

International Civil Law In The Settlement Of Cross-Border Civil Disputes

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Abstrak: Globalization has encouraged the increasing development of legal relationships between individuals and legal entities originating from different countries. These interactions have given rise to civil legal relations that are no longer confined to the territory of a single state but involve foreign elements connecting more than one national legal system. This condition has led to a growing number of cross-border civil disputes that require dispute resolution mechanisms capable of ensuring legal certainty, justice, and benefits for the parties involved. In this context, Private International Law (PIL) plays an important role in determining the applicable law (choice of law), the jurisdiction of competent courts, and the recognition and enforcement of foreign judgments. This study aims to analyze the application of Private International Law principles in the settlement of cross-border civil disputes and to identify various challenges encountered in practice. The research employs a normative legal research method using statutory and conceptual approaches. The findings indicate that the principles of Private International Law serve as essential instruments for resolving legal conflicts arising from the existence of foreign elements in legal relationships. However, their implementation continues to face several obstacles, including jurisdictional conflicts, differences among national legal systems, the lack of uniform rules regarding the recognition and enforcement of foreign judgments, and the national interests of individual states. Therefore, legal harmonization and enhanced international cooperation are necessary to establish a more effective, fair, and legally certain system for resolving cross-border civil disputes.

Keywords: *Private International Law, Cross-Border Civil Disputes, Jurisdiction, Choice of Law, Foreign Judgments.*

INTRODUCTION

The development of globalization has significantly changed the pattern of world public relations. Advances in information technology, transportation, communication, and international trade allow individuals and legal entities from various countries to conduct legal interactions more easily and quickly. Economic activities that previously only took place in the domestic sphere have now developed into legal relationships involving parties from various countries.¹

Cross-border legal relationships can be found in a variety of fields, such as international trade, foreign investment, banking, insurance, international transportation, intellectual property rights, intermarriage, international inheritance, and digital transactions. These relationships often give rise to disputes involving foreign elements so that the resolution cannot rely solely on the national law of a country.²

¹ Sudargo Gautama, *Indonesian International Civil Law*, Volume I (Bandung: Alumni, 2010), pp. 1–5

² Bayu Seto Hardjowahono, *Basics of International Civil Law* (Bandung: Citra Aditya Bakti, 2006), pp. 15–22

In practice, cross-border civil disputes pose complex problems. This complexity arises due to the involvement of more than one legal system, each of which has different characteristics, principles, procedures, and settlement mechanisms. For example, a business contract can be made in Indonesia, executed in Singapore, and involve companies from Japan and the United States. When a dispute arises, the question arises about which country's law should be used and which country's court has the authority to adjudicate the case.³

Such a situation gives rise to a conflict of law (*conflict of laws*) which is the main object of study of International Civil Law. International Civil Law functions to determine the legal system that applies to a legal relationship that contains foreign elements and determines the court that has the authority to resolve the dispute.⁴ In its development, International Civil Law not only regulates the choice of law (*choice of law*), but also includes the issue of judicial authority (*jurisdiction*), recognition and enforcement of foreign judgments (*recognition and enforcement of foreign judgments*), as well as the legal status of persons or legal entities that have a relationship with more than one country.⁵

In Indonesia, the development of International Civil Law is increasingly important as foreign investment, international trade, and citizen mobility increase. Various international business agreements involving Indonesian companies often include legal choice clauses (*choice of law*) and forum options (*choice of forum*) which shows the

importance of HPI in modern legal practice. The application of the clause aims to provide legal certainty for the parties and minimize potential disputes regarding applicable law and authorized dispute resolution institutions.⁶

However, the implementation of HPI still faces various challenges. Differences in legal systems between countries often lead to legal uncertainty. Jurisdictional conflicts between courts from multiple countries can also hinder the dispute resolution process. In addition, the implementation of foreign court judgments often faces obstacles because not all countries have the same mechanism for recognizing and executing such judgments.⁷

This condition is even more complex when disputes involve countries that have different legal traditions, such as *civil law* and *common law*, so a comprehensive understanding of the principles of International Civil Law is needed in order for dispute resolution to take place effectively and fairly.⁸

