DE LEGA LATA Jurnal Ilmu Hukum
Volume 11 Nomor 1, January-June 2026
E-ISSN: 2477-7889 I ISSN: 2477-653X I Akreditasi: SINTA 3, SK No: 28/E/KPT/2019
http://jurnal.umsu.ac.id/index.php/delegalata

Ratification Of The Convention On Contracts For The International Sale Of Goods (CISG) To Improve Indonesian Business Actors Bargain Position In International Transaction Contracts

Mutiara Hermawati[1], **Davilla Prawidya Azaria**[2]
[1,2] Universitas Pembangunan Nasional Veteran Jakarta, Indonesia
Email: 2210611133@mahasiswa.upnvj.ac.id (Corresponding Author)

Accepted: 28-11-2025. Revised: 04-12-2025 Approved: 06-12-2025 Published: 08-12-2025
DOI: 10.30596/dll.v11i1.26980

How to cite:
Hermawati, M. (2026). "Ratification Of The Convention On Contracts For The International Sale Of Goods (Cisg) To Improve Indonesian Business Actors Bargain Position In International Transaction Contracts", De Lega Lata: Jurnal Ilmu Hukum, Volume 11 (1): p. 78-90

Abstract

Indonesian business actors are often in unfavorable bargaining positions on international contract transactions. Mainly is caused by inconsistency between KUHPerdata as the legal instrument and its implementation. This paper aims to explain how KUHPerdata and CISG determine the bargaining position then analyze CISG normatively as the best legal instrument option to improve Indonesian business actors and lift up its unfavorable position. Research method uses normative legal conduct by statute and comparative approaches. KUHPerdata and CISG are primary legal instruments in comparison while supported with the best practices in Vietnam and China. Result shows that KUHPerdata holds at least four fundamental weaknesses which leads to an unfavorable position for its beared actors. On the other hand, CISG could overcome those weaknesses with the fundamental breach concept as its effective limit manifestation. By ratifying CISG and adopting the best practices in Vietnam and China would improve Indonesian beared actors bargaining position in international contract transactions.

Keywords: Ratification, CISG, KUHPerdata, International Contract Transactions.

INTRODUCTION

The rapid progress of globalization has concomitantly fueled economic growth within the business. A salient indicator of this advancement is the escalating volume of international transactions facilitated by cross-border trade. Throughout 2024, Indonesia successfully registered a trade balance surplus amounting to USD 31.04 billion, marked by an increase in export volume of 5.37% and imports of 3.37% relative to the figures recorded in 2023 (Badan Kebijakan Fiskal Kemenkeu, 2025). In essence, when undertaking a transaction, both parties have legally established a contractual relationship, referred to as a perikatan (Naja, 2006). According to Salim, a perikatan constitutes a relationship arising from an agreement (contract) between two or more parties, wherein the parties consist of a party entitled to demand the fulfillment of prestasi (creditor) and a party obligated to render prestasi (debtor) based on

mutual consent, as set forth in Article 1233 of the Civil Code (KUHPerdata) (Salim et.al., 2007). Meanwhile, the term 'agreement' is defined under Article 1313 of the KUHPerdata, which defines an agreement as a legal act by which parties mutually bind themselves to perform or not to perform a certain thing in accordance with their mutual consent.

There are prerequisites for validity required to be met by the parties during the formation of the agreement, which comprise the following: 1) consent; 2) legal capacity; 3) a specific subject matter; and 4) a lawful cause. These conditions are mandatory to be fulfilled so that the agreement can be legally binding and acknowledged, as stipulated in the provisions of Article 1320 of the KUHPerdata (Raynee et.al., 2024). Agreements executed by the parties are often embodied in the form of a contract (written agreement) which contains mutually agreed-upon clauses, founded upon the fundamental right to contract. A mutually accepted agreement constitutes a binding legal obligation, obligating the parties to fully comply with and execute the stipulations contained therein without exception, pursuant to the principle of pacta sunt servanda enshrined in Article 1338 of the KUHPerdata (Sumiryah & Djulaeka, 2022). This is in alignment with the function of a contract as the basis of the agreement, which concurrently provides legal certainty for the parties in the execution of their established rights and obligations (Handriani & Edy, 2021).

International sale and purchase transactions are transactions designated for business interests, the execution of which traverses international boundaries. Consequently, in formulating an international sale and purchase contract, the parties must stipulate more specific clauses, such as choice of law or forum selection jurisdiction of law, due to the variance in the legal systems, jurisdictions, and applicable regulations in the respective countries of origin of the involved parties (Rohmah et.al., 2025). This context renders international transaction contracts essential as the primary basis for consensus and assures clear legal predictability for the parties. This disparity in legal systems and jurisdictions led to the creation of the CISG by the United Nations Commission on International Trade Law (UNCITRAL) as an international legal instrument specifically regulating international sales contracts. The primary goal of the CISG is to ensure legal predictability by bridging the differences in the legal systems, concerning the participants involved in composing international agreements. To date, 97 countries have ratified the CISG into their national law, but Indonesia is not among them (IICL, 2024).

