IMPLEMENTATION CHOICE OF LAW PRINCIPLES IN INTERNATIONAL TRADE CONTRACTS CONNECTED WITH PUBLIC ORDER IN INDONESIA

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Abstract- Indonesian treaty law gives to parties who will enter into agreements of all terms and conditions applicable to the parties, with all breadth and freedom. This is called as the principle of freedom of the parties. The restriction that applies to the parties is simply not to violate the principles of public order. As a member of the World Trade Organization (WTO), Indonesia is obliged to take an active role in realizing a fair and mutually beneficial world trade order. One of the efforts to realize the world trade order is done by stipulating the requirements and procedures for the imposition of Antidumping Import Duty, Import Duty and Import Duty of Safeguard Measures and its handling, and enforcement of several principles in international trade system. This paper, using the available references advanced in the literature, aims briefly to discuss the implementation choice of law principles in the formation of international contracts associated with public order. This study suggests the following notes. The first is to limit the application of foreign law in certain respects. The second is to deter freedom of autonomy rights of the parties in determining the enactment of the law in their contracts. The third is to restrict the entry into force of foreign legal stelsel which is inconsistent with the legal styles of the judge adjudicating the parties' disputes. The fourth is to protection the use of the autonomy of the parties' right to an extremely large choice of law. Thus, many improvements need to be done to make the formation of international contracts in a better shape.

Index terms- WTO, International trade contract, Choice of law, Public order**.**

I. INTRODUCTION

In the last three decades, it has been clearly seen that Indonesia is opening itself extensively to foreign capital as well as to international transactions which are mostly done in various fields of industry, services and trade. Such rapid economic development unfortunately cannot be well anticipated by the written legal instrument owned by the Government of the Republic of Indonesia. This is because the process of making laws and regulations cannot be quickly implemented since the making of the Act and the regulations must pass through the stages, ordinances and procedures. Such stages, ordinances and procedures require time and lengthy talk, while the development of the economy itself sometimes ignores procedural, because of the need for economic practice.

Regulation and the formulation of legislation are the basic requirements for the implementation of law in accordance with the requirements of legal stelsel adopted in Indonesia, namely stelsel legal continental, while on the other hand we are also urged by the facts that we must anticipate and accommodate economic activities.

That from the legal intersection between Indonesia and the economic community from abroad, there arise kinds and forms of contract or treaties having conditions and conditions which are partly or entirely foreign at all and or are things which are new in the Indonesian legal system. In this case it may be grateful that the stack of our covenant law is sufficient to provide a basis for these new and unfamiliar things to be incorporated into the treaties to be held as the chart and the terms and conditions applicable therein. Indonesian treaty law gives to parties who will enter into agreements of all terms and conditions applicable to the parties, with all breadth and freedom so called the principle of freedom of the parties. The restrictions that apply to the parties are simply not to violate the principles of public order[1].

At the Asia-Pacific Economic Cooperation meeting in Subic, the Philippines was born to a commitment of 18 APEC economic leaders on the start of the trade and trade liberalization process in the Asia-Pacific region on January

[1] Sudargo Gautama, *International Trade Law*, Alumni, Bandung, Ed.ke-2, Cet.ke-1, 1997, pn. 13

1, 1997. This commitment also concerns the approval of the Manila Action Plan for APEC (MAPA) as the first step of the liberalization action.

The agreement reached is not spectacular, but the countries involved in free trade are challenged to prepare as much as possible the condition of their internal economy, as it will be confronted with a more free and transparent trade phenomenon with a tendency for wider market opportunities and imported goods will increasingly flood the market. Therefore, entrepreneurs and governments should anticipate new aspects related to trade that will begin to be discussed under the auspices of the World Trade Organization (WTO) post Uruguay Round[2].

This paper, using the available references advanced in the literature, aims briefly to discuss the implementation choice of law principles in the formation of international contracts associated with public order. However, before this main subject of this paper is dicussed, the worl trade system after the Uruguay Round is firstly addressed in section 2. Section 3 highlights contract requirement in the trading systems. Section 4, then, discussed the principles of choice of law in the formation of international contracts associated with public order. Finally, concluding notes are drawn in Section 5.

