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# Kant's Concept of Moral Autonomy as a Philosophical Justification of Party Autonomy

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**Abstract**

One of the important doctrines in international private law, especially in the field of contract law, is the party autonomy doctrine. Although it has gained enormous acceptance, there is still debate about the existence of the doctrine, as well as disagreements about the exact parameters, scope and boundaries of the doctrine. Kant's categorical imperative: "Act so that the maxim of thy will can always at the same time hold good as a principle of universal legislation," is the principle of individual moral autonomy as a universal law-making agent based on the autonomy of the will. This principle provides a philosophical justification for the existence of party autonomy. Based on Kant's idea, a categorical imperative is obtained that guides every rational being in viewing the doctrine of party autonomy, namely by giving respect to every free choice made by the parties in relation to disputes that occur between them. In this way, a transcendental understanding of party autonomy is obtained, which is respect for all rational beings to recognize and uphold every choice made by the parties in a dispute resolution that occurs.

## I. Introduction

One of the important doctrines in international private law, especially in the field of contract law, is the party autonomy doctrine.[1] Nygh stated that the freedom of the parties to international contracts to choose the law and choose the authorized forum in resolving disputes that arise in connection with their contracts is generally universally accepted.[2] However, the overwhelming acceptance of this doctrine does not simply eliminate the debate about the existence of the party autonomy doctrine. The devolution of law from state authority to autonomy of the parties, as embodied in the concept of party autonomy, has sparked concerns about avoiding state regulation, subversion of sovereign authority and ignoring the legitimacy of government authority.[3] This article presents a philosophical justification for the doctrine of party autonomy through Kant's thought of moral autonomy. The goal is to obtain a transcendental understanding of party autonomy, which can transcend the differences in views of various legal systems in the world regarding the existence of the party autonomy doctrine

[1] Alex Mills, "Conceptualizing Party Autonomy in Private International Law," *RCDIP* 1, no. 1 (2019): 418.
[2] Peter Nygh, *Autonomy in International Contracts* (Clarendon Press, 1999), 8.
[3] Fleur Johns, "Performing Party Autonomy," *Law and Contemporary Problems* 71 (2008): 243-44. Although party autonomy has become an important feature in several aspects of international private law, not a few scholars consider it difficult to reconcile real private power with state sovereignty. See Mills, "*Conceptualizing Party Autonomy*," 419.

The sophistication of party autonomy lies in the ability of this doctrine to give freedom to parties to determine their own distribution of private legal authority,[4] such as choosing the law or forum that is authorized to resolve their disputes. Although this concept is an ancient idea that can be traced back to Ancient Greece.[5] Some scholars believe that Dumoulin, a prominent French scholar in the 16th century, is the initiator of the foundation for the idea of party autonomy. Dumoulin argues that the intentions of the parties and the circumstances that describe these intentions, must be the main determining factor in determining the applicable law in an international treaty.[6] In the mid-19th century, party autonomy developed into a doctrine that is accepted as the main guiding principle in practice in English, German and French courts.[7]

The enormous acceptance and popularity in the 20th century, led to the emergence of many debates about the existence of party autonomy. The debate revolves around whether this doctrine is valuable enough and should therefore be respected in international legal relations. Most scholars support the existence of party autonomy. However, there are several commentators who give a negative view of the existence of party autonomy. Roosevelt III, for example, called party autonomy "*universally said to be a disaster*."[8] Long before, Beale argued that party autonomy is a doctrine that usurps state power, and therefore must be ignored.[9]

Meanwhile, several scholars who support the existence of party autonomy are still debating about the exact parameters, scope and definitions of this doctrine.[10] Various countries also provide different definitions on the freedom of the parties to determine their own applicable law in the international agreements they make.[11] In other words, despite the fact that there is a real consensus on the acceptance of party autonomy, there are various controversial debates that have yet to be resolved and dealt with consistently, especially in their application to different legal jurisdictions.[12]

This debate occurs because there is no or weak philosophical justification for the existence of party autonomy. This is due to the presumption that because party autonomy has received enormous acceptance in international legal practice, there is a tendency to suggest that a theoretical and philosophical foundation is not needed for this doctrine.[13] As a result, not many scholars have attempted to construct a philosophical basis for this doctrine. Pertegas and Marshall stated that party autonomy

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[4] Id.

