



Legal Efforts For The Parties To The Sale and Purchase Agreement of Goods (Comparative Study of The United Nation Convention on Contracts For The International Sale of Goods (CISG) Provisions and The Civil Code in International Trade)

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ABSTRACT

A sale-purchase agreement is a type of reciprocal agreement that involves two parties, namely the seller and the buyer. Both parties who make a sale-purchase agreement each have the right and obligation to carry out the contents of the agreement they made. As in general, an agreement is a legal institution based on the principle of freedom of contract where the parties are free to determine the form and content of the type of agreement they make. However, the freedom to make an agreement will be different if it is carried out in a wider scope involving parties from countries with different legal systems. Each country has its own provisions which may differ from one another. This research is entitled: Legal Efforts for the Parties in the Sale-Purchase Agreement of Goods (Comparative Study of the Provisions of The United Nation Convention on Contract for the International Sale of Goods (CISG) and the Civil Code in International Trade). The problems that will be discussed from this research are: How to regulate the rights and obligations of the parties in a sale and purchase agreement in international trade both in the Civil Code and The United Convention On Contract For The International Sale Of Goods (CISG) as well as legal remedies that can be taken by the parties. parties in the event of an international trade dispute in the Civil Code and The United Convention On Contract For The International Sale Of Goods (CISG) This research is normative legal research. The first step is to carry out normative legal research based on secondary legal materials, namely an inventory of regulations relating to contracts and buying and selling of goods internationally, both contained in the Civil Code and in The United Convention On Contract For The International Sale Of Goods (CISG).). In the CISG legal remedies for sellers and buyers in the event of a dispute on the implementation of the agreement are divided into three categories, namely in terms of breach of contract, fundamental contract, and anticipatory breach. In the Civil Code, legal remedies for the parties in the sale-purchase agreement are regulated in Article 1236-1243 of the Civil Code in the event of a specific default and default, each of which has different consequences and duration of filing a lawsuit. Meanwhile, the claim for compensation is regulated in Articles 1243-1252 of the Civil Code.

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1. Introduction

A sale-purchase agreement is a type of reciprocal agreement that involves two parties, namely the seller and the buyer. Both parties who make a sale-purchase agreement each have the right

and obligation to carry out the contents of the agreement they made. As in general, an agreement is a legal institution based on the principle of freedom of contract where the parties are free to determine the form and content of the type of agreement they make. However, the freedom to make an agreement will be different if it is carried out in a wider scope involving parties from countries with different legal systems. Each country has its own provisions that may differ from one another. These differences will of course affect the form and type of agreement made by the parties who come from the two different countries because what is allowed by one country's legal system is not necessarily allowed by another country's legal system. With the diversity of the legal system, the international trading community makes an international convention to regulate international goods buying and selling agreements. Efforts to unify the law of international trading began in 1929 by UNIDROIT (International Institute for the Unification of Private Law) which was instituted in legal documents. These documents are in the form of international conventions, model law, legal guides, general legal principles, or contract standards. This unification took place at the suggestion of a German jurist named Ernest Rabel by forming a preparatory committee. After working for five years, the committee submitted an initial draft entitled The International Law on the Sale of Goods which was approved by UNIDROIT and submitted to the League of Nations for comments from member countries. On the basis of input from member countries, the committee then revised, in 1939 the UNIDROIT Executive Council issued a new version of the draft². the committee submitted an initial draft entitled The International Law on the Sale of Goods which was approved by UNIDROIT and submitted to the League of Nations for comment from member countries. On the basis of input from member countries, the committee then revised, in 1939 the UNIDROIT Executive Council issued a new version of the draft². the committee submitted an initial draft entitled The International Law on the Sale of Goods which was approved by UNIDROIT and submitted to the League of Nations for comment from member countries. On the basis of input from member countries, the committee then revised, in 1939 the UNIDROIT Executive Council issued a new version of the draf.

After the establishment of the United Nations in 1945 successively from 1951, 1956 and 1963 the Conference was held in The Hague. This conference was sponsored by the Government of the Netherlands, by establishing a Special Commission in charge of improving the draft, resulting in the Final Act of the Conference on a Draft Convention relative to a Uniform Law on the Sale of Goods. At the last conference which was held from April 2 - 25, 1964, 2 (two) new conventions were established, namely : convention on Uniform Law on the International sale of Goods(ULIS) and Convention on Uniform Law on the Formation of Contract for the International Sale of Goods(ULFC).