II. WORLD TRADE SYSTEM POST URUGUAY ROUND

International commercial contracts that reflect the harmonization and legal unification results of different legal systems indicate the awareness and determination of the international community to institute more uniform provisions governing all aspects related to international commercial transactions as outlined in a contract. The principles, terminology and provisions developed have been formulated in such a way as to become the clear rules of the game for the parties to the various international commercial transactions created and implemented between the parties.

After the Uruguay round, the 8th General Agreement On Tariffs and Trade (GATT) negotiations led to the signing of The Final Act of the Uruguay Round of Multilateral Trade Negotiations by 125 GATT Members in Marrakesh, Morocco on April 15. The signed agreement was the most extensive and significant global trade liberalization deal in history, as GATT's establishment was aimed at preventing the recurrence of tariff warfare in the 1930s and for world trade to proceed freely.

Initiatives to start the Uruguay Round are driven by two goals. The first is to strengthen GATT in order to prevent rising protectionist pressures in both developed and developing countries due to global recession, debt crisis and international trade imbalances, so multinational discipline needs to be strengthened to prevent unilateral action and bilateral and regional trade arrangements inconsistent with Principles of non-discrimination and transparency. The second is to update GATT by extending coverage to new and relevant issues in international trade that were not previously included in GATT or have not been fully regulated by GATT.

The Uruguay round is the most thorough and ambitious round of GATT negotiations since in addition to entering new sectors such as agriculture, trade, (e.g. antidumping), and the establishment of WTO is also the first round in which the Developing Country participates fully.

In general, the objective of the Uruguay Round is to create a more free and fair international trade system while keeping in mind the interests of developing countries in particular.

The above objectives are further elaborated as follows: (1). Market access for export products through efforts to reduce and eliminate import duties, quantitative restrictions or other non-tariff barriers; (2) broadening the scope of international trade products, including trade in services, regulation of trade aspects of Intellectual Property Rights, and trade-related investment policies; (3) enhancement of the role of GATT in overseeing the implementation of the commitments achieved, and improving the multilateral trading system based on the principles and provisions contained in the GATT; (4) improving the GATT system to be more responsive to the development of the economic situation, as well as strengthening GATT relationships with relevant international organizations with the trade prospects of high-tech products; (5) the development of cooperation forms at national and international levels in

[2] Sudargo Gautama, *The Facets of International Trade Law (GATT and GSP)*, Citra Aditya Bakti, Bandung, Cet.ke-1, 1994, pn. 37

order to integrate trade policies and other economic policies that affect the growth and development of the economy, through efforts to improve the international monetary system.

The implementation of national development, particularly in the economic field, requires efforts to, among other things, continuously improve, expand, consolidate and secure markets for all goods and services, including investment and intellectual property rights related to trade, Competitiveness especially in international trade.

Within the framework of international economic and trade relations, Indonesia's success in increasing exports and national development will also depend on the development of the world economic order as well as the stability of the international trade system in addition to the ability of the national economic adjustment to existing developments. One of the factors that greatly affect the world economy, is the order or system that is the basis of trade relations between countries.

As a member of the World Trade Organization which has ratified the Agreement Establishing the World Trade Organization as embodied in Law Number 7 year 1994, Indonesia is obliged to take an active role in realizing a fair and mutually beneficial world trade order. One of the efforts to realize the world trade order is done by stipulating the requirements and procedures for the imposition of Antidumping Import Duty, Import Duty, and Safeguard Measures Import Duty and handling.

Due to the enactment of the WTO then came the so-called free market. A free market is a situation in which two parties engage in voluntary trading transactions, in which the seller declares his willingness to sell and the buyer's willingness to buy at a mutually agreed price. The market mechanism in pricing is determined by supply and demand. If demand increases, then the price will rise, demand will fall then the price will decrease. Conversely, if the offer is high, then the price falls. If the offer is low, then the price will go up. The economy in the free market is governed by principals, while government intervention is minimal. The free market also assumes that every manufacturer is in perfect competition. This means that there is no market subsidy or monopoly. Price is something that is absolutely determined by the market, so that producers cannot achieve maximum profit by determining the high price. Therefore, the company will offer the lowest price in order to compete in the market. Corporate profits are usually very few, and the accumulation of wealth is not from high profit margins, but from high sales turnover.

