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Research Article

BUSINESS PRACTICES WITH THE INTERNATIONAL CIVIL DISPUTES THAT ARE NOT CONTAINED CHOICE OF LAW IN CONTRACT

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A R T I C L E I N F O

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A B S T R A C T

The purpose of this study is to describe and analyze: business practices of international civil disputes in case there is no choice of law in contracts.This research using normative juridical methods. The results of this study with a very dominant theory has been widely accepted and known as The Most Characteristic Connection Rule. According to this theory, the applicable law is the law of the parties who have a very characteristic achievement. In the field of international business, then the law applicable exporters because it contains the most characteristic. Logically obvious that the exporter / seller faces many buyers so there must be provisions which are more common. The court will determine the choice of law based on the law of one of the parties who perform feats of the most characteristic in a transaction. Associated, or also called Linkage Theory Closest and Most Realistic. According to this theory, the tendency of the applicable national law. Sample Letter of Credit (L/C) is the law of the country where the issuing bank is the place to do issuance of L/C, where he did change the L/C, the implementation of research documents L/C and L/C payment implementation.

INTRODUCTION

Trade law became a special law that is the law of the merchants. Commercial Law in the beginning there has been no new unitary regional nature, because each region has its own law different tone. Eventually held unitary Trade Law for relations in international commerce more closely. So that in the 17th century in France held the codification of French law. Codification of French law and Dutch law meant in order that there is legal certainty. Dutch and French law it has to do with the Positive Law in Indonesia, because between Indonesia and the Netherlands there is a convergence of history, as a result of Dutch colonialism. So we are somewhat influenced law on Dutch law, even though we have a typical Indonesian law that Indigenous Peoples. Under Article II Transitional Provisions of the 1945 Constitution, it still applies to businesses in Indonesia. KUHD Indonesia [1]announced with the publication date of 30 April 1987 (S. 1947-23), which entered into force on 1 May 1848. In conjunction with this codification of French law which was formed on March 21, 1804 under the name of Code Civil des Francais, in 1807 promulgated again with the Code Napoleon. The Netherlands is one country that once colonized France between the years 1806-1813 so as a result of the French Code applicable there. After the Netherlands became independent in 1813, it is based on Article 100 of the Constitution of the Netherlands in 1814, formed the committee in charge of making plans Codification Dutch law. Codification of the Dutch Civil Code will be inaugurated in 1838, because in a war from 1830 to 1838 the Netherlands and Belgium that resulted in their separation. The Dutch Law Codification imitate the French Civil Code, the composition of the Institutiones in Corpus IurisCivilis of Roman Law. Because the French Civil Code also contains a lot of elements that come from the Roman Law Codification. Before Roman times, civil law governing legal relations between individuals are now included in the Civil Code and the traders need rules commerce. Because commerce is growing, hence the need for the Law of Commerce or Trade Law or business on the upswing. Eventually the Commercial Code at that time still a customary law, so it needs to be codified [2]Trade relations or transactions many forms, from the form of relationship selling, shipping and receiving of goods, production of goods and services on a contract basis. All such transactions are loaded with potential disputes childbirth.[1]

Formulation of the problem

How business practices in international civil disputes that there are no contained choice of law in contract?

Research purposes

The purpose of this study is to describe and analyze: business practices of international civil disputes in case there is no choice of law in contracts.

[1] KUHD Indonesia (KitabundangHukumDagang Indonesia)

[2]Cindawati,2014*HukumDagang Dan Perkembangannya*, Putra Penuntun, Palembang, Edisikedua, hlm 3

RESEARCH METHOD

This study will be conducted by using normative juridical which guides the laws and determines some standard agreements and norms against a phenomenon by analyzing secondary data or documents. Furthermore, it will be selected in accordance to the three law sources, namely; (a) primary law which includes legislation, (b) secondary laws which includes relevant documents, national and international journals, theories and (c) tertiary law which includes dictionary, encyclopedia, and black laws.

Data collecting will be taken from data secondary and interviewing the various subjects who will be as the source of data. In order to be more in-depth research, this study will be conducted by using qualitative approach since it will present the description based on case study rather than statistical data.