[5] *Party Autonomy* is an ancient concept. This concept can be traced embrionically to the ancient Greeks. A record that is estimated to date from 120-118 BC records that for treaties made between the Greeks and the Egyptians, the determination of the competent court and applicable law, was based on the language they used in making the agreement. The record indicates that the parties have the authority to determine how their dispute will be resolved. See Friedrich K. Juenger, *Choice of Law and Multistate Justice*, Special Edition (Transnational Publisher, Inc., 2005), 7-8.

[6] Ole Lando, *The Conflict of Law of Contracts: General Principles* (Martinus Nijhoff Publishers, 1985), 241-42.

[7] Id. 244.

[8] Kermit Roosevelt III, "The Myth of Choice of Law: Rethinking Conflicts," *Michigan Law Review* 97, no. 8 (1999): 2449.

[9] Joseph Henry Beale, *A Treatise on the Conflict of Law*, Vol. 2 (Baker Voorhis & Co., 1935), 1079-80.

[10] Symeon C. Symeonides, "Party Autonomy in International Contracts and the Multiple Ways of Slicing the Apple," *Brooklyn Journal of International Law* 39, no. 3 (2014): 1128. See also Yeshnah D. Rampall and Ronan Feehily, "The Sanctity of Party Autonomy and the Powers of Arbitrators to Determine the Applicable Law: The Quest for an Arbitral Equilibrium," *Harvard Negotiation Law Review* 23 (2018): 392.

[11] Although in general the rights of the parties to choose the law that applies to their international agreements have been accepted and become the basis of legal systems throughout the world, each country differs in determining the limits on this freedom. Some countries provide almost unlimited freedom. Several other countries limit the freedom of the parties by demanding that the parties pay attention to the coercive provisions of local country law. See Lando, *The Conflict of Law*, 237-38.

[12] Mills, "*Conceptualizing Party Autonomy*," 418.

[13] Id.

was inspired by Kant's thoughts.[14] However, both of them did not explain in detail about this. For this reason, it is hoped that the philosophical justification for the party autonomy doctrine can provide a good understanding of the existence of party autonomy and eliminate academic debates about this doctrine.

## II. Research Methods

This research is interdisciplinary research.[15] The object of study, which is a phenomenon in the field of law, will be studied through a legal and philosophical discipline approach. The two disciplines will jointly be used to examine research objects using a common method, that is within the framework of legal philosophy. Considering that the focus of philosophy is related to the main questions regarding certain structures, the study of legal philosophy does not question law from its normative aspect, but rather identifies and analyzes the conceptual structure of a particular legal knowledge.[16] Dworkin stated that the main focus of the study of legal philosophy is on philosophical issues that arise from the existence and practice of law.[17] Accordingly, the collaboration between legal disciplines and philosophy within a framework of legal philosophy can produce a complete, fundamental and comprehensive understanding of the legal phenomenon which is the object of this research, namely regarding the doctrine of party autonomy.

## III. Results and Discussions

### Kant's Idea of Individual Moral Autonomy

Autonomy is a phrase commonly used in politics.[18] The evolution of the concept of autonomy can be traced back to Classical Greece, where the idea was used to refer to the sovereignty and freedom of the polis from interference by foreign powers.[19] In its development, this phrase developed into a very important phrase, not only in political philosophy, but also in moral philosophy.[20] Modern thinkers, such as Grotius, Locke, Rousseau, to Montesquieu, have tried to bring the concept of autonomy into the realm of the individual, in order to explain the essence of life of state. However, history records that Kant was a thinker who succeeded in bringing the concept of autonomy to the realm of individual morality.

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[14] Marta Pertegas and Brooke Adele Marshall, "Party Autonomy and its Limits: Convergence Through the New Hague Principles on Choice of Law in International Commercial Contracts," *Brooklyn Journal of International Law* 39, no. 3 (2014): 976.

[15] Interdisciplinary-research is research that uses more than one discipline as a comprehensive basis for studying a problem, by bringing together existing methods from several disciplines. See I. J. Kroeze, "Legal Research Methodology and The Dream of Interdisciplinarity," *Potchefstroom Electronic Law Journal* 16, no. 3 (2013): 51.

