PROCEEDINGS

the International seminar on

BUILDING COLLABORATION AND NETWORK IN A GLOBALIZED WORLD

INTERNATIONAL THINKSHOP
ITC-2017
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Doctoral Program of Cultural Studies
Faculty of Arts, Udayana University

Editors:
Prof. Dr. Phil. I Ketut Ardhana, M.A.
Prof. Dr. I Wayan Ardika, M.A.
Prof. Dr. I Nyoman Darma Putra, M.Litt.
Prof. Dr. Veysel Bozkurt
George Mentansan, S.Sos., M.Hum.

September 14th 2017, Denpasar - Bali

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WELCOME MESSAGE
RECTOR OF UDAYANA UNIVERSITY

The President of IFSSO (International Federation of Social Sciences Organization), Prof. Nestor Castro Ph.D.
The Dean Faculty of Arts Udayana University, Prof. Dr. Ni Luh Sutjiati Beratha, M.A.
The Vice President of IFSSO, Prof. Dr. phil. I Ketut Ardhana, M.A.
Prof. Joseph P. Lalo, Ph.D., (from the Philippines),
Prof. Dr. Yekti Maunati,MA (Indonesian Institute of Sciences, Jakarta)
Dr. Sri Sunarti Purwaningsih, MA (Indonesian Institute of Sciences, Jakarta)

Professors and postgraduate students,

Om Swastyastu,

First, I would like to submit our prayer and gratitude to Ida Sanghyang Widhi Wasa, Tuhan Yang Mahaesa/ the Almighty God, for his blessings and guidance that this International Seminar on *"Building Collaboration and Network in A Globalized World"*, held by the Postgraduate Program of Cultural Studies, Faculty of Arts-Udayana University in collaboration with the International Federation of Social Science Organizations can be taken place this morning.

The distinguished guests, ladies, and gentlemen

First of all, I would like to extend my warm welcome to distinguished guests: Prof. Nestor Castro, Ph.D., (The President of IFSSO), Dr. Hakan Gullerce (Sociologist from Istanbul Foundation for Science Innovation), Prof. Morad Moulai Hadj (Department of Sociology, Faculty of Social Sciences, University of Oran- Algeria), Prof. Joseph P. Lalo, Ph.D., (from the Philippines), Prof. YektiMaunati, Ph.D. M.A., and Dr. Sri Sunarti Purwaningsih (from the Indonesian Institute of Sciences, Jakarta), and all participants.

This Internationalseminar covers areas like social science policy matters, establishing network, providing information, and documentation services in the social sciences.

In this International Seminar the delegates will have several opportunities, including:

To discuss topics ranging from ways to strengthen social sciences in Building Collaboration and Network in A Globalized World.

To examine the recent specific issues related to the development of social sciences and humanities studies in the region and in the world in general.

In the recent time, we are aware that sharing our experiences on social sciences and humanities studies is a must. By holding this International Seminar, we expect that we can strengthen our network and widen our knowledge and experiences in social sciences and humanities studies.

I believe that in the near future, there is a need for having a regular regional and international conferences/ seminars to fill the gap among scholars in different countries in understanding of the development of contemporary research in social sciences and humanities. Indeed, we need to share our experiences, both scientific and practical, on the development of social sciences and humanities studies.

The aim of this International seminar is to elaborate this knowledge into concrete and practical solutions, so that all of us can strengthen our culture and improve their quality of life while conserving their environment for sustainable development.

I am proud that Udayana University in Bali has been chosen to be the host of the international seminar to all of you. I am very sure as the seminar progresses there will be many opportunities to learn one another as well as to develop new collaborations, network and partnership for the near future.

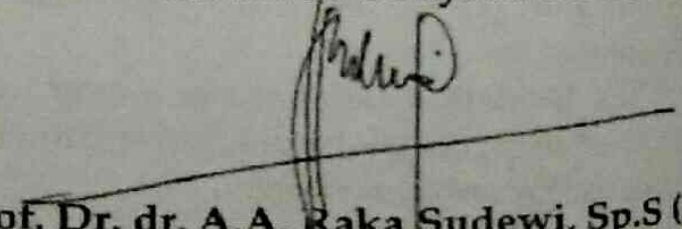
Through this international seminar, we can share ideas and give new suggestions to each other so that this international seminar will be meaningful for all of us. We do hope, that all ideas presented by the speakers will enrich our viewpoints and understanding on matters related to build collaboration and network in a globalised world.

I thank you all for being here. I wish you a fruitful seminar and please enjoy staying in Bali

Thank you very much.