DISCUSSION

Trade relations or transactions many forms, from the form of relationship selling, shipping and receiving of goods, production of goods and services on a contract basis. All such transactions are loaded with potential disputes childbirth. Generally, trade disputes are often preceded by a negotiated settlement. If the settlement fails or does not work, then pursued other means such as a settlement through the Court or Arbitration[3]

According SudargoGautama[4]: International Contract Law this actually means is: one part of the International Private Law. Because the principles of International Law, need to be understood. Contract Law Linkage Business (Trade) International with International Law is strong. Differences Business Contracts (Trade) international with international treaties, namely: international contracts in the field of commercial or commercial whereas international agreements in the field of public non-commercial or commercial nature. For contracts often likened to the agreement, for example: the form of such contracts is subject to the rules of Civil Law (contract) International. International treaty law is subject to the rules of Law No. 24 of 2000 on International Agreements, subject to the rules of Public Law. If there are two or more foreigners in Indonesia were each different population groups or different each hold citizenship law relationship, Example:

1. A foreigner in Indonesia English descent lease entered into a relationship with a stranger in Indonesia French descent, the prevailing International Law.
2. Similarly, if C a foreigner in Indonesia Hispanics adopt a child (adoption) of D an Indonesian citizen (of any class).
1. International Law regulations.

Role of International Law in International Contract Law are: the legal field gives an explanation of the elementary notions and principles in International Contract Law.

For example: International Law explained the meaning inter alia on when the foreign element in a contract of one's personal status, choice of law, choice of forum, the competence of an absolute and relative competence of the judiciary. International civil law is part of international law International law consists of:

1. Private International Law is the law that governs the relationship between the citizens of a country with citizens from other countries in international relations.
2. International Public Law (Law between the State) the law that governs the relationship between the state of the other countries in international relations. When people talk about international law is almost always the reference is to the International Public Law.

Thus the notion of International Law, namely:

The law governing the relationship between the citizens of a country with citizens from other countries in international relations. Rule of International Law used against an international sales contract. Transactions involving parties from different countries, it is likely to arise a conflict between the laws in one country with laws in other countries. Because a commercial contract with a very simple way of contract, so the arrangements in the contract is not entirely clear.

Example: is which law should apply where there is a dispute in the contract does not expressly specified. For the applicable law is international law in the field of business has developed several theories. But theories are dominant and have been widely accepted is known as The Most Characteristic Connection Rule. According to this theory, the applicable law is the law of the parties who have a very characteristic achievement. In the field of international business, the law applicable exporters because it contains the most characteristic. Logically that exporters face many buyers or sellers so there should be a general provision. If not many claims of certain buyers.

Practice of International Trade and International Civil Dispute 1.The phenomenon of trade relations or transactions many forms, fromin the form of a business relationship or selling, shipping and receiving of goods, production of goods and services on a contract basis. All such transactions are loaded with potential disputes childbirth. Trade disputes are generally preceded by settlement negotiations. If the settlement fails or does not work, then pursued other means such as a settlement through the Court or Arbitration.Submission of a dispute, the court or to arbitration, often based on an agreement between the parties. The usual step is to make an agreement or incorporate a dispute resolution clauses into contracts or agreements they make, the Court or Arbitration Board. It is generally agreed institution or forum that will resolve the dispute, the parties should also agree what the law will be applied by the tribunal must be agreed between the parties. The legal basis for the forum or the Dispute Settlement Board that will handle the dispute is agreement between the parties. There is good agreement between the parties at the time the contract is signed or after the dispute arises. Usually the negligence of the parties to determine the forum will result in difficulties in resolving disputes, because with the emptiness choice of the forum will be strong reasons for each forum to declare itself competent to examine a dispute.In Common Law Legal System known concept of "long arm jurisdiction". With this concept, the court may declare its authority to receive any dispute, Likewise, compared with the legal