These problems show that HPI has a very important role in creating legal certainty in international civil relations. Therefore, it is necessary to conduct an in-depth study of the application of the principles of International Civil Law in the settlement of cross-border civil disputes and the various obstacles faced in practice. This study is expected to provide a more comprehensive understanding of the importance of International Civil Law as an instrument to realize legal certainty, justice, and

³ Peter Hay, Patrick J. Borchers, dan Symeon C. Symeonides, *Conflict of Laws*, 6th ed. (St. Paul: West Academic Publishing, 2018), hlm. 3–12

⁴ Sudargo Gautama, *Introduction to Indonesian International Civil Law* (Bandung: Binacipta, 1987), pp. 10–18

⁵ J.G. Castel dan Janet Walker, *Canadian*

Conflict of Laws, 6th ed. (Markham: LexisNexis Canada, 2005), hlm. 1–20

⁶ Bayu Seto Hardjowahono, *Fundamentals of International Civil Law*, pp. 87–94

⁷ Peter Hay, Patrick J. Borchers, dan Symeon C. Symeonides, *Conflict of Laws*, hlm. 237–255

⁸ Symeon C. Symeonides, *Choice of Law* (Oxford: Oxford University Press, 2016), hlm. 45–61

legal protection for parties involved in cross-border legal relations.⁹

METHODOLOGY

This study uses a normative legal research method that aims to examine and analyze the application of International Civil Law in the settlement of cross-border civil disputes. The approaches used include the statute approach and the conceptual approach. The legal materials used consist of primary legal materials in the form of laws and regulations, international conventions, and legal instruments related to International Civil Law, as well as secondary legal materials in the form of books, scientific journals, articles.

DISCUSSION

A. Application of Principles of International Civil Law in the Settlement of Cross-Border Civil Disputes.

The development of globalization has brought about very significant changes in the pattern of legal relations of the international community. Advances in the fields of information technology, communication, transportation, and international trade have expanded the scope of interaction between individuals and legal entities from various countries. Legal relations that originally only took place within the boundaries of a country's jurisdiction have now developed into legal relationships involving foreign elements, both in the form of the nationality of the parties, domicile, location of the object of dispute, the place where legal acts occurred, and the place of execution of an agreement. This situation has led to an increase in the potential for cross-border civil disputes whose resolution can no longer rely solely on the provisions of national law, but instead requires the rules of

International Civil Law (HPI) as a guideline in determining applicable law and an authorized dispute resolution forum.¹⁰

Conceptually, International Civil Law is not international law in the sense of regulating relations between countries, Rather, it is a set of national legal rules that function to resolve civil law issues that contain foreign elements. Therefore, the main function of the HPI is not to create new material legal norms, but to determine which national legal system is most appropriately applied to a particular legal relationship (choice of law) and to determine the judicial institution or forum that is authorized to resolve the dispute (choice of forum).¹¹ Thus, HPI functions as an instrument for resolving conflicts of laws that arise due to the linkage of a case with more than one national legal system.

The application of HPI principles begins with the identification of foreign elements in a legal relationship. This stage is a fundamental step because it determines whether a case falls within the scope of HPI or is still in the realm of national civil law. Foreign elements can be in the form of differences in the nationality of the parties, domicile in other countries, objects of dispute located abroad, or the exercise of rights and obligations carried out in several countries at once. After the foreign element is found, the judge or dispute resolution institution will determine the connecting factors as the basis for determining the law that has the closest relationship with the case.¹² The link point is a central concept in International Civil Law.

This concept serves as a link between a legal relationship and a certain legal system so that it allows judges to determine the law that must be applied objectively. The forms of link points are very diverse, including nationality, domicile, place of agreement (*lex loci*

⁹ Sudargo Gautama, *Indonesian International Civil Law*, Volume I, pp. 25–30

¹⁰ Sudargo Gautama, *Indonesian International Civil Law*, (Bandung: Alumni, 2004), pp. 12–16

¹¹ Bayu Seto Hardjowahono, *Basics of International Civil Law*, (Bandung: Citra Aditya Bakti, 2013), pp. 21–28

