

# INDONESIA AND ITS RELUCTANCE TO RATIFY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG)

Surya Oktaviandra\*

\*Maastricht University, the Netherlands

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Corresponding author's e-mail : suryaokta1985@gmail.com

## Abstract

*There is still huge debate regarding the Government of Indonesia's reluctance to ratify one of the most important conventions in the business world, namely the United Nations Convention on Contracts for the International Sale of Goods (CISG). This paper discusses the issues regarding ratification in terms of interdisciplinary areas such as law, economics, and public policy. A comprehensive analysis of this topic ensures an in-depth understanding and thus helps to make better recommendations to solve the problem. Despite having his own point of view, the author utilized other scholars' arguments to compare findings and present the debate regarding ratifications based on current business circumstances, policy, and relevant regulations. This study's findings are that neither the current business conditions nor global pressure are adequate to justify the immediate ratification of the CISG. While the last option depends on the political will of government, the author believes that the government should seek to ratify the CISG at a convenient time rather than alter the National Civil Code.*

**Keywords:** CISG, Globalization, Ratification, Economy, Business, Policy, Government.

## Abstrak

*Masih ada perdebatan besar mengenai kebijakan di Indonesia yang berkaitan dengan fakta bahwa Pemerintah Indonesia masih enggan untuk meratifikasi salah satu konvensi penting bagi dunia usaha yaitu CISG (Konvensi tentang Kontrak untuk Penjualan Barang Internasional). Makalah ini mencoba membahas isu-isu yang akan mengantarkan bidang inter-disiplin seperti hukum, ekonomi, dan kebijakan publik. Dengan pendekatan yang komprehensif, akan memastikan pemahaman yang padu dan dengan demikian menciptakan analisis yang lebih tepat untuk memberikan kontribusi dalam mengemukakan pemecahan masalah. Meskipun memiliki sudut pandang khusus, penulis mendasarkan dan menggunakan argument sarjana lainnya untuk membandingkan dan menyajikan perdebatan mengenai keadaan bisnis saat ini mengenai praktik, kebijakan, dan peraturan yang relevan. Temuan makalah ini adalah kondisi praktik bisnis saat ini atau tekanan global yang tidak memadai untuk segera mendesak untuk meratifikasi CISG. Sementara pilihan terakhir berasal dari kemauan politik pemerintah, penulis percaya bahwa pemerintah harus berusaha untuk meratifikasi CISG dalam waktu yang tepat dan tidak terlalu lama daripada mengubah KUH Perdata Nasional semata-mata.*

**Keywords:** CISG, Globalisasi, Ratifikasi, Ekonomi, Bisnis, Kebijakan, Pemerintah

## I. INTRODUCTION

The broad acceptance of the United Nations Convention on Contracts for the International Sale of Goods<sup>1</sup> (hereinafter, the “CISG”) is genuinely thrilling.<sup>2</sup> To date, 85 states have become members of this convention, and this huge number includes 8 out of the 10 biggest countries in the global economy; this list excludes the United Kingdom and India.<sup>3</sup> Many academics, especially legal scholars, seek to encourage all countries to join the CISG framework by delineating its role in standardizing international sales laws worldwide. The CISG’s primary purpose is to diminish legal barriers to international business activities and promote uniformity in international trade by narrowing the disparities and non-conformity among different national sale laws globally. However, among the 195 countries worldwide, only 85 states are members of CISG. This phenomenon shows that the worldwide acceptance of the CISG is questionable.

Countries still reluctant to ratify the CISG have been criticized in literature, such as Schwenzer and Hachem’s work.<sup>4</sup> They criticized countries that do not seek to adopt and learn the CISG regulations, describing them as *old dogs that refuse to learn new tricks*, rather than highlighting the limitations of the CISG such as its lack of precision, vagueness, and the usage of general clauses. Ratifying a convention is not as simple as it seems on the surface. Countries have some considerations before they decide to bind themselves to an international agreement. This is also true for the CISG. This study aims to deliver a broader perspective on how a convention, like the CISG, can be ratified by a country. Indonesia is used as the country to be studied.<sup>5</sup> Indonesia has not received much attention regarding its reluctance to ratify the CISG, despite the compelling case to analyze the development of the CISG from the perspective of non-CISG-ratifying countries. Although countries have different views regarding ratifying the CISG, there may face similar conditions and thus, help to understand why some countries have not yet joined the CISG.