[3] Gerald Cooke,1977*Disputes Resolution in International Trading*, in Jonathan Reuvid (ed), *The Strategic Guide to International Trade*, Kogan Page, London, p. 193.
[4]Sudargo Gautama,1980,*HukumPerdatadanDagangInternasional*, Binacipta Bandung, hlm 8

principles in Indonesia, that the judicial authorities may not refuse any dispute brought before him. For example, Judicial bodies in the United States and Britain often accept the parties' dispute, although the connection between the dispute with the Courts is very small. The defendant had a business in the United States or in the contract expressly or tacitly referring to one state of the United States or the laws of England[5]

Agencies and Institutions Responsible Alternative Dispute Justice Board or the Board of Arbitration[6], the parties may also submit the dispute to the Alternative Dispute Resolution Method, which is commonly known as ADR (Alternative Dispute Resolution) or APS (Alternative Dispute Resolution). Alternative arrangements here can be Alternative Ways beside the court. It could also mean the Alternative Settlement In general, the various alternative dispute resolution that the parties may use, including alternative settlement through courts. Usually in the clause is incorporated or otherwise anyway law to be applied by the Dispute Settlement Body. In international trade imposes several stakeholders or the subjects of law, namely the countries, companies and individuals. In this study, the parties are the parties to the merchant (legal entities and individuals) and the state. Due to the nature of International Trade Law is cross-border, the discussion is limited between merchants with merchants, and merchants with foreign countries. example:

Disputes between traders with Trader

The dispute between two traders is disputed frequent and occur most frequently. Disputes like this happens almost every day. The dispute be resolved through various means. The way it all depends on the freedom of the parties' agreement. Agreements and freedom will also find a forum court what will resolve their dispute. Agreements and freedom as well, which will determine what laws will be enforced and applied by the judiciary to judge the dispute. Agreement and the freedom of the parties is essential. Law respecting an agreement and freedoms. Of course, the agreement and that freedom had its limits. Usually these limits are not in violation of the law and public order.

Disputes between Merchants and Foreign Countries

Disputes between traders and the state is also not an exception. Trade contracts between traders and the state is already prevalent signed. These contracts in the amount (value) is relatively large, including construction contracts (development contracts), for example, contracts in the mining sector. What matters is the concept of state immunity recognized international law. The concept of immunity is at least influence the decision of the merchant to determine the settlement of the dispute. Because of the concept of immunity is, a state in any situation, never be tried before Justice foreign bodies. International law turned out to be a flexible, International law not only recognizes the state as a subject of international law perfectly (par excellen) also honor individuals (traders) as a subject of international law.

Therefore, in international law there is a sense jure imperii and jure gestiones. Jure imperii is the state's actions in the public sphere in his capacity as a sovereign state. Such acts can never be tested or tried before Courts. The concepts of iusgestiones that the state's actions in the field of civil or trade.

Therefore, such an act is none other than the state's actions in his capacity as the individuals (trafficking or private), so that such acts can be considered as acts as ordinary traders. Measures like that then lead to disputes that can be resolved before the bodies of General Jurisdiction, Arbitration. By contrast, countries that submitted its rebuttal that a tribunal does not have jurisdiction to prosecute the state as a party in a business dispute, are usually rejected. The judiciary was generally embraced the concept of iusgestiones.

In International Trade Law, it can be stated here principles on resolving international trade disputes, namely:

The principle of the parties' agreement (consensus)

The principle of agreement between the parties is a fundamental principle in the resolution of international trade disputes. The principle is the basis to be implemented whether or not a dispute resolution process. This principle can also be the basis of whether a dispute resolution process that is already underway is terminated. So this principle is essential, justice agencies (including arbitration) should respect what the parties agreed. Included in the scope of the terms of the deal are: 1) That one party or both parties do not attempt to deceive, suppress or mislead other parties, 2) That the amendments to the agreement must be derived from the agreement of both parties. This means that the termination of the agreement or revision of the charge agreement must also be based on the agreement of both parties[7]

The principle of the freedom to choose the ways of dispute resolution

The second important principle is the principle on which the parties have complete freedom to define and choose how or the mechanics of how the dispute resolved (Principle of Free Choice of Means). This principle is contained inter alia in Article 7 of the UNCITRAL, Model Law on International Commercial Arbitration[8] Article contains definitions of the Arbitration Agreement, namely the surrender agreement the dispute to an Arbitration Board. According to this article, submission of the dispute to an arbitration agreement or agreement of the parties, means the submission of a dispute to the Arbitration Board should be based on the freedom of the parties to select it.