The concept of a free market is actually an ideal and egalitarian concept. Trading is voluntary, and because of perfect competition, the consumer will get the cheapest price, and the producers get the same profits. The producer's profit is usually determined by the lowest price emphasis. In this principle, an economy is said to be efficient, if no one is harmed in an activity that makes others better off (no one worse off to make some one better off).

The weakness of the free market is that because of perfect competition, the strong will prevail, the weak will lose. Someone with a large capital base (rich) will be more flexible in trading transactions, and have more choices. Access to capital, information, education and relationships must be better than someone with a small (poor) capital. The profit he gained will be much larger than someone with a smaller capital.

III. CONTRACT REQUIREMENT IN TRADING SYSTEMS

The role of trade is very important in promoting economic development, but in its development has not fulfilled the need to face the challenges of national development so that it takes the economic politics to give more opportunity, support and development of people economy covering cooperatives and micro, small and medium enterprises as the main pillar National economic development.

Foreign trade is a trade which includes export and/or import activities on goods and/or trade services which extends beyond the territory of the state, which in reality is always made a contract to realize it.

The contract means a bond or a covenant, in which the wishes and expectations of the binding parties are set forth as a manifestation of the will to be realized from the relations established by both parties.

Now the need for written contracts, especially for international agreements is urgently needed and can be used as a guide and/or reference in the implementation of contracts that have been agreed. This is in fact contrary to the souls of Asians or Easterners in general, who generally consider a gentlemanship agreement with shake hand alone is sufficient, and a detailed and rambling written contract is generally disliked and unnecessary.

In Indonesia, even Customary Law states that an oral consent alone is sufficient to bind the parties originally made before the community leaders, tribal elders, or village chiefs, and so on. But what happens, when contracts have to be held on the trade on goods that are quite complicated specifications, between people who dwell far apart from different countries and with legal stelsels among those who are different, the necessity for the holding and creation of a commercial contract detailed and complete becomes very urgent. In Anglo Saxon's system of making detailed commercial contracts, it may have begun since the Industrial Revolution, in which the trade in industrial products could no longer be made only by summative agreements or contracts but should be included In detailed and complete contracts.

The benefits of Indonesia's participation in the agreement basically not only enable the opening of wider international market opportunities, but also provide a better multilateral protection framework for national interests in international trade, especially in the face of trading partners. For that consequence, this among others needs to be followed up by the need to perfect or prepare the necessary legislation. No less important is the preparation, growth and improvement of the quality of human resources, especially the understanding among economic actors and the apparatus of the organizers, of the overall agreement and the various obstacles and challenges that surround it.

In order to accelerate the achievement of national economic development, it is necessary to improve the quality and quantity in the field of trade through the preparation of areas that have geo-economic and geostrategic advantages. The area is prepared to maximize industrial activities, exports, imports, and other economic activities that have high economic value. Development of Special Economic Zone aims to accelerate regional development and as a breakthrough model for the development of the region for economic growth, including industry, tourism and trade and that is no less important as a means in the realization of the contract to be implemented internationally in the field of trade so as to create jobs.

Special Economic Zone is a region with certain limits within the jurisdiction of the Unitary State of the Republic of Indonesia which is determined to perform economic functions and obtain certain facilities. The function of the Special Economic Zone is to conduct and develop businesses in the fields of trade, services, industry, mining and energy, transportation, maritime and fisheries, post and telecommunications, tourism, and other fields. Accordingly, the Special Economic Zone comprises one or more Zones, including export processing zones, logistics, industry, technological development, tourism and energy whose activities may be designated for export and for the country.

The facilities provided in the Special Economic Zone are intended to increase competitiveness to be more attractive to investors. The facility shall consist of fiscal facilities, in the form of taxation, customs and excise, regional tax and regional levies, and non-fiscal facilities, in the form of land, licensing, immigration, investment and employment facilities, as well as other facilities and facilities which may be provided at the Zone at In the Special Economic Zone, which is certainly in need of expertise in the field of international contract if you are willing to take advantage of the opportunities provided.