For Indonesia, despite being globally and nationally persuaded to ratify the CISG for the harmonization of legal regimes,<sup>6</sup> the *why* and *how* Indonesia should

<sup>1</sup> United Nations Convention on Contracts for the International Sale of Goods, Vienna, 11 April 1980, UNTS No. 1489

<sup>2</sup> A list of the CISG’s member states is available on UNCITRAL’s website: [http://www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods/1980CISG\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html) (Last visited on 24 July 2017).

<sup>3</sup> The 10 biggest economies in 2017 are the USA, China, Japan, Germany, the UK, France, India, Italy, Brazil, and Canada; see <https://www.weforum.org/agenda/2017/03/worlds-biggest-economies-in-2017/> (Last visited on 24 July 2017).

<sup>4</sup> I. Schwenzer & P. Hachem, “The CISG—Successes and Pitfalls,” *The American Journal of Comparative Law*, 57(2), (2009): 457-478, 478.

<sup>5</sup> To date, Indonesia is not among ten largest economies in the world, such as the UK and India, who did not ratify the CISG. However, its position as the 4<sup>th</sup> largest country in the world by population is an important factor affecting the ratification of the CISG in the upcoming years.

<sup>6</sup> Taufiqurrahman, “The significance of accession to the United Nations Convention on Contracts for the International Sale of Goods 1980 for Indonesia,” *Juridical Tribune (Tribuna Juridica)*, 2(2), (2012), 54-71; S. Hutabarat, “Harmonisasi Hukum Kontrak dan Dampaknya Pada Hukum Kontrak Indonesia [Contract Law Harmonization and its Implications for Indonesia’s Contract Law],” *Veritas et Justitia*, 2(1), (2016), 112-134. [In Bahasa Indonesia]; C. Dhini, Maharani, N., & Amarulloh, R., “Harmonisasi Buku III Kitab Undang-undang Hukum Perdata Dengan Convention on Contracts for the International Sales of Goods Dan United Nation Commission on International Trade Law Terhadap Kontrak Dagang Internasional [Harmonization of the Civil Code Book III with the Convention on Contracts for the International Sales of Goods and the United Nations Commission on International Trade Law for International Trade Contracts],” *Privat Law*, 3(2), (2015). [In Bahasa Indonesia]; H. Palar, “Harmonisasi Hukum Kontrak Jual Beli Barang Inter-

undertake the ratification has not been explored by legal scholars. This study aims to gain a deeper understanding of the factors that influence Indonesia's decision regarding ratification of the convention and the steps that Indonesia must undertake to ratify the CISG. The remainder of this paper is organized into two major chapters. The first chapter discusses the factors that influence the decision to ratify the CISG from three prominent perspectives: global influence, real business practices, and the political will of a state. The second chapter discusses Indonesia's options regarding the ratification of the CISG. Finally, the main considerations and recommendations regarding the ratification of the CISG are discussed.

## II. FACTORS INFLUENCING THE RATIFICATION OF CISG

### A. Global Influence

The globalization era has led to the rapid growth of international trade across state borders. The United Nations Commission on International Trade Law (UNCITRAL), one of the UN's core bodies in the international trade sector, realized the urgency of uniform regulations regarding contracts for the international sales of goods. Therefore, in 1980, UNCITRAL established the CISG, which came effective since 1988. At the time of its establishment, merely 17 countries were signature states for this convention.<sup>7</sup> Later, five other states joined the CISG before its effective implementation date in 1988. The success of the CISG's ratification began in the 1990s when 34 states decided to join, followed by 29 additional countries in the 2000s, all constituting the 85 current member states. Another milestone in the CISG's success story was when two of the ten biggest economies in the world, Japan and Brazil, decided to join the convention in 2008 and 2013 respectively. Consequently, the CISG by de facto became the most international trade regulation used by countries worldwide and is estimated to influence nearly three-quarters of the global trade activity.

However, the success of the CISG is still questionable since its participants mostly come from the western side of the world. Only few CISG members originate from the eastern part of the world such as Bahrain, China, Egypt, Iraq, Israel, Japan, Kyrgyzstan, Mongolia, Korea, Singapore, Syria, and Vietnam. In Southeast Asia, only two (Singapore and Vietnam) out of the ten countries in the region are members of the CISG.