Presently, Indonesian business actors still rely on the KUHPerdata as the primary basis for contract law in drafting international sale and purchase transaction contracts, which is specifically regulated in Book III, particularly Articles 1457–1540. The KUHPerdata itself is a legal instrument inherited from the colonial era that has yet to undergo any changes or reforms since its initial enactment (Gerhard & Tazqia, 2022). Furthermore, the contractual regulation within the KUHPerdata is general in nature and lacks explicit provisions regarding international sale and purchase transactions. This creates a legal vacuum concerning specific matters, particularly in determining the choice of law and dispute resolution involving foreign elements, given that international sale and purchase transactions possess greater complexity compared to domestic sales transactions. The reliance of Indonesian business actors on the national legal regime places those active in international sale and purchase transactions in a weak bargaining

position (disadvantaged position) when negotiating the choice of law and arbitration seat in the prospective contract.

This weak bargaining position is substantiated by data recording that 67% of Indonesian business actors do not raise objection to the governing law applied for the resolution of disputes arising from international sale and purchase transaction contracts (Hartono et.al., 2023). This indirectly indicates that Indonesian business actors often submit to the governing law of the counterparty's country, which possesses more accommodating legal instruments, consequently obligating Indonesian business actors to face the risk of interpretation arising from different laws. Furthermore, the involvement of Indonesian business actors in international arbitration forums such as the Singapore International Arbitration Centre (SIAC) records that Indonesia ranks among the top 10 foreign users, occupying the 6th position in 2023 (SIAC, 2024). The high frequency of involvement of Indonesian business actors affirms that, when undertaking international sale and purchase transactions, Indonesian business actors tend to culminate in disputes, consequently incurring greater costs and time for their resolution.

Therefore, in order to enhance the bargaining position of Indonesian business actors when undertaking international sale and purchase transactions, the CISG is an instrument that should be considered for adoption as national law. This is because the CISG contains detailed provisions on international transactions and can serve as the substantive law for the parties, as the enforceable law for resolving disputes arising, under the conditions stipulated in Article 1(1) of the CISG. The CISG is mandatory under this Article for parties with businesses in different States, provided two conditions are met: (a) both parties must be from States that have ratified the Convention, or (b) the relevant rules of Private International Law require the application of a Contracting State's law. Consequently, if either of these conditions is fulfilled, the CISG can become the applicable law, either voluntarily or when the parties omit to select the governing law for the international sale and purchase contract, as exemplified by the case of Maxxsonics USA, Inc. (Maxxsonics) v. Fengshun Peiying Electro Acoustic Company, Ltd (Fengshun) which occurred in 2005 (Qasthari et.al., 2019). It is against this backdrop that the author aims to further discuss the aspects that weaken the bargaining position of Indonesian business actors when executing international transaction contracts through the KUHPerdata and the CISG, and to delve deeper into the capacity of the CISG to enhance that bargaining position in international transaction contracts through the application of substantive law.

METHOD RESEARCH

The study adopted the normative juridical approach, which depends on statutory regulations as the primary material for in-depth examination and investigation concerning the focus of the study (Benuf & Muhamad, 2020). In conducting the research, two main approaches are utilized: the statute approach and the comparative approach. The statute approach is executed by analyzing the provisions found in the KUHPerdata in Book III, Articles 1457–1540, as the domestic contract law instrument, and the CISG as the international contract law instrument for sale and purchase transactions. Meanwhile, the comparative approach is conducted by specifically comparing both instruments regarding aspects that constitute weaknesses in the bargaining position of Indonesian business actors, most notably when settling on the jurisdiction's rules for international contracts, and also by comparing the practices of

China and Vietnam to identify best practices for CISG implementation. Data for this study was collected exclusively from secondary sources, namely primary, secondary, and tertiary legal materials. The primary legal materials comprise the KUHPerdata and the CISG. The secondary legal sources include scholarly works such as books, journals, research papers, and other academic literature used to reinforce the primary analysis. Meanwhile, the tertiary legal materials consist of dictionaries and legal encyclopedias supporting the research. The data collection technique is performed through literature study, while data analysis employs a qualitative-descriptive technique to compare the aspects of weakness in the KUHPerdata, as the main legal basis for contracts in international transaction contracts, with the CISG, as the international legal instrument specifically regulating international transactions.

