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DISPUTE RESOLUTION OF DEFAULTS IN INTERNATIONAL SALES AND PURCHASE CONTRACTS: A REVIEW OF THE IMPLEMENTATION OF THE 1980 VIENNA CONVENTION (CISG)

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Abstract: *The development of international trade has the consequence of increasing the potential for disputes, where defaults in international sales and purchase contracts become a crucial legal issue. The United Nations Convention on Contracts for the International Sale of Goods (CISG) 1980, or the 1980 Vienna Convention, was designed as a uniform legal regime to govern such contracts and provide a uniform dispute resolution framework. This study aims to analyze in depth the application of CISG provisions in resolving default disputes, focusing on mechanisms and conditions for aggrieved parties to use available legal remedies. The research method used is normative juridical, with data collection techniques through literature studies on the provisions of the CISG, legal doctrine, as well as the decisions of international chambers of commerce and national jurisprudence from the parties countries. The results of the study identified that the CISG offers a complete and flexible set of legal remedies, including the right to sue for performance performance, cancellation of contracts, price reduction lawsuits, and compensation claims. The application of these legal remedies is highly determined by the classification of default as a fundamental breach, notification obligation, and loss mitigation efforts. The conclusions of the study confirm that although the CISG succeeds in creating harmonious legal standards, the complexity in the interpretation of its articles requires special expertise from practitioners to avoid uncertainty in dispute resolution.*

Keywords: *CISG; Default; International Sale and Purchase Contracts; Dispute Resolution.*

I. INTRODUCTION

International trade is growing rapidly in line with economic globalization. One of the legal instruments is the international sale and purchase contract which is the backbone of cross-border transactions. However, the complexity of legal relationships between parties from different jurisdictions often leads to disputes, especially when a default occurs. International trade is a major pillar in the global economy, but it is accompanied by legal complexity, especially when there is a default in the sale and purchase contract. Before the existence of a unified law, legal conflicts between jurisdictions were often an obstacle. The 1980 Vienna Convention on Contracts for the International Sale and Purchase of Goods (CISG) comes as a solution, offering a uniform legal regime that directly applies to parties domiciled in the participating countries. Although it has been ratified by many countries, the practical application of the CISG in resolving default disputes still faces challenges of interpretation and implementation.

Previous research by Schlectriem and Schweizer has comprehensively reviewed the provisions of the CISG, but an in-depth analysis of how these legal remedies are applied in jurisprudence and arbitration practice still needs to be developed. This study aims to fill this gap by analyzing the effectiveness of the default dispute resolution mechanism under the CISG umbrella. This research will critically examine the conditions for the implementation of each legal remedy, the interaction between legal remedies, and the obstacles that arise in practice. Indonesia has not ratified the CISG, but many Indonesian businesses are subject to this rule through legal options in international contracts. Thus, this paper not only outlines positive laws but also provides a critical perspective on their application, which is the value of the novelty of the research. Identification of these issues is important to provide a more comprehensive understanding and contribution to legal certainty in international commercial transactions.

II. RESEARCH METHODS

This research uses normative juridical research methods. This approach is carried out by analyzing various primary and secondary legal sources. The primary legal sources studied include the text of the 1980 Vienna Convention (CISG) and its travaux préparatoires. Secondary legal sources include the Civil Code, textbooks, international law journals, and scholarly articles from international trade law experts. In addition, this study also analyzes the judgments of international courts and arbitration bodies (such as those of the ICC and UNCITRAL) that handle disputes under the CISG. The data analysis technique used is qualitative by interpreting, constructing, and systematizing the collected legal materials to answer the problems being studied.

III. RESULTS AND DISCUSSION

3.1. Legal Remedies for Default in the CISG Framework

CISG regulates a series of legal remedies that can be taken by *aggrieved parties* due to the default of other parties. These legal remedies are regulated mainly in Part III of the CISG (Articles 45-52 for sellers and Articles 61-65 for buyers). These main legal remedies can be categorized as *Specific Performance demands,* Avoidance of Contracts, *Damages Requests, and* Price Reduction.

Specific *Performance Requirements* are regulated in Article 46 (for buyers) and Article 62 (for sellers). However, this right is limited by Article 28 which states that a court is not obliged to order the fulfillment of an achievement if according to its national law it is not obligatory to do so. Avoidance *of the Contract is* regulated in Article 49 (for buyers) and Article 64 (for sellers). The right to cancel the contract is only granted if the default that occurs is fundamental *(fundamental breach)* as defined in Article 25 of the CISG. Requests for Damages are regulated in Articles 74-77. A claim for damages can be brought regardless of whether the breach is fundamental or not, and can be sued in conjunction with other legal remedies (except for the cancellation of a contract in certain circumstances). Article 77 also imposes an obligation to mitigate losses. Price *Reduction is* regulated in Article 50. This legal remedy is available to the buyer if the delivered goods do not conform to the contract, regardless of whether the price has been paid or not.

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3.2. Applications and Challenges in Jurisprudence

Analysis of various rulings shows that the application of these legal remedies relies heavily on the interpretation of key concepts such as "fundamental breach". A default is considered fundamental if it results in such a loss as to substantially deprive the aggrieved party of what the aggrieved party expects under the contract. The judgment in the case of the Bundesgerichtshof (Germany) No. VIII ZR 121/98 is an example in which the delivery of goods of low quality is significantly considered a fundamental default.