Indonesia is one of the eight countries that have not ratified the CISG in Southeast Asia. Despite being the biggest archipelago, the 3<sup>rd</sup> largest democracy, and the 4<sup>th</sup> largest populated country in the world, Indonesia's global economic rank is slightly disappointing, being currently ranked 15<sup>th</sup> on the list.<sup>8</sup>

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nasional Dalam Rangka Pelaksanaan Masyarakat Ekonomi ASEAN [Harmonization of International Contracts for the Sales of Goods for ASEAN Economic Communities],” *Lex Et Societatis*, 3(8), (2015). [In Bahasa Indonesia].; and M. A. Zuhir, “Standarisasi Perdagangan Internasional Dalam Vienna Convention on The International Sale of Goods (CISG) 1980 [Standardization of International Trade based on the Vienna CISG 1980],” (2012) [In Bahasa Indonesia].

<sup>7</sup> While 18 countries originally signed the convention, but Venezuela failed to ratify it., Ssee the list aton [http://www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods/1980CISG\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html) (Last visited Accessed on 24 July 2017).

<sup>8</sup> The latest data from the IMF World Economic Outlook report (April 2017);, see <http://statistics-times.com/economy/countries-by-projected-gdp.php> (Last visited Accessed on 27 July 2017).

However, Indonesia, as an emerging country, is predicted to become the 4<sup>th</sup> largest economy in the world in 2050, after China, India, and the USA.<sup>9</sup> This statistic delineates how important Indonesia's position in the marketplace is in the future and its decision of whether to ratify the CISG or not is similarly critical to international business development.

Based on the statistics in 2015, Indonesia is not a distinguished actor in terms of exports and imports.<sup>10</sup> Its exports amounted to \$161 billion (ranked 26<sup>th</sup> in the world) and its imports amounted to around \$139 Billion (ranked 31<sup>st</sup> in the world). Therefore, Indonesian authorities presumably have the right excuse to ignore the CISG as the government may perceive that Indonesia has relatively low international sales activity. A supplementary argument can be derived from the similar reluctance of other Asian countries, especially Southeast Asian countries, to ratify the CISG. However, based on more detailed data regarding Indonesia's 15 largest trading partners,<sup>11</sup> Indonesia's motivation to join the CISG should be strengthened. Indonesia's trade with Asian countries outside the Southeast Asian region (China, Japan, India, and Korea) accounted for around 41% of its total trade, while its trade with other Southeast Asian countries (Singapore, Malaysia, Thailand, the Philippines, and Vietnam) was merely 26%, followed by the USA, the EU (The Netherlands, Germany, and Switzerland), and Australia at 16%, 7%, and 3% respectively. Although the Asian region contributed the largest margin to Indonesia's trade (around 67%) and merely one-third was contributed by Western countries, Indonesia is called to join the CISG since it conducts trade with global markets. Another compelling factor is that more than three-quarters (around 77%) of Indonesia's trade partners are members of the CISG, while the remainder (India, Malaysia, Thailand, and the Philippines), approximately 23%, share its non-CISG member status.

## B. Business Practices

In this section, we analyze business practices in international trade, especially in Indonesia. However, so far, few quantitative studies have investigated the business practices in Indonesia. The only quantitative research in Indonesia conducted in 2006 by Affifah Kusumadara,<sup>12</sup> who collected information regarding how business practitioners in Indonesia conduct their trade activities in accordance with CISG regulations. Her primary finding was that the business practitioners in Indonesia were indifferent (67%) to the contractual laws governing their trade activities notwithstanding the fact that approximately 75% of their business was conducted with partners from CISG member countries (Singapore, the EU countries, the USA, Canada, Australia, and Korea).<sup>13</sup> However, this research did not investigate whether this fact will lead business practitioners to demand that the government ratify the CISG. Therefore, this reality does not justify the urgent ratification of the CISG by the

<sup>9</sup> The Data derived from the study of PWC's report to spot "The World in 2050",; see <http://www.pwc.com/gx/en/issues/economy/the-world-in-2050.html> (Accessed on 27 July 2017).

<sup>10</sup> Retrieved from <http://atlas.media.mit.edu/en/profile/country/idn/> (Accessed on 27 July 2017).