[16] M. D. A. Freeman, *Lloyd's Introduction to Jurisprudence,* ed. 5 (Thomson Reuters (Legal) Limited, 2008), 13-14.

[17] R. M. Dworkin, *The Philosophy of Law* (Oxford University Press, 1997), 1.

[18] Meng Zhaohua, "Party Autonomy, Privat Autonomy, and Freedom of Contract," *Canadian Social Science* 10, no. 6 (2014): 212.

[19] The term autonomy comes from the Greek, namely "autos" which means "self", and "nomos" which means law. Thus, autonomy *(autonomos)* can be interpreted as self-government or self-determination. See Jonathan Pugh, *Autonomy, Rationality, and Contemporary Bioethics* (Oxford University Press, 2020), 4. See also P. D. Motloba, "Understanding of the Principle of Autonomy (Part 1)," *The South African Dental Journal* 73, no. 6 (2018): 418.

[20] Gerald Dworkin, "The Nature of Autonomy," *Nordic Journal of Studies in Educational Policy* 1 (2015): 7. In the field of moral philosophy, personal autonomy is directed to creative self-creation and encourages the development of the virtues that support it. See Robert S. Taylor, "Kantian Personal Autonomy," *Political Theory* 33, no. 5 (2005): 602.

Freedom, as well as autonomy, is the most important concept in Kant's system of thought in Kant's moral philosophy.[21] According to him, freedom is a concept that *a priori* must be accepted based on practical common sense.[22] Insofar as the reality of freedom is proven by the apodeictic laws of practical reason, this can be used as a stepping stone to explain every metaphysical matter in a more consistent and objective manner, because these metaphysical matters can be proven through the fact that the idea of freedom really exists and can be expressed by moral law.[23] The idea of the moral law, which is the autonomy of the will, can only be properly expressed if it is presumed to exist through the idea of freedom.[24]

According to Kant, freedom is essentially in the will of man, and thus also in the will of all rational beings.[25] Meanwhile, the rational will has the freedom to regulate itself, or in Kant's language it is expressed by the idea of being autonomous,[26] that is the ability to choose and use that ability without any interference from other parties.[27] In other words, autonomy is defined by Kant as something that belongs to a rational will, namely something that can be a source of law because it is determined by the will of the subject, and is independent of other tendencies or authorities outside of that will.[28] In this way, Kant succeeded in placing the concept of autonomy at a value level that transcends the empirical world.[29]

At the level of values, we are dealing with the notion of "*ought*". Autonomy of the will gives rise to an obligation. If you "*can*" then you "*ought*."[30] Thus said Kant. It is impossible for someone to be obliged to do something if he cannot do it, because only a free and autonomous being can act morally.[31] Based on this basic assumption, Kant concluded that the autonomy of the will is the sole principle of all moral laws and all the obligations corresponding to them.[32] For this reason, moral action is an action that is carried out solely because of obligation, not because of any particular purpose or motive.[33] In fact, Kant further suggested that all obligations are ultimately a moral matter.[34]

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[21] In Kant's system of thought, freedom is the *ratio dessendi* of morality and is the main key to all of his thought structures. See Lewis White Beck, *Studies in the Philosophy of Kant* (The Bobbs-Merrill Company, Inc., 1965), 32. See also George P. Fletcher, "Law and Morality: A Kantian Perspective," *Columbia Law Review* 87 (1987): 535.

[22] Freedom is the only possible way to make practical use of our minds in our behavior. Therefore, it is absolutely impossible for both philosophy and human thought in general to argue about the existence of freedom. See Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. Mary Gregor (Cambridge University Press, 1997), 60.

[23] Immanuel Kant, *Critique of Practical Reason*, trans. Thomas Kingsmill Abbott (Dover Publications, Inc., 2004), 1-14.

[24] Kant, *Groundwork*, 55.

[25] Kant, *Critique of Practical Reason*, 15.

[26] Huntington Cairns, *Legal Philosophy from Plato to Hegel* (The Johns Hopkins Press, 1949), 392. Kant reveals that free action is action based on the will of the individual autonomously. See Iain Brassington, "The Concept of Autonomy and Its Role in Kantian Ethics," *Cambridge Quarterly of Healthcare Ethics* 21, no. 2 (2012): 167.