Om Shanti, Shanti Shanti Om

Rector of Udayana University



Prof. Dr. dr. A.A. Raka Sudewi, Sp.S (K)

WELCOME MESSAGE
HEAD OF POSTGRADUATE PROGRAM
OF CULTURAL STUDIES
FACULTY OF ARTS-UDAYANA UNIVERSITY

Rector of Udayana University, Prof. Dr. dr. A.A. Raka Sudewi, Sp.S (K)
The President of IFSSO (International Federation of Social Sciences Organization), Prof. Nestor Castro Ph.D.
The Dean Faculty of Arts Udayana University, Prof. Dr. Ni Luh Sutjiati Beratha, M.A.
Prof. Joseph P. Lalo, Ph.D., (from the Philippines),
Prof. Dr. Yekti Maunati, M.A. (The Indonesian Institute of Sciences, Jakarta)
Dr. Sri Sunarti Purwaningsih, M.A. (Head of Research Center for Culture and Society, the Indonesian Institute of Sciences)

Professors and postgraduate students,

Om Swastyastu,

First, I would like to express my gratefulness *angayubagia,* to Ida SanghyangWidhiWasa, Tuhan Yang Mahaesa, the Almighty God, and welcome for all of you in Bali regarding our International Seminar on "Building Collaboration and Network in A Globalized World", held by the Postgraduate Program of Cultural Studies, Faculty of Arts-Udayana University in collaboration with the International Federation of Social Science Organizations

Ladies, gentlemen, and all participants,

I am happy to welcome you to the international seminar starting this morning in the Prof Dr. Ida Bagus Mantra Building, Faculty of Arts Udayana University in Denpasar Bali. I would like to extend my warm welcome to distinguished guests: Prof. Nestor Castro, Ph.D., (The President of IFSSO), Dr. Hakan Gullerce (Sociologist from Istanbul Foundation for Science Innovation), Prof. Morad Moulai Hadj (Department of Sociology, Faculty of Social Sciences, University of Oran 2- Algeria), Prof. Joseph P. Lalo, Ph.D., (from the Philippines), Prof. Yekti Maunati, Ph.D. M.A., and Dr. Sri Sunarti Purwaningsih (from the Indonesian Institute of Sciences, Jakarta), and all participants.

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Delegates will have the opportunity:

To discuss topics ranging from ways to strengthen social sciences in Building Collaboration and Network in A Globalized World.

To examine the recent specific issues related to the development of social sciences and humanities studies.

By sharing our experiences on social sciences and humanities studies, we expect that we can widen our knowledge and experiences as well as strengthen our network among sholars in the fields of social sciences and humanities.

This also shows that there is a need for a regular regional seminar to provide a platform for the dissemination of research to each other and to the public in general.

As the Organizing Committee, I also would like to express my sincere thanks to all parties who have provided positive supports, both material and spiritual towards the achievement of this International seminar.

This international seminar bringing together more than 50 participants from across the world will explore the global connection in the world; will share ideas and comments, so that it will be fruitful for all of us and the ideas presented by the speakers will enrich our viewpoints and understanding on the development of social sciences and humanities studies. I do hope the Rector of Udayana University will kindly open this International Seminar.

I am sure as this seminar will bring many opportunities to learn one another as well as to develop new collaborations, network and partnership for the better future in the region.

Thank you very much.

Om Shanti, Shanti Shanti Om

Prof. Dr. phil. I Ketut Ardhana, M. A.

PREFACE

International Seminar on "Building Collaboration and Network in A Globalized World", held by the Postgraduate Program of Cultural Studies, Faculty of Arts-Udayana University in collaboration with the International Federation of Social Science Organizations (IFSSO).

This International Seminar 2017 basically does not end when the event is done. Efforts to disseminate and recommendation from research have been an integral part of research have been an integral part of a research process itself. The results of research should remain open at certain level and be widely publicized.

Publishing the proceedings of "Building Collaboration and Network in A Globalized World" is an effort to disseminate research results. This proceeding book is a collection of research and study of researchers, academics, and doctoral candidates with different background from many fields of science such as politics, public administration, culture, education, arts, and tourism.

As organizer of the seminar, we hope this proceeding book is able to provide information and inspiration for those who are related to the topics of the research. We would also like to express our sincere gratitude and appreciation to all those who have supported in organizing this International International Seminar. Hopefully this small step can be a stepping stone for next bigger effort.

Denpasar, 14 September 2017

Derinta Entas, S.E.,M.M
Organizing Committee

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Role of Contract in Business Activity

Oleh :

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Abstract

The Role of law in the fair trade is important now, It wil support the development of business, Accordance with this, the business could be realized by making a contract which can be done by both of national and international business people. The Steps of making the contact can be done by: selecting the business partner selectively; pay for consultant; provide detail information concerning the capacity; pay for professional negosiator; and make a brief, detail, & precise contract, including the choice of law clause, as well as dispute resolution.
Key Words : Contracts; business activities; legal sources.