<sup>11</sup> See <http://www.worldstopexports.com/indonesias-top-15-import-partners/> (Accessed on 27 July 2017).

<sup>12</sup> Affifah Kusumadara is a lecturer at Law Faculty in University of Brawijaya, Indonesia.

<sup>13</sup> Kusumadara, "Pentingnya Ratifikasi UN Convention on Contracts for The International Sales of Goods oleh Pemerintah Indonesia [The Urgency to Ratify the UN Convention on Contracts for The International Sales of Goods by Indonesian Government]," *Jurnal Forum Penelitian [Journal of Research Forums]* No. 2., (2006), 5. [In Bahasa Indonesia].

government yet.

For comparison, a similar problem was observed in the Western countries by Giles Cuniberti. His scientific research examined 181 arbitral award cases, publicly available, particularly from the International Chamber of Commerce. Three major jurisdictions, the USA, Germany, and France, were considered. In general, he found that, like Indonesia, the parties involved in international sales were not concerned about the legal regime governing their business contracts despite belonging to CISG member countries.<sup>14</sup> Cuniberti noted that the concerned parties failed to refer to laws governing their business contracts and did not opt in or out of the CISG. Among the 181 cases, the number of cases wherein the relevant parties were not aware of contractual laws was 95% in France, followed by 75% and 63% in Germany and the USA respectively.<sup>15</sup> In 2016, John F. Coyle conducted a study in the USA, collecting more than 5000 contracts and interviewing several lawyers who had drafted these contracts. His findings were similar; the CISG was avoided by companies in the USA, who were not aware that, when selecting US laws, the CISG is also applicable. Several recent surveys indicate that attorneys in the USA and Europe routinely encourage their clients or companies to opt out of the CISG.<sup>16</sup> However, this finding is not generalized worldwide, for example, in contracts with Chinese solar companies, when choosing the law governing the contract, priority is given to the CISG, followed by Chinese or German law, and sometimes, the national sales laws of England, Australia, or Japan.<sup>17</sup>

There are slight concerns regarding the effectiveness of the CISG in practice. Business practitioners, whether consciously or not, are not using this regulation at a satisfactory rate. There are two prominent reasons for this situation: First, there is a lack of certainty associated with the CISG. Although its primary purpose is to introduce more certainty in commercial exchanges,<sup>18</sup> the Vienna Convention has failed to implement strict regulations that nurture certainty. This is a consequence of the CISG's burden to accommodate different legal systems globally via the opt-out provision. Commonwealth laws are considered stricter and more defined regarding this issue, which is why several common-law countries, such as the UK and India, feel that the CISG has a weakness regarding this matter and is not suitable for governing international sales.<sup>19</sup> Cuniberti,<sup>20</sup> and Schwenzer and Hachem<sup>21</sup> also acknowledge this weakness of the CISG in practice that causes business practitioners to opt out of using the CISG in their businesses. Second, in conjunction with the excessive freedom inherent in this convention, the CISG establishes non-uniformity as its member states are permitted to opt out based on Article 6 of the CISG. Consequently, many contracted sales were conducted outside the CISG and thus indicate that the CISG

<sup>14</sup> G. Cuniberti, "Is the CISG Benefiting Anybody," *Vanderbilt Journal of Transnational Law* 39(5), (2006): 1511-1550, 1529.

<sup>15</sup> *Ibid.* pp. 1530-1535.

<sup>16</sup> 15 J. F. Coyle, "The Role of the CISG in US Contract Practice: An Empirical Study," *U. Pa. J. Int'l L.*, 38, (2016), 195, 195-206.

<sup>17</sup> *ibid.*, p. 222-223. The CISG has been preferred by Chinese companies because Chinese law resembles the CISG, since its revision in 1999 to accommodate the rules of the CISG.

<sup>18</sup> The official purpose of the CISG can be found at the UNCITRAL website as follows: [http://www.uncitral.org/uncitral/en/uncitral\\_texts/sale\\_goods/1980CISG.html](http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html) (Accessed on 24 July 2017).

<sup>19</sup> H. Sono, "Japan's Accession to the CISG: The Asia Factor," *Pace International Law Review* 20(1), (2008): 105-114, 106.

<sup>20</sup> Cuniberti, "Is the CISG Benefiting Anybody," 1544.