The development of globalization of international trade, both trade in goods and services, demands the adjustment of the rule of law, including in the field of contract law. Compliance between national contract law governing international trade activities with relevant international instruments, in this case the CISG and its complementary rules should be closely scrutinized in the context of the development of its national legal rules.

IV. PRINCIPLES OF CHOICE LAW IN THE FORMATION OF INTERNATIONAL CONTRACTS ASSOCIATED WITH PUBLIC ORDER

Regarding the terms of the validity of a treaty and the substance of certain contracts in the Civil Code will not be discussed again, as they may already be discussed in matters relating to the treaty in general. In this case it will only be mentioned about some basic principles that must be considered in the contracts that are commonly used in Indonesia and should be the concern of the draft agreement or trade contract.

Differences in the arrangement of contractual (national) law in an international trade transaction involving business actors from two or more different countries will certainly create legal uncertainty. For example, the international sale and purchase transactions conducted by Vietnamese businessmen with Indonesian businessmen will involve two common legal systems. Although the two legal systems of these two different States characterize the civil

law tradition, it does not mean that the provisions on contract law between Vietnam and Indonesia must be the same. Moreover, if we talk to countries that have different legal systems, like Singapore with common law traditions and have different arrangements with Indonesian contract law that follow the Continental European legal tradition. Differences in the arrangement and also the understanding of contract law from those from different legal traditions certainly raises the potential for conflict.

Therefore, it is necessary to harmonize the contract law, one and another in order to remove the barriers derived from different contract law arrangements on international trade transactions. The aim is to encourage economic activity within the ASEAN regional market. Harmonization of national law at regional level and contract law in particular, will provide effective protection for business people from different countries. Such protection will at least appear when the risk of conflict with a dispute resulting from ignorance of the legal rules of contract from business associates from different countries may be minimized.

Efforts to harmonize contract law must be followed by adaptation in the respective national laws of the State. Harmonization can be a new cultural asset, a huge new value for each country and especially for ASEAN countries. The experience gained from implementing harmonization at the national and regional levels will contribute to and support economic integration among ASEAN member countries, particularly concerning the choice of law in international trade contracts.

a. Choice of Law Principles

The choice of law in the treaty law is the freedom granted to the parties to choose their own law to use for their agreement. The choice of law is what law will be used in making a contract. Contracting parties are entitled to an agreement on the choice of law and the choice of forum applicable to the treaty. The choice of law determines the governing law, and so, the choice of arbitration forum determines the jurisdiction of the dispute resolution forum.

The objective of applying the choice of law is equal treatment for similar cases, and the development of community interests, goals and policies. There are several reasons for enforcing the choice of law, namely enforcing the legal choice clauses contained in the contract (recognition) of the autonomy party, setting aside the choice of law, and enforcing the law's choice clause as a supporter, and not a determinant.[3]

For agreements with transnational aspects, the choice of law becomes important. Not all foreigners feel confortable that the treaty, although it concerns Indonesia, is governed and construed in accordance with Indonesian law. The choice of foreign law for an agreement concerning Indonesia is legitimate and binding. The problem for the compiler is whether the choice is practical and effective.

The laws that will apply will depend somewhat on the agreement of the parties. The applicable law may be a national law of a particular State. Usually the national law exists or is related to the nationality of either party. This mode of selection is commonly applied today. If either party or both parties disagree with one of the national laws, they will usually seek to find a relatively neutral national law. Another possible alternative to international trade law is to apply the principles of compliance and appropriateness (ex aequo et bono), however, the application of this principle must be based on the agreement of the parties.

The choice of law is now commonly accepted in international trade contracts, both by western countries with a liberal capitalist system that accepts this choice of law, as well as the socialist countries.

If the dispute settlement arising out of the agreement is made before the judiciary in Indonesia, the problem may be that the relevant judicial body may declare itself authorized or capable of providing a judicial review of the relevant foreign law. If the dispute is made in the Foreign Court, will the decision of a foreign court be conducted in Indonesia. In accordance with the principle of procedural law applicable in Indonesia, the decision of foreign law can not be immediately implemented in Indonesia. The courts in Indonesia can only use such decisions as a matter or evidence in their own decision in a new case filed before the court.