DISCUSSION

1. Weakness Aspects in the Bargaining Position of Indonesian Business Actors in the KUHPerdata Over the CISG

International sale and purchase transactions are transactions conducted across international borders, involving parties originating from two different countries. Consequently, each party to an international sales transaction is assigned a particular designation: the exporter and the importer. The exporter is the selling party who sends goods from one country to another to gain profit and expand markets, while the importer is the buying party who brings goods into their own national territory to meet domestic market demand (Sutedi, 2014). For this reason, international sale and purchase transactions are transactions designated for business interests, and they become more complex due to the variance in legal systems, jurisdictions, and applicable regulations in the respective countries of origin of the parties (Wibowo & Sri, 2023). This variance renders an international sale and purchase contract highly essential as the basis for agreement and legal certainty to protect the interests of each party carrying out the rights and responsibilities stipulated by the agreed-upon contract. This is because the contract will directly possess legal force and be binding, which therefore binds the signatories to honor the provisions set out in the document as if they were statutory laws, guided by the rule of pacta sunt servanda (Syamsiah et.al., 2023).

In the formation of international sale and purchase transaction contracts, Indonesian business actors still rely on the KUHPerdata as the main legal basis, which is specifically regulated in Book III, particularly Articles 1457–1540, and adheres to the core tenets of agreement legislation. The KUHPerdata itself does not specifically distinguish between domestic and international sale and purchase agreements/contracts. Although the contract drafting adheres concerning party autonomy, thereby affording the parties the liberty to define their own clauses for the agreed-upon contract, the fact remains that Indonesian law, as a domestic legal instrument, is rarely chosen as the choice of law in the case of a dispute. This is substantiated by data set forth in the Academic Paper on the Ratification of the UN Convention on Contracts for the International Sale of Goods, which states that international sale and purchase transaction contracts drafted by law firms for Indonesian corporate clients more often designate the laws of major foreign trading partners originating from the European Union, the United States, and Singapore to govern their international sale and purchase contracts (Badan Kemenkumham, 2013). From the aforementioned data, it can be discerned that Indonesian

business actors frequently submit to the governing law of the counterparty's country. This is further corroborated by data stating that 67% of business actors do not raise objection to the controlling rules for the global transaction contracts they execute (Hartono et.al., 2023).

Based on the principle of freedom of contract, in determining the clauses of an international sale and purchase transaction contract, the parties shall mutually negotiate specific matters to be stipulated in the contract, aiming to protect the respective interests of the parties (Mahardika & Rifqi, 2025). One of the crucial stipulations during contract negotiation is the provision for establishing the choice of law. The variance in jurisdiction, legal systems, and applicable regulations in the parties' countries of origin creates a debate regarding which law is superior to be designated as the choice of law for dispute resolution, considering the existence of connecting factors in Private International Law that must be mutually linked to determine the applicable law. Alternatively, in adherence to the fundamental right to contract, the choice of law can be negotiated by the parties, including utilizing a law outside the parties' respective countries that is deemed capable of accommodating the international sale and purchase contract (Meliala, 2024). It is this choice of law provision that frequently causes Indonesian business actors to submit to the national law of the counterparty. One of the factors making domestic law rarely chosen as the preferred option is that the KUHPerdata is deemed rigid and more suitable for domestic transactions due to its mechanisms requiring more time. This condition is contrary to international sale and purchase transactions, which prioritize flexibility and efficiency (Taupiqqurahman, 2010). This is because in the practice of international sale and purchase, a company will not only undertake sale and purchase transactions with a single party or trade partner but also with other trade partners originating from different countries.

The rigidity of the KUHPerdata as the main basis for contract law is contrary to the CISG, which is an instrument that bridges differences across various legal systems, establishing a neutral set of rules in international trade that prioritizes flexibility and efficiency as a legal instrument specifically regulating international sale and purchase transaction contracts (Hutagalung, 2013). The CISG has proven successful in resolving over 3,000 international sale and purchase contract dispute cases (Qasthari et.al., 2019). The KUHPerdata and the CISG are harmonious legal instruments; nevertheless, there are several aspects in the KUHPerdata provisions that are less suitable for application in international sale and purchase transaction practices. To address these issues, the CISG stipulates provisions that are more accommodating to international sale and purchase contracts involving Indonesian business actors. These aspects are as follows:

a) Article 1238 and Article 1243 Concerning Wanprestasi versus Article 25 Concerning Fundamental Breach