United Nations Convention on Contracts for the International Sale of Goods (*CISG*) basically only regulates the sale and purchase of goods that are international in nature. This means that purely domestic contracts are still governed by their respective national laws. The aim is not only to ensure the creation of a uniform international trading law regime, but also an effort to make regulations that are more responsive to the needs of the international business community.

As is the case in the European Union, which has a disparity (mixed) legal system between common law and civil law. In order to prevent business transactions from being hindered by differences in perceptions, the Principles of European Contract Law which was agreed upon in Stockholm in May 1996. This principle of European contract law has in fact largely adopted UNIDROIT and UNCISG Principles of International Commercial Contracts (UPICCs) because experts who are members of the Commission on European Contract Law that composes (UPICCs).

The UPICCs principles have become a reference for contract law renewal in almost all parts of the world, such as Germany, the Netherlands, the United States of America, the State of

Canada, Quibek, Canada and Russia. This is a symptom of growing harmonization of civil law, especially contract law in line with free trade and globalization.

Considering that Indonesia has not ratified the UNCISG while Indonesia is a business partner of countries that are members of the WTO and the ASEAN Free Trade Area, it is time for Indonesia to start paying attention to efforts to ratify the UNCISG to avoid obstacles to international business transactions⁶. Optimism for harmonization is based on the fact that the independence of the State from metropolitan colonies has stimulated development in all fields, including development in the field of contract law. Because contract law is a system and institution to support free trade that is currently taking place. Almost most countries in the world are currently or have just updated their civil law, including contract law, because harmonization of law will overcome obstacles caused by differences in legal systems. Harmonization must be able to bridge the diversity of legal systems in the world, which in turn turns out to be things that are of common interest. The following is a civil law system that applies throughout the world.

2. Method

To obtain a scientific truth in writing the thesis, the writer uses the method of collecting data by means of library research, namely studying and systematically analyzing books, magazines, newspapers, internet, laws and regulations and other materials. other materials related to the material discussed in this thesis. The method used to analyze the data is qualitative analysis, ie the data obtained are then arranged systematically and then analyzed qualitatively to achieve clarity of the problems to be discussed.

3. Analysis and Results

3.1 Legal Efforts According to The Civil Code

a. Lawsuit about Default

In an obligatory agreement, there are always obligations that must be fulfilled by one party and these obligations are rights whose fulfillment can be demanded by the other party.

The party entitled to sue is called the debtor or creditor and the party authorized to fulfill the claim is called the debtor or debtor. On the other hand, something that can be demanded is called an achievement.

Achievements in the Civil Code are divided into three types, namely giving up an item, doing an act, and not doing an act. If a debtor does not fulfill his obligations, according to the law the debtor is said to be in default which causes him to be sued before a judge.

Subiectif classifies default actions into four types, namely :

- 1) does not carry out what is promised to be carried out;
- 2) carry out what was agreed not as it should be;
- 3) did what was promised but was late;
- 4) do something that the agreement is not allowed to do.

Meanwhile, Pitlo argues that a default can occur if the debtor has an error. Error is the presence of an element of negligence or intentional. Deliberately occurs if the debtor knowingly and willingly does not fulfill his obligations. Negligence occurs if the debtor can prevent the cause of non-performance and the debtor can be blamed for not preventing it.

Thus, a person can be declared in default when the person concerned does not carry out his

obligations to fulfill his achievements and the non-performance of these obligations is due to negligence or intentional.

Van Dume stated that in the event of a default, the creditor who was harmed from a reciprocal engagement had several options for various possible claims, namely⁴⁷:

- 1) demanding achievement only;
- 2) claim performance and compensation;
- 3) claim compensation only;
- 4) demand the cancellation of the agreement;
- 5) demand cancellation of the agreement and compensation.

This is nothing but intended to provide protection for creditors, in order to defend the interests of dishonest debtors.

However, the law also pays attention to and provides protection for debtors who do not fulfill their obligations, if this occurs not due to error or negligence. Subjectif stated that a debtor who is declared in default is still possible to make a defense in the form of:

- 1) file a claim for the existence of coercive circumstances;
- 2) propose that the creditor himself has also been negligent;
- 3) file that the creditor has waived his right to claim damages.

The provisions regarding the coercive circumstances in the Civil Code can be found in articles 1244 and 1245 of the Civil Code. The two articles are intended to protect debtors who have good intentions.

However, Pitlo emphasized that if the debtor has defaulted, the debtor can no longer free himself on the basis of coercive circumstances that occurred after the debtor broke his promise. Obstacles of the debtor to carry out the agreement due to coercive circumstances can theoretically be distinguished between absolute and non-absolute coercion.