¹² Sunaryati Hartono, *Principles of International Civil Law*, (Bandung: Binacipta, 1989), pp. 35–41

contractus), place of execution of agreement (lex loci solutionis), location of objects (lex rei sitae), and the will of the parties as outlined in the contract clause. Through the use of these link points, judges can avoid arbitrary application of the law and prioritize the principles of legal certainty and justice for the parties to the dispute.¹³

In the practice of international legal relations, the most dominant principle applied is the choice of law. This principle gives the parties the freedom to determine the legal system that will govern their legal relationship. This freedom is a manifestation of the principle of *freedom of contract* which has been widely accepted in modern civil law. Through the choice of law clause, the parties can determine from the beginning which country law will be used if a dispute arises in the future due to the performance of the contract. In international trade transactions, for example, the parties often choose the laws of the United Kingdom, Singapore, or Switzerland because they are considered to have a stable, consistent legal system, and provide adequate protection for the interests of business actors.¹⁴

The existence of the principle of legal choice provides several important benefits. First, this principle creates legal certainty because the parties have known from the beginning the legal system that will govern their rights and obligations. Second, legal choices reduce the likelihood of legal conflicts caused by differences in the national legal system. Third, this principle provides space for the parties to choose the legal system that is considered most suitable for the character of the transaction being carried out. Thus, freedom of choice of law not only reflects respect for the autonomy of the parties, but also becomes an instrument capable of improving efficiency and certainty in international trade activities.¹⁵

Nevertheless, freedom to choose the law is not absolute freedom. Almost all international civil law systems provide restrictions on the application of legal options if they are contrary to public order (*public order* or *Public order*) the country where the matter is examined. The judge may set aside the law chosen by the parties if the content or consequences of its application are considered to be contrary to the fundamental values of the national legal system. In addition, legal options cannot be used to avoid coercive legal provisions (*mandatory rules*), especially those related to consumer protection, employment, business competition, and other public interests. The restriction shows that the principle of freedom of contract must still be balanced with the state's obligation to safeguard its public interest and the rule of law.¹⁶

In addition to legal options, International Civil Law also recognizes The Principle of Choice of Forum which gives the parties the right to determine the dispute resolution institution to be used in the event of a dispute. The forum can be a national court or an international arbitration institution. In modern international trade practice, forum option clauses are almost always included in business contracts because they provide certainty regarding the jurisdiction of the institution authorized to adjudicate disputes. The existence of such clauses can also minimize jurisdictional conflicts between countries and reduce the possibility of practices *forum shopping*, that is, the effort of one of the parties to seek the court

¹³ Sudargo Gautama, *Indonesian International Civil Law*, pp. 67–74

¹⁴ Bayu Seto Hardjowahono, *Fundamentals of International Civil Law*, pp. 95–103

¹⁵ UNCITRAL, *Model Law on International Commercial Arbitration*, 1985 (amended 2006), Pasal 28

¹⁶ Sunaryati Hartono, *Principles of International Civil Law*, pp. 96–103

that is considered most favorable for its interests.¹⁷

In addition to the principle of choice of law and choice of forum, International Civil Law also recognizes **Nationality Principle** and **asas domisili (domicile principle)** as the basis for determining the law that applies to a person's personal status. Both principles have an important position because they relate to personal legal relationships, such as marriage, divorce, child adoption, guardianship, a person's legal capacity, and inheritance.

Countries that adhere to the continental legal system (civil law), including Indonesia, generally emphasize the principle of citizenship in determining the personal status of their citizens. On the other hand, countries that adhere to the common law system prioritize the principle of domicile as the basis for determining the applicable law. These different approaches show that each country has different legal policies in connecting a person to its national legal system.¹⁸

The principle of citizenship is based on the assumption that a person's legal relationship with his or her country remains inherent even if the person is outside the territory of his or her home country. Therefore, various issues regarding personal status generally remain subject to the laws of the country where a person's nationality is located. On the other hand, the principle of domicile holds that a person's legal relationship is more determined by his permanent residence or the center of his life interests. In international practice, the two principles often face each other, causing legal conflicts when a case involves parties from countries with different systems. In such conditions, the judge must consider the most relevant link points so that dispute resolution

still reflects legal certainty and a sense of justice for the parties.¹⁹

In addition, the development of international legal relations shows that the application of HPI is no longer limited to conventional legal relations, but has also penetrated various digital transactions involving business actors and consumers from various countries. Electronic commerce (*electronic commerce*), digital contracts, cloud computing services (*cloud computing*), to transactions through *marketplace* international challenges pose new challenges in the implementation of HPI. The legal relationship is often carried out without a physical meeting of the parties, making it difficult to determine the birthplace of the legal relationship and the location of the implementation of the agreement. Therefore, judges are required to be more careful in determining the most appropriate connecting factors so that the law applied really has a close relationship with the disputes being examined.²⁰

