

Settlement of the Cross-Country Cooperation Agreement between PT. Indah Logistik and City Cargo

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ABSTRACT

Logistics activities are not only focused on a particular area, but the movement of goods also crosses national borders. Indonesia and Saudi Arabia cooperate reasonably in religious activities, especially the Hajj and the Umrah. Millions of Indonesian citizens are estimated to carry out Umrah and Hajj worship activities yearly. This activity not only focuses on the movement of people but also the movement of goods, namely all the needs ranging from food and equipment that must be sent from Indonesia to Saudi Arabia, as well as vice versa, the luggage of Indonesian citizens who have completed the Hajj and Umrah. PT Indah Logistik, one of the logistics companies, sees the potential or opportunity from this movement of goods, but is experiencing obstacles with operational activities in Saudi Arabia. To run this opportunity, PT Indah Logistik collaborates with City Cargo, one of the logistics companies operating in Saudi Arabia, with the aim that all goods movements in Saudi Arabia will be handled by City Cargo and goods movements in Indonesia will be handled by PT Indah Logistik. However, both companies experience problems with the cooperation agreement, namely legal certainty regarding the law that will govern the contract and the place of dispute resolution when there is a dispute in the future. The settlement of the cooperation agreement between the two companies, which are located in two countries with different legal systems, must be done carefully by considering all legal theories and principles to realize an agreement that can mutually benefit both parties.

INTRODUCTION

Every year based on data from the ministry of religious affairs, it is estimated that there is a very significant surge of Hajj and Umrah pilgrims from Indonesia to Mecca and Medina, Saudi Arabia. Based on the latest data, it is estimated that there will be a surge of 68% of Umrah pilgrims and from the last recorded there were around 1,267,490 pilgrims in the 2022-2023 period. This surge is estimated to be 5 times in the last five years, the size of Umrah pilgrims each year is expected to be directly proportional to the number of goods movement from Indonesia to Saudi Arabia and vice versa. The movement of goods is quite large, of course, opening up great business opportunities for the logistics business, both in Indonesia and Saudi Arabia. Business opportunities in the field of logistics business from Hajj and Umrah pilgrims every year will certainly continue to increase, and must be responded to immediately by capturing this business. PT Indah Logistik as one of the largest logistics companies in Indonesia, saw this opportunity and then planned to open a logistics business in Saudi Arabia. However, in its implementation, it encountered obstacles because to open a business in Saudi Arabia, it is required to have citizenship status. This obstacle was then responded to by exploring cooperation with a local logistics company in Saudi Arabia, namely City Cargo.

After going through several meetings, it was then decided to enter into a cooperation agreement with City Cargo with the aim that the implementation of logistics operations in Saudi Arabia is handled by City Cargo and logistics operations in Indonesia are handled by PT Indah Logistik. In the process of drafting the agreement, the two companies are located in two different countries with different legal systems, where the Indonesian legal system adheres to the Continental European legal system or *Civil Law* and the legal system in Saudi Arabia adheres to the Sharia legal system or Islamic law. In Article 1320 of the Civil Code, four conditions for the validity of an agreement are stated, namely:

1. Agree with those who bind themselves
2. The Ability to Make an Alliance.
3. A certain thing
4. A halal cause.

These four requirements are a reference for business actors in Indonesia in making agreements, but the problem is whether it also applies to business actors in Saudi Arabia who adhere to a different legal system. In Islamic law, it is also regulated about agreements commonly called akad or *al agdu* which means binding, connecting or connecting. The meaning of a contract in Islamic law is defined as the meeting of *ijab* and *qabul* as the statement of the will of two or more parties to produce a legal effect on its object. There are three important things in a contract or agreement in Islamic law, namely:

1. *al-Āqidāni*, i.e. the parties who are directly involved in the contract
2. *Mahallul 'aqd*, which is the object of the contract which is also called "something to be done"
3. *Shighatul 'aqd*, a statement of the sentence of the contract which is usually carried out through the statement of *ijab* and *qabul*

Regarding proficiency in Islamic law related to covenants, it is not clearly regulated, but it has been regulated that a person is considered capable or mature after entering puberty and has sufficient intelligence.

Based on the comparison between the two legal systems in both countries, basically the requirements that state whether an agreement is valid or not, between Islamic law and civil law, are almost the same, i.e. the agreement of the parties, there is an object of agreement, and the conditions of competence are almost the same. However, in its implementation, the two business actors still try to make agreements based on the existing laws in their respective countries. The settlement of agreements between the two business actors in different countries and the legal system becomes more complex because each logistics activity has almost the same operational activities in both countries.