The principle of freedom of choice of law

The principle of freedom of the parties to determine what law will be applied if the dispute is resolved by the Arbitration Courts. Freedom of the parties to determine this law, including the freedom to choose a fit and proper (ex aequoet bono), namely those in the justice and propriety. This principle is the source from which the court will decide the dispute based on the principles of fairness, appropriateness or feasibility of a dispute settlement. For example, this freedom must be respected by the Courts, is Article 28 paragraph (1) of the UNCITRAL Model Law on International Commercial Arbitration

[5]Gerald Cooke, 1977, *Disputes Resolution in International Trading*, in Jonathan Reuvid (ed), *The Strategic Guide to International Trade*, Kogan Page, London, p. 193.
[6]*Ibid*, p. 198

[7]Pasal 1338 KUHPerdata Indonesia.

[8]Article 7 The UNCITRAL, *Model Law on International Commercial Arbitration*

"The arbitral tribunal shall Decide the dispute in accordance with such rules of law as are chosen by the parties as aplicable to the substance of the dispute. Any designation of the law or legal system of a given state shall be construed, unless otherwise Expressed, as Directly referring to the substantive law of that state and not to its conflict of laws rules "[9].

The principle of good faith (Good Faith)

The principle of good faith can be regarded as a fundamental principle and the most central in the settlement of disputes. This principle requires and obliges the good faith of the parties in resolving disputes. In resolving a dispute, this principle is reflected in two stages. First, the principle of good faith required to prevent disputes that may affect relations between both countries. Second, these principles are required to be present when the parties to resolve disputes through means of dispute resolution, which is known in the Law (Commerce) International namely negotiation, mediation, arbitration, tribunal, or the ways the choice of the other party. In national law, this principle in Article 1330 of the Civil Code and Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. Article 6, paragraph (1) of Act 30 of 1999, states: (1) "civil dispute or difference of opinion can be resolved by the parties through Alternative Dispute Resolution are based on good faith, to waive settlement of litigation in the District Court.

Principle of Exhaustion of Local Remedies

This principle was actually born out of customary international law. In its efforts to formulate a regulation of this principle, the UN International Law Commission (International Law Commission) contains specific rules regarding this principle in Article 22 of the ILC Draft Articles on State Responsibility[10]

Article 22: "When the conduct of a state has created a situation not I comformity with the esult of it by an international obligation concerning the treatment to be accorded to aliens, Wether natural or Juridical persons, but the obligations Allows that this or an equivalent the result may nevertheless be Achieved by subsequent conduct of the state, there is a breach of the obligation only if the aliens concerned have exhausted the effective local remedies available to them without Obtaining the treatment called for by the obligation or where that is not possible an equivalent treatment ".

According to this principle, customary international law stipulates that: before the parties submit the dispute in the International Court of dispute resolution measures provided or granted by the National Law a country must first be taken (exhausted).

Dispute Resolution Forum[11]

Dispute resolution forum in Business Law or International Trade in principle the same as the forum which is known in international dispute resolution in general. The forum is a negotiation, investigation of the facts (inquiry), mediation, conciliation, arbitration or legal settlement through the courts, or some other means of dispute resolution, which is chosen and agreed upon by the parties. Ways of dispute resolution are well known in many countries and legal systems of the world. These ways is seen as an integral part and dispute resolution which recognized the legal system. Example: National Laws that can be found in Article 6 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution[12]. Other countries are the United States, Britain and Australia.