In the practice of international business dispute resolution, the application of HPI principles is also widely realized through international arbitration mechanisms. Arbitration was chosen because it provides greater flexibility than litigation in national courts. The parties have the freedom to determine the applicable law, the place of arbitration (*seat of arbitration*), the language of the trial, to the arbitrator who is considered to have competence according to the field of dispute. This flexibility makes arbitration a more efficient dispute resolution forum, especially in international trade transactions involving business actors from various jurisdictions. In addition, the existence of New York Convention 1958 provide broader

¹⁷ Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution; see also *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York Convention 1958)

¹⁸ Sudargo Gautama, *Indonesian International Civil Law*, (Bandung: Alumni, 2004), pp. 118–126

¹⁹ Bayu Seto Hardjowahono, *Basics of International Civil Law*, (Bandung: Citra Aditya Bakti, 2013), pp. 135–146

²⁰ Sunaryati Hartono, *Principles of International Civil Law*, (Bandung: Binacipta, 1989), pp. 144–151

guarantees for the recognition and enforcement of foreign arbitral awards than national court awards, thereby increasing legal certainty for international business actors.²¹

However, the application of HPI principles in practice still faces various challenges. Differences in the legal system between countries cause differences in legal interpretation methods, evidentiary procedures, and the implementation of judgments. Judges are also required to understand foreign laws if the law is determined as a valid law based on the HPI rules. Under certain conditions, the court must ask for expert testimony on foreign law in order to apply the law appropriately. This shows that cross-border civil dispute resolution requires more complex competence than domestic civil dispute resolution.²²

From the perspective of Indonesian law, the existence of HPI is increasingly important as foreign investment flows, international trade, and cross-border community mobility increase. Various business contracts involving Indonesian companies almost always include legal choice clauses and forum options as a form of anticipation of the possibility of disputes in the future. On the other hand, Indonesia has also given recognition to international arbitration through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which strengthens Indonesia's position in the international business dispute settlement system. Although until now Indonesia does not have a codification of International Civil Law that comprehensive, various national provisions and judicial practices have shown that there is a development towards a more modern HPI system that is adaptive to the dynamics of global legal relations.²³

Based on this description, it can be understood that the application of the principles of International Civil Law is a very important instrument in ensuring legal certainty for the parties involved in cross-border legal relations. The principle of choice of law, choice of forum, principle of citizenship, principle of domicile, and the use of various points of link have provided a systematic mechanism in determining the applicable law and the authorized dispute resolution institution. The existence of these principles not only serves to resolve legal conflicts between countries, but also serves as a means to create justice, protect the rights of the parties, and support the creation of a healthy international trade and investment climate. Therefore, strengthening the regulation of International Civil Law, increasing the capacity of law enforcement officials, and harmonizing with various international legal instruments is an unavoidable need in facing the development of global legal relations in the future.²⁴

B. Obstacles and Efforts to Resolve Cross-Border Civil Disputes in the Perspective of International Civil Law

The increase in cross-border legal relations as a consequence of globalization has a positive impact on the development of trade, investment, and mobility of the international community. However, these developments also raise various increasingly complex legal issues. Cross-border civil disputes not only involve differences in the interests of the parties, but also bring together various national legal systems that have different characteristics. Therefore, although International Civil Law has provided various principles for determining

²¹ *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York Convention 1958); UNCITRAL, *Model Law on International Commercial Arbitration* (1985, amended 2006)

²² RechtsVinding **Journal**, "Recognition and Implementation of Foreign Judgments in the Indonesian Legal System", Vol. 8, No. 2, 2019, pp. 205–220

²³ Indonesia, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution; Law Number 48 of 2009 concerning Judicial Power

²⁴ IUS Journal QUIA IUSTUM, "Application of International Civil Law in the Settlement of Cross-Border Civil Disputes", Vol. 27, No. 3, 2020, pp. 430–447

applicable law and dispute resolution forums, in practice there are still various obstacles that cause the dispute resolution process to be more complicated than civil disputes of a domestic nature.²⁵

One of the main obstacles is Differences in the legal system embraced by every country. In general, countries in the world adhere to the Civil Law, Common Law, religious law (*religious law*), as well as mixed legal systems (*mixed legal system*).

