

The Principle of Personality as a Basis for Legal Determination in International Agreements

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Article Info

Article history:

Accepted: 30 April 2025

Publish: 12 May 2025

Personality Principles;

International;

Law International Agreements;

Abstrak

This research discusses the role of the principle of personality in determining the applicable law in international agreements amidst the complexities of legal relationships resulting from globalization. The principle of personality, which emphasizes the connection of legal subjects to their state based on nationality or domicile, is proposed as a principle to provide legal certainty and justice. This study employs a normative and comparative approach to analyze the application of this principle in various international legal instruments and to evaluate its advantages and limitations. While the principle of personality offers legal certainty and protection for individuals, challenges such as jurisdictional conflicts and legal uncertainties in the context of modern business agreements are also identified. Therefore, this research aims to provide recommendations for the formulation of more adaptive and inclusive international agreements, as well as to emphasize the importance of a personal approach in creating a legal system that is responsive to global dynamics.

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1. INTRODUCTION

In the world of law, contracts play an important role as the basis for regulating legal relations between parties. A contract can be understood as an action carried out by two or more parties, where each party has an obligation to carry out one or more achievements in accordance with the agreement that has been made. In this sense, a contract is a form of agreement that creates rights and obligations for the parties. However, what differentiates contracts from agreements in general is their written form.[1] Contracts as written agreements provide stronger evidentiary power, clarify the rights and obligations of each party, and minimize the potential for disputes to occur in the future. Therefore, understanding the nature and characteristics of contracts is very important in legal practice, especially in the fields of civil law and international business.

It is a fact that there is not a single country in the world that does not have relations with other countries.[2] The real form of global interaction is the increasing number of international agreements involving various legal subjects from different countries. According to the Vienna Convention, an agreement can be categorized as an international agreement if it fulfills several important elements, namely: it is a written instrument between two or more parties, it is subject to the provisions of international law, it is made by a legal subject who has international personality, and it creates legal obligations for the parties involved.[3] International agreements, which were initially exclusive instruments between countries, have now developed into legal mechanisms that also include non-state

actors such as multinational corporations, international organizations, and even individuals. The complexity of relations between cross-border legal subjects requires the existence of a legal order that is able to provide certainty, justice and balanced legal protection for the parties involved.

One of the most crucial issues and often a source of dispute is determining the applicable law (*choice of law*) in international agreements.[4] Which law will be applied if a violation or dispute occurs? Is it the law of the country where the agreement is signed, the law of the parties' home country, or international law itself? These questions show that in practice, determining the applicable law is not a simple matter, especially when agreements involve legal subjects from various legal systems that have different legal characteristics and principles.

Unclearness in determining the applicable law can give rise to legal uncertainty (*legal uncertainty*), which in turn will affect the effectiveness and enforceability of the agreement itself. In addition, uncertainty in the law also provides opportunities for legal practices where plaintiffs or parties involved in disputes choose certain locations or courts to present their cases. They hope to obtain a more favorable decision than if they filed the case in a different court. This certainly has the potential to harm one of the parties and can lead to inequality in legal protection. Therefore, it is important to establish a principle or principle that can be the basis for determining laws that apply fairly and consistently in international agreements.

One of the principles that can be used as a basis in this context is the principle of personality (*personality principle*). The principle of personality is a principle in international law which focuses on the legal attachment of legal subjects to their country based on personal elements, such as citizenship or domicile. In the context of determining applicable law, the principle of personality can provide a more contextual and proportional approach by taking into account the legal background of the parties involved in the agreement. By referring to this principle, the law enacted will better reflect the legal identity of the subject concerned and is expected to be able to bridge differences between national legal systems.

The application of the principle of personality in determining applicable law is nothing new in international law, especially in private international law. However, in the practice of international agreements which are increasingly complex and involve various cross-country interests, the application of this principle requires a more in-depth study. This is because other principles such as the principle of territoriality, the principle of universality, and the principle of effectiveness also play a role in forming the legal framework of international agreements. Therefore, it is important to examine the position and relevance of the principle of personality in the framework of contemporary international treaty law, especially in the context of determining applicable law.[5]

Determining the applicable law in international agreements not only has implications for normative aspects, but also practical aspects related to the implementation of agreements, dispute resolution and law enforcement. In practice, international agreements often contain applicable legal clauses (*governing law clause*), which is the main determinant in resolving disputes that may arise in the future. However, not all agreements explicitly state which law applies, leaving room for different interpretations by each party and by the competent judicial body.