Prodjodikoro stated that the absolute compulsion to occur caused the promise to be completely unfulfilled by anyone and in any way. The state of coercion does not absolutely occur if the implementation of the promise is still possible but it is so difficult and with the sacrifice of the authorities in such a way that it is appropriate that the obligation to carry out the promise is considered non-existent or disappears.

b. Lawsuit on Unlawful Acts

The Civil Code (KUHPerdata), Article 1365 states that "every act that violates the law that causes harm to another person, requires the person who because of his fault published the loss, compensates for the loss.

Article 1365 of the Civil Code determines the conditions for determining an unlawful act. First, there must be an act against the law, namely not only an act that is contrary to the law, but doing or not doing something that violates the rights of others or is contrary to the obligations of the person who does or does not act, is contrary to the nature of caution as appropriate in society.

Second, there is an error. Third, there are losses. Fourth, there is a causal relationship between the unlawful act and the loss.

Furthermore, Article 1366 of the Civil Code states "everyone is responsible not only for losses caused by his actions, but also for losses caused by negligence or carelessness". Article 1367 of the Civil Code regulates "a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents, or caused by goods under his control".

The unlawful act always looks at the consequences and not at the cause. So, unlawful acts do not need an element of intent or negligence, but it is enough that an error has been made, so that the party who made the mistake can be held civilly responsible.

As a result of unlawful acts, other people lose. So, the party who commits an unlawful act must be responsible for the loss suffered by the other person.

Based on the description above, it can be concluded that any action of a party which is an unlawful act that results in harm to another party, can legally be held civilly responsible by filing a lawsuit to the court.

Civil liability and compensation that must be borne by the party who commits an unlawful act is only limited to direct losses from unlawful acts.

c. Lawsuit Over The Internet

Namely In fact, in a legal event, including buying and selling electronically, it is inseparable from the possibility of violations committed by one or both parties, and violations of the law may be categorized as Unlawful Acts (Onrechtmatigedaad) as stipulated in Article 1365 of the Civil Code. which states that : "Every act that violates the law, which brings harm to another person, obliges the person who because of his fault issued the loss, compensates for the loss."

Based on the above definition, an act can be considered an act against the law if it fulfills the following elements:

- 1) there is an unlawful act
- 2) there's a mistake
- 3) there is a downside, and
- 4) there is a reciprocal relationship between elements 1, 2 and 3.
- 5) A person cannot be prosecuted for committing an unlawful act, if the act is carried out in a state of emergency/noodweer, overmacht, the realization of personal rights, due to employment orders or forgivable misunderstandings. If the element of guilt in an act can be proven, then he is responsible for the losses caused by his actions, but a person is not only responsible for losses caused by his own mistakes, but also for actions that contain errors committed by people who are his dependents, goods- item
- 6) are under their supervision and their pets, as stipulated in Article 1366 to Article 1369 of the Civil Code.
- 7) Losses caused by unlawful acts can be in the form of material losses and or immaterial losses. Material losses can consist of actual losses suffered and expected gains. Based on jurisprudence, the provision for compensation due to default as specified in Article 1243 to Article 1248 of the Civil Code is applied analogously to compensation for damages caused by unlawful acts. Immaterial losses are losses in the form of reducing the comfort of a person's life, for example due to humiliation, disability and so on, but someone who commits an unlawful act does not always have to provide compensation for the immaterial loss.
- 8) In order to be able to claim compensation for people who commit acts against the law, in addition to having an error, Article 1365 of the Civil Code also requires a causal relationship/causal relationship between unlawful acts, errors and existing losses, thus the damages that can be claimed for compensation are only the loss caused by the unlawful act.

Acts against the law as regulated in Article 1365 of the Civil Code can also be used as a basis for claiming compensation for actions deemed unlawful in the process of buying and selling electronically, whether carried out through litigation dispute resolution or through the court by filing a lawsuit, as well as settlement non-litigation disputes or out of court, for example by negotiation, mediation, conciliation or arbitration.

3.2 Legal Efforts According to The United Nations Convention On Contracts For The International Sale of Goods (CISG)

In the CISG legal remedies for sellers and buyers in the event of a dispute on the implementation of the agreement are divided into three categories, namely in terms of breach of contract, fundamental contract, and anticipatory breach. In the Civil Code, legal remedies for the parties in the sale-purchase agreement are regulated in Article 1236-1243 of the Civil Code in the event of a specific default and default, each of which has different consequences and duration of filing a lawsuit. Meanwhile, the claim for compensation is regulated in Article 1243 to Article 1252 of the Civil Code.