   There is a difference in the concept of breach between Wanprestasi and Fundamental Breach. Wanprestasi, as stipulated in Article 1238 of the KUHPerdata, focuses on the debtor's inability or refusal to carry out a duty and procedurally requires a formal written order or similar document (somasi). This rule is deemed rigid because the aggrieved party must follow formal procedures. Furthermore, Article 1243 does not specifically regulate a clear threshold regarding the severity or triviality of the breach committed, meaning almost all forms of "negligence" can be considered wanprestasi. This has the potential to trigger claims for compensation and culminate in contract

avoidance, even if the breach committed is not substantially serious. Conversely, under Article 25, the CISG introduces the idea of Fundamental Breach. The CISG restricts contract avoidance only when a serious breach occurs resulting in a significant loss of the injured party's contractual expectations, except where the party committing the breach could not have predicted such a consequence. This concept grants greater flexibility to ensure that minor breaches do not automatically lead to contract avoidance, thus placing contract avoidance as an ultima ratio (the last resort).

b) Article 1266 Concerning Contract Rescission versus Article 49 and Article 64 Concerning Avoidance/Termination

The contract rescission introduced by Article 1266 is deemed overly rigid due to the stipulation that a contract can only be avoided through a court decision, thereby necessitating a longer legal process and requiring more time, which is contrary to international sale and purchase transactions that prioritize flexibility and efficiency. Conversely, the CISG stipulates contract avoidance with the *nachfrist* principle. Under this principle, the seller is permitted to terminate the agreement if the buyer commits a fundamental breach, including failure to pay or take delivery after the seller grants an extension, as specified in Article 64 of the CISG. The buyer holds the same right to seek termination under Article 49(1)(b) if the seller fundamentally breaches the contract, such as by failing to deliver the goods within a timeframe set by the buyer. Therefore, contract avoidance can be unilaterally executed by the aggrieved party through a declaration, without necessitating the filing of a lawsuit with the court, thereby ensuring that contract disputes can be resolved swiftly without being entrapped in protracted judicial processes.

c) Article 1460 Concerning Risk Transfer versus Article 67 to Article 69 Concerning Passing Risk

Article 1460 of the KUHPerdata dictates the transfer of risk, holding that the buyer is the responsible party even though the delivery of the goods has not been executed, and the seller is entitled to demand payment. This is a crucial matter in international transaction contracts due to the process of goods transportation requiring a clear and measurable division of risk between the seller and the buyer. Conversely, the CISG distinguishes certain conditions in the passing of risk, such as in deals concerning the carriage of goods, where the seller's risk terminates and passes to the buyer at the moment the goods are transferred to the first carrier, as provided in Article 67 of the CISG. Moreover, for merchandise sold during shipment, Article 69 of the CISG specifies that the risk transfers retroactively from the contract date. Finally, risk is also deemed to pass when the buyer accepts the goods or when the goods are put at their disposal, provided the buyer then fails to collect them in due time, as provided in Article 69 of the CISG. With such specific rules, the CISG provides greater legal certainty for the parties in determining when the risk of loss is transferred.

d) Article 1243 to Article 1246 Concerning Compensation versus Article 74 to Article 77 Concerning Damages

The compensation, as stipulated in Article 1243 of the KUHPerdata, states that compensation can be claimed after the debtor is in default and still fails to execute the

obligation, covering costs, losses, and interest. Subsequently, the debtor is obliged to pay compensation if they fail to prove the reason for non-performance based on Article 1244 of the KUHPerdata. A party is discharged from liability for compensation if the non-performance is caused by an unforeseen event (overmacht) based on the provisions of Article 1245 of the KUHPerdata. Furthermore, Article 1246 of the KUHPerdata regulates compensation for actual losses sustained and profits that could have been enjoyed. The concept of compensation regulated in the KUHPerdata tends to be limited to actual losses and interest as lost profit, and adheres to the principle of overmacht which highly emphasizes the defense of force majeure to discharge a party from the compensation obligation. Conversely, the CISG implements a standard of complete indemnification (full compensation). Article 74 mandates that damages must equal the total loss sustained, including lost profits, provided the loss was foreseeable or reasonably ought to have been foreseen by the party committing the breach. The Convention improves efficiency in goods trade by providing concrete methodologies for assessing damages, either by reference to a cover purchase or sale (Article 75) or by using the current market price (Article 76). Finally, the injured party is required by Article 77 to employ all reasonable measures to reduce the size of the loss, encouraging a prompt and effective resolution.