In the context of relations between legal subjects across countries, determining the applicable law becomes increasingly complex because it involves differences in legal systems, differences in legal culture, and differences in the level of legal protection offered by each country. For example, an agreement between a company from a country that adheres to the common law system and a company from a country that adheres to the system

civil law will face its own challenges in determining the legal basis to be used if a breach of contract occurs. These differences are not only substantive, but also procedural, which can influence the course of the dispute resolution process.

In this case, the personality principle offers a more flexible and fair approach because it takes into account the legal subject's attachment to a particular legal system. Thus, this principle can help reduce potential legal conflicts and provide clarity regarding the rights and obligations of each party in the agreement. Apart from that, the principle of personality is also in line with the principle of autonomy of the parties (*party autonomy*) in international contract law, which gives freedom to the parties to choose the law that will apply in their agreement.

The importance of the principle of personality can also be seen from its role in guaranteeing the protection of human rights and universal justice values. In some cases, the application of law based on the principle of territoriality or effectiveness can ignore the personal values inherent in legal subjects, such as the protection of cultural identity, religion and social values held by individuals or legal entities. Therefore, the application of the principle of personality can be a bridge between national legal principles and more universal international legal principles.

Furthermore, the development of modern international law shows a trend that increasingly recognizes the importance of a personal approach in cross-border legal relations. This can be seen from the increasing number of bilateral and multilateral agreements which include clauses relating to the protection of citizens, recognition of the legal status of individuals outside their country's territory, as well as regulations regarding the recognition and implementation of foreign court decisions. All of this shows that identity and personal attachments are important elements in building a just and inclusive international legal system.

However, applying the principle of personality in the context of determining applicable law also has its own challenges. One of them is the difficulty in determining the domicile or citizenship of transnational legal subjects, such as multinational companies that have branch offices in various countries. Apart from that, there is also the possibility of a conflict between the principle of personality and other legal principles, such as the principle of effectiveness which places more emphasis on the ability of a law to be actually enforced in a region or on a legal action.

Therefore, a holistic and systematic approach is needed in applying the principle of personality as a basis for determining applicable law in international agreements. This approach must be able to accommodate the complexity of relations between legal subjects across countries, without sacrificing the basic principles of international law, such as justice, legal certainty and protection of human rights. This is where in-depth academic studies are important to evaluate the effectiveness and relevance of the personality principle in the context of contemporary international law.

This research aims to examine in depth the role of the principle of personality in determining the applicable law in international agreements, by emphasizing the importance of a personal approach in creating a legal system that is fair, proportional and responsive to global dynamics. Through a normative and comparative approach, this research will analyze how the principle of personality is applied in various international legal instruments, as well as evaluate its advantages and limitations in international legal practice. This research will also provide recommendations for drafting international agreements that are more adaptive to the legal needs of the subjects involved, by making the principle of personality one of the main principles in determining applicable law.

Thus, through this study it is hoped that it can contribute to the development of international legal theory, especially in the field of treaty law, as well as provide a

theoretical and practical basis for treaty designers, legal practitioners and policy makers in designing and interpreting international agreements that are more inclusive and just.

2. RESEARCH METHOD

This research uses a normative and comparative approach to analyze the role of the principle of personality in determining the applicable law in international agreements. This methodology is designed to explore and evaluate the application of the principle of personality in the increasingly complex context of international law, especially in situations where legal subjects come from various legal systems.

This approach focuses on the analysis of applicable legal norms, including international legal principles and relevant treaties. Through this approach, research will identify and examine the legal bases that underlie the application of the principle of personality, as well as how this principle functions in the context of determining applicable law in international agreements.

This research will also compare the application of the principle of personality with other relevant principles, such as the principle of territoriality and the principle of autonomy of the will. By comparing these various approaches, the research aims to evaluate the advantages and limitations of each principle in international legal practice.

With this methodology, it is hoped that research can make a significant contribution to the development of international legal theory, especially in the field of treaty law, as well as provide guidance for legal practitioners and policy makers in designing better international agreements.

3. RESEARCH RESULTS AND DISCUSSION

In Indonesian national law, the principle of personality is reflected in various statutory regulations. Law Number 24 of 2000 concerning International Agreements regulates that international agreements can only be made by the Indonesian government with other international legal subjects. This shows that Indonesia recognizes and implements the principle of personality in its national legal practice.[6]

The principle of personality in the context of international treaty law refers to the principle that only entities recognized as subjects of international law have the capacity to make and be bound by international treaties. Subjects of international law include states, international organizations, and in some cases, individuals and other non-state entities. This principle ensures that only parties who have valid legal capacity can create internationally binding rights and obligations.[7]

The development of globalization has had a significant impact on interactions between countries and between individuals across national borders. In this context, international law, especially private international law, becomes very important in regulating transnational legal relations. One important aspect of private international law is determining the applicable law in international agreements. Various principles are used to determine applicable law, one of which is the principle of personality.