Abstrak

Peranan bidang hukum dalam perdagangan bebas sangat penting, terutama untuk memperlancar pengembangan bisnis para pengusaha . hal ini dapat diwujudkan melalui pembuatan kontrak oleh para pihak pelaku bisnis nasional maupun bisnis internasional. Tahapan/tata cara pembuatan kontrak dalam bisnis, dapat melalui cara seperti: memilih mitra bisnis secara selektif; memanfaatkan jasa konsultan ahli; menyediakan informasi lengkap mengenai kapasitas bisnis yang dilakukan; memanfaatkan jasa negosiator profesional; dan merumuskan kontrak secara ringkas, cermat, dan lengkap termasuk pencantuman klausa-klausa pilihan hukum, dan penyelesaian sengketa.
Kata Kunci: Kontrak, Kegiatan Bisnis, Sumber Hukum.

CHAPTER I. INTRODUCTION

The flow of globalization and trade liberalism have led inter-state economies into dependence. The globalization and liberalism build the

challenge and opportunity which force all of the countries in the world to create adjustment and policy steps not only in the economy field but also in the field of law.

The correlation between law and economics affect each other so closely to fulfil the human need in their daily life. Economic development will affect the implementation of the law and vice versa, Legal changes will have a profound impact on economy. Government deregulation is basically a legal product because it involves regulations that have been proven to have a broad impact in the national economy. On free trade[1], law plays an important role to smoothen, develop the business especially the law of agreement. The law of agreement overpowered so many parts of human life, moreover it is unpredicted how many contracts are made each day. In broad terms, a contract is an agreement that defines the relationship between two or more parties. Commersial contracs in its simplest terms are agreements are made by two or more parties to conduct business transactions.

Based on the above explanation, there are two problems, namely: 1) How is the rule in making the business contract; 2) How are the function and position of the contract in business activities. Writing method used is with normative approach. This means that assessment is done by considering the theories or principles of law, legislation, and international conventions related to the issues discussed.

[1] Huala Adolf & A. Chandrawulan, 1994, "Masalah – masalah Hukum Dalam Perdagangan Internasional", Raja Grafindo, Jakarta, Page 1

CHAPTER II DISCUSSION

A. UNDERSTANDING AND SOURCE OF CONTRACT LAW

Black's Law Dictionary (1991) defined that contract is: *"An Agreement between two or more person which creates an obligation to do or not to do a particular thing[2]"* in other words: *"A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty"*. Hasanudin Rahman stated that Contract as a media or tool of engagement that is deliberately written in writing as an evidence for the parties concerned. Or in other words the contract is as a deliberate agreement made in writing as an evidence for the parties concerned[3]. Abdul R. Saliman gives the definition of a contract is an event in which two or more persons promise to commit or not to perform a particular act, usually in writing[4].

From a variety of notions of contract or contracts (in English) and overeenkomst (in Dutch) in a broader sense often referred to as the Covenant. But basically both contract and agreement have almost the same meaning. The contract refers to a thought to the existence of commercial gain obtained by both parties, whereas the agreement may simply mean a social agreement that is not necessarily beneficial to both parties commercially. Contract or agreement is defined as an act or an event or two or more persons mutually promise or agree to do or not to do a particular deed, which this event is made in writing.

Legal sources of contracts can be seen in various statutory provisions in Indonesia, such as the Civil Code (Civil Code), particularly the Third book on engagement (verbintenis), especially regarding the "Agreement"[5]. The provision of

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[2] Henry Campbell Black, 1991, Black's Law Dictinary, With Pronunciations, Abridged Sixth, Edition, Centenial dition (1891 – 1991), St. Paul. Minn,West Publishing Co., Page. 224

[3] Hasanudin Rahman, 2003, "Contract Drafting (Seri Ketrampilan Merancang Kontrak Bisnis)", Citra Aditya Bakti, Bandung, Page .3

[4] Abdul. R. Saliman, dkk, 2004, "Esensi Hukum Bisnis Indonesia (Teori & Contoh Kasus)", Prenada Media, Jakarta, Page 12

[5] Subekti, 1984, "Pokok- Pokok Hukum Perdata", Intermasa, Jakarta, Page. 122

Article 1233 of the Civil Code states that each engagement is born of the Agreement and the Law. Thus the Contract is the treaty itself, certainly as a binding agreement. In view of the Contract in Indonesian Law, Burgerlijk Wetboek (BW) is referred to as Overeenkomst which, when translated into Indonesian means Agreement. The terms "contract" or "agreement" in the Indonesian national legal system have the same meaning, as in the Netherlands, there is no distinction between "contract" and "overeenkomst" terms. Peter Mahmud Mazuki states that the Covenant has a broader meaning than the contract. The contract refers to a thought to the existence of the commercial advantage gained by both parties[6].

