



LEGAL PROTECTION FOR FOREIGN LEGAL SUBJECTS IN INTERNATIONAL CONTRACTS: AN INTERNATIONAL PRIVATE LAW PERSPECTIVE

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Abstract

The protection of foreign legal subjects in the context of international contracts has become an increasingly important issue in international relations. In the era of globalization and economic integration, international contracts serve as a primary instrument in facilitating cross-border transactions. However, foreign legal subjects face different challenges and risks compared to domestic legal subjects. This journal examines the legal protection of foreign legal subjects in international contracts from the perspective of international private law. International private law plays a crucial role in governing legal relationships between nations and resolving disputes involving foreign legal subjects. Foreign legal subjects, such as individuals, companies, or legal entities from other countries, require effective legal protection in contractual rights, enforcement of intellectual property rights, dispute resolution, and prevention of discrimination. Challenges include differences in laws between nations, variations in the understanding of principles of international private law, and disparities in jurisdictional systems. To provide fair and equal legal protection for foreign legal subjects, it is important to understand the perspective of international private law. This journal analyzes various aspects of legal protection for foreign legal subjects in international contracts through a doctrinal approach and analysis of international court practices. The analysis and findings of this journal are expected to contribute to the understanding of the legal protection of foreign legal subjects in the context of international contracts and

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promote the development of more effective and inclusive legal frameworks.

Abstrak

Perlindungan subjek hukum asing dalam konteks kontrak internasional menjadi isu yang semakin penting dalam hubungan internasional. Di era globalisasi dan integrasi ekonomi, kontrak internasional menjadi instrumen utama dalam memfasilitasi transaksi lintas batas. Namun subjek hukum luar negeri menghadapi tantangan dan risiko yang berbeda dibandingkan dengan subjek hukum dalam negeri. Jurnal ini mengkaji tentang perlindungan hukum subjek hukum asing dalam kontrak internasional dari perspektif hukum perdata internasional. Hukum perdata internasional memainkan peran penting dalam mengatur hubungan hukum antar negara dan menyelesaikan perselisihan yang melibatkan subjek hukum asing. Subyek hukum asing, seperti perseorangan, perusahaan, atau badan hukum dari negara lain, memerlukan perlindungan hukum yang efektif dalam hak kontrak, penegakan hak kekayaan intelektual, penyelesaian sengketa, dan pencegahan diskriminasi. Tantangannya mencakup perbedaan hukum antar negara, variasi pemahaman prinsip-prinsip hukum perdata internasional, dan kesenjangan dalam sistem yurisdiksi. Untuk memberikan perlindungan hukum yang adil dan setara bagi subjek hukum asing, penting untuk memahami perspektif hukum perdata internasional. Jurnal ini menganalisis berbagai aspek perlindungan hukum terhadap subjek hukum asing dalam kontrak internasional melalui pendekatan doktrinal dan analisis praktik peradilan internasional. Analisis dan temuan jurnal ini diharapkan dapat memberikan kontribusi terhadap pemahaman tentang perlindungan hukum subjek hukum asing dalam konteks kontrak internasional dan mendorong pengembangan kerangka hukum yang lebih efektif dan inklusif.

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INTRODUCTION

A contract is an agreement between two or more people in which there are promises or mutual promises that apply as a form of reciprocity, are recognized under law, or whose implementation is recognized as a legal obligation for the parties who make it. In accordance with the definition above, it can be said that the important factors of a contract or agreement are agreements, rights, and obligations to carry out something (contractual rights and obligations) (Bayu Seto Hardjowahyono, 2006: 280–281). This understanding is in line with the notion of a contract according to Black's Law Dictionary, namely that a contract is an agreement between two or more people that creates an obligation to do or not to do a certain action. Rights and obligations that arise between the parties based on contracts made and agreed upon by the parties must be carried out and fulfilled so as not to violate the rights of other parties. This does not only apply to national contracts but also to international contracts. An international contract is a commercial agreement made between parties in which the parties come from different countries, so based on the world legal system that is enforced, it is also possible that there are different laws that can be applied to the legal actions they take.