The principle of personality is one of the main principles in contract law, which confirms that the validity of an agreement is only limited to the parties who make it.[8] The principle of personality is a principle which stipulates that the law that applies to a person, including in agreements, is the law of that person's country of origin or nationality. In the context of international agreements, this principle is used to determine the law governing agreements based on the personal status of the parties. This discussion will examine in depth the advantages and disadvantages of the principle of personality as a basis for determining law in international agreements.

The principle of personality in business law refers to the recognition that every individual or legal entity has rights and obligations. In the context of international business law, entities that have legal personality can engage in business agreements and participate in international transactions. According to P. H. Sembiring, "legal personality is the ability to have rights and obligations in a legal context.

In modern international relations, the principle of personality is no longer only related to personal status, but is also starting to be applied in various fields, including international agreements, cross-border dispute resolution, and extraterritorial jurisdiction. This principle is used to emphasize that the state has legal authority over its citizens, even when they are outside the state's territorial territory.

In the field of international treaties, the principle of personality becomes increasingly important when transnational legal subjects, including individuals, business entities and international organizations, are involved in treaties that are not automatically subject to one legal system. In this context, a personal approach (based on the legal status of the parties) is considered as one way to bridge jurisdictional differences and prevent legal conflicts between countries.

The advantages and disadvantages of the personality principle are very important, especially in the era of globalization which is characterized by increasing human mobility, cross-border trade and international cooperation. On the one hand, the personality principle offers various advantages, such as providing legal certainty for individuals, strengthening protection for citizens abroad, and facilitating cohesion between national law and national identity. This principle is also considered more flexible in maintaining orderly legal relations across countries, because it still binds individuals to the legal norms of their own country.

However, the principle of personality is not free from weaknesses. In the midst of efforts to harmonize international law, the application of this principle can give rise to jurisdictional conflicts, especially when the law of the country of origin conflicts with the law of the country where the incident occurred. In addition, the application of the principle of personality can hamper the effectiveness of law enforcement in other countries, and in some cases, risks creating unequal legal treatment for foreign and local citizens.

One of the main advantages of the personality principle is its ability to provide legal certainty. By basing the applicable law on the nationality or place of origin of the legal subject, a person has clarity regarding which law regulates his or her rights and obligations in an agreement. This legal certainty is important in complex international legal relations.

The principle of personality strengthens national legal values by still linking individuals to the legal system of their country of origin. This allows the preservation of the legal norms, values and culture of each country, while avoiding the domination of certain legal systems over individuals who come from different legal systems.

In the context of international agreements, an individual's country of origin can more easily provide legal protection to its citizens because legal relations remain within the corridor of national law. States can intervene or provide consular protection if there is a dispute or violation of the rights of their citizens in international agreements.

In an increasingly globalized world, international agreements often occur between business entities from various countries. In this context, the principle of personality becomes less relevant because transactions are economic and pragmatic, not merely personal. Citizenship-based approaches tend to be rigid and do not reflect the practical needs of modern international agreements.

Legal harmonization efforts aim to unify legal principles so that they can be applied uniformly in various countries. The principle of personality, which emphasizes the national

laws of each party, has the potential to become an obstacle in creating a harmonious and globally integrated legal system.

In the era of globalization, quite a few individuals have dual citizenship or even do not have citizenship. In this situation, the application of the principle of personality becomes problematic because it is not clear which law should apply, or there is even more than one law that can be claimed to apply.

In international treaties, the principle of autonomy of the will or "*party autonomy*" is very important. The parties are free to determine which law they choose to regulate their agreement. The choice of law in an international agreement must be made *bona fide*, namely in good faith and based on honest and reasonable considerations of the parties. The choice of law must not be made with the aim of avoiding legal provisions that should apply or to commit legal smuggling (*fraud law*).^[9] The application of the principle of personality can hamper this freedom if the national legal system does not allow the choice of foreign law or limits the freedom of movement in determining the applicable law.

Even if a treaty is subject to the laws of one of the parties' home country, its implementation can be hampered if the courts of another country are reluctant to apply foreign laws, especially if those laws conflict with local public policy. This causes uncertainty and potential disputes in the implementation of international agreements.