However, in order to provide protection to the public in Indonesia in general, in the face of transactions with

[3] From various court decisions in various countries, it can be seen that there is no principal difference between the existing legal system in the world. The benefit of the choice of law is to satisfy the parties because it uses its basic rights, it is certainty because it allows parties to easily determine the law, provide efficiency and benefits

foreigners, it is proposed as the 2nd paragraph as follows: "But if a foreigner commits a legal act in Indonesia, whereas according to his national law for his conduct whether the person has a legal capacity or only limited legal capacity, that person is deemed to have the legal capacity for such action to the extent that under the law of Indonesia is deemed to be so. The purpose of this second paragraph is to provide protection for the Indonesian legal community generally to the actions of foreigners. For example, trade contracts have been made and in Indonesia foreigners are considered competent to do so (according to the last interpretation for 18 years)[4]. Foreigners who, for example, according to their own National Law, are considered immature because they are not yet 26 years old, shall be deemed to have the authority to conduct such transactions because according to Indonesian law he is deemed to have the authority to do so.

The 19th century freedom of choice by these parties grew, used by judges, among them Von Savigny. He argues that legal relationships are displayed in the form of voluntary submission on a legal stelsel that occurs as it is chosen (*lex loci executions*). Such choices primarily occur secretly. The autonomy theory of the parties is developed by Mancini, that the autonomy of the parties is one of the basic rights of the entire building of international civil law in addition to the principles of nationality and the public interest.

Mancini makes the freedom of individuals to determine the law for their contractual relations, but such freedom is limited by public order, the law chosen is closely related to the contract, and does not violate the fundamental policies of other countries whose interests are greater than the principal decisions.

Basic consideration of the validity of the choice of law over the notion that all countries do not have the same national legal system. In the absence of a choice of law, a national private law shall be applied. Discussions about party autonomy are presented in a discussion of the development of international business practices related to contracts. That party autonomy should be recognized in standard banking agreement, for example, in the case of credit agreement between bank as creditor and debtor as credit recipient. The clauses in the standard agreement shall be mandatory in order to protect the debtor as the party paying off the credit in order to repay the debt in accordance with its ability, in case of conflict of law.

Other aspects discussed in case of conflict of law, among others are negotiable instrument and negotiable document, beside conflict of law, like common law, social law, and anglo saxon. The choice of law arrangements in general is the need for protection and certainty of the parties in conducting trade relations beyond the borders.

Furthermore, the regulatory substance relating to the moving objects to be registered, and the intellectual property approved in the previous session as the security right intangible property, in response to legal needs relating to secured transactions, which are efficiently expected to remove legal barriers and provide a positive impact On the willingness of cost for credit.

Discussions related to conflict of law, among others, pertain to bank accounts, and security accounts (securities). Both instruments are difficult to distinguish in the implementation of bank functions as a third party in serving customers. The security account serves as the fulfillment of the last-regulated obligation in the Hague Convention is more complex than the bank account.

Agreement on the use of securities as the fulfillment of obligations to follow the principal agreement must be paid at maturity by the issuer. As with the choice of law, the choice of foreign jurisdiction in an agreement is legitimate and binding on the parties to it. The problem is again on the effectiveness of the decision of the foreign judiciary when it will be implemented in Indonesia[5].

One of the limitations in the choice of law is about a particular legal system that is coercive. The parties can not deviate from the rules of coercion. This has been commonly accepted both in the atmosphere of internal and international law. The law of force (*dwingen recht*) limits the freedom of the parties in determining the choice of law. Such restrictions are determined by the economic state of modern life, such as consumer protection, the prevention of abuse of authority from the economic authorities as well as maintaining a fair competitive climate in the economy.

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[4] Purwoto S. Gandasubrata, Discussion on Rasjim Wirjaatmadja's Paper on "*Approval of wives/husbands to pledge joint property and age limit for a prospective customer to open an account and borrow money to Banks*", Tarumanegara University, Fakulty of Law, BPHN, Indonesian Banking Development Institute, Jakarta November 8, 1988

[5] Ted Soedarjanto Soedibjo, *Introduction to Commercial Contracting*, Presented at the Faculty of Law of Pancasila University in March 1993.

b. Choice of Law and Public Order

Public order and choice of law are two very important legal principles in conflict of law. The experts assume that public order serves as an institution that limits the freedom of the parties in determining the choice of law that is choosing the law that applies to them in case of dispute.