Based on the comparison regarding several aspects between the provisions of the KUHPerdata and the CISG, it can be concluded that the CISG functions as a specialized legal tool worthy of consideration for ratification into national law as an effort to equalize the bargaining position of Indonesian business actors in international sale and purchase transaction practices, and to fill the legal vacuum concerning foreign elements that are not yet explicitly regulated in the KUHPerdata, given that there have been no changes to its provisions since its initial enactment (Gerhard & Tazqia, 2022). The aforementioned aspects of the KUHPerdata's weaknesses indicate that this legal instrument was designed solely to govern domestic sale and purchase contracts and does not contain adequate provisions for international sale and purchase contracts, as reflected in the formal and rigid procedures (Qasthari et.al., 2019). This characteristic is sharply contrary to international transaction practices, which uphold high flexibility and efficiency. Consequently, the KUHPerdata is unable to accommodate the complexities inherent in international sale and purchase transactions. This inability to accommodate constitutes a factor causing Indonesian business actors to frequently be in a weak bargaining position when faced with their more dominant international trade partners.

2. Enhancing the Bargaining Position of Indonesian Business Actors by Ratification of CISG

Indonesia is one of the countries actively involved in international sale and purchase transaction practices, as indicated by a significant increase in the volume of exports and imports compared to previous years. However, this achievement creates a juridical contradiction regarding the weak bargaining position of Indonesian business actors when faced with their more dominant trade partners. This weakness is substantiated by data recording that 75% of Indonesia's main trade partners, including the European Union, the United States, China, and Singapore, have ratified the CISG (Badan Kemenkumham, 2013). Indonesia joined the BRICS economic bloc (Brazil, Russia, India, China, South Africa) in January 2025. This alliance seeks

to strengthen the economic role of developing countries and elevate the Global South's influence in global governance. Furthermore, most of the dominant economies in the BRICS group have already adopted the CISG into their domestic law (BRICS Brasil, 2025).

Indonesia's participation in BRICS without ratifying the CISG potentially creates a deficit in legal sovereignty during economic negotiations. Given Indonesia's non-ratification status, every international transaction contract executed between Indonesia and a BRICS member state becomes vulnerable to the application of the dominant trade partner's domestic law or dependent on complex Private International Law mechanisms. The non-ratification status does not preclude the CISG from indirectly becoming the relevant substantive law in international sale and purchase transaction contracts involving Indonesian business actors. This potential is rooted in Article 1(1), specifying that the CISG controls if the businesses involved are in different States and one of the following is true: (a) the States are both CISG signatories, or (b) the rules governing the choice of law lead to the application of a Contracting State's legal system.

The CISG's use as the controlling substantive law, pursuant to Article 1(1)(b), does not constitute a weakness in the bargaining position of Indonesian business actors when forming international transaction contracts. The application of the CISG, conversely, provides an opportunity for Indonesian business actors to have a bargaining position equal to that of their trade partners, enabling them to utilize the CISG in international transaction contracts. This is considering that the CISG is a legal instrument that bridges the differences across various legal systems worldwide and has been recognized as a standard and custom in international trade practice, with 97 countries having ratified it (IICL, 2024). However, even so, the CISG is not automatically applicable to every international sale and purchase transaction contract involving Indonesian business actors. This is because the CISG itself permits Contracting States to make a reservation concerning the applicability of Article 1(1)(b) through Article 95. This reservation exempts the Contracting State from being bound by the applicability of Article 1(1)(b).

The consequence of the reservation under Article 95 is that the CISG cannot automatically be designated as the choice of law in international sale and purchase transaction contracts. This results in the applicable law remaining the domestic law of the counterparty, unless the parties voluntarily designate it based on the principle of party autonomy, as provided in Article 6 of the CISG (CISG Advisory Council, 2013). Although the determination of the choice of law clause in international transaction contracts is founded upon the principle of party autonomy, which prioritizes the parties' decisions to protect their respective interests, in practice, the partner with a low bargaining position is frequently compelled to submit to the domestic law of the more dominant trade partner when designating the choice of law in the international transaction contract. This is reinforced by the applicability of the Article 95 reservation of the CISG, which enables a dominant state to maintain the application of its national law instead of utilizing the CISG. This condition potentially incurs a greater burden of cost to interpret the legal provisions of the counterparty's country, particularly for trade partners adhering to the *common law* system, which is substantially different from the *civil law* system adopted by Indonesia (Suhartanto & Yeni, 2024). Therefore, the opportunity for Indonesian business actors to obtain a bargaining position equal to that of their trade partners can only be realized through the ratification of the CISG, which would activate the provisions of Article 1(1)(a) of the CISG

as a neutral legal instrument capable of bridging differences in legal systems, thereby allowing this legal instrument to apply automatically when the parties are Contracting States.