In addition, the obligation to notify under Article 39 and Article 26 is a critical element that often fails to be fulfilled by the parties, resulting in the loss of the right to rely on the default. Another challenge arises from the interaction between the demands of achievement and the national law of the forum that can refuse its execution under Article 28.

3.3. Comparison of the Civil Code with CISG

The Civil Code (BW) bases the default on summons (Article 1238 paragraph (1) BW) and the right to claim damages (Article 1243 BW, Article 1267 BW). However, the Civil Code does not recognize the fundamental concept of breach or the obligation to mitigate losses. In contrast, the CISG regulates the strict definition of fundamental breach (Article 25 of the CISG), the obligation to notify (Article 39 of the CISG), and the obligation to mitigate (Article 77 of the CISG). This makes CISG more modern and in line with international trade practices.

3.4. **Comparison Table of Civil Code and CISG**

ASPECT	Civil Code	CISG 1980
Legal basis for default	Article 1238 paragraph (1): the debtor is considered negligent after the summons. Article 1243: compensation only after negligence.	**Article 25: Fundamental breach when a substantial loss deprives the benefit of the contract.**
Notification obligations	There are no explicit settings: just somasi.	**Article 39: the buyer is obliged to notify the defect of the goods within a reasonable time.**
Types of legal remedies	Article 1267: options for fulfillment, fulfillment + compensation, compensation, cancellation.	**Article 46: demand for the delivery of goods. Article 62: demand payment. Chapters 49 & 64: Avoidance. Articles 74-77: Indemnification. Article 50: price reduction.**
The fundamental concept of breach	Not explicitly known; based on the principle of propriety.	**Article 25: a strict definition of substantial loss.**

Loss mitigation	Not explicitly regulated.	**Article 77: the aggrieved party is obliged to mitigate losses.**
Performance fulfillment execution	Articles 1234-1240: achievements can be prosecuted through national courts.	**Article 28: The court forum is not obliged to specific perfomance if national law does not permit it.**

3.5. Discussion Analysis

From the results of the comparison between the Civil Code and the CISG, it appears that the CISG offers a legal tool that is more adaptive to the needs of international trade. The fundamental concept of breach in Article 25 of the CISG provides legal certainty by setting an objective limit on when the breach can be considered severe enough to void the contract. This is different from the Civil Code which does not recognize this category so it leaves it entirely to the interpretation of the judge. This difference raises the practical consequence that parties to contracts under the Civil Code often face uncertainty about when the contract can be legally cancelled.

In addition, the obligation to notify or *notice* as stipulated in Article 39 of the CISG shows the principles of fairness and prudence. The buyer cannot delay or conceal an objection to the defect of the goods because the delay eliminates his right to sue. This principle is not found in the Civil Code, which relies more on a unilateral summons mechanism from creditors. The CISG thus emphasizes the basis of balance and good faith between the parties.

The obligation to mitigate losses in Article 77 of the CISG also reflects the development of legal doctrine that requires the aggrieved party not to remain silent and to magnify his losses. In international arbitration practice, this clause is often a consideration for reducing the amount of damages claimed. The Civil Code does not regulate this principle so that the risk of loss is fully charged to the defaulting party without considering the contribution of the aggrieved party.

From a practical perspective, the existence of the CISG provides international standards that facilitate cross-border trade by reducing legal uncertainty between jurisdictions. On the other hand, the use of the Civil Code in international contracts often poses obstacles because it is not in line with global trade practices. This condition shows the importance of ratification of the CISG by Indonesia considering that national business actors have often been subject to the CISG through legal choice clauses in contracts.

However, the implementation of CISG is also not without challenges. The interpretation of CISG articles such as the fundamental definition of breach is highly dependent on international jurisprudence and academic doctrine. This requires the capacity and competence of Indonesian judges, arbitrators, and legal practitioners to continue to update their understanding in order to avoid uncertainty. Thus, although the CISG offers harmonization, the success of its implementation is still determined by the readiness of domestic legal resources.

IV. CONCLUSION

Based on the research that has been conducted, it can be concluded that CISG has provided a comprehensive and flexible legal framework for resolving defaults in international sales and purchase contracts. This convention succeeds in creating harmonization by providing

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a choice of legal remedies that can be adjusted to the nature and gravity of the default that occurs. The Convention emphasizes the balance of rights and obligations of the parties and the efficient resolution of disputes. Indonesia's ratification of the CISG will increase legal certainty and competitiveness in global trade transactions. However, the effectiveness of its implementation depends heavily on a consistent interpretation of its provisions, especially regarding the fundamental definition of breach and notification obligations. The complexity of this interpretation demands specialized expertise from judges, arbitrators, and legal practitioners who handle international trade disputes.

Therefore, it is recommended that the parties to the contract, legal counsel, as well as judicial and arbitration institutions keep abreast of developments in jurisprudence and doctrine regarding the CISG to ensure legal certainty and efficiency in dispute resolution. The suggestion for further research is to conduct a more in-depth comparative study on the application of CISG in various different jurisdictions.

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