Hijman said that in the international civil field how far the meaning of the rights of the parties in determining the law for them is still discussed. In connection with *partij-autonomie* it is said that "*Met dit vragstuk raak ik een hoofdproblemen, van het geheele privaatrecht: de betekenis van den menselijken wil voor het recht*". (With this question comes the major problem of the whole civil law: the meaning of human desire for the law).

Choice of law is very important to be associated with public order, which, judging from the point of view of the philosophy of the individual's willingness to the applicable law (wildogma) and Roman teachings. The issue of choice of law in the field of international business presents elements of the legal philosophy, containing also aspects of law theory, legal practice and legal politics, which Kosters calls *de hoek steen van het rechtstelsel* (the cornerstone of a legal system).

The concept of public order is different in each country. Public order is bound to time. If the situation and conditions are different, the understanding of public order also changes. Public policy also has a close relationship with political considerations. It may be said that policymakers play an important role in this public order.

Such an approach may affect the view towards the philosophy of the extent to which the role of individual will be against the applicable law, or in Roman law regarding *animus, voluntas, consentire*. The problem is in determining its right in case of conflict of law.

Experts in the field of international business recognize that empirically the principle of choice of law in the field of contract is used in the world without questioning the dogmatic view expressed by the experts. Its implementation is more based on considerations in terms of economic principles, and laws, relating to the limits of the authority of choice of law. The limits of the authority of choice of law may be made indefinitely, or restricted only in certain respects, of which law applies to contracts agreed upon by the parties, and to the extent to which parties may decide for themselves the laws used for their legal relations, and if the parties do not exercise their right to choose the law applicable to them then which law is the basis of their contractual exercise. What provisions are appropriate if the parties do not exercise their right to decide the choice of the law, and when exercising that right in view of the nature of freedom to self-determinate the law applicable to contracting parties in accordance with the logic or contrary to the dwingend nature of the provisions of the rule or legislation.

It is also a matter of whether the parties are free in their choice or very limited in their ability. Whether the parties may determine certain rules is subject to or applies only to certain parts of the contract, so that in a contract there are several rules on which to base/partly subject to certain laws, while other parts of the contract subject to other laws need to be observed on its own.

In connection with this substance, Rabel in favor of the principle of freedom of choice of law says that the parties have the right to determine the law applicable in their contract[6]. Empirically it can be seen in the results of research on the decision of the International Court of Justice, and international arbitration bodies about the recognition of the legal choice of the parties to the parties that has been adopted by the most courts and publicits. Sudargo Gautama expresses Winter's opinion in a special essay on the coercive role of international treaties on the acceptance of the law's choice by the parties with respect to the conduct of international contracts[7].

Public order has several functions connected with choice of law. First, as brakes or inhibitors, that is, to limit the application of foreign law in certain respects. Second, to deter freedom of autonomy rights of the parties in determining the enactment of the law in their contracts. Third, as an element restricting the entry into force of foreign

[6] Rabel, in book Sudargo Gautama, *op.cit*, pn. 122, say that: "despite some the parties to a contract have a right to determine the law applicable to their contractual relationship only the limits may be controversial. Hence the recent literature interest it self more in the limits to imposed upon the autonomy of the parties intention than in challenging its existence".

[7] De Winter, LJ, *Dwingen Recht bij Internasionale Overeenkomsten*, University of Leiden, Marthijn Nijhof, Nederland, 1964, pn. 329-331. "Deze opvatting, die aanvankelijk op bezwaren van dogmatische aard stuitte, wordt thans in vrijwealle landen zowel in de rechtspraak als de wetenschap aanvaard"

legal stelsel which is inconsistent with the legal stiles of the judge adjudicating the parties' disputes. And fourth, as protection against the use of the autonomy of the parties' right to an extremely large choice of law.