The success of the CISG in international sale and purchase transaction practices is evidenced by case studies in China concerning the achievement of legal certainty and in Vietnam concerning commercial efficiency. In China, the best practice of the CISG is realized through the active role of the Supreme People's Court in creating uniformity of legal interpretation. This is demonstrated by the use of the fundamental breach concept to resolve Guiding Case No. 107 between ThyssenKrupp Metallurgical Products GmbH v. Sinochem International (Overseas) Pte., Ltd (CISG, 2014). In this case, the Supreme People's Court interpreted the concept of fundamental breach, where the primary issue lay in the HGI Index being lower, specifically 32, than the range stipulated in the contract, which was 36–46. Although non-conformity between the contracted goods and the delivered goods was proven, the judge, in his ruling, rejected the claim for contract avoidance. The rejection was due to the delivered goods still being usable and resalable in the domestic market. Furthermore, the ruling ordered the seller to bear the financial losses incurred by refunding the price difference due to the lower index and compensating the buyer for the damages sustained. Therefore, the concept of fundamental breach can create legal predictability for the exporter, by establishing a high threshold for contract avoidance. Furthermore, the claim for compensation commensurate with the loss sustained also provides legal certainty for the importer to obtain the rights to the benefits that should have been derived.

Subsequently, Vietnam, which is the second ASEAN country to ratify the CISG after Singapore in 2017, demonstrates that the application of the CISG can have commercial efficiency implications in dispute resolution (United Nations, 2015). This is evidenced by the default application of the CISG at the Vietnam International Arbitration Centre (VIAC), based on jurisprudence analysis and arbitration practice, resulting in Vietnamese companies consistently applying the CISG with their trade partners without specifying a choice of law clause in international transaction contracts, such as those with trade partners from Italy, France, and Singapore (Hang, 2020). This demonstrates that the application of the CISG can be realized through the provisions of Article 1(1)(a) of the CISG, which shall automatically apply when the parties are Contracting States. The absence of a choice of law clause in the contract and the automatic application of the CISG is considered to provide an advantage for Vietnamese companies by reducing the cost burden of negotiating the choice of law in the contract. Moreover, Vietnamese companies gain a position of equal bargaining power with their trade partners, thereby no longer being directly subjected to the law of the dominant foreign partner (Conventus Law, 2021). Therefore, the ratification of the CISG will yield both national and global benefits. Nationally, the CISG can serve as a modern legal instrument providing substantive certainty for Indonesian business actors, especially Small and Medium Enterprises (SMEs), which will indirectly reduce the burden of cost and time required to interpret the law designated as the choice of law. Globally, the ratification of the CISG can strengthen the bargaining position of Indonesian business actors in contract negotiations and establish the CISG as a neutral and uniform default law applicable to international transaction contracts.

By referencing the best practices of the CISG in China and Vietnam, it is evident that the CISG is an instrument worthy of consideration for ratification, considering that most of

Indonesia's main trade partners have become Contracting States, which means Indonesian business actors are already familiar with the principles and provisions contained in the CISG. Furthermore, there is a clear conceptual disparity concerning breach between the KUHPerdata and the CISG, which proves that the concept of fundamental breach is deemed to establish a higher standard for contract avoidance compared to the concept of wanprestasi, which fails to specify the threshold for the severity or triviality of the breach committed. The application of the CISG in international transaction contracts can enhance Indonesia's bargaining position with its trade partners through the designation of the CISG as the choice of law in international transaction contracts. This would effectively reduce the cost burden of interpreting the counterparty's national law and shorten the time required for negotiating contract clauses, given that international sale and purchase practices are not confined to transactions with a single trade partner but also involve other trade partners from various countries worldwide.

The ratification of the CISG would not only enhance the bargaining position of Indonesian business actors in international sale and purchase transaction practices but also serve as a guideline for adding and harmonizing provisions in the KUHPerdata that are not yet explicitly regulated concerning international trade, such as the mechanisms for the carriage and transportation of goods, the provisions for risk transfer and compensation that are insufficiently accommodating to international sale and purchase transaction practices, and legal remedies related to the choice of law and jurisdiction of law provisions (Palar, 2021). Consequently, to mandate the effectiveness of the CISG ratification, the government may also enact specific legislation regulating international sale and purchase transaction contracts or undertake a reform of the KUHPerdata to align with the increasingly rapid dynamics of globalization (Oktaviandra, 2018).