The agreement may mean a social agreement that is not necessarily beneficial to both parties commercially. One of the reasons why agreements by many people can not always be equalized by contract is because in the sense of the agreement given by Article 1313 of the Civil Code does not contain the word "agreement made in writing". The meaning of the agreement in the article only mentions as an act whereby 1 (one) person or more binds himself to 1 (one) other person or more.

Sources of contract law derived from the provisions of the Civil Code, primarily based on the treaty law can have a relationship with legal principles such as:

1. . **The principle of Consensuality**, it is important that for the occurrence of a covenant is sufficient to reach agreement on the principal matters of the treaty and that the covenant is born at the moment or second of consensus or agreement. In other words, the agreement is valid if the principal has been agreed and no formality is required[7]. The principle of consensuality can be concluded through Article 1321 juncto Article 1338 paragraph (1) of the Civil Code.
2. **The principle of Binding Strength**, whether in an open system held by contract law or for the principle of binding force, may refer to Article 1374 paragraph (1)

[6] Peter Mahmud Marzuki, 2002, “Kontrak Dan Pelaksanaannya”, Makalah Perkuliahan pada Program Pascasarjana Universitas Airlangga – Surabaya, Page 4

[7] *Ibid*., Page. 1

BW (old) or Article 1338 paragraph 1 of the Civil Code, states: "All Agreements made Legally valid as a law for those who make it ". The provisions of Article 1339 of the Civil Code include the principle of the binding force, as follows: "A covenant is not only binding on things expressly stated therein, but also for everything that is by nature of the treaty, necessitated by propriety, custom or law". Noting also the application of the principle of Pacta Sunt Servanda known in international law which is also used in the practice of international relations in declaring that "All agreements made by human beings on a reciprocity essentially intend to be fulfilled and if necessary can be enforced, so legally binding".

3. **The principle of Freedom of Contract**, the principle that people are bound by agreements assume a certain freedom within society to be able to participate in juridical traffic and this implies also the principle of freedom of contract. The validity of freedom of contract in Indonesian treaty law, among others, can be concluded in the formulation of Articles 1329, 1332, and 1338 paragraph (1) of the Civil Code which states as follows: Article 1329: "Article 1332:" Only merchandised goods can become the subject of a treaty. "Article 1338 paragraph (1):" Every person is competent to make attachments, if he by law is not declared incompetent. All legally-made agreements act as laws for those who create them. The scope of the principle of freedom of contract, under the law of Indonesia agreement as follows:

    a. Freedom to make or not to make arrangements.
    b. Freedom to choose the party with who wants to make the agreement.
    c. The freedom to decide or choose clauses of the agreement to be made.
    d. Freedom to determine the object of the agreement.
    e. Freedom to determine the form of a covenant.
    f. Freedom to accept or violate the optional law provisions (aanvullen, optional).

According to the explanation of the principle of freedom of contract, the entry into force of this principle is not absolute. The Civil Code provides restrictions on the principle of freedom of contract, in the provisions of: Article 1320 paragraph (1) of the Civil Code determines that "the agreement is illegal in

the absence of an agreement of the party making it. According to the explanation of the principle of freedom of contract, the entry into force of this principle is not absolute. The Civil Code provides restrictions on the principle of freedom of contract, in the provisions of: Article 1320 paragraph (1) of the Civil Code provides that "unlawful agreement if without agreement of the party making it.

From the provisions of Article 1320 paragraph (2) Civil Code can be concluded that the freedom to make an agreement is limited by the ability. Article 1320 Paragraph (4) juncto Article 1337 of the Civil Code provides that "the parties are not free to enter into agreements in respect of powers prohibited by law or against good morals or contrary to public order."

Article 1332 of the Civil Code provides for the freedom of contracting the parties to enter into agreements as far as the object of the treaty is concerned. Under this provision it is not free to agree to any goods whatsoever, only goods of economic value alone shall constitute the object of the agreement.

Other restrictions on the principle of freedom of contract from the point of view of legislation, morality and public order shall refer to the provisions of Article 1335 of the Civil Code determining: "A covenant without cause, or which has been made by something or false or forbidden has no power." Article 1337 The Civil Code determines: "A forbidden cause, where prohibited by law, or when contrary to good morals or public order." The limitation of freedom of contract from defects in the will may take the form of: oversight, coercion, fraud and abuse of circumstances.