[27] Susan Meld Shell, *Kant and the Limits of Autonomy* (Harvard University Press, 2009), 1. Freedom of will can only be achieved through autonomy, which is something possessed by the will to become a law for itself. See Kant, *Groundwork*, 52.

[28] Pauline Kleingeld, "The Principle of Autonomy in Kant's Moral Theory: Its Rise and Fall," in *Kant Persons and Agency*, ed. Eric Watkins (Cambridge University Press, 2018), 61. This means that Kant tries to derive the principle of morality from the principle of non-contradiction to the concept of the rational agent as a person capable of self-determination. See Paul Guyer, *Kant on the Rationality of Morality* (Cambridge University Press, 2019), 17.

[29] Cairns, *Legal Philosophy*, 392. In this way too, Kant saw autonomy as the basis of human dignity and of every rational nature. See Kant, *Groundwork*, 43.

[30] All things that are obligatory are always expressed by the word "should". This shows the relationship between the objective laws of reason and will. See Id. 24.

[31] Fernando R. Teson, "The Kantian Theory of International Law," *Columbia Law review* 92 (1992): 62-63. See also Surya Prakash Sinha, *Jurisprudence, Legal Philosophy in a Nutshell* (West Publishing Co., 1993), 139.

[32] Kant, *Critique of Practical Reason*, 34. Kant saw that understanding morality in terms of the concept of autonomy was the only way to explain unconditional moral obligation. Pauline Kleingeld, "Moral Autonomy as Political Analogy: Self-Legislation in Kants's Groundwork and the Feyerabend Lectures on Natural Law (1784)," in *The Emergence of Autonomy in Kant's Moral Philosophy*, ed. Stefano Bacin and Oliver Sensen (Cambride University Press, 2018), 158.

[33] Beck, *Philosophy of Kant*, 23.

[34] E. L. Hinman, "Kant's Philosophy of Law," *The Monist* 35, no. 2 (1925): 282.

However, Kant realized that human free will can be both subjective and objective.[35] This means that not all human will can be used as a basis for behaving as a practical law or moral law. If reason infallibly determines will, then the actions of rational beings can be recognized as objective or subjective necessity. Will is the ability to choose simply because the choice is a good thing, regardless of the tendency that is deemed necessary. However, if minds cannot determine the will so that the will is also open to subjective conditions that are not in accordance with objective conditions, then the will does not have a legislative nature.[36] In other words, only objective will can be made into practical law. For this reason, Kant seeks to get rid of all forms of subjective will and leave an objective will as a practical law that is used as the basis for behaving.[37]

The conception of an objective principle, in so far as it is obligation for the will, is a command of reason which is called imperative.[38] For Kant, any practical principle which presupposes the object or matter of the faculty of desire as the basis for determining the will is empirical, and therefore cannot provide practical law.[39] This practical principle is referred to by Kant as a maxim, namely the will that is not in itself, but conditional will with respect to the desired goal. Given that the subjectivity of maxims often leads to contradictions of will, maxims cannot be universalized.[40] For this reason, maxims are not imperative, because conditional will, for Kant, is always subjective and therefore only a hypothetical imperative.[41]

Practical law, according to Kant, must be objective and valid for all rational beings.[42] The law may not depend on contingent conditions or a particular exception, but must be based on an absolute necessity.[43] For that, it must be freed from contingent subjective conditions that can cause differences between one rational being and another.[44] This means that practical law must refer to will as objective will, and must be autonomous, without considering the motives and goals to be achieved by its causality, so that it can be legislative in nature.[45] In this way, will becomes imperative.[46] Kant called it a categorical imperative,[47] which he formulated as: "*Act so that the maxim of thy will can always at the same time*