Prior to ratifying the CISG, the government must also delve deeper into the CISG provisions that allow for reservations through Articles 95 and 96. Specifically, Article 95 permits the rejection of the applicability of Article 1(1)(b) concerning the automatic application of the CISG when the law designated is the law of a Contracting State. This is considering that by making a reservation to this Article, Indonesian business actors gain the power to mandate the application of domestic law in international sale and purchase contracts (CISG, 2010). The reservation allowed by Article 96 activates Article 12 of the CISG, which permits a Contracting State to declare that its national law requiring sales contracts to be in writing will prevail. This provision is particularly appropriate for civil law jurisdictions, including Indonesia (CISG, 2010). Consequently, the government must further examine the impact of enacting such reservations to ascertain whether they would benefit Indonesian business actors or, conversely, create adverse effects. Although the CISG is a legal instrument that specifically regulates international trade practices, it remains plausible that Indonesian business actors may not yet be familiar with its intricacies, given that this legal instrument is still classified as soft law and is not legally binding.

Conclusion

Based on the comparative analysis between the KUHPerdata and the CISG, it is found that the CISG can address and enhance the bargaining position of Indonesian business actors in the formation of international transaction contracts against the aspects of weakness in the KUHPerdata, which is deemed less suitable for application in international transaction

contracts. These aspects include: the concept of wanprestasi which has a broad interpretation by not regulating the threshold of "negligence" for claiming contract avoidance, as stipulated in Article 1238 and Article 1243 of the KUHPerdata; contract rescission procedures that must proceed through a court decision, as stipulated in Article 1266 of the KUHPerdata; the imposition of risk transfer borne by the buyer immediately after the contract signing, as stipulated in Article 1460 of the KUHPerdata; and compensation which only tends to be limited to actual losses, alongside the existence of overmacht which discharges a party from the liability and obligations that should have been performed, as stipulated in Article 1243 to Article 1246 of the KUHPerdata.

Contract avoidance concept in CISG is more suitable in international transactions than the concept of wanprestasi. This concept is fundamental breach, as stipulated in Article 25 of the CISG, which places contract avoidance as the last resort, meaning avoidance can only occur if the breach committed is a serious breach of substance. This concept has been utilized by China in resolving Guiding Case No. 107 between ThyssenKrupp Metallurgical Products GmbH v. Sinochem International (Overseas) Pte., Ltd. Furthermore, the ratification of the CISG would activate the provisions of Article 1(1)(a) of the CISG, which facilitates the automatic application of the CISG as the choice of law when the parties originate from Contracting States, similar to the default law applied in Vietnam. Furthermore, the ratification of the CISG would activate the provisions of Article 1(1)(a) of the CISG, which facilitates the automatic application of the CISG as the choice of law when the parties originate from Contracting States, similar to the default law applied in Vietnam. The CISG's ratification also brings Article 1(1)(a) into force, thereby automatically applying the Convention as the choice of law when both parties hail from signatory nations, much like the default rule in Vietnam. Consequently, the CISG improves Indonesian business actors' leverage with trading partners who are also bound by the instrument. Using the CISG as the standard governing law relieves the parties of the financial and time burden associated with interpreting designated domestic laws in cross-border agreements.

REFERENCES

Badan Kebijakan Fiskal Kemenkeu. (2025). *Indonesia Pertahankan Surplus Neraca Perdagangan Tahun 2024 untuk Tahun Kelima Berturut-turut*.

Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia. (2013). Naskah Akademik Tentang Ratifikasi Konvensi PBB Mengenai Kontrak Jual Beli Barang Internasional (*United Nations Convention On Contract For The International Sale Of Goods*).

Benuf, K., & Muhamad A. (2020). Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Jurnal Gema Keadilan, 7(1), 23-24.*

BRICS Brasil 2025. (2025). *What is BRICS?*

CISG Advisory Council. (2013). *Reservations Under Articles 95 and 96 CISG.* https://cisgac.com/opinions/cisgac-opinion-no-15/

CISG-Online. (2010). *Art. 95 CISG*. https://share.google/J6CtlktQLOR1dS17W

CISG-Online. (2010) *Art. 96 CISG.* https://cisg--online-org.translate.goog/cisg-article-by-article/part-4/art.-96-cisg?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=tc

CISG-online. (2014). *Cases number 2847*. https://cisg-online.org/search-for-cases?caseId=8761

Conventus Law. (2021). *Vietnam - When Does CISG Apply And What Are The Benefits Of CISG?* https://share.google/1bmhMqF9sAvY5eCJH

Handriani, A., & Edy M. (2021). Kepastian Hukum Terkait Pentingnya Perjanjian Tertulis Dalam Bertransaksi. *Pamulang Law Rev, 4(1), 4-6.*

Hang, N. M. (2020). *Opt-In or Opt-Out of the CISG: Cases and GTCs Analyses and Tips for Contract Negotiators*.