These differences affect legal sources, legal interpretation methods, evidentiary systems, and court procedures. Countries that adhere to Civil Law place laws and regulations as the main source of law so that judges play a more role as law enforcers. On the other hand, countries that adhere to Common Law give an important position to the decisions of previous judges (*precedent*) as a source of law. These differences often create difficulties when judges have to apply foreign laws or recognize judgments that come from countries with different legal systems.²⁶

Differences in legal systems also affect the legal concepts used in dispute resolution. An act that is considered valid under the law of one country does not necessarily obtain the same recognition in another country. For example, there are differences regarding regulation of electronic contracts, consumer protection, intellectual property rights, and civil liability in digital transactions. This condition makes the process of determining the applicable law more complex because the judge must consider which legal system has the closest relationship with the case being examined. If not done carefully, the improper application of

the law can reduce legal certainty and harm one of the parties to the dispute.²⁷

In addition to the differences in the legal system, Jurisdictional conflict It is the most common obstacle that arises in cross-border civil disputes. Jurisdictional conflicts occur when more than one country feels it has the authority to examine and adjudicate the same dispute. This situation is a logical consequence of the principle of state sovereignty, where each state has the right to exercise its jurisdiction over legal relations that have a connection with its territory or interests. In international trade practice, a contract can be made in Indonesia, signed in Singapore, executed in Japan, while the parties are from different countries. Such a situation opens up the possibility that several countries at the same time claim the authority to adjudicate the case.²⁸

Jurisdictional conflicts can have various legal consequences that are detrimental to the parties. One of them is the emergence of the practice **forum shopping**, which is the action of one of the parties to choose or seek a dispute resolution forum that is considered to be in its best interest. This practice is often carried out when there are several courts that both have the basis of jurisdiction over a case. Although formally not always against the law, forum shopping has the potential to cause injustice because it provides an unbalanced advantage to one party. In addition, these conditions can lead to wasted money, time, and energy due to litigation processes in several countries at the same time.²⁹

The development of information technology also presents new challenges in the application of International Civil Law. Currently, various business transactions are

²⁵ Sudargo Gautama, *Indonesian International Civil Law* (Bandung: Alumni, 2004), pp. 201–208

²⁶ Bayu Seto Hardjowahono, *Basics of International Civil Law* (Bandung: Citra Aditya Bakti, 2013), pp. 173–184

²⁷ Sunaryati Hartono, *Principles of International Civil Law* (Bandung: Binacipta, 1989), pp. 165–172

²⁸ Juridical Journal, "Jurisdictional Conflicts in International Civil Disputes", Vol. 35, No. 2, 2020, pp. 255–270

²⁹ Bayu Seto Hardjowahono, *Fundamentals of International Civil Law*, pp. 191–198

carried out through digital platforms without clear regional boundaries. Electronic contracts can be made online by parties in different countries without ever having a meeting in person. In these conditions, determining the birthplace of the legal relationship and the location of the contract implementation becomes increasingly difficult. As a result, the process of determining the competent court as well as the applicable law requires a more in-depth analysis of the link points that are most relevant to the dispute.³⁰

Another obstacle that has a great influence on the effectiveness of dispute resolution is Recognition and enforcement of foreign judgments. In principle, a country's court decision only has legal force in the jurisdiction of the country that issued it. In order for the judgment to be enforced in other countries, a recognition mechanism is needed in accordance with the provisions of the national law of the country where the execution will be carried out. The problem arises because not all countries have the same regulations regarding the recognition of foreign judgments. Even in some countries, recognition is only can be granted if there is a bilateral or multilateral agreement that regulates.³¹