Legal protection for foreign legal subjects in the context of international contracts is becoming an increasingly important issue in international relations. In the era of globalization and economic integration, international contracts have become one of the main instruments for facilitating border transactions between countries and increasing cross-border cooperation. However, in this context, foreign legal subjects often face challenges and risks that are different from those of domestic legal subjects. In this journal, the focus is on examining legal protection for foreign legal subjects in international contracts from an international private law perspective. International private law plays an important role in determining the rules governing legal relations between countries and resolving disputes involving foreign legal subjects.

Foreign legal subjects, which refer to individuals, companies, or legal entities from other countries that are involved in international contracts, often require effective legal protection to safeguard their rights and interests. This legal protection covers various aspects, such as contract rights, intellectual property enforcement rights, settlement of claims, and preventive guidance. However, challenges arise in providing effective legal protection for foreign legal subjects in the context of international contracts. Legal differences between countries, differences in the understanding and application of international private law principles, and differences in jurisdiction systems can affect the legal protection given to foreign legal subjects. Therefore, it is important to understand the perspective of international private law in order to provide fair and equal legal protection for foreign legal subjects in the context of international contracts.

This study aims to analyze and examine various aspects of legal protection for foreign legal subjects in international contracts from an international private law perspective. Through a doctrinal approach, this research will discuss the challenges of providing effective legal protection for foreign legal subjects from the perspective of international private law in this context. Based on the previous

explanation, there are several issues raised in this research, which include: What are the challenges in providing effective legal protection for foreign legal subjects from the perspective of private international law?, and How is the legal protection for foreign legal subjects in the context of international contracts? Likewise, the analysis of this journal seeks to find out related to the protection of foreign legal subjects.

METHODS

The method used in this research is a normative-descriptive research method, namely normative legal research, which is a process of finding a rule of law, legal principles, or legal doctrines to answer the legal issues at hand" (Peter Mahfud Marzuki, 2010: 35). "In this type of legal research, law is often conceptualized as what is written in laws and regulations, or law is conceptualized as rules or norms, which are benchmarks for human behavior that are considered appropriate. This research uses a conceptual approach and a statute approach.

RESULTS AND DISCUSSION

Individuals as Subjects of International Law

In general, legal subjects are defined as any holders, owners, or supporters of rights and bearers of obligations based on or according to law. With the ability to be the owner, holder, or supporter of rights and the bearer of obligations, it is concluded that there is also the ability to enter into legal relations with each other. It is these legal relations that, in turn, give birth to the rights and obligations of the parties concerned. In general, what is seen as a legal subject is:

- a. Individuals, also known as natural persons, are persons or individuals who, due to their natural and social characteristics, automatically have the status of legal subjects.
- b. A legal entity is also referred to as a legal person, namely an entity or institution that is deliberately created or established for a specific purpose and is given status as a legal subject so that it can enter into legal relations and assume legal obligations independently, separate from the legal rights and obligations of its members.

A person is a subject of international law, which has rights and responsibilities in a restricted sense, regardless of whether they are a citizen or a foreigner. In this constrained meaning, it is the complete opposite of the notion of the state as a subject of international law. According to Moctar Kusumaatmadja and Eddy R. Agoes (2003), this perspective is founded on the theoretical idea that only the state is a subject of law and that people have certain rights and duties through nations that are signatories to conventions like the 1949 Red Cross Convention. By borrowing a term from Prof. Nguyen Quoc Din, individuals are subjects of artificial international law because it is the will of the state, which is formulated in conventional provisions, that makes individuals in certain matters subjects of international law (Boer Mauna, 2003: 594).

In its development, the position of the individual as a subject of international law becomes important, and the notion of only the state as a subject of international law begins to be abandoned. As in the case of the Danzig Railway

Officials Case, the International Court of Justice issued a decision in its dictum that is generally of the opinion that "If an international treaty gives to individuals a right, that right must be recognized and enforceable under international law, meaning that it is recognized by international courts of law". Likewise with the existence of trials in Nuremberg and Tokyo for trying the perpetrators of war crimes, in which case the perpetrators of crimes are individually responsible for war crimes and crimes against humanity and cannot take refuge in their country.