Hartono, E., Gunardi L., & Moody R. S. (2023). Pentingnya Ratifikasi CISG Untuk Ekspor dan Impor Indonesia. *Jurnal Serina Sosial Humaniora, 1(7), 17-18.*

Hutagalung, S. M. (2013). *Kontrak Bisnis di ASEAN Pengaruh Sistem Hukum Common Law dan Civil Law.* Jakarta: Sinar Grafika.

IICL. (2024). CISG: *Table of Contracting States*. https://iicl-law-pace-edu.translate.goog/cisg/page/cisg-table-contracting-states?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=sge#:~:text=Hingga%20November%202023%2C%20UNCITRAL%20dan,terakhir%20yang%20telah%20menyetujui%20CISG

Indonesian Civil Code (KUHPerdata). (1847).

Mahardika, M. P., & Rifqi N. F. (2025). Peran *Asas Freedom of Contract* dalam Penerapan Hukum Perdagangan Internasional. *Jurnal Hukum De'Rechtsstaat (JHD), 11(2), 160-161.*

Mangara, G., & Tazqia A. A. (2022). Urgensi Pembaharuan Kitab Undang-Undang Hukum Perdata Di Indonesia. *Rewang Rencang : Jurnal Hukum Lex Generalis, 3(4), 285-287.*

Meliala, A. J. (2024). *Hukum Perdata Dan Kontrak Internasional.* Jakarta: LLPM Press UPN Veteran Jakarta.

Naja, H. R. D.(2006). *Seri Keterampilan Merancang Kontrak Bisnis Contract Drafting.* Bandung: PT Citra Aditya Bakti.

Oktaviandra, Surya. (2018). *Indonesia and Its Reluctance To Ratify The United Nations Convention On Contracts For The International Sale Of Goods (CISG). Indonesia Law Review, 8(3), 250-253.*

Palar, Harry. (2015). Harmonisasi Hukum Kontrak Jual Beli Barang Internasional Dalam Rangka Pelaksanaan Masyarakat Ekonomi ASEAN. *Lex et Societatis, 3(8), 39-41.*

Qasthari, D. A., Huala A., & Etty H. D. (2019). Urgensi Ratifikasi United *Nations Convention On Contracts For The International Sale Of Goods* (Cisg) Vienna 1980 Terhadap

Perkembangan Hukum Perjanjian Jual Beli Barang Di Indonesia Dikaitkan Dengan Akta Notaris. *Acta Diurnal: Jurnal Ilmu Hukum Kenotariatan, 3(1), 4-6.*

Raynee, R. R., Zulfa L. N., Firyal N. S., Karren, & Surahmad. (2024). Analisis Terhadap Konsep Perjanjian dan Unsur-Unsur Perjanjian dalam Hukum Perikatan. *Media Hukum Indonesia (MHI), 2(4), 341-343.*

Rohmah, U. A., Rabith M. K. H., Muhammad A. P. W., & Rifka N. A. P. (2025). Hukum Perikatan dalam Kontrak Internasional dan Implikasinya. *Syntax Admiration, 6(1), 865-866.*

S, Salim H., Abdullah, & Wiwiek Wahyuningsih. (2007). *Perancangan Kontrak & Memorandum Of Understanding (MoU).* Jakarta: Sinar Grafika.

SIAC. (2024). *SIAC Continues to Grow*. https://siac.org.sg/wp-content/uploads/2024/04/Press-Release-SIAC-Annual-Report-2023.pdf

Suhartanto, F. P., & Yeni F. (2024). Perbedaan Sistem Hukum *Civil Law* dan *Common Law. KONSENSUS: Jurnal Ilmu Pertahanan, Hukum, dan Ilmu Komunikasi, 1(3), 74-76.*

Sumiryah & Djulaeka. (2022). *Kapita Selekta Hukum Perjanjian*. Surabaya: Scopindo Media Pustaka.

Sutedi, Adrian. (2014). *Hukum Ekspor Impor.* Jakarta: Raih Asa Sukses.

Syamsiah, D., Riki M. B. B., & Nur F. Y. (2023). Dasar Penerapan Asas Pacta Sunt Servanda Dalam Perjanjian. *Jurnal Das Sollen, 9(2), 844-846.*

Taufiqurrahman. (2010). Upaya Pembaruan Hukum Nasional Di Bidang Kontrak Jual-Beli Barang Internasional. *Yuridika, 25(3), 270-274*.

United Nations. (2015). *Viet Nam accedes to the UN Convention on Contracts for the International Sale of Goods (CISG).*

United Nations Convention on Contracts For The International Sale of Goods. (1980).

Wibowo, A., & Sri Y. (2023). *Hukum Dagang Internasional.* Semarang: Yayasan Prima Agus Teknik dan Universitas STEKOM.