<sup>21</sup> I. Schwenzer, & P. Hachem "The CISG—Successes, and Pitfalls," 472.

does not embody uniform regulations in international sales law. In common-law countries like the USA, Australia, Singapore, and Canada, where statistics indicate that the application of the CISG is relatively low, domestic law is preferred.<sup>22</sup>

Since Indonesia is not a CISG members, practitioners are to choose what type of contract law will apply to their business. In many cases, practitioners regularly use their partner's national laws<sup>23</sup> because of the inadequacy of Indonesia's Civil Code, which was introduced in 1848 by the Dutch Kingdom during Indonesia's colonization period. It is understandable why Indonesia's Civil Code is not suitable to regulate international sales law today. In fact, there is no separation between domestic-international sales and consumer-commercial transactions in Indonesia's Civil Code. This condition has led Indonesian companies to select other legal regimes and employ trust-based agreements in business contracts with foreign companies.

The fact that Indonesia's Civil Code is unable to regulate international sales contracts and the government has not yet ratified the CISG, poses both benefits and shortcomings for Indonesian trade companies. The benefit is that they can freely choose their law regime and so can easily choose contract laws that align with their own interest and circumstances. They simply use the basic principle of *Pacta Sunt Servanda* with their partners, based on the freedom of contract (Article 1338 of Indonesia's Civil Code). If an Indonesian practitioner has a business deal with a partner from a CISG member country, they can choose to apply either the partner's national laws or the CISG (if the partner's country does not make a reservation based on Article 95). This leads to the drawback of not being a CISG member. While several countries have made a reservation on Article 95, Indonesian business practitioners are forced to solely use the national laws of their partners. This situation arises from the policy that allows refusal of the applicable law based on Article 1.1.b of the CISG. This article states that a country can use the CISG as the applicable law only with other CISG members. Therefore, since Indonesia is not a CISG member currently, Indonesian trade companies have limited options compared to countries such as the USA, Singapore, and China (all of which are primary trading partners of Indonesian companies) that made a reservation on Article 95 of the CISG.

### C. Political Will

Since the early 21<sup>st</sup> century, many legal scholars have attempted to persuade the Government of Indonesia (hereinafter, the GOI) to ratify the CISG with Kusumadara's paper leading the efforts. However, the GOI continues to remain silent on the final ratification act although several prior steps have been taken toward ratification. One of the most important endeavors toward ratification is the presence of the *Naskah Akademik* or Academic Document, which was sponsored by the National Law Development Agency (*Badan Pembinaan Hukum Nasional*, hereinafter, the BPHN) under the administration of The Ministry of Justice and Human Rights of the Republic of Indonesia.

The Academic Document for the ratification of the CISG was released by the BPHN in 2013 and has become the academic grounding for the GOI to ratify the CISG.<sup>24</sup>

<sup>22</sup> Kusumadara, "Pentingnya Ratifikasi" 7.

<sup>23</sup> Kusumadara, "Pentingnya Ratifikasi" 9.

<sup>24</sup> H. Juwana, "Ratifikasi Konvensi PBB Mengenai Kontrak Jual Beli Barang Internasional [The Ratification of the United Nations Convention on Contracts for the International Sales of Goods]," *Badan Pembinaan*

The fundamental concept of the Academic Document is to protect Indonesian trade companies from the uncertainty of their business contracts. The document suggests that Indonesian trading companies should have the option to benefit from the CISG's role as a uniform law of international trade. Since Indonesia is not a CISG member, Indonesian trading companies will have the opportunity to learn and prepare for the consequences of applying the CISG.

However, since ratification has political ramifications, the GOI must examine both from the advantages and disadvantages of ratification. The advantages are apparent: the CISG will ensure the conformity of international contract sales. Furthermore, many countries are becoming CISG members, and a vast majority of Indonesia's primary trading partners are among them. Consequently, ratifying the CISG will increase Indonesia's trade volume significantly in the coming years.