In the following, we will look at some of the legal remedies contained in the CISG :

a. Legal Remedies in Breach of Contract

- 1) For Buyers, it is regulated in articles 45-52 CISG and 74-77 CISG.
 - a) The buyer has the right to ask the seller to deliver the goods.
 - b) The buyer has the right to ask for replacement goods and compensation.
 - c) The buyer has the right to request cancellation of the agreement.
 - d) The buyer has the right to ask for a price reduction.
- 2) For Sellers, it is regulated in articles 61-65 CISG and 74-77 CISG.
 - a) The seller has the right to request the execution of the agreement on the buyer to pay the price, accept the delivery of the goods and determine the extension of time to perform the obligations.
 - b) The seller has the right to request cancellation of the agreement.
 - c) The seller has the right to ask for compensation including lost profits (articles 74-77 CISG).

Legal remedies regulated in the CISG are interrelated. The right to recover losses as regulated in articles 74-77 of the CISG does not disappear if the parties use other legal remedies.

b. Legal Efforts in Fundamental Breach.

- 1) Article 25 of the CISG confirms the understanding of a fundamental breach that a violation of the agreement committed by one party will be fundamental if this violation will cause harm to the other party to such an extent that it is not possible to obtain what is expected according to the agreement, except for the party committing the violation. indeed could not have foreseen the occurrence of such a thing, nor would anyone else in the same circumstances as himself would reasonably have been unable to foresee the outcome of such a thing.
- 2) As a legal consequence of a fundamental breach, each party may request the cancellation of the agreement under Article 26 of the CISG.

c. Legal Efforts in Anticipatory Breach.

- 1) The Parties have the right to request the suspension of the implementation of the agreement. Pursuant to Article 71 of the CISG, both the seller and the buyer can delay the performance of obligations if the counterparty does not perform an important part of its obligations as a result of a deficiency in the ability to perform the obligations or its bona fide or or its actions in preparing the implementation or implementation of the agreement.
- 2) The Parties have the right to request the cancellation of the agreement.

According to article 72 of the CISG if before the date of delivery of the contract it has become clear that one of the parties will commit a fundamental violation of the agreement, the other party can declare the agreement as canceled by notification.

In the event of delivery of goods in installments, the failure of the counterparty to carry out its

obligations is a fundamental violation and therefore a cancellation of the agreement may be requested. However, according to the CISG, avoidance measures do not apply to the entire contents of the agreement. Based on the provisions of article 81 of the CISG, avoidance does not apply to provisions regarding disputes, provisions governing the rights and obligations of the parties as a result of avoidance, and parties who have implemented the agreement either in whole or in part are entitled to claim compensation.

Thus, the CISG distinguishes between remedies available to buyers (Articles 46-52), those available to sellers (Articles 61-65) and those available to sellers and buyers (Articles 71-78). In the following, some concrete forms of legal remedies that can be taken according to the CISG can be seen, namely.

d. Lawsuit Efforts Through the Internet

- 1) Buying and Selling Transactions Through the Internet (Electronic Commerce). Based on the provisions of Article 1 number 10 of the Draft Law on Information and Electronic Transactions (RUU ITE), it is stated that electronic transactions are legal acts carried out using computers, computer networks or other electronic media. Electronic buying and selling transactions are one of the embodiments of the above provisions. In this electronic sale and purchase transaction, the parties involved in it carry out a legal relationship as outlined in a form of agreement or contract which is also carried out electronically and in accordance with the provisions of Article 1 number 18 of the Bill on Electronic Information and Transactions (ITE), referred to as a contract. electronic means an agreement contained in an electronic document or other electronic media.
- 2) Legal Actions for unlawful acts in Buying and Selling Transactions Through the Internet (Electronic Commerce). According to the provisions of the Bill on Information and Electronic Transactions (ITE), in particular Article 34 states that the public can file a lawsuit in a representative manner against parties who use information technology that results in harm to the community. A person can file a lawsuit on behalf of other people who are harmed without having to first obtain a power of attorney as usual legal counsel. A lawsuit on a representative basis is possible if it has fulfilled the following 62:
 - a) The number of people who are harmed is very large, so that if the lawsuit is filed individually it becomes ineffective;
 - b) A group of people who represent must have the same interests and demands the same as the community they represent, and are both victims of an unlawful act of the same person or institution.