4. **Principle of Personality (Privity of Contract),** the principle of personality contained in Article 1340 Civil Code, determines: "An agreement only applies between the parties that make it. An agreement can not bring harm to third parties; No third parties may benefit, other than in matters governed in Article 1317. The scope of the provisions of Article 1340 of the Civil Code is limited to the parties involved in a treaty only as stated in the article 1340 (1). Accordingly, any third party or party outside the treaty can not claim a right under that agreement. Paragraph (2) states that the treaties can not

harm or provide benefits to a third party except for the matters set forth in Article 1317 of the Civil Code, which is a promise for the benefit of a third party that is to give up its right to a third party.

B. CONDUCT TERMS OF CONSTRUCTION

According to Article 1320 of the Civil Code, the contract is valid if it meets the following requirements:

1. The ability to make contracts (adult and not sick); and
2. Their binding agreements.Terms Objective, if this condition is violated then the contract is null and void, including:
3. The ability to make contracts (adult and not sick); and
4. Their binding agreements.

Terms Objective, if this condition is violated then the contract is null and void, including:

1. Acertain thing (Object); and
2. A lawful cause (kausa).

Here we have to distinguish between subjective requirements with objective terms[8]. The non-fulfillment of the objective conditions resulted in the agreement being null and void. That is, from the beginning never a promise was born and there was never any engagement. The aims of the parties to enter into such agreements to produce a failed engagement. Thus, there is no basis for mutual prosecution before the judge. According to English it is said that such is null and void[9].

The non-fulfillment of the subjective requirement resulted in his agreement null and void, but one of the parties had the right to request that the agreement be canceled. The party who can request the cancellation is an incompetent party or parties who give unanimous agreement. Accordingly, the treaty has been made binding as long as it is not canceled (in the case of a judge) at the request of the

[8] Johanes Ibrahim & Lindawaty sewu, 2004, "Hukum Bisnis Dalam Persepsi Manusia Modern", Penerbit Refika Aditama, Bandung, Page. 44

[9] Hasanudin Rahman, *Op. Cit*., Page 8

party entitled to request such cancellation. Given the validity of the principle of consensuality in the making of a contract, it means that two or more parties have agreed on a matter. The application of the principle of consensuality in a contract means basically the contract that arises because of it has been born from the moment the agreement is reached. In other words, the contract is valid if it has agreed on the principal and does not need a formality. The form of consensuality in a contract can be realized through the signature of the parties involved in the contract. Signature which in addition serves as a form of agreement, as well as a form of agreement on the place and time and the contents of the contract made. The signature also relates to the intentions of the parties to make a contract as a proof of an event.

The requirement of the ability to make a contract must be clearly stated about the identity of the parties. Article 1330 of the Civil Code, states that persons who are not competent to make an agreement are:

1. People who are immature;
2. Those who are placed under the ability; and
3. Women in matters established by law, and all persons to whom the Act has prohibited the making of certain agreements

To a certain extent, with respect to the subject matter of the content becomes the content of the contract. An agreement must have an object (or in this case may be a service) at least specified, and the amount may not be specified at the time the contract is made as long as it can be calculated or determined in number (note the Article 1333 Civil Code). Judging from the Dutch language, the translation of goods in Article 1333 of the Civil Code comes from the word zaak which, according to the General Dictionary of Dutch - Indonesia by S Wojowasisto, can be interpreted as: Benda (barang);

1. Goods
2. Enterprises (enterprises);
3. Disputes / cases;
4. Subject matter;
5. Something that is required (necessity); and
6. Not important.

Related to that, if it is related to Article 1320 of the Civil Code which states that one of the terms of the contract / agreement is a certain "matter" and the word "thing" is derived from the Dutch onderwerp which may also be defined as the subject or subject (or subject matter) Problem), then it is more appropriate to be translated as the subject matter.

Zaak in Article 1333 of the Civil Code (also in Articles 1332 and Stake 1334) is more correctly translated as the subject matter because the subject or objective of the agreement / contract may be not objects / goods, but in the form of services or services, such as those done by PT. PLN Distribution Bali is providing services / services in the electricity sector to the consumer that is for the public, especially Balyarakt Bali. Thus in an agreement / contract should contain a certain subject / object in order to be implemented. The judge will do his best to find out what the principal or object of a contract is for the contract to be entirely determined by the contract's subject, then the contract becomes null and void.