The application of the law in this cooperation agreement is very important because it will be a reference when at some point there is a problem in the future. Both parties try to find a solution regarding legal certainty that should be used or implemented that can benefit each party involved in the agreement and facilitate in the event of a dispute in the future. This problem will be the subject of discussion in this journal, how to get the best solution for both parties in determining the legal certainty that will be used in the agreement, whether it will refer to Saudi Arabian law or Indonesian law.

LITERATURE REVIEW

Research on cross-border cooperation agreements has primarily focused on those aimed at conducting activities within a specific country. The resolution of disputes related to such activities usually relies on the principles of international civil law, which emphasize the location where the legal activity or agreement will take place and the location where the implementation of the agreement occurs.

In dispute resolution, when the activity or place of implementation is clearly defined, the theories of **lex loci contractus** and **lex loci solutionis** are typically applied. With these two principles, if the location of the agreement's execution and the associated activities are known, it becomes relatively straightforward to determine how to resolve the associated disputes.

This research examines agreements in which both parties hold equal positions regarding the activities and location of the agreement. Under these circumstances, settling cross-border agreements requires attention to additional factors to ensure that both parties can agree on which laws apply and where dispute resolution will take place. Limited research has been conducted on international agreements in the logistics sector, so this study will focus on finding solutions for resolving cross-border agreements in which the parties involved have equal and balanced status.

METHODOLOGY

This legal research uses the Normative Juridical approach method, which is a problem approach by examining and reviewing a applicable and competent laws and regulations to be used as a basis for implementing problem

solving. Normative legal research is research by examining the body of literature or secondary data.

Legal research conducted in this theory will refer to legal theories on how to settle or make cross-border agreements. The literature study will try to explore how the concept of agreement in the two countries is, whether there are significant differences and how to bring the two concepts together so that the agreement can be implemented properly. Another thing that will be the focus of this study is the theories related to international civil law, which governs the important matters of an international treaty.

Legal materials that are analyzed qualitatively will be presented in the form of a systematic description by explaining the relationship between various types of legal materials, then all legal materials are selected and processed, then stated descriptively so as to describe and reveal the legal basis, so as to provide the right solution to respond to problems regarding the agreement at hand.

RESEARCH RESULTS

The findings of the literature review and several reference sources on cross-border agreements, especially those related to the existence of different legal systems, show that the factors of formation and the objects that will be involved or affected by the agreement greatly influence the settlement process.

There is no significant difference regarding the concept of agreement from the point of view of Islamic law in Saudi Arabia and the point of view of civil law in Indonesia. The only minor difference is in the requirements at the time when a person is categorized as capable in making an agreement while everything else is basically the same. The settlement of disputes related to cross-border affairs must be resolved by international civil law theories that approach from various points of view and the elements that form agreements and the objects affected.

In this study, it was also found that a cooperation agreement between City Cargo and PT Indah Logistik, is a logistics cooperation where the work or operational process will take place equally between the two countries. Each party has the same responsibility, so in the formulation of the agreement both parties want the applicable law and the place to settle the dispute is based on the laws of their respective countries and its location that is favorable to them.

Based on the conditions of the agreement by taking into account all the background and factors that affect the agreement, a theory of approach from international civil law was found, which can bridge the settlement of the cooperation agreement. The theory is the theory of the proper law of contract and the theory of the most characteristic connection, which will then be a source of reference for concluding the agreement by taking into account all the subjects, objects, impacts and factors involved in the agreement or international business contract.

DISCUSSION

In an agreement that applies in Indonesia, it is known that there are several principles that are a reference and reference in making an agreement, namely:

1. The basis of freedom of contract
It is a principle that gives the parties the freedom to determine the content of the agreement according to their will, as long as the matter regulated does not conflict with the applicable law and public order.
2. The Basics of Consensualism
It is the principle that states that an agreement is considered valid and valid since there is an agreement between the parties, without requiring a certain formal form.
3. The Basis of Good Faith
It is a principle that obliges the parties to the agreement to act honestly and fairly in carrying out their rights and obligations
4. Asas Pacta Sunt Servanda
It is a principle that states that a legally made agreement will be valid as a law for the parties who make it and must be obeyed properly.