Next will be described as negotiations, mediation, conciliation and arbitration court[13], as follows:

Negotiations

Negotiation is a means of dispute resolution is the most basic use. The negotiated settlement is the most important. Many disputes are resolved every day by these negotiations without any publicity or attract public attention. The main reason is because in this way the parties can oversee the dispute settlement procedure. Each solution is based on an agreement or consensus of the parties. Similarly, Kohona said that the negotiations are "an efficacious of settling Disputes Relating to an agreement because they enable the parties to arrive at Conclusions having regard to the wishes of all the disputants."[14]

According to the great dictionary Indonesian: negotiation is a bargaining process with the brunding between the parties to the dispute to find a common agreement on the disputed issues, for example: negotiations within the broken promise
Weakness in the use of this method in resolving disputes are: 1. When the parties is domiciled Is not balanced. One party is strong, the other weak. In this state, one of the strong party is in a position to put pressure on the other party. This happens when the two sides negotiate to resolve disputes between them. 2. The process of negotiations were slow and takes a long time. This is mainly because of the difficulty of the problems that arise between the parties. In addition, there is rarely an expiration date requirements for the parties to resolve disputes through negotiations. 3. There is a party too hard in his stance. This situation can result in the negotiation process has become unproductive.

Mediation

Mediation is a settlement through a third party, such third parties may be individual (entrepreneur) or institution or professional organization or trade. Mediator participate actively in the negotiation process. Usually with a capacity as a neutral party seeks to reconcile the parties by providing suggestions of dispute resolution. The proposals made settlement through mediation rather unofficial (informal). This proposal is based on information provided by the parties and not on the investigation. If the proposal is accepted, the mediator was able to continue its mediation functions by making new proposals. Therefore one of the main functions of the mediator is looking for various solutions (settlement), identify things that can be agreed upon by the parties and made proposals to end the dispute. As in any negotiation, there are no specific procedures to be followed in the process of mediation. The parties are free to determine the procedure. The important thing is, agreements between the parties from

[9]Article 28 paragraph (1) UNCITRAL Model Law on International Commercial Arbitration

[10]United Nations International Law Commission. Article 22 of the ILC Draft Articles on State Responsibility

[11]UU No. 30 Tahun 1999 tentangArbitrasedanAlternatifPenyelesaianSengketa

[12]Pasal 6 UU No. 30 Tahun 1999 tentangArbitrasedanAlternatifPenyelesaianSengketa

[13]Adolf Huala, 2004,*HukumPerdaganganInternasional*, PT Raja GrafindoPersada, Jakarta, hlm 201.

[14]Palitha TB. Kohona,1985, *The Regulation of International Economic Relation Through*, the NetherlansMartinusNijhoffPubl, p. 161.

the process (election) way of mediation, accepting or not the proposals given by the mediator, the mediator up to the task termination.

According to Gerald Cooke[15], describes the advantages of mediation as follows: "When mediation is successfully used, it Generally Provides a quick, cheap and effective result. It is Appropriate Clearly, therefore, to Consider providing for mediation or other alternative dispute resolution techniques in the contractual dispute resolution clause ".

According to Cooke[16] that a settlement through mediation is not binding.that is to say, although the parties have agreed to resolve the dispute through mediation, but they are not compulsory or should resolve disputes through mediation. When the parties failed to resolve the dispute through mediation, they still can submit to binding forum, the settlement through the law, that court or arbitration.

Conciliation

Conciliation has similarities with mediation. The second way is to engage a third party to settle their disputes peacefully. Conciliation and mediation is difficult to distinguish. The term is used interchangeably. But according to Behrens, there is a difference between these two terms, namely conciliation is more formal than mediation[17] . Conciliation may also be completed by an individual or a body or bodies referred to a Conciliation Commission. Conciliation Commission or ad hoc (temporary), serves to define the requirements of the settlement accepted by the parties. But the decision is not binding on the parties [18]. The trial of a Conciliation Commission composed of two phases: a written stage and the oral stage. First, the dispute described in writing submitted to the Conciliation Board. Then the agency will hear oral testimony from the parties. The parties may be present at the hearing stage, but it could also be represented by proxy. Based on the facts obtained, Conciliator or Conciliation Board will submit its report to the parties along with the conclusions and proposals of dispute settlement. Once again, this proposal is not binding in nature. Therefore, the proposal is accepted or not depends entirely to the parties.