State Jurisdiction Over Foreigners

The practice of implementing jurisdiction by several countries, which is applied to people, their property, actions, or events, varies, and the differences are caused by historical and geographical factors of a country (J. G. Starke, 2001: 269). In international law, several principles of jurisdiction are known as :

1. Territorial jurisdiction: the exercise of territorial jurisdiction by a state over property, persons, actions, and events occurring within the territory of a state—is recognized by international law for all member states of the international community. "The jurisdiction of states within the limits of national territory applies to all the inhabitants," reads Article 9 of the Montevideo Convention from 1933. As a result, while a country is sovereign, the legality of its territorial authority is inside those bounds and will continue to be so. Maritime coastline lines or territorial waters, vessels flying a certain nation's flag, and ports are also considered to be part of a country's territory. Both a subjective and an objective geographical principle apply to the expansion of the notion of territorial jurisdiction. The subjective territorial principle refers to the exercise of a country's jurisdiction to prosecute and punish crimes committed on its soil even when these activities are carried out on the soil of other nations. Although it was incorporated in the 1929 Geneva Convention for the Suppression of Counterfeiting Currency and the 1939 Geneva Convention for the Suppression of Illicit Traffic in Drugs, the use of this concept is not yet widely acknowledged in international practice. A certain country may, however, exercise objective jurisdiction in an objective territory if a criminal act or other action is committed in another country but is carried out or completed on its territory, or if that action has extremely dangerous repercussions for the social and economic order in that territory. This idea is followed by the two conventions listed above and is acknowledged by German, English, and American court rulings. The Lotus Case opinion of Judge J.B. Moore, which included the following statement: "There is no presumption of immunity arising from the fact that the person charged with the case is a foreigner; a foreigner cannot claim exemption from the exercise of such jurisdiction except insofar as that person can demonstrate the following: for reasons of special immunity, he is not subject to local jurisdiction," also acknowledged territorial jurisdiction over foreigners. (J. G. Starke, 2001: 277). Foreign heads of state, foreign representatives, foreign consuls, foreign-owned ships, foreign-owned military forces, and international organizations are exempt from the use of territorial jurisdiction.
2. Individual jurisdiction; this jurisdiction is applied based on the particular

parties engaged in a given legal matter, rather than the boundaries of a nation. According to the concepts of active and passive nationality, this particular jurisdiction is exercised in international law. The state can exert authority over every citizen in accordance with the active nationality concept, but only if a person suffers a loss in accordance with the passive nationality principle. This principle is recognized by international law with some restrictions, as in the Cutting Case, where a government that rejects this principle is also not required to accept proceedings conducted by other nations against its nationals. According to the theory of passive nationality, if the territorial state where the crime took place does not punish the person who caused the loss, then the victim's country of origin has jurisdiction over the crime if they are on its soil. This is because every nation has the right to protect its citizens abroad.

3. Jurisdiction: In accordance with the principle of protection, every nation has the right to exercise its jurisdiction over crimes involving crucial security, integrity, and economic interests on the grounds that the consequences of the crime are very serious for that nation. If the jurisdiction is not exercised, the perpetrators will avoid punishment because they did not break local laws or will be denied extradition because the crime is not a political crime. For instance, the High legal in the Case of Joyce v. DPP held that "a foreigner who betrays the Crown can be punished even if it was done abroad" according to English legal precedent.
4. Application of universal principles to jurisdiction Any nation may prosecute a crime, no matter where it was committed, if it falls under the definition of universal jurisdiction. Crimes that are considered to be "jure gentium," such as war crimes and piracy, give rise to the right for all nations to apprehend and punish those responsible.

According to Article 9 of the 1933 Montevideo Convention, which states that "Nationals and foreigners are under the same protection of the law and the national authorities, and the foreigners may not claim rights other or more than those of nationals," a foreigner is entitled to the same protection based on the law of the country where he is located as well as certain rights to give him the opportunity to live a decent life. A nation will treat its own inhabitants differently than it will treat outsiders. Not all foreigners generally have the same rights and responsibilities. Compared to people who are on the territory of a transitory country, such as foreign visitors, residents of other countries have more rights and duties. (Yudha Bhakti Ardhiwisastra, 2003: 19).