C. CONTRACT DESIGNING PROCEDURE

In the era of globalization, many business people who conduct transactions or business activities through the creation of a contract as a binding instrument for the business relationship. In order to avoid misinterpretation of the contents of the contract as well as the occurrence of a dispute resulting from a business relationship that may pose a risk of loss to both parties, business people should know and understand the procedures of contract design. Practically put, the procedures for contract design are as follows: First, selectively select a business partner. Should be selected partners who are bona fide or have a good reputation and business capacity. This can be done by capturing the complete information. Secondly, using the consultant's skill-qualified consultant to draft or review the contract, for example useful such as formulating a contract with the use of words or phrases that do not have multiple meanings, but must use words or sentences that have meaning / meaning Such as the use of the Indonesian language in a concise, thorough and

complete manner including the inclusion of legal choice clauses and dispute resolution, thirdly, providing as much information as to the nature and capacity of the business to be deployed. Fourth, utilizing professional negotiator services. These services are generally available to certain consultants who also provide mediation services. Fifth, to formulate the contract concisely, thoroughly and including the inclusion of legal choice clauses and dispute resolution[10].

In practical life, business people should know the various aspects that must be considered in making the contract, such as status, capacity, and bonafidity of each party, the characteristics of the contract object, and the choice of legal and choice of dispute resolution to be used.
Each party should know with certainty the status and economic potential of the party to be its contract partner. In a capital or marketing arrangement, the status of the parent or branch of the company should be known; Capital; Turnover; and its market area; Bona fideity and history of development and business practices. Failure to do so may result in problems related to the prosecution of responsibility for the consequences of contractual breach by one of the parties, the extent of the obligations to be carried out in connection with the established cooperation, the share of profit generated by the cooperation, the broad responsibility of each party to the parties Third, in the event of a loss to a third party due to the application of the contract made.

Another thing that should also be observed is the issue of contract object. The parties should know exactly the characteristics of the object of the contract to be contracted, as well as the implications of any formulation of contracts established in connection with the object. Failure to do so may result in various issues relating to the implementation and consequences of contract execution, including benefits gained.

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[10] Schaber, Gordon.D., and Rohwer, Claude.D., 1984, "Contract in a Nutsel", Second Edition, West Publishing Co.,St.Paul, Minn. And Ida Bagus Wyasa Putra, 2000, "Aspek – Aspek Hukum Perdata Internasional Dalam Transaksi Bisnis Internasional", Penerbit Refika Aditama, Bandung,

The parties should also specify the law to be used as the basis of the contract established including, the legal system and dispute resolution to be selected to resolve the dispute arising, directly or indirectly from the effect of contracting. This issue is particularly important in Links to contracts made for the purposes of international business transactions / activities. For this purpose, the parties should know the legal system (domestic / national) of a country to be selected as the basis of the contract as well as the basis for dispute resolution. The neglect of this may cause problems in the vagueness of the status or resignation of established contracts; Confusion in dispute resolution, due to the lack of attitude towards the dispute resolution institution to be used; and the legal uncertainty selected as the basis for dispute resolution. The final node of these problems is efficiency, which can adversely affect the implementation of business predictions and the realization of benefits.

In contract making, a contract designer before deciding to draft an international business contract, he must first understand the legal system affecting business transactions that will be conducted by his client with other parties abroad. The reason according to Karla C. Shippey, J.D. There are at least 2 (two) things: First, the law in both countries (our country with the state of foreign business partners) will determine certain aspects of the contractual relationship. Secondly, the law in one country (not necessarily in our country) may be more profitable for us than the laws of other countries[11]. Basically this world has 4 (four) types of legal system that can be used as basis in commerce: common law, civil law, shari'ah (Islamic law), and communist / socialist law. Banayk countries adopt a combination of these legal systems while maintaining the cultural influence of the nation. For example, Japan looks to Germany as it develops its modern law, and therefore follows the civil law system even though its trade practices appear to be influenced by the American model. The law in Malaysia is a combination of common law, Islamic law and principles of Malay teachings.

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[11] Karla C. Shippey.J.D., 2001, "Menyusun Kontrak Bisnis Internasional", Cetakan Pertama, PPM, Jakarta, Page 142. Terkutip dari Hasanudin Rahman, *Op.Cit.,* Page 225

The civil law system in Egypt was adopted and combined with Islamic principles with the common law of France and some general laws that reflect British influence. In Asia, Africa and South America, the legal system of each country usually follows the legal system of the "master" of its colonists. Brazil implements a legal system reflecting Portuguese history, while Singapore implements a common law system inherited from British law.

Taking into account the current practice of business activities both nationally and internationally / across the borders of dominant countries occurs in countries that have common law (Anglo saxon) legal systems and civil law (continental law) legal systems. Such a legal system can be owned by a country very influential on the position of the contract as a formal legal source for the parties who make the contract. This is also related to the legal relationship that occurs in a contract in the form of rights and duty / obligation for contract makers.