For example, institutionalized Conciliation Commission is a body established by the World Bank to resolve disputes of foreign investment, which the ICSID Rules of Procedure for Consiliation Proceedings (Consiliation Rules). However, in practice the use of this method is less popular. Since its establishment in 1966, the ICSID Conciliation Board received just two cases. The first case, received on October 5, 1982. Before the Conciliation Board formed parties agreed to end the dispute.The second case, which Tesoro Petroleum Corp. v. Government of Trinidad and Tobago, received in 1983. The case was successfully completed in 1985 after the parties agreed to accept the proposals given by the conciliator.

Arbitration

Arbitration is voluntary submission of the dispute to a neutral third party. These third parties may be individual, institutional arbitration or arbitration. While the (ad hoc). Arbitration Service increasingly popular. Arbitration is widely used in resolving disputes and national and international trade. The reason for this Arbitration Board are used as follows:

1. The advantages of settling disputes through arbitration is a relatively quick settlement rather than litigants binding process. Free settlement is urgently needed by the business world.
2. Another advantage of the settlement of disputes through arbitration is confidential in nature, either secrecy or confidentiality of the proceedings Arbitration decision.
3. In the settlement through arbitration, the parties have the freedom to choose his judge (arbiter) which according to them neutral and expert or specialist on the subject of disputes they face. Arbiter election entirely on the agreement of the parties. Arbitrators are usually chosen are those who are not only experts, but also he does not always have to be a lawyer. He could have mastered in other fields. He can engineer, head of the company (manager), insurance experts, banking experts.
4. d. Another advantage of this is that it allows the body Arbitration the arbitrator to apply its dispute based on the feasibility and appropriateness (if indeed the parties so desire).
5. In the International Arbiter, relatively more Arbitration decision can be implemented in other countries than if the dispute resolved through such court. This will be achieved partly because within the scope of International Arbitration is no specific agreement on this matter, namely the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards [19].

Arbitration agreement

In practice, usually the submission of Disputes to A Certain Judicial bodies, Including arbitration, the dispute resolution clause contained in a contract. Usually the title of the clause is written Directly to the "Arbitration". Another term used is the choice of forum or choice of jurisdiction. Both of Reviews These implies a somewhat different terms. The term choice of forum, means the preferred way to adjudicate Disputes, in this case the court or the Arbitration Board. The term choice of jurisdiction, meaning selection of the place where the court has the authority to deal with Disputes. The place is like the UK, the Netherlands, Indonesia[20]. Submission of a dispute to arbitration can be done by making a submission clause, ie submission to arbitration a dispute that has been born. Alternatively, through the creation of an arbitration clause in an agreement before the dispute was born (or Arbitration Clause Arbitration Clause). Submission Clause or the Arbitration Clause must be in writing. This requirement is essential. National and International Legal System requires as a key condition for arbitration. National law, the requirement is stipulated in Article 1 (3) of Law No. 3 of 1999 on

[15]Gerald Cooke,1977, *Disputes Resolution in International Trading.*……..op cit, p 193
[16]*Ibid*
[17]Peter Behrens,1992,*Alternative Methods of Dispute Settlement in International Economic Relations"*dalam: Ernst-Ulrich Petersmann and Gunther Jaenicke, *Adjudication of International Trade Dispute in International and National Economic Law*, Fribourg UP, p. 22.

[18]*Ibid,* p. 24.

[19] Indonesia meratifikasiKonvensi New York 1958 denganKeppresNomor 34 tahun 1981
[20]Gerald Cooke, *Dispute Resolution in ……., Op Cit*, p. 194.

Arbitration and Alternative Dispute Resolution[21]. In international legal instruments, contained in Article 7 (2) of the UNCITRAL Model Law on International Commercial Arbitration, 1985[22], or article II of the Convention NewYork 1958[23]. It must be stressed here is that the jurisdiction of the Arbitration clause Arbitration childbirth. That is, the clause authorizes the arbitrator to resolve the dispute. If the court accepts a contract dispute in the Arbitration Clause contained, the court must refuse to handle Disputes.

