

CHAPTER I

INTRODUCTION

A. Background

In recent decades, globalization has been increasingly growing. Which brings the distances between countries being closer. The growing impact of globalization gives opportunities to every country to make contact with another country. Even every individuals in the country are able to make a contact with individuals in another country.

The effects of globalization is getting larger on a rapid pace which certainly gives a big impact to the business world. Businesses grows rapidly and it gives big impacts to the economy on an individual scale or even on a larger, scale which is one's country economy.

Opportunities of having an international commercial contracts between states are getting bigger because of globalization. One state can make a commercial contract with another state, one individual also can make a commercial contract with an individual in another state. Even individuals can make a contract with another state.

Having a large opportunity as a result from globalization requires international associations to harmonize the laws of each states that of course differs from one to another. Every state has a different set of law that was adapted from its people. Every country has different backgrounds and

people. Indonesia itself consist of different backgrounds and cultures and they created a law to accommodate all the people in the country.

There are 2 types of agreement that can be made by individuals. The first one is an oral or verbal agreement, which is an agreement that was made by both individuals only by verbal wordings and verbal agreement without any written agreement. The second one is a written agreement which of course is an agreement that was written in a paper, agreed and signed by both parties.

Written agreement was divided into 2 types, which is the agreement authentic agreement and the non-authentic agreement. The agreement by under hand was only done by both of the parties without any witnesses. Meanwhile the authentic agreement has to be done in front of the officials that was competent so that the verification of the agreement will be impeccable and complete. On private law, finding evidences lean towards written proof and evidences. So evidences will be easier to prove if it was written rather on an oral form.

Indonesia follows the civil law as its law system whereas Singapore follows the common law. Certainly there are differences on how to make the rules and regulations, especially on rules regarding contract and agreements. Indonesia follows the principals of contract regulated in UNIDROIT and was a part of the UNIDROIT organization. Meanwhile Singapore is not a member of the UNIDROIT organization.

The distance between Indonesia and Singapore is very close to each other, allowing businessmen to stretch their wings to the international level. There are a lot of Indonesian companies that is working together with Singaporean companies. Certainly agreements were needed for the cooperation. The parties have obligations that has to be done and also rights that can be achieved. By having an agreement, it can assure both parties of their obligations and rights.

There are no concrete standardization regarding agreements. So each party are allowed to create the agreement. But there are some agreements that was actually not suitable with the standard agreement. Sometimes we can find agreements that are incomplete, or there are certain elements that inflicts a financial loss or may harm the other party, so on and so forth. Those things cannot be ruled out by the international organization because of the jurisdiction of a state. Every state has its own law regulating the agreements and contracts.

Every state has its own set of rules and regulations. There is no international organization that can control how a law in a state should be unless if that state has signed and ratified an international convention and was ready to adapt and make changes to harmonize the law with the international convention, especially regarding the commercial contract whether it is a domestic contract or an international contract.

The differences of law in each of the states regarding the commercial contract complicates parties from different states to carry out the contract. To make things easier, an international organization was made to regulate the contracts. The organization will make regulations regarding the commercial contract in order to ease the parties so that they will have a guidance on creating the contract.

The international organization was named UNIDROIT (The International Institute for the Unification of Private Law). This organization has the principals that acted as a foundation on creating a good agreement. The principals of UNIDROIT are very basic principal used by a party to create an agreement consisting of things that should be the foundation of the agreement, things that should be in an agreement, and things that should not be in an agreement.

Not every states in the world is a member of the UNIDROIT international organization. But the parties that are aware of the principals of UNIDROIT will mostly choose and use those principals on creating the agreement.

Indonesia pours the content of the principals of UNIDROIT that is known as UNIDROIT Principles of International Commercial Contracts (UPICC) on Kitab Undang-Undang Hukum Perdata about agreements.

Where Singapore who is not a member of the UNIDROIT applies the Law of Singapore about Commercial Law chapter 8, The Law of Contract.

We can see there are differences between the law in Indonesia and the law in Singapore regarding commercial contract. Certainly there should be similarities and differences on how to make and how to implement a contract in Indonesia and Singapore.

Based by the elaboration above, the Researcher chooses the title **“Comparative Study Between Indonesia Law of Contract and Singapore Law of Contract”**.

B. Research Questions

Based on the background of the study above, statements of the problems to be researched are as such:

1. What are the similarities in commercial contract between Indonesia and Singapore?
2. What are the differences in commercial contract between Indonesia and Singapore?
3. What are the effect by adopting UNIDROIT principles?
4. What are the effect by not adopting UNIDROIT principles?

C. Research objectives and benefits

1. Objectives

1. To analyze the principals of UPICC.
2. To analyze the requirements needed for an agreement in Indonesia and Singapore.

3. To compare the differences between the agreements in Indonesia and Singapore.
4. To compare the differences on the law and regulations regarding commercial contract in Indonesia and Singapore.

2. Benefits

The benefits that can be gained from this research is to make a good and better agreement based on the principals of UNIDROIT. To make an a good agreement we need a basic knowledge on how a good agreement should be made. So by analyzing the principals of UNIDROIT, it will enhance the knowledge of parties that are going to make an agreement based by the principals of UNIDROIT. Another benefit from this research is to know more about the agreements in Indonesia and Singapore. Are the agreements in Indonesia is already suitable based on UNIDROIT, or are the agreements in Singapore based on the principals of UNIDROIT too? By doing this research, readers are able to see the differences and similarities between countries who are members of the UNIDROIT organization and countries that are not members of the UNIDROIT organization. Also this research will bring further benefits to parties that are going to make agreement with other parties from other country that is not a member of the UNIDROIT organization.