[35] According to Kant, human free will can be subjective, or called maxims, if a condition is considered by the subject to be valid only for himself. Will can be said to be objective, or called a practical law, if the condition is recognized as objective, that is valid for the will of every rational being. See Kant, *Critique of Practical Reason*, 17.
[36] Kant, *Groundwork*, 24.
[37] Without this practical law, which is the law that Kant called the law of an autonomous nature, human actions might only be based on their strongest inclinations, so that their actions would not be any different from those of other creatures. See Richard Dean, *The Value of Humanity in Kant's Moral Theory* (Oxford University Press, 2006), 228.
[38] Kant, *Groundwork*, 24.
[39] Kant, *Critique of Practical Reason*, 19.
[40] Taylor, "Kantian Personal Autonomy," 615-16.
[41] Kant, *Critique of Practical Reason*, 18. The nature of the imperative to act, insofar as it is determined by the actual conditions of the will of the subject based on knowledge of the facts, is a hypothetical imperative. See Lewis White Beck, *A Commentary on Kant's Critique of Practical Reason*, ed. 11 (The University of Chicago Press, 2001), 85.
[42] According to Kant, a law can only be a practical law which is the basis of obligation if it brings with it an absolute necessity that applies to all rational beings. For this reason, the practical laws that form the basis of obligations must not be sought in human nature or in the world conditions in which humans are placed, but are *a priori* determined in a pure rational conception. See Kant, *Groundwork*, 2-3.
[43] Id. 20.
[44] The need to avoid contradictions between individual maxims and efforts to universalize these maxims is a consequence of the need to avoid contradictions between the nature of rational beings as individuals and the existence of free will. See Guyer, *Kant on the Rationality*, 24.
[45] Kant, *Critique of Practical Reason*, 19-24. If the highest legislative principles of will depend on other authorities outside the will, it will result in no autonomy, but heteronomy. However, Kant argued that the will must have the nature of autonomy and only be subject to pure will as self-legislation, and free from all motives. See Kleingeld, "The Principle of Autonomy," 63.
[46] Cairns, *Legal Philosophy*, 392.
[47] The categorical imperative is something that represents an action as necessary in itself, without reference to other goals. This means that the action is objectively necessary. See Kant, *Groundwork*, 25.

*hold good as a principle of universal legislation*".[48] This categorical imperative is referred to as the principle of autonomy, which is individual participation in universal law-making based on the autonomy of the will.[49]

**Philosophical Justification or Party Autonomy Doctrine Based on Kant's Concept of Autonomy**

The above Kant's idea provides a philosophical basis for the existence of the doctrine of party autonomy. However, the use of Kant's thought in the field of law discipline often raises concerns about the deviation of Kant's thought, considering that the philosophical framework built by Kant is used for practical needs, that is at the level of legal practice. In addition, the gap between law and morals often gives rise to academic dissatisfaction with the application of Kant's moral philosophy within a legal framework. For this reason, Kant's idea must be used carefully and still be positioned at the level of values, so that a transcendental understanding of the doctrine of party autonomy can be obtained.

It is generally understood that party autonomy is a doctrine that frees the disputing parties to choose, based on their own will, regarding how disputes that occur between them will be resolved.[50] At a glance it seems that this understanding is in accordance with Kant's notion of individual participation in law-making, or individual autonomy as a self-legislator. However, this compatibility does not immediately provide a philosophical justification for the party autonomy doctrine. There are still some things that need to be cleared up.

Doesn't individual participation in law-making in Kant's system of thought directed towards universal laws?[51] How is it possible that a meeting of the will of the disputing parties can become an objective practical legal guide? How, then, can the choices made by the disputing parties regarding how the dispute be resolved be legislative in nature and apply to all rational beings? Some of these questions seem to undermine the assumption that there is a philosophical justification from Kant's thoughts on the doctrine of party autonomy. However, if some of these questions can be answered and clarified properly, then we will not only get a philosophical justification for the existence of the party autonomy doctrine, but we will also achieve a transcendental understanding of this doctrine.

The first step to clarifying the problem is to understand that Kant's idea of the autonomy of the will includes two elements, that are, on the one hand, the will is subject to the moral law, and on the other hand, the obligatory power of the moral law arises from the will itself.[52] This means that free will and the moral law imply and influence each other.[53] The will that implies and influences each other with the moral law must be the will of all rational beings, because only the will of all rational beings can be objective and give a reciprocal influence with the moral law.[54] In other words, it can be concluded that

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[48] Kant, *Critique of Practical Reason*, 31.

[49] Kant, *Groundwork*, 40-41. Through his formulation of the categorical imperative, Kant establishes the principle of autonomy, a principle whose function is to formulate a procedure for examining whether one's maxims are morally permissible. In other words, the principle of autonomy is the principle of one's will which at the same time becomes the will that universally regulates all of its maxims. Kleingeld, "The Principle of Autonomy," 63.