Considering the advantages and disadvantages, the application of personality principles should be considered contextually. In agreements that are personal and concern individual status, this principle is still relevant. However, in commercial and business agreements, a more flexible approach such as the principle of autonomy of will or the principle of the place of implementation of the agreement (*local contract law*) is more recommended, considering the nature of international business transactions which demand efficiency, certainty and practicality.^[10] Today's business world moves at a fast pace and crosses national jurisdictional boundaries. Business actors, both individuals and corporations, need legal certainty and flexibility in determining which law will regulate their agreements. Therefore, the principle of autonomy of will, which gives parties the freedom to choose the law that will regulate their legal relations, becomes more relevant and in line with the needs of modern transactions.

The principle of autonomy of will allows the parties to expressly agree on the laws of a particular country that they consider to be most appropriate and conducive to the implementation of the contract. For example, two companies from different countries may consciously choose the laws of a third country that are considered neutral, efficient, and business-friendly. This provides assurance that the agreement will not be hampered by the conflicting national laws of the respective parties, which may have significant differences in contractual arrangements. In this way, the potential for disputes can be reduced from the start because there is clarity and agreement regarding the law used.

Meanwhile, *local contract law*, or the law under which agreements are made or executed, also offers a more practical approach to business agreements. In many cases, the place of implementation of the agreement is the main location of the business activities carried out by the parties, so that logically and practically, the law of that place is closest to the substance and context of the implementation of the contract. This approach not only makes law enforcement and dispute resolution easier, but also reflects the principle of legal territoriality that is still adhered to by many national legal systems.

When comparing this approach with personality principles, it is clear that personality principles tend to be more static and personal in nature. In commercial transactions, personal aspects such as an individual's nationality are usually not central. Instead, more attention is paid to the object of the transaction, the implementation mechanism, the location of the business, and the effectiveness of the law used. Therefore, the use of the

principle of personality in the context of business agreements can actually cause confusion, legal uncertainty and inefficiency in resolving disputes, especially if each party comes from a country that has a very different legal system.

Not only that, courts in the country where the contract is implemented may find it difficult to apply the law of another country based on the principle of personality, especially if the law contains provisions that are foreign or conflict with local public policy. In this case, the application of the principle of autonomy of will and *lex loci contractus* provides a more realistic solution because both are more easily accepted internationally and have become common practice in drafting cross-border contracts.

In addition, within the framework of legal harmonization and regional and global economic integration, the principle of autonomy of will has received a strong place in various international legal conventions and instruments, such as the Hague Convention and provisions in European Union contract law (e.g. *Rome I Regulation*).^[11] These instruments recognize the freedom of the parties to choose the applicable law, as long as it does not conflict with fundamental principles such as justice, public order, and protection of the weaker party in the contract.

Recognition of the principle of autonomy of the will also reflects the development of more open and progressive legal thinking. Rather than forcing the application of law based on personal attributes such as citizenship, the international legal system now emphasizes the principle of equality and the free will of the parties. In other words, in a business world that is oriented towards efficiency and results, law must be a tool that facilitates, not limits. In this framework, the principle of personality becomes less relevant, except in very specific and limited contexts, such as family legal relations or international inheritance.

However, this does not mean that the principle of personality is completely abandoned in business agreements. In some jurisdictions, especially countries with continental civil law systems, the influence of the principle of personality is still felt in the regulation of the legal capacity of parties to contracts. However, this aspect tends to be an initial stage of administrative verification rather than the main basis for determining the law that substantially applies to the contract.

4. CONCLUSION

The principle of personality has an important role in determining the applicable law in international agreements, especially in the context of cross-border legal relations which are increasingly complex due to globalization. This principle emphasizes the attachment of legal subjects to their country based on personal elements, such as citizenship or domicile, so as to provide legal certainty and protection for individuals. However, the application of the personality principle is also faced with challenges, such as potential jurisdictional conflicts and limitations in situations where the legal subject is transnational.

In the context of business and commercial agreements, a more flexible approach such as the principle of autonomy of will and *lex loci contractus* is more advisable. This approach gives parties the freedom to choose the most appropriate and efficient law, and accommodates the fast dynamics of international transactions.

Overall, although the principle of personality remains relevant, especially in specific contexts, modern international law tends to move towards a system that is more adaptive and responsive to the practical needs of business actors. Therefore, the application of the principle of personality must be carried out carefully and selectively, adapted to the context of the legal relationship being regulated.

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