The public order function is empirically available in China. The provisions of Chinese law prohibit the exercise of choice of law in business contracts related to technology. The legal provisions used are Chinese law. The provisions stipulated by the Minister of Trade and Economy of China on the policy of importing technology in the China Republic[8]. Therefore, one of the experts who opposed the autonomy of the parties, said that if the term autonomy is used need to limit its definition. This is, for example, in the form of a definition to avoid the widespread implementation.

Public order or openbare order (Netherlands), and ordre public (France), as the main limitation of freedom to exercise one's willingness in the contract field to avoid the occurrence of legal smuggling. The smuggling of the law can be done through the change of the decisive point in the legal process used as the basis for the settlement of a legal event. A subjective role by moving or changing points of determinant to another legalized stelsel may result in the smuggling of this law.

The smuggling of the law is the shifting of the objective linkage points that determine the secondary point of attachment. The parties make domicilie changes, or close the contract abroad, or choose the execution place (*lex loci executionis*) abroad. By law, the choice of law can be done with an objective point of contact, such as citizenship (*lex patriea*), domicile (*lex domicilie*), place of object (*lex rei sitae)*, place of contract executed (*lex loci contractus*), and so on. In order to avoid the occurrence of legal smuggling, through the attitude of the party concerned arbitrarily choosing the law which is wrapped in the interest of his own benefit, and not the law applicable in the country of one of the contracting parties, strict requirements are applied[9].

If an act is committed in a particular place, then the choice of place is not intentionally chosen for the purpose of smuggling. Rabel argues that "in place of certain legal systems it is required that elections be made only of laws that have a real relationship with the relevant legal event.

Selection is only against existing law of a certain relationship with the contract concerned. The above requirement is an attempt to avoid the possibility of legal choice turning into legal smuggling. In this connection it can be pointed at cases of usury, which often occur in US jurisprudence on the difference in interest rates and conditions in various states, resulting in legal smuggling by legal-choice means. In this case the Judge holds that the choice of law is only acceptable, if the law chosen is the law of domicile in fact the parties and the contract is closed, simultaneously deemed made, and carried out and made the payment[10].

V. CONCLUDING NOTES

Substantive weaknesses in some national legal provisions governing international trade activities, including international trade contracts may potentially be a constraint for various international trade transactions conducted by the Indonesian side with its counterparts from other countries.

The Government has sought to create reliable legal and institutional instruments in the face of international trade rules, which are carried out with various improvements in the rules and implementation of GATT that have an impact on international trade law and regulation, a deep understanding of the Final Act is essential so that

[8] Douglas C. Markel and Randy Peerenboom. *The Technology Transfer Tango*, The China Business, January-February 1997, pn. 25.

[9] The jurisprudence of countries with the Anglo Saxon legal system very firmly applies this requirement. For example in English law, in response to questions raised by the Dutch government as to the 6th Convention in The Hague on international sale and sale: “The view adopted in English Law is that a contract ought to be governed and is governed by the law or laws to which the parties intended to summit themselves. When the parties expressly stipulate that their contract shall be governed by the contract, provided that the stipulation express the bonafide intention of the parties. But a contract will not be enforced in England, whether lawful by the law which the parties intended to be applicable or not, (1) if it or the enforcement of it is opposed in English interests of state, or to the police of the English law, or the moral rules upheld by English law…”

[10] Sudargo Gautama, op.cit., pn 123., Affirming that the appointment to the relevant internal law of the country concerned. If it is recognized that there is an authority to choose the law on the one hand, then it is not in the place that this chosen law then refers to another law as the law that will resolve the dispute concerned. If so, then this would be a contradiction to the idea of autonomy.

governments can deal with trading partners, provides support to employers and also for the government to know the limits that can be exercised in enforcing regulations on international trade contracts.

What should be improved in the relations of employers and governments also need to anticipate the aspects of international contracts relating to trade. Three issues are identified as follows. The first is the issue regarding trade contract relationship with the environment, namely, the linkage between market access and conditions with various aspects of environmental conservation. The second is the issue of the relationship of trade contracts and labor standards, that is, the linkages between market access and requirements that should meet various aspects of workers' welfare. The third is the isuue of trade relations and competition policy, so it can pay more attention to the needs and principles of nationality on the basis of public order.

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