Moreover, Indonesia must be aware of competitor countries in the region, such as Vietnam and Singapore, that have already joined the CISG. It is predicted that the Philippines will also ratify the Vienna Convention in the future after it acknowledged that the CISG's provisions share basic similarities with its contract law and the slight difference will not oppose the fundamental principles of the Philippines' contract law.<sup>25</sup>

Additionally, the GOI must address several issues associated with ratifying the CISG. First, currently, the CISG is still unable to establish uniformity due to its opt-out provision, which allows the application of other legal regimes governing contract sales globally.<sup>26</sup> Furthermore, in terms of its broader application, the CISG still faces the problem of its incompatibility with Sharia Law, especially regarding the several Arab countries that base their commercial laws on Islamic Law.<sup>27</sup> Moreover, the CISG is not perceived as a catch-all, which means that ratifying the CISG does not guarantee that all international sales laws will be covered. In fact, a major shortcoming of the CISG is that it does not consider the validity issue, which is important for business contracts. It is believed that the CISG will decrease the cost for governing sales contracts; however, it also increases the cost of sale transactions due to its limited uniformity, which forces parties to understand other national regulations.<sup>28</sup> For instance, besides the validity issue, the CISG does not regulate the transfer of ownership and hardship procedures. Second, despite its position as the 15<sup>th</sup> largest global economy, Indonesia's international trade activity seems relatively small, being ranked 26<sup>th</sup> and 31<sup>st</sup> in terms of exports and imports respectively. These figures provide weak rationale regarding the urgency to become a CISG member. Third, using Cuniberti's terminology, Indonesia's trading companies are grouped as *unsophisticated* actors, legally speaking, which implies that they are indifferent

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*naanHukum Nasional [National Law Development Agency]. [In Bahasa]. This Academic Document can be found at [http://www.bphn.go.id/data/documents/na\\_bbm.pdf](http://www.bphn.go.id/data/documents/na_bbm.pdf). (Accessed on 27 July 2017).*

<sup>25</sup> R. Cuevas, "The Philippines' Perspective on United Nations Convention on Contracts for International Sales of Goods," *NZACL Publication*, Vol. XVI, (2013), 298. Retrieved from <http://www.victoria.ac.nz/law/research/publications/about-nzacl/publications/special-issues/hors-serie-volume-xvi.-2013/Laborte-Cuevas.pdf> (Accessed on 27 July 2017).

<sup>26</sup> M. F. Koehler & Yujun, G., "The Acceptance of the Unified Sales Law (CISG) in Different Legal Systems," *Pace Int'l L. Rev.*, 20, 45, (2008).

<sup>27</sup> F. Akaddaf, "Application of the United Nations convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic countries: Is the CISG compatible with Islamic Law principles," *Pace Int'l L. Rev.*, 13, 1, (2001).

<sup>28</sup> Cuniberti, "Is the CISG Benefiting Anybody," 1546.

regarding the enforcement of their legal contracts as long as the core business terms are clear, such as goods, price, and dispute settlement. Indonesian companies prefer to enhance their custom regulations rather than spending money and time in learning new laws such as the CISG. Therefore, there is insufficient demand from domestic merchants and thus the GOI does not perceive any urgency to ratify the CISG. The United Kingdom faces a similar situation, wherein the government observed that many leading enterprises and organizations, such as BP, the Law Society of England and Wales, and the Commercial Bar Association are uninterested in the CISG.<sup>29</sup> Finally, the main reason for the reluctance to ratify the CISG is that the GOI has other urgent priorities of national interest such as the national economy, social-cultural development, and improving law construction. Indonesia began its existence as a state after the *Reformation Regime* in 1999. Therefore, every aspect of Indonesia is being rebuilt. Regarding the national economy, after experiencing heavy turbulence arising from the economic crisis in the mid-1990s, the GOI seeks to rebuild the national economy and establish a solid foundation for the future. Economy policies have been created to reduce any legal barriers and to improve infrastructure that will accelerate trade activity. For instance, since 2015, the GOI has identified and revised around 154 regulations, among which 122 were related to port and dwelling time. This policy is still being implemented in 2017, with the 15<sup>th</sup> economic stimulus package being released to revise 20 regulations regarding logistics.<sup>30</sup> It is evident that the GOI is more interesting rebuilds its domestic economic regulations rather than enhancing its economic laws in terms of its international scope. This reality of Indonesia resembles Japan's conditions before it was eventually able to join the CISG in 2008. In the 1990s, Japan was ready to ratify the Vienna Convention but its efforts were disturbed by the Asian economic crisis, after which Japan struggled to rebuild its economy and implemented activities to approve the convention that was abandoned for years.<sup>31</sup>