[50] Johns, "Performing Party Autonomy," 249.

[51] In Kant's system of thought, the concept of autonomy is directed at the idea of a universal principle of morality, that is the idea that forms the basis of all actions of rational beings. See Kant, *Groundwork*, 57. Meanwhile, the will of the parties to determine where their dispute resolution will be resolved is basically a binding agreement like the law of the parties that is specific and particular. See Kenneth S. Carlston, "Theory of the Arbitration Process," *Law and Contemporary Problems* 17, no. 4 (1952): 635.

[52] Kleingeld, "The Principle of Autonomy," 63.

[53] Kant, *Critique Critique of Practical Reason*, 29.

[54] What is meant by the will of all rational beings is the good will possessed by every creature that accepts moral principles. A will that prioritizes moral considerations above personal considerations. See Dean, *The Value of Humanity*, 6.

Kant's concept of autonomy cannot be understood as "*giving law to oneself*", but "*giving law to all rational beings or the entire moral community*."[55]

Based on this understanding, Kant's concept of autonomy cannot be applied directly as a philosophical basis for the existence of the autonomy of the parties in determining how their disputes are resolved. This is because the objective will that can provide unconditional obligations is only a will that is not dependent on the goal to be achieved.[56] Will based on motives and goals to be achieved by its causality, according to Kant, is empirical and heteronomic[57] in nature, so it cannot be imperative, but only a mere hypothetical imperative.[58] In order to be categorical imperative, the will must be freed from all the goals to be achieved.[59]

Meanwhile, in reality humans are always compelled to choose something according to their interests.[60] Likewise in determining the method of dispute resolution. There is always a motive that the parties aim at in making their choice.[61] Each individual always makes, or tries to do, dispute resolution options that suit the character of their legal relationship or business relationship, and provide benefits for them.[62] Thus, the motives aimed at by the disputing parties in determining how to resolve their disputes always give rise to heteronomy, so that they cannot be used as universal legal guidelines.

For example, arbitration is preferred over courts because of the various advantages offered in arbitral proceedings.[63] Business people always avoid litigation in court, because for them court means sharpening disputes and breaking ties with their business partners.[64] In addition, choosing arbitration is also considered to be able to save time and avoid unnecessary problems in resolving disputes that occur.[65] Instead, courts are the destination for resolving disputes because they offer better procedural protection.[66] For this reason, the philosophical justification of Kant's thought for the existence of the doctrine of party autonomy cannot be made through the point of view of the autonomy of the parties in

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[55] Kleingeld, "Moral Autonomy," 171.
[56] An action performed based on obligation derives its moral value not from the goal it is intended to achieve, but from the will with which the action occurs regardless of any object of desire or inclination. The purpose of an action, or the effects arising from the action, cannot be an unconditional basis for action that is legislative in nature. Kant, *Groundwork*, 13.
[57] If a will seeks a law that is determined by something outside its maxim of conformity with the expectation of conformity with universal laws, then something that is heteronomic is always obtained. See id. 47.
[58] In Kant's system of thought, human reason freely and spontaneously provides moral principles as a basis for acting which is truly autonomous, apart from any influence of tendencies. Dean, *The Value of Humanity*, 227.
[59] This is because the categorical imperative is a necessity that orders a certain behavior immediately and absolutely, without having conditions as other goals to be achieved by it. The categorical imperative is not a matter of desired action or outcome, but a principle which is an end in itself, and what is fundamentally good. Kant, *Groundworks*, 27.
[60] Abraham Mathew and Zaidi bin Hasim, "The Philosophy of Arbitration," *International Journal of Business, Economics and Law* 8, no. 4 (2015): 107.
[61] It has become an inevitabillity that the choices made by the parties in resolving their disputes are always directed towards the goal to be achieved. These goals are generally low and efficient costs, fast results or avoiding various kinds of unnecessary delays, the ability to choose a decision maker, processes that comply with legal standards, application of business standards, binding decisions, predictability, confidentiality, etc. See Thomas J. Stipanowich, "Arbitration and Choice: Taking Charge of the "New Litigation", *DePaul Business and Commercial Law Journal* 7, no. 3 (2009): pp. 401.
[62] In general, business people always try to choose the best dispute resolution for themselves. They understand when to choose arbitration as a faster and more efficient alternative to courts. They can also determine the type of arbitration they want, as well as the procedures and procedures for arbitration that suit and benefit them. See id. 393.
[63] Id. 385.
[64] Charles L. Bernheimer, "The Advantages of Arbitration Procedure," *The ANNALS of The American Academy of Political and Social Science* 124, no. 1 (1926): 98.
[65] Either implicitly or explicitly, arbitration and trial are always described as two things that contradict one another. If arbitration offers speed, is economical, flexible, and technically proficient, then courts are described as slow, inefficient, formalistic, and technically unskilled. See Pamela K. Bookman, "The Arbitration-Litigation Paradox," *Venderbilt Law Review* 72, no. 4 (2019): 1141-42.
[66] Michael A. Helfand, "Arbitration Counter-Narrative: The Religious Arbitration Paradigm," *The Yale Law Journal* 124 (2015): 2996.