Arbitration Institutions

Arbitration institutions facilitated by the institutions of the leading international arbitration. Reviews These agencies for example is the London Court of International Arbitration (LCIA), the Court of Arbitration of the International Chamber of Commerce (ICC) and the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). On the institutional side, the setting of Arbitration now supported Also by the existence of an arbitration rules that the reference of many countries in the world items, namely the Model Law on International Commercial Arbitration created by the United Nations Commission on International Trade Law (UNCITRAL) , In the absence of choice of law in a contract, if at a later date of birth dispute the Court or Arbitration Board will Decide the dispute based on the principles of International Law applicable. Particularly the law that determines the applicable law in the event the parties do not choose Reviews their own law.

In the case of contracts in international trade is not the choice of law in international trade, import export example: by way of payment by letter of credit (L / C).

Lettter of credit is a promise to pay from the Issuing Bank to Beneficiary / Exporter / seller which payment can only be made by the Issuing Bank if the Beneficiary submits to the Issuing Bank the documents in accordance with the requirements of Lettter of credit

Lettter credit is: as a means of payment in international sloppy and there is an element of a promise of payment from the issuing bank, so sellers/exporters feel the goods proper shipping safe, on the other hand the buyer feel secure in carrying out the payment as payment will only be made by the issuing bank if the document that represents goods purchased in accordance with the terms of the letter of credit[24]

In this case the court will first look at the will of the parties or Presumed intention of the parties. Provide an opportunity for the Court to Determine the law that will apply to the contract:

a. The lack of options leads to legal uncertainty. The parties do not or difficult, to ascertain the which the law about the which the court will apply.
b. According to the UNCITRAL, the absence of choice of law will lead to two states as follows: a The law applicable to the contract will be subject to and determined by the rules of Private International Law of a legal system of a country, b Although the rules HPI a countries will Determine the law applicable to the contract, the rules of the legal system may be vague, too general, making it difficult, to give certainty and Determine the law applicable to the contract.

For that effort to find a way out of the role of Private International Law may give Reviews directions through the application of the theory[25]:

The theory of The Most Characteristic Connection, the which can help in finding the most junction point has the characteristics of the agreement. Examples of the most characteristic point link is in the purchase agreement, the applicable law of the seller. Sudargo Gautama claims is the most Appropriate theory, saying:

"In our view would conception is the most well used in Determining the which the law should be treated on international contracts in the which the parties do not make choice of law".

According to this theory, the court will Determine the choice of law based on the law of one of the parties who perform feats of the most characteristic (center of gravity) in a transaction[26]

Case illustration

Case International Offshore SA vs Banco Central SA.

Judges determine the national law applicable to the case of letter of credit (L/c) is based on the theory of linkage closest and most real, and the result is a state law where judges choose successors Bank as national law applicable to the Letter of credit. In this case the recipient or the plaintiff legal entity but operates in Panama Texas. Applicant Spanish legal entity, as well as issuing bank. Letters of credit (L/C) issued by the US dollar value of load condition that payment is made in the event of cancellation of contract development located in Spain. Letter of credit forwarded by the successor bank in New York. And the recipient is required in the Letter of credit to submit the documents to the successor bank in New York. Beneficiary Bank sued publisher of the English Courts. The principal problem is the determination of maturity Letter of credit is determined by Spanish law or the law of the State of New York. The Court concluded that the State of New York law is the applicable law, because the law is the "association closest and most real" with the letter of credit transactions. In this case the letter of credit did not contain a provision in which the country Letter of credit maturity, so the Court must decide. Therefore in the letter of credit is not loaded Choice of Law Clause, the judge must determine the applicable law of the Letter of credit as the legal basis for determining which countries occur maturity Letter of credit[27]

[21]Pasal 1 (3) UU No. 3 Tahun 1999 tentangArbitrasedanAlternatifPenyelesaianSengketa.
[22] Article 7 (2) of the UNCITRAL Model Law on International Commercial Arbitration, 1985
[23]PasalII KonvensiNewYork 1958 klausulArbitrasemelahirkanjurisdiksiArbitrase. Artinya, klausultersebutmemberikewenangankepada Arbitrator untukmenyelesaikansengketa.Apabilapengadilanmenerimasuatusengketa yang didalamkontraknyaterdapatKlausulArbitrase, pengadilanharusmenolakuntukmenanganisengketa

[24]https://legalbanking.wordspress.com. diakses 4 August 2016.