In practice, a country's courts may also refuse recognition of foreign judgments if they are deemed to be contrary to the Public Order or *Ordre Public*. The principle of public order is an instrument of protection of fundamental values that apply in the national legal system. Therefore, even if a judgment has permanent legal force in its country of origin, its implementation can still be rejected if it is

contrary to the basic legal principles of the country that is asked to implement the decision. This condition shows that the success of the settlement of cross-border civil disputes depends not only on the court's decision, but also on the willingness of other countries to recognize and implement the judgment.³²

These obstacles show that the effectiveness of resolving cross-border civil disputes is not enough to depend only on the application of the principles of International Civil Law, but also requires adequate national regulatory support and international cooperation. Therefore, one of the most important efforts to overcome these obstacles is to Harmonization of international law.

Legal harmonization is the process of harmonizing legal principles that apply in various countries without having to eliminate the characteristics of their respective national legal systems. The main goal is to create common legal standards so that differences in legal systems are no longer a barrier in the resolution of cross-border disputes. In international practice, legal harmonization has been carried out through various international conventions prepared by organizations such as UNCITRAL or Hague Conference on Private International Law, which seeks to establish uniform rules on international contracts, arbitration, recognition of foreign judgments, and various other aspects of International Civil Law.³³

In addition to legal harmonization, Increasing cooperation between countries It is also a factor that greatly determines the success of transnational dispute resolution. Such

³⁰ IUS **Journal QUIA IUSTUM**, "The Development of International Civil Law in the Era of Digital Trade", Vol. 27, No. 3, 2020, pp. 441–450

³¹ **RechtsVinding Journal**, "Recognition and Implementation of Foreign Judgments in the Indonesian Legal System", Vol. 8, No. 2, 2019, pp. 205–220

³² Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958); Law Number 30 of 1999

concerning Arbitration and Alternative Dispute Resolution

³³ United Nations Commission on International Trade Law (UNCITRAL), *UNCITRAL Model Law on International Commercial Arbitration* (1985, amended 2006); Hague Conference on Private International Law, *Hague Principles on Choice of Law in International Commercial Contracts*, 2015

cooperation can be realized through the establishment of bilateral and multilateral agreements on mutual legal assistance (*mutual legal assistance*), exchange of legal information, recognition of foreign judgments, and simpler dispute resolution mechanisms. With good cooperation, the process of submitting documents, summoning witnesses abroad, collecting evidence, and implementing court decisions can be carried out more effectively. International cooperation also strengthens trust between countries in respecting the decisions of foreign judicial institutions and arbitrations so as to provide better legal certainty for the parties.³⁴

In the context of Indonesia, strengthening national regulations on International Civil Law is an urgent need. Until now, Indonesia does not have a law that specifically regulates International Civil Law comprehensively. Most of HPI's practices still refer to colonial heritage provisions, various sectoral regulations, general principles of law, jurisprudence, and doctrine experts. This condition causes that there are still legal vacancies in various issues, especially regarding the recognition of foreign court decisions, the determination of laws that apply to international electronic contracts, and the settlement of disputes involving digital technology. Therefore, the establishment of more systematic national regulations will provide legal certainty while strengthening Indonesia's position in facing the development of international legal relations.³⁵

In addition to regulatory updates, Capacity Building of Human Resources in the Legal Field It also has a very important meaning. Judges, advocates, arbitrators, notaries, and academics need to have an

adequate understanding of the principles of International Civil Law, the development of contemporary international law, and the evolving dispute resolution practices in various countries. This competence is increasingly important considering that judges are not only required to understand national law, but in certain circumstances must also be able to interpret and apply foreign laws in accordance with the rules of International Civil Law. Education, continuous training, and academic cooperation with international institutions are strategic steps in improving the quality of Indonesian law enforcement apparatus in this field.³⁶

The development of information technology also opens up opportunities to increase the effectiveness of cross-border dispute resolution. Digitization of judicial administration, use of electronic documents, online trials (*online court*), to the use of electronic signatures has accelerated the process of resolving cases involving parties from various countries. Technology not only reduces the cost of dispute resolution, but also expands access to justice (*access to justice*), especially for parties located in different jurisdictions. Therefore, the modernization of the judicial system through the use of information technology needs to be continuously developed in order to be able to keep up with the increasingly complex dynamics of international legal relations.³⁷

Other growing efforts are The use of international arbitration as an alternative to dispute resolution. Arbitration gives the parties the flexibility to determine the applicable law, the place of dispute resolution, the arbitrator selected, and the procedure that will be used during the arbitration process.