Challenges in Providing Effective Legal Protection for Foreign Legal Subjects in International Contracts

Challenges in providing effective legal protection for foreign legal subjects in this case related to international contracts include:

- a. Differences in National Law

Every country has a different legal system, including in terms of international contracts. This legal difference can lead to uncertainty in legal protection for

foreign legal subjects. They need to understand and adapt to the laws of their host country, which may differ from those of their home country.

b. Complexity of Dispute Resolution

International contracts often involve parties from different countries. The resolution of disputes involving foreign legal subjects can be complex, especially when there are differences in jurisdictions, the choice of applicable laws, and various dispute resolution procedures.

c. Power Inequality

Foreign legal subjects, especially individuals or small companies, may face power inequalities in the negotiation and implementation of international contracts. They may face stronger parties or have greater resources, thus affecting the legal protection they receive.

d. Discrimination and Unfair Treatment

Foreign legal subjects may face the risk of discrimination or unfair treatment from local parties or the host country. They may be subject to protectionist policies, economic discrimination, or discrimination based on nationality, which may reduce fair and equal legal protection.

e. Culture and Language

Language and cultural differences between foreign legal subjects and local parties can make it difficult to understand and communicate effectively. This can affect the legal protection received by foreign legal subjects in international contracts.

f. Limited Law Enforcement

Enforcement of breaches of international contracts often involves complex legal processes in multiple jurisdictions. Foreign legal subjects may face challenges in obtaining fair compensation in the event of a breach of contract by a local party.

In facing this challenge, it is important to find the right and effective solution. This can involve an in-depth understanding of private international law, consultation with experienced legal experts, and attention to dispute resolution mechanisms that can provide fair legal protection for foreign legal subjects. In addition, international cooperation in the harmonization of laws and increasing transparency can also help overcome challenges in providing effective legal protection for foreign legal subjects in the context of international contracts.

Legal Protection for Foreign Legal Subjects in the Context of International Contracts

Legal protection for foreign legal subjects in the context of international contracts is based on the principles of international private law and relevant international agreements. Several important aspects of legal protection for foreign legal subjects in international contracts are as follows:

- a. Choice of Law, In international contracts, the parties involved can choose the law that will govern the contract. This choice of law may include the law

of a party's country of origin or a law that is considered neutral or best suited to the interests of the parties involved. This choice of law provides legal certainty for foreign legal subjects and guarantees that their rights and obligations will be protected.

- b. **Court Jurisdiction**, In settling international contract disputes, the parties involved need to pay attention to the jurisdiction of the court that will handle the dispute. Foreign legal subjects have the right to gain access to fair and independent courts when settling international contract disputes. The principles of private international law can be used to determine appropriate jurisdiction and provide fair legal protection for foreign legal subjects.
- c. **Intellectual Property Rights Protection**. International contracts often involve intellectual property rights, such as copyrights, trademarks, or patents. Foreign legal subjects need to be protected against infringement of their intellectual property rights in the context of international contracts. International treaties, such as the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement, provide a legal framework governing the protection of intellectual property rights at the international level.
- d. **Enforcement of Awards and Arbitration**. In order to ensure effective legal protection for foreign legal subjects, it is important to have decision-enforcement mechanisms that can be recognized and implemented in various jurisdictions. International arbitration, whether through arbitral institutions or ad hoc arbitral proceedings, can be an effective alternative to international contract dispute resolution. The New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards is the main legal basis for regulating the recognition and enforcement of international arbitral awards.
- e. **Legal Protection Against Discrimination**. Foreign legal subjects must be protected from discrimination in the context of international contracts. Private international law principles prohibit discrimination based on nationality or national origin in international contract dispute resolution. Parties to international contracts must be treated fairly and equally, regardless of their nationality.