The Common Law system, the peculiarity of this system is that courts are based on decisions that have been made by the courts against previous cases. In other words, courts in common law countries apply and interpret legislation with principles that have been developed in previous decisions or by extrapolating new principles from the old principles to apply to a new, factual situation.

At Common Law Principle known differences between formal contract and informal contract. Contracts that follow the formalities specified are called Formal Contracts, while others are classified as Informal Contracts. Any oral or written contract that is not sealed or not a "Contract of Record", is considered an Informal Contract or otherwise known as a Simple Contract. The Informal Contract has no requirement concerning the language, form or arrangement and consists of obligations made by the parties promising by stating simply and usually most without legal language. A Formal Contract by the Common Law Principle must:

1.Written;
2.Signed, witnessed and placed under the seal of the parties; and
3. Delivered[12].

[12] O.G. Rai Widjaya, 2002, “Merancang Kontrak (Contract Drafting)”, Cetakan Pertama, Mega Point, Jakarta, Page 34 - 35

In the civil law legal system is used jurisdiction of non judges, except for criminal cases, and the court usually consists of judges. Compared to the common law system, in the civil law system there are fewer well-identified rules regarding evidence, defense and oral arguments before a judge is only allowed to be minimal. Most evidence is presented to the court in written form. The judge's decision is usually based on the interpretation of codified law without reference to previous cases, although in some countries past case decisions are recognized after the same decisions have been made many times.

As a result, the decision of a proposed lawsuit is somewhat unpredictable compared to the common law court, which is based on previous legal case decisions.

Most countries that do not apply common law have civil law systems. Civil law is characterized by a comprehensive and systematic set of legislation, known as law, which governs almost all aspects of life. These countries first developed new rules and then expanded their courts. Therefore, court decisions are based on the legal principles of existing legislation.

Many countries that implement civil law systems have procedures to recognize arbitration decisions. An efficient arbitration system is also available in many countries that embrace this legal system, although only a few types of disputes are resolved through the arbitration process.

D. THE CONTRACT PERIOD

The contract is declared binding and entered into force for the contracting parties in the business relationship since the agreement and the endorsement of the signing of both contracting parties. At the time of entry of a contract depends on the agreement of the contracting parties in accordance with the interests of domestic / national business relationships or international business relations or through cross border. It is usually set out clearly and firmly within the contents of the contract as an object or subject of contract by the contract maker as agreed.

A contract based on the period or term of the contract there are two types: First, Single Year is a contract of implementation of work that binds budget funds for

a period of 1 (one) budget year; And secondly, multiyear is a contract of work execution that binds budget funds for a period of more than 1 (one) fiscal year undertaken with the approval of the Board of Commissioners (DEKOM) / General Meeting of Shareholders (RUPS)[13] of the Contract may be terminated, As follows: 1) Payment; @) The cash offerings are followed by the storage of the product to be paid somewhere; 3) Debt renewal; 4) Compensation; 5) Debt mixing; 6) debt relief; 7) Deletion of the product intended in the contract; 8) Cancellation of contract; 9) Due to the enactment of a cancellation requirement; And 10) Through time[14].

E. THE POSITION AND FUNCTION OF CONTRACT IN BUSINESS

1. THE POSITION OF CONTRACT IN BUSINESS ACTIVITIES

Business transactions can be local and international. Local business transactions take place between parties within a country regarding the object of the treaty in the country. International business transactions involve parties and or objects of agreement which do not originate from one State, but originate in more than one State or object or subject may come from abroad. For local business transactions controlled by the law of the country concerned. The law applicable to international business transactions is usually specified in the contract. But in determining any applicable law because it needs to note the International Civil Law (HPI) which is actually a national law of each country.

International business is a cross-border commercial activity carried out between individuals or companies of different nationalities, based on specific outcomes (futures out-come) and aims to gain an advantage (engage in for gain)[15].

International business activities and transaction namely, *"...Act of transacting or conducting any business; management; proceeding; that which is done; an affair".* Kemudian disebutkan *"... it way involve selling, leasing, borrowing, mortaging or lending... it must therefore consist of an act or agreement, or several*

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[13] Keputusan Direksi PT. PLN. (PERSERO) No. 200.K/010/DIR/2004, 28 September 2004

[14] Abdul R. Saliman, *Op.Cit*., Page 35

[15] Henry Campbell Black, *Op.Cit*., Page 136

acts or agreements, or several acts or agreements having some connection eith each other, in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered...,"[16]

Contracts in various modern legal systems can be regarded as a favorable legal institution for contracting businessmen, for several reasons, among others: 1) allowing parties to establish legitimate interests, such as guaranteeing the execution of unsatisfactory contracts; 2) enable other individuals to show confidence in the market; 3) the working of pacta sunt servanda principle for effective contract implementation; And 4) may choose the role of other institutions to avoid a protracted and costly dispute settlement in the courts.