³⁴ Sudargo Gautama, *Indonesian International Civil Law* (Bandung: Alumni, 2004), pp. 245–252

³⁵ Bayu Seto Hardjowahono, *Basics of International Civil Law* (Bandung: Citra Aditya Bakti, 2013), pp. 210–221

³⁶ Peter Mahmud Marzuki, *Legal Research*, Revised Edition (Jakarta: Kencana, 2021), pp. 87–96

³⁷ Law Number 48 of 2009 concerning Judicial Power; M. Yahya Harahap, *Civil Procedure Law* (Jakarta: Sinar Grafika, 2017), pp. 54–61

This flexibility makes arbitration more desirable for international business actors than litigation in national courts. In addition, international arbitration awards have a higher level of recognition because they are supported by Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958) which has been ratified by many countries, including Indonesia. This condition provides a guarantee of better legal certainty in the implementation of judgments compared to foreign court decisions in general.³⁸

Based on the overall discussion, it can be understood that the main obstacles in resolving cross-border civil disputes include differences in legal systems, jurisdictional conflicts, and difficulties in recognizing and implementing foreign judgments. These obstacles are a consequence of the diversity of the national legal system and the principle of sovereignty that each country has. Nevertheless, the development of International Civil Law shows that there is a The tendency towards legal harmonization and increased. international cooperation as solutions to these problems. By strengthening national regulations, improving the competence of law enforcement officials, expanding the use of information technology, and optimizing international arbitration mechanisms, the settlement of cross-border civil disputes is expected to take place more effectively, efficiently, fairly, and provide legal certainty for all parties involved. Therefore, International Civil Law remains in a very strategic position in supporting the creation of orderly and fair international legal relations in the midst of the rapid development of globalization.

CONCLUSION

Based on the results of research and discussion on the Application of International Civil Law in the Settlement of Cross-Border Civil Disputes, it can be concluded that International Civil Law has a very important

role in regulating and resolving civil disputes that contain foreign elements.

The existence of International Civil Law is necessary to determine the applicable law, the court authorized to try the case, and the mechanism for the recognition and enforcement of judgments resulting in cross-border disputes. The application of the principles of International Civil Law, such as the nationality principle, domicile principle, choice of law, choice of forum, *lex loci contractus*, *lex loci solutionis*, and *lex rei sitae*, provides a legal basis in determining the most appropriate legal system to apply to a dispute. These principles serve to create legal certainty, protect the rights of the parties, and avoid legal conflicts that can arise due to the involvement of more than one national legal system.

However, the application of International Civil Law in practice still faces various obstacles. These obstacles include differences in legal systems between countries, jurisdictional conflicts, forum shopping practices, and difficulties in the recognition and implementation of foreign judgments.

Differences in the legal systems embraced by different countries often lead to differences in procedures, proof, and interpretation of the law. In addition, the absence of uniformity of rules regarding the recognition and implementation of foreign judgments is also an obstacle in realizing legal certainty for the parties to the dispute.

The results of the study show that the effectiveness of resolving cross-border civil disputes does not only depend on the existence of the principles of International Civil Law, but is also influenced by the level of cooperation between countries, the quality of national regulations, and the readiness of judicial institutions in handling cases containing foreign elements. Therefore, the strengthening of International Civil Law is becoming an increasingly important need along with the increasing legal, economic, and social interaction at the global level. Thus,

³⁸ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958); Law Number 30 of 1999

concerning Arbitration and Alternative Dispute Resolution

International Civil Law acts as a legal instrument that is able to bridge.

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The author realizes that this scientific article still has limitations both in terms of discussion and analysis. Therefore, constructive criticism and suggestions are highly expected for the improvement of this scientific work in the future.

Finally, the author hopes that this article can provide benefits for the development of International Civil Law, become a reference for students, academics, legal practitioners, and the public, and contribute to the development of cross-border civil dispute resolution that is able to realize legal certainty, justice, and legal benefits in the era of globalization.

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