### III. OPTIONS TO CHOOSE

#### A. Ratify the CIGS or Modify National Law

Regarding political barriers, legal scholars have two arguments. On one hand, they seek to persuade the GOI to ratify the Vienna Convention due to its political ramifications for both international relationships and economic achievements in the future. Despite the associated problems, the GOI must take immediate steps to protect national merchants conducting business with foreign companies. Another concern is whether Indonesian merchants are unsophisticated or not. The function of a government is to establish laws that regulate the activities of its citizens, in this case, its merchants, as mandated by the preamble of Law Number 7, 2014 regarding trading. On the other hand, legal scholars have softened their approach toward persuading Indonesia to ratify the CISG by proposing another solution: modifying Indonesia's Civil Code to incorporate the CISG provision into the national law. It is

<sup>29</sup> S. Moss, "The Why the United Kingdom Has Not Ratified the CISG," *Journal of Law and Commerce* 25(1), (2005): 483-488, 483.

<sup>30</sup> News Desk, "Indonesia to Revise 20 Regulations in Next Economic Stimulus Package," *The Jakarta Post*, January 21, 2017. <http://www.thejakartapost.com/news/2017/01/21/govt-to-revise-20-regulations-in-next-economic-stimulus-package.html> (Accessed on 4 October 2017); Deputy Assistance, "Maritime Infrastructure to Reduce Logistics, Transportation Costs, President Jokowi Says," *Sekretariat Kabinet Republik Indonesia*, May 4, 2017. <http://setkab.go.id/en/maritime-infrastructures-to-reduce-logistics-transportation-costs-president-jokowi-says/> (Accessed on 4 October 2017).

<sup>31</sup> Sono, "Japan's Accession to the CISG," 107.



believed that incorporating international sales regulations into the national law would enhance Indonesian traders' knowledge as well as increase the available options instead of merely depending on the national laws of foreign trade partners. Furthermore, Indonesia's Civil Code is inadequate for regulating international sales laws since it was created for the purpose of domestic sales activities in the past. The modification of the civil code will also help to develop Indonesia's laws, particularly private laws.<sup>32</sup>

However, altering the National Civil Code is an arduous task for the following two reasons. The first barrier is domestic complexity. The procedure and process to alter the civil code involves time and extremely complex tasks. Altering the National Civil Code will not only involve developing the law but also attract strong arguments in the parliament; this is evident from the fact that Indonesia's Civil Code has lasted for more than a decade despite efforts to alter it on several occasions. The second barrier to the alteration of the civil code arises from the question of its effectiveness in practice. When the Indonesian Civil Code has successfully incorporated international sales contract regulations, will it really be a choice for the concerned parties in international sale?

Utilizing national laws for international transaction issues will only be effective in two circumstances: the absence of choice-of-law provision (for non-CISG members) and when trading parties agree to use one national law to govern their contracts. Furthermore, international sale laws in the Indonesian Civil Code will only be valid when there are, at least, two parties from different countries conducting sales of goods across country borders and they agree to govern their contract with the incorporated regulations. The incorporate regulations would not be valid for domestic application or international application when parties decide not to choose it. It is unlikely that parties from other countries, especially from advanced countries, will agree to choose Indonesian laws over their own. The laws in advanced countries are arguably far better in governing international sale contracts since they have evolved through time and practice. A good example is the Dutch Civil Code, which is the origin of the Indonesian Civil Code, was altered substantially in 1992. It must be admitted, without prejudice regarding the inadequacy of the Indonesian legal system, that a similar situation will likely occur in Indonesia. If this scenario takes place, the effect of international sale laws in the civil code will be ineffective, that is, it will be disregarded in international sales practice and unused in domestic transactions. Therefore, the option to alter the Indonesian Civil Code is not a wise policy compared to its political cost and energy. This conclusion does not necessarily mean that the National Civil Code of Indonesia must not be modified to include international sales of goods at some point. However, the modification of the civil code must not be used as a substitution for the ratification of the CISG since modifying the Indonesian Civil Code alone is not an effective solution. The ideal path, obviously, would be to ratify the CISG and simultaneously, or at least shortly after, to strengthen the Indonesian Civil Code.

## **B. Operating National Law**

Meanwhile, the first option, to ratify the CISG, seems more realistic. If Indonesia decides to accept the CISG as well as ratify the convention in domestic law,<sup>33</sup> the

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<sup>32</sup> Kusumadara, "Pentingnya Ratifikasi", 16. Juwana, "Ratifikasi Konvensi," 78.