Contracts as an agreement of the parties in a business or business transaction whether local or national or international or cross border crossing the State of a certain thing (object), may cause rights and obligations to the parties, so the contract creates a legal relationship for the parties. A contract in a business activity is a binding instrument for a business relationship.

Thus contracts made by the parties, both national and international contracts, give rise to the rights and obligations of the contracting parties, therefore the contract they make is a formal legal source for the party making the contract. In other words, the position of the contract in the activity or business transaction is as a formal legal binding law against the contracting parties themselves.

2. THE FUNCTION OF CONTRACT IN BUSINESS ACTIVITIES

Considering the existence of the contract as an agreement and as a formal legal source for contracting parties in business activities or transactions conducted by business people, either local or domestic or Indonesian citizenship or foreign nationals and can also have objects that are national objects In Indonesia as well as objects abroad / international or cross borderline Neagara. Business activities or transactions conducted by business people can have a goal to gain an abundant advantage for both business people and as contract makers for the business. On this occasion can be seen several functions that can be owned by the contract for

[16] *Ibid*., Page 137

business activities undertaken by the business, such as the function to secure transactions or business activities (contract function in business activities) and functions that are economic.

The function of contract in business is to secure transactions. It is undeniable that the business relationship starts from the contract. Without a contract, no business relationship is possible. Contract can be done orally or in writing. At convention on international sale of goods in 19980, oral contracts are also recognized, but given that the contract function is to secure business transactions, if the verbal contracts by the parties can be viewed as secure because the integrity of each party can be guaranteed, written contract. Only if there is a third party who may object to the contract and oppose it, then both parties must prove the existence of the contract with other evidence.

In addition to the contractual function in the business, the contract also has economic function in terms of economics as stated by Erman Rajagukguk. The function of such an economic contract is as follows: 1) a contract that contains compensation if one of the parties breaches or breaches the contract, will provide an essential check on opportunity in non simulatneous exchanges by guaranteeing the one party, in the execution of the contract, not facing the risk , Rather than cooperation from other parties; 2) using parties given categories of exchanges with a set of contract terms (where they are free to determine if they wish), thus reducing transaction costs; 3) to reduce the inadvertence of the parties by assigning liability to the losers to the other; And 4) formulate a set of provisions which is a forgiving excuse in the execution of the contract so that efficient exchanges can be implemented, but do not encourage the execution of inefficient exchanges that do not meet the criteria of pareto efficiency.

CHAPTER III CONCLUSION

A. CONCLUSION

Based on the above description, the following conclusions can be made :

1. Procedures of contracting in business, in order to avoid business actors from the risk of loss, in other words safe way of contracting can be through ways such as: 1) selectively selecting business partners; 2) utilizing the services of consultants who have the expertise to prepare and review contracts; 3) provide complete information on the business capacity to be carried out; 4) utilizing professional negotiator services 5) formulating contracts with the use of words or sentences that do not have multiple meanings / plural, but must use words or sentences that have a single meaning such as the use of Indonesian in a concise, thorough and complete as well as inclusion of clauses Choice of law and dispute resolution. It should also consider with certainty the characteristics of the object of the contract, the formulation of the contract as well as the determination of the legal system (common law and civil law system) for contracts in international business activities.
2. The position and function of the contract in business activities. The position of contract in business activity is as a binding instrument in business activity or in other words as a source of formal law for business activities both national and international. The function of contracts in business activities is to secure transactions / business activities of a national or international nature (the function of a juridical contract). The contract also has an economic function, which includes: 1) a contract that contains compensation if one of the parties is defaulted; 2) using parties given catagories of exchange with a set of contract terms thereby reducing transaction cost; 3) to reduce the inadvertence of the parties by assigning liability to the party causing the loss to the other party; 4) formulate a set of provisions as a forgiving reason in the execution of the contract so that efficient exchange occurs,

but does not support the implementation of inefficient exchanges that do not meet the criteria of pareto efficiency.

B. SUGGESTION

1. In order for the parties in the making (especially in the formulation) of the contract to pay attention to the use of words or sentences that have no double meaning / plural, but must use words or sentences that have a single meaning / meaning such as the use of Indonesian.
2. In order for the parties to enter into a contract for business activity, it shall first observe the legal system prevailing in the country in which the contract is established having the common law / anglo saxon and civil law / continental law system. Because this is closely related to the status of the contract as a binding instrument or legal legal source for the contracting parties

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