In the world of international civil law, several principles are also regulated regarding the relationship between a company and other companies, especially those that contain foreign elements or cross national borders. Foreign elements or cross-country borders can refer to the subject, object or location of the act or the implementation of the law. Similar to domestic agreements, foreign agreements or contracts also adhere to the principle of freedom of contract, which means that all parties are free to enter into contracts including the content of the agreement.

The main problem in a contract or agreement, especially with foreign parties, especially with different legal systems, is the choice of law that will be used. This choice of law is very important because it concerns how the agreement will then be interpreted in the future when there is a dispute between the parties involved in the contract. The content of the agreement concerns the object, the arrangement of rights and obligations and other matters that are part of the agreement that will be agreed upon by both parties. Related to international agreements and contracts, there are several types of legal options that can be alternatives, namely:

1. This choice of law is related to the party who will determine which law will apply in interpreting the agreement.
2. The choice of jurisdiction is related to which court or forum to use in the event of a dispute between the parties related to the agreement
3. This choice of domicile is related to the determination or designation of legal domicile of the parties to the agreement.

These three legal options are one of the important factors in the creation of international agreements or business contracts, all parties involved must be able to decide both the legal options, the choice of forum and the legal domicile to be used in the agreement.

In addition, there are several things that are restrictions in international civil law that must be of concern to all parties to the agreement, namely:

1. Not breaking the law

2. Only valid in the field of contract law
3. Not about the law of employment contracts
4. It must not be about the provisions of the law with a public nature
5. Legal choices must be based on good faith and must not be used in improper ways with the aim of committing fraud or legal smuggling

Regarding the case of the agreement faced by PT Indah Logistik and City Cargo, in determining which law will be used and which forum will be used if there is a dispute in the future, it is an issue that is difficult to decide in a meeting to discuss the agreement. This is very difficult to decide considering that this agreement is a cooperation where all parties have the same position both in terms of operational implementation and the activities carried out.

To find a middle point or certainty at which point City Cargo has a better bargaining position compared to PT Indah Logistik is difficult, considering that both feel that they have the same bargaining position. Another problem is that the two companies have different legal systems, one based on Islamic law while the other is civil law. These things make the cooperation agreement between the two companies not easy, to determine the legal certainty that will apply in the agreement to be made.

In addition, legal options in international civil law are also known several theories in applicable international law, namely:

1. The theory of *Lex Loci Contractus* is a theory that refers to the place where a legal act or agreement is performed
2. The *Lex Loci Solutionis* theory is a theory that refers to the place where the execution of the agreement or the activities of the agreement will be carried out
3. The theory of the proper law of contract is a theory that refers to the most reasonable state law by looking for the center of gravity or the point of connection that is most closely related to the contract.
4. The most characteristic connection theory is a theory that refers to who performs the most characteristic feats

Lex Cause is a process for resolving disputes by referring to certain qualifications or points of connection agreed upon by both parties.

These legal principles are the basis for resolving disputes or finding common ground in every problem that arises in the implementation of international business agreements or contracts.

Referring to the problems faced by the two business actors, both parties agreed to find a common ground from the existing problems by looking at which point the profit is more in favor of City Cargo and at which point to PT Indah Logistik. Operationally, the two business actors have the same responsibilities and operational areas, as well as the process, but the main point of this collaboration is more about how to handle cargo goods from Hajj and Umrah pilgrims from Indonesia. By referring to this, an agreement was reached that the handling of goods will be more dominant from Saudi Arabia to Indonesia than vice versa. From the sales side, of course, offering logistics

management services to Hajj and Umrah pilgrims in Saudi Arabia is more profitable using the name PT Indah logistics than Citi Cargo. Hajj and Umrah pilgrims will feel more comfortable and safe with the certainty of their goods if what is used for sales or marketing is the company name PT Indah Logistik.

Guided by the goods that will be handled more are the goods of Hajj and Umrah pilgrims from Indonesia, although the collection and delivery process will come from Saudi Arabia, namely Mecca and Medina, the bargaining position or the point of emphasis will be more on PT Indah Logistik. Based on the conditions and circumstances that occurred between the two business actors, it can be described that when a dispute occurs, the one who will make many demands is from the Hajj and Umrah pilgrims from Indonesia, so that indirectly it can be said that the law that will be widely used is the law that applies in Indonesia.