[25]Sudargo Gautama,1980, *HukumPerdata*……Op cit, hlm 8.

[26]Soedargo Gautama,1996, *Indonesia danKonvensi-KonvensiHukumPerdataInternasional*, hlm 62.
[27]RamlanGinting, 2000, *Letter of Credit TinjauanAspekHukumdanBisnis*, SalembaEmpat, Jakarta, hlm 119

Table 1 The law determines Should Treated In Contracts International Where the Parties Not Doing Choice of Law

No	*Teori The Most Characteristic Connection*
1	Point Links Most Carries Characteristics In the Sales and Purchase Agreement Business
2	Courts Determine Legal Options Based On Law of One Party Conducting Performance Most Characteristics (Center of Gravity) In a Transaction
3	Trends National Law Applicable To Letter of Credit (L/C) a. The place is done issuance of Letter of Credit, b. Points for changes Letter of Credit, c. Points execution of research documents and the Letter of Credit d. Points execution of Letters of Credit. e. Research documents and the payment of Letter of Credit.

Associated, or also called Linkage Theory Closest and Most Realistic[28]. According to this theory, the tendency of national law applicable to the *Letter of credit* (L/C) *is* the law of the country where the issuing bank is located. The reason is the linkage Closest and Most real find in the country issuing bank in the form of a publication carried*Letter of credit*, where he did change the *Letter of credit*, where the implementation of research documents *Letter of credit*and the implementation of payment*Letter of credit*. However, this trend also applies to the State may occur request payment *Letter of credit*, research documents and payment of *Letter of credit.* International business occurs in cases where the concerned state law to be applied in the event of a dispute. Generally lies in the agreement or approval of the parties in the sales contract containing a clause on the law of the state where specified. If the parties appoint Arbitration in certain countries, then this institution is trying to finish judge actions. If the case goes to court (litigation) they appoint court of the country having jurisdiction and agreed. The law of that State shall be determined as legal clause contained in the Contract. If the parties do not expressly state their intentions on the Law of the country which will be specified in the Contract. Event of a dispute, the parties desire to be indicated by the Court of the Contract. The general principle in this case is the law under which the contract is a legal system that shows on the basis of the Legal System Contract is made or a transaction related very close. Arbitration Service in resolving cases of commercial dispute can be resolved without litigation in court [29].

CONCLUSION

Business practices in civil disputes under international law there is no choice in the contract:

a. In the absence of choice of law in a contract, if it turns out later there is a dispute, the Court or Arbitration Board will decide the dispute based on the principles of International Law applicable.
b. The Role of International Law can give directions through the application of theory: The theory of the most Characteristic Connection, which can help in finding the most junction point has the characteristics of the agreement. Examples of the most characteristic point link is in the purchase agreement, the applicable law of the seller.

Theory is the most appropriate

"In the view of conception is the most well used in determining the law which should be treated on international contracts in which the parties do not make choice of law".According to this theory, the court will determine the choice of law based on the law of one of the parties who perform feats of the most characteristic (center of gravity) in a transaction.

Theory Closest and Most Realistic.the tendency of the applicable national law, for example: Letter of Credit (L/C) is the law of the country where the issuing bank is located. The reason is the linkage Closest and Most real find in the country issuing bank in the form of a Letter of Credit issuance is done, place the revision of the Letter of Credit, the implementation of research documents Letter of Credit and Letter of Credit payment implementation. However, this trend also applies to the State may occur request payment Letter of Credit, research documents and the payment of Letter of Credit.

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Author contributions

Cindawati: Conceptual research, data collection, drafts, manuscript review, interpretation of results

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