<sup>33</sup> Indonesia is silent regarding the monism and dualism systems of law, practice shows that the appli-

international sales of goods law will become the prevalent law unless the concerned parties are silent (in case the other party is not a CISG member, it would be excluded from the application of the CISG based on Article 1(1)) or explicitly oppose the application of the CISG based on Article 6 of the convention. Furthermore, the effectiveness of the application of the CISG depends on the subsequent efforts: First, the parliament must enact the ratification process in the Indonesian legal system. Second, the related domestic laws must be made consistent with the CISG's regulations including them in the Indonesian Civil Code. In the Netherlands, for example, along with its status as a CISG member, the Dutch Civil Code also governs and more often, provides guidance regarding several international sales laws, including the Book 10 Private International Law, which refers to the general provisions in Title 10.1 and the contractual obligations in Title 10.13. Furthermore, regarding international sales, the Dutch Civil Code also governs the transport of sold goods. In addition to participating in several international conventions regarding transports, the Netherlands, in its civil code, has the regulation Book 8 Transport Law and Means of Transport. This inclusion is necessary to complete the international sales of goods regulations since the nature of international sales is not only about the contract itself but also the delivery from the seller's premises to the buyer's location. Although the CISG mentions the transportation of goods in Article 31(2), the regulation is not mandatory and is inadequate in practice, wherein the concerned parties in international sales commonly agree on their chosen transportation mode. Therefore, in practice, most international sales utilize several international transport regulations such as Incoterms 2010, the Hague-Visby Rules, and the Convention on the Contract for the International Carriage of Goods by Road (CMR). In practice, despite the many transport regulations for the international sales of goods available and that have been adopted by the Netherlands, the guidance of the Dutch Civil Code has proven to be crucial, particularly when resolving any legal conflicts regarding complicated transportation. Therefore, should Indonesia finally ratify the CISG, supporting efforts to regulate consistent laws at the domestic level must also be undertaken to ensure the effectiveness of the CISG and its practices.

#### IV. CONCLUSION

Alongside with the United Kingdom and India, the world is waiting to see whether Indonesia will ratify the CISG or not. Like other countries that are still reluctant to join the Vienna Convention, Indonesia has received many criticisms not only from outside but also from inside the country. However, the decision to ratify an international convention is not a simple task because it requires a political decision by policymakers. Several factors influence Indonesia's decision regarding its immediate ratification of the CISG. First, the CISG is not implemented uniformly worldwide, despite being perceived as a one-stop shop for the regulation of all international sales of goods. Second, from a global market perspective, there is no urgent need for Indonesia to join the CISG as its current trade activity is relatively low in terms of exports and imports sales. Third, there is a lack of domestic support, particularly from business practitioners, who are indifferent to the laws that govern their contracts. Lastly, after the economic crisis in Asia in the mid-1990s and the Reformation Regime implemented in 1999, the Indonesian government is more interested in rebuilding

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cation of an international convention that has been ratified is subject to its enactment in legislature to make it consistent with the domestic legal system, see Simon Butt, "The Position of International Law Within the Indonesian Legal System," *Emory International Law Review*, Vol. 28 Issue 1 (2014), 1.

national regulations rather than advancing its international agenda.

Many legal scholars have softened their approach to persuading the Government of Indonesia to ratify the CISG after perceiving the government's reluctance. Subsequently, they urged policymakers to, at least, modify Indonesia's Civil Code to include the provisions of the CISG. However, it is not realistic to expect that the civil code will be altered solely to incorporate the CISG. Furthermore, it is believed that Indonesia will have to join the CISG with its rising global market position in the future. As an emerging market, Indonesia is expecting to climb higher in world trade rankings. It is predicted that many countries will similar be compelled to join the Vienna Convention in the upcoming years, including other ASEAN countries. Therefore, the necessity to enter the CISG will arise naturally and the government will have no reason for its reluctance to ratify the CISG anymore. By that time, the CISG will perhaps be further strengthened regarding the universality of its applicable laws, and will not only surpass the Civil Law States but also become donna major player for common-law countries in terms of governing their international contract sales. For its broader application, the CISG must also be compatible with Sharia Law in the future.

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