

Kajian hukum perdata internasional terhadap pilihan hukum asing dalam kontrak konsumen daring di Indonesia = Private international law review on foreign choice of law within online consumer contracts in Indonesia

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Abstrak

E-commerce membuka kemungkinan dilakukannya transaksi lintas negara di mana salah satu pihaknya ialah konsumen. Transaksi demikian lazimnya dilakukan menggunakan kontrak konsumen daring. Isu hukum perdata internasional muncul apabila terjadi kontrak konsumen antara pelaku usaha dan konsumen yang tunduk pada yurisdiksi berbeda, dan apabila terdapat pilihan hukum asing dalam kontrak terkait. Prinsip hukum perdata internasional mengakui lembaga pilihan hukum, yakni hukum yang dipilih oleh para pihak. Namun berkaitan dengan kontrak konsumen, ketidakseimbangan posisi tawar para pihak dapat dengan mudah memberikan hasil yang tidak adil dan merampas hak-hak konsumen. Untuk mengetahui apakah pilihan hukum dalam kontrak konsumen daring dapat diakui menurut hukum Indonesia atau tidak, maka penerapan teori pilihan hukum perlu dikaji dalam kontrak konsumen. Undang-Undang Informasi dan Transaksi Elektronik dan Undang-Undang Perdagangan beserta peraturan turunannya memuat beberapa kaidah hukum perdata internasional, termasuk mengenai pembatasan pilihan hukum asing.

E-commerce brought the possibility of cross-border transaction in which one of the parties is a consumer. Such transactions are normally conducted through an online consumer contract. Private international law issue arises when a consumer contract is conducted between consumer and business who are subject to different jurisdictions, and if the relevant contract involves a foreign choice of law. The principle of private international law recognizes the choice of law, which is the law chosen by the parties. But in regards of consumer contracts, there is an issue of imbalance in the bargaining position of the parties, in which can easily produce unfair results and deprive consumers of their rights. To find out whether choice of law in online consumer contracts can be recognized according to Indonesian law or not, the application of choice of law principles in consumer contracts needs to be examined. The Electronic Information and Transaction Law (UU ITE), the Trade Law (UU Perdagangan), and their derivative regulations contain several principles of private international law, including restrictions on foreign law choices.