Based on this, it was agreed that the agreement made would use the applicable law in Indonesia to interpret the content of the agreement to be used. And the choice of forum to be used to resolve the issue in the event of disagreement in the deliberation for consensus is the forum or arbitrase located in Singapore. Negotiation in deciding the legal options to be used in interpreting the agreement and the dispute settlement are very important factors in an international agreement or business contract.

From the process of settling the agreement between these two business actors, it can be said that the theory used in finding a solution is the theory of the proper law of contract and the theory of the most characteristic connection.

To determine the legal choice using the theory of the proper law of contract refers to the transaction that will occur, where the transaction that occurs will involve most of it with Hajj and Umrah pilgrims from Indonesia. This is in line with Morris's opinion, which states that proper law is a legal system that has the most close and tangible relationship with the transactions that occur. Morris's opinion is also in line with Lord Atkin's opinion which states:

The legal principles that guide an English court on the proper law are now well settled; it is the law that the parties intended to apply. Their intention will be ascertained by the intention expressed in the contract, if any, which will be conclusive. If no intention is expressed, the intention will be presumed by the court from the terms of the contract and the relevant surrounding circumstances."

The concept in this theory emphasizes the importance of looking at the factors or elements that underlie why this agreement is realized or occurring, and determines the most dominant or important elements until the agreement is formed. Because this agreement is motivated by the large number of Indonesian citizens who carry out Hajj and Umrah activities, the most dominant element is the element from Indonesia so that the application of Indonesian law is very appropriate.

The same applies to the most characteristic connection theory, this theory is guided by which party performs the most characteristic achievements. According to Rabbel, if the parties to an international contract do not determine their own choice of law, the law of the country in question will apply where the contract in question shows the most characteristic connection.

In this theory, the obligation to perform a performance that is most characteristic is the benchmark for determining the law that will govern the agreement. In each contract it can be seen which party performs the most characteristic performance and the law of the party that performs the most characteristic performance is considered to be the law that must be used. Because this cooperation agreement refers more to Hajj and Umrah goods originating from Indonesia, it can be ascertained that if there are complaints or demands, they come from Indonesia, so that the legal problems that will be faced will refer more to Indonesian law.

So based on both the theoretical approaches, the proper law of contract and the theory of the most characteristic connection, it is clear which legal choice should be used to make an international business agreement or contract between City Cargo and PT Indah Logistik.

CONCLUSIONS AND RECOMMENDATIONS

Every business activity or any activity is basically inseparable from the existence of an agreement or contract, especially when the activity involves more than one entity and is related to profit, then an agreement or contract becomes mandatory. Agreements if made by parties in a certain jurisdiction are not too much of a problem because they can immediately determine legal choices based on the domicile of business actors.

The problem or settlement of agreements is often a problem when it concerns business actors from foreign elements, namely business actors are in other regions and often the legal system is different. This is what happened to PT Indah Logistik and City Cargo when entering into logistics cooperation agreements from and to Saudi Arabia and Indonesia. This cooperation activity involves cross-border and different legal systems where one is Islamic law while the other is civil law. Another obstacle is that activities occur in both countries with the same scope of activities, so it becomes a separate problem in determining which legal options will be applied in making international business agreements or contracts between the two companies.

After carefully exploring using the theoretical approaches contained in international law, namely the theory of the proper law of contract and the theory of the most characteristic connection, the most appropriate legal choice is Indonesian law. The most basic basis for consideration is the elements that are the background for the formation of the agreement between City Kargo and PT Indah Logistik, as well as the potential legal consequences that are likely to occur in the transaction process where the majority of consumers are Indonesian citizens. Based on these two things, it is concluded that the most appropriate legal choice for the settlement of international business agreements or contracts is Indonesian law.

ADVANCED RESEARCH

Research concerning the agreement between PT Indah Logistics and City Cargo, considering that they operate under different legal systems, necessitates additional references and examples of similar agreements that have taken place. The limitations of this research primarily involve the need for more information on the legal system in Saudi Arabia, where City Cargo is based. Gaining an understanding of the applicable laws in a country is essential for comprehending the rules and regulations governing the agreement.

Investigating agreements between parties with differing legal systems can provide valuable insights into resolving cross-border issues. Therefore, it is crucial for this research to delve deeper into the legal frameworks employed by the parties involved in the international agreement. A comprehensive understanding of these legal systems will facilitate finding effective solutions for settling any disputes that may arise from the agreement.

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