4. Conclusion

Comparison of Sale and Purchase Agreements in International Trade in the Perspective of Indonesian Civil Law and those regulated in The United Nations Convention on Contracts for the International Sale Goods (CISG), are: (1) According to the Civil Code The sale and purchase agreement is regulated in Article 1457 of the Civil Code which states that buying and selling is an agreement in which one party binds himself to deliver an object, and the other party pays the promised price. The method and formation of a sale and purchase agreement, can occur openly, as happens in sales on an executorial basis or what is called an *excutoriale verkoop*. Executorial sales must be carried out through public auctions by auction officials. However, this general way and form of executorial sales, rarely happens. Such a sale must require a court decision.

Therefore, buying and selling that occurs in the traffic of everyday people's lives is a hand-to-hand buying and selling, namely buying and selling carried out between sellers and buyers without official intervention, and does not need to be in public. The form of buying and selling, especially if the object is movable goods, is enough to do it verbally. Except for certain objects, especially regarding immovable objects in general, always require the form of a deed of sale

and purchase. The purpose of this deed is simply to study the sale and purchase with the need for delivery which sometimes requires juridical submission in addition to actual delivery. (2) according to The United Nations Convention On Contracts For The International Sale of Goods (CISG) The provisions of The United Nations Convention On Contracts For The International Sale of Goods (CISG) do not provide a specific definition of an international sale-purchase agreement. Article 1 of the CISG only provides limitations on the scope of application of the CISG provisions.

From the formulation of article 1 of the CISG, it can be seen that the agreement in question must have an international character according to the criteria in article 1 paragraph (1) of the CISG. Regarding goods, the CISG also does not define directly but provides limitations on goods that are excluded by the CISG. (1) The arrangement of the rights and obligations of the parties in a sale and purchase agreement in international trade both in the Civil Code and The United Nations Convention on Contracts for the International Sale Goods (CISG), are: a. According to the Civil Code, According to the Civil Code, the seller's main obligation is to deliver the goods and bear it (Article 1474 of the Civil Code), as mentioned above. While what is meant by guarantee or *vrijwaring* is a condition where the seller assumes control of the goods being sold in a safe and peaceful manner, and bears hidden defects in the goods he sells, so that they can be used for the intended purpose, without prejudice to use function. The seller is not responsible for visible defects.

If the seller finds out that there is a defect in the goods being sold, he is only obliged to return the price paid by the buyer, or replace the buyer's expenses in carrying out the purchase Basically the buyer has two main obligations, namely paying the price of goods and receiving delivery. Provisions regarding the buyer's obligation to pay the price are regulated in Articles 53 to 60 of the CISG. In this case, for the goods being sold, the conditions are compared with the trade in the goods in question. If the price of goods is determined by weight and doubt arises, the price is determined based on net weight. If the buyer is not bound to pay a price in a certain place, he must pay the seller: at the seller's place of business and if payment is made by delivery of goods or documents, on the spot, (1) Comparison of legal remedies that can be taken by the parties in the event of an international trade dispute in the Civil Code and The United Nations Convention on Contract for the International Sale Goods (CISG).

Article 25 of the CISG confirms the understanding of a fundamental breach that a violation of the agreement committed by one party will be fundamental if this violation will cause harm to the other party to such an extent that it is not possible to obtain what is expected according to the agreement, except for the party committing the violation. indeed could not have foreseen the occurrence of such a thing, nor would anyone else in the same circumstances as himself would reasonably have been unable to foresee the outcome of such a thing. As a legal consequence of a fundamental breach, each party may request the cancellation of the agreement under Article 26 of the CISG. (1) Legal Efforts in Anticipatory Breach, (a) The Parties have the right to request the suspension of the implementation of the agreement. Pursuant to Article 71 of the CISG, both the seller and the buyer can delay the performance of obligations if the counterparty does not perform an important part of its obligations as a result of a deficiency in the ability to perform the obligations or its bona fide or or its actions in preparing the implementation or implementation of the agreement. (b) The Parties have the right to request the cancellation of the agreement. According to article 72 of the CISG if before the date of delivery of the contract it has become clear that one of the parties will commit a fundamental violation of the agreement, the other party can declare the agreement as canceled by notification.

In the event of delivery of goods in installments, the failure of the counterparty to carry out its obligations is a fundamental violation and therefore a cancellation of the agreement may be requested. However, according to the CISG, avoidance measures do not apply to the entire

contents of the agreement. Based on the provisions of article 81 of the CISG, avoidance does not apply to provisions regarding disputes, provisions governing the rights and obligations of the parties as a result of avoidance, and parties who have implemented the agreement either in whole or in part are entitled to claim compensation. Thus, the CISG distinguishes between remedies available to buyers (Articles 46-52), those available to sellers (Articles 61-65) and those available to sellers and buyers (Articles 71-78).

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