes through the electronic system is not expressly regulated in the provisions of the Electronic Information and Transaction Law and there are several deficiencies, it is necessary to immediately enact a law on Indonesian Civil International Law which covers in its entirety the issues of Civil Law issues. International Indonesia in order to create legal certainty in civil matters related to the foreign legal system.

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