determining how their disputes are resolved, but how the autonomy of human will, and therefore also includes the will of all rational beings, views the existence of the autonomy of these parties.

With the change in point of view in applying Kant's concept of autonomy as the basis for thinking about party autonomy, there are two questions that need to be clarified. Why should the disputing parties deserve or deserve to be given the freedom to determine for themselves the method of dispute resolution they want? How does rational will respond to the existence of the parties' choices regarding how to resolve the dispute? The first question relates to the value of the parties' freedom of choice and the last question relates to the validity of the parties' free choice.

It should be emphasized that the freedom of the parties to determine for themselves how their disputes are resolved is a good thing in themselves.[67] It is derived from the basic assumption that individuals are the best judges of their own affairs.[68] In a private dispute, only the disputing parties have an interest in resolving the dispute. Parties other than the disputing parties to the dispute will not benefit or be harmed by the dispute that occurs and its settlement. Given the private character, it is proper that the disputing parties hold the highest authority in determining how their disputes are resolved.[69]

Once a choice is made by the parties to the dispute, the choice will be binding on them. It is true that every individual, and accordingly also means all rational beings, with the autonomy they have has the freedom to perceive and treat the choices that have been made. Even, it often happens that one of the parties, on the basis of the autonomy they have, for some reason does not respect the choices they have agreed on. This can also happen to all other rational beings, where they can provide various views on the existence of the parties' choices, according to their goals or subjective motives. This is of course because humans are basically always driven by various kinds of tendencies and motives in carrying out an action.[70] However, given that these various kinds of will depend on the faculty of desire of the subject, then they only apply as maxims which cannot be legislative in nature.[71]

Good will is not judged by what it does or the effect it produces, nor is it because of its ability to achieve a goal to be achieved. However, an intention can be said to be a good will because it is good in itself, so that in itself it is considered as something to be valued far higher than all any tendencies, even the sum total of all tendencies.[72] Good will in itself is a necessity of acting out of genuine respect for the obligations arising from practical law, which is of value above all.[73] Only a good will in itself, that is a will based on its noumenal self, can be legislative in nature.[74]

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[67] The right to regulate oneself is a natural human right. This right is a very valuable human right, because it embodies the principles of freedom, independence, equality, integrity and responsibility, all of which are very valuable for any human community. Frank D. Emerson, "History of Arbitration Practice and Law," *Cleveland State Law Review* 19, no. 1 (1970): 157.
[68] Meng, "Party Autonomy," 213. Bearing in mind that humans are the best judges for themselves, any agreement made by the parties in relation to the disputes they face is the correct definition of justice. See Melese Wondmagegnehu Belete, "The "Principle of Party Autonomy" in Contract Under the Civil Code of Ethiopian: Is It an Absolute Principle?," *Beijing Law Review* 10 (2019): 796.
[69] This is based on the assumption that if individuals have the freedom to make agreements in relation to their necessities of life, then they also have the freedom to determine how their disputes will be resolved, according to their agreement. See Carlston, Theory of the Arbitration, 631-32.
[70] Kant, Groundwork, 3.
[71] A maxim which cannot be universalized without contradiction cannot become a universal law. See B. Sharon Byrd & Joachim Hruschka, "Kