

Tinjauan hukum perdata internasional terhadap hukum yang berlaku pada perjanjian jual-beli internasional via internet menurut undang-undang No. 11 tahun 2008 tentang informasi dan transaksi elektronik
UU ITE = Review on the private international law against the law applicable to international sales agreement by means of internet pursuant to law No. 11 year 2008 on electronic information and transaction

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Abstrak

Perjanjian jual-beli internasional yang dilakukan melalui internet semakin marak terjadi. Timbul permasalahan mengenai hukum mana yang berlaku terhadap perjanjian tersebut. UU ITE memberikan kewenangan bagi para pihak dalam sebuah transaksi elektronik internasional untuk melakukan pilihan hukum. Dalam hal tidak adanya pilihan hukum, UU ITE mengatur bahwa penentuan hukum yang berlaku didasarkan pada asas HPI. UU ITE tidak mengatur asas HPI mana yang sebaiknya digunakan. Terdapat beberapa asas HPI yang dapat digunakan seperti *Lex Loci Contractus*, *Lex loci Solutionis*, *The Proper Law of the Contract*, dan *The Most Characteristic Connection*. Perjanjian jual beli via internet termasuk dalam perjanjian antar orang yang tidak hadir atau *contract between absent persons*. Penentuan locus dapat dilakukan berdasarkan *mailbox theory* dan *acceptance theory*. Ketentuan dalam UU ITE tidak menggambarkan seara jelas teori mana yang dianut oleh Indonesia. Teori yang sebaiknya digunakan adalah *acceptance theory*, karena dengan teori tersebut, kedua pihak mengetahui adanya kesepakatan di antara mereka. Kesulitan-kesulitan yang terdapat pada teori *lex loci contractus*, *lex loci solutionis*, dan *the proper law of the contract* dalam menentukan hukum yang berlaku pun dapat dipecahkan dengan menggunakan teori *the most characteristic connection*. Dalam melakukan pilihan hukum, UU ITE juga mewajibkan para pihak untuk tetap memperhatikan kepentingan kedua belah pihak secara adil serta batasan-batasan yang terdapat dalam HPI.

.....International sales agreement made through the Internet are increasingly prevalent. Problems arise as to which law should apply to such kind of agreement. Law No. 11 Year 2008 emphasizes the use of choice of law by the parties. In the absence of choice of law, Law No. 11 Year 2008 stipulates that the law applicable to international electronic transaction is determined based on the private international law principles. However, it does not stipulate which private international law principle that should apply. There are several principles that could be used, such as *lex loci contractus*, *lex loci solutionis*, *the proper law of the contract*, and *the most characteristic connection*. An international sales agreement by means of internet is categorized as a *ldquo contract between absent persons rdquo* . The determination of the place of contracting can be done by using *mailbox theory* and *acceptance theory*. Law No. 11 Year 2008 does not depicture which theory that should apply. The prevailing theory should be the *acceptance theory*, because the parties will then know the existence of agreement between them and to be bound to it. The difficulties found in using the *lex loci contractus*, *lex loci solutionis*, and *the proper law of the contract* can be solved by using the *most characteristic connection*. In making a choice of law, Law No. 11 Year 2008 also requires both parties to observe their interests fairly and the limitations under private international law.