Additionally, in certain nations, there are a number of institutions for legal protection that foreigners can employ to resolve legal concerns :

- a. An agreement governing the protection of each nation's residents and their assets between the country of origin and the country where it is located.
- b. Foreign investment protection institutions, such as the Indonesia-Belgium Agreement on Mutual Encouragement and Protection for Investment, which was signed on January 15, 1972, and assurances from the local government (host state) in the case of nationalization measures.

- c. The Insurance Guarantee Agreement, which is made up of investors and recipient nations under the World Bank-sponsored Convention Establishing the Multilateral Investment Guarantee Agency.
- d. Local legal remedies (Exhaustion of local remedies) in the form of a legal action from a foreigner who has been harmed through a lawsuit before the local court.
- e. Through Diplomatic protection. Due to a breach of international law caused by discussions or legal claims made on behalf of its inhabitants, this effort was undertaken. The Permanent International Court of Justice held in the *Mavrommatis Palestine Concession* case from 1924 that if diplomatic protective measures have been adopted, the state is a party to the dispute.
- f. Filing a lawsuit in a foreign court if the subject of the dispute falls under the jurisdiction of the host nation, as in the *Bremen tobacco* case between the Government of Indonesia and the owner of a Dutch-owned tobacco company because the disputed goods are located on German soil. (Yudha Bhakti Ardhiwisastra, 2003: 29).

It is crucial to pay attention to the principles of international private law that protect foreign legal subjects' rights, choose the law that governs contracts, ensure fair trial jurisdiction, protect intellectual property rights, take into account recognized international award enforcement and arbitration mechanisms, and forbid discrimination based on nationality in order to effectively provide legal protection for foreign legal subjects in the context of international contracts. Foreign legal subjects can feel secure and get legal certainty while executing international contracts thanks to this legal protection system.

CLOSING

Conclusion

Legal protection for foreign legal subjects in the context of international contracts is an important matter to ensure fairness, legal certainty, and fair treatment for all parties involved. International private law plays an important role in regulating legal relations between countries and resolving disputes involving foreign legal subjects. In this context, legal protection must cover various aspects, such as contract rights, protection of intellectual property rights, dispute resolution, and prevention of discrimination. Foreign legal subjects must be recognized as parties having rights and obligations under international contracts, and they must be able to choose the law governing their contract with adequate legal certainty.

However, challenges in providing effective legal protection for foreign legal subjects include legal differences between countries, different understandings of international private law principles, and differences in jurisdiction systems. This can affect the legal protection given to foreign legal subjects. In this research, analyses and studies are carried out on various aspects of legal protection for foreign legal subjects in the context of international contracts from an international private law perspective. Through a doctrinal approach and analysis of international court practices, it is expected to understand the challenges and

opportunities in providing effective legal protection for foreign legal subjects in the context of international contracts.

In an effort to provide fair legal protection for foreign legal subjects, it is important to pay attention to the principles of international private law, ensure the existence of a fair and effective dispute resolution mechanism, and prevent discrimination based on nationality. It is hoped that the results of this research can contribute to a better understanding of legal protection for foreign legal subjects in the context of international contracts as well as encourage the development of a more effective and inclusive legal framework for fair protection for foreign legal subjects.

Recommendation

Recommendation that the author can convey regarding legal protection for foreign legal subjects in international contracts: an international private law perspective are as follows:

- a. It is necessary to harmonize and standardize international private law among countries to minimize legal differences that may affect legal protection for foreign legal subjects in international contracts.
- b. Cooperation between countries is needed to increase the understanding and application of international private law principles so that legal protection for foreign legal subjects becomes more consistent and effective.
- c. Special attention should be paid to the protection of contractual rights and the enforcement of intellectual property rights for foreign legal subjects in international contracts, including fair and equitable dispute resolution mechanisms.
- d. It is essential to review and encourage the development of a more inclusive legal framework to overcome challenges and prevent discrimination against foreign legal subjects in the context of international contracts.

It is hoped that the implementation of these suggestions can improve legal protection for foreign legal subjects in international contracts, encourage better cooperation between countries, and create a fair and equal legal environment for all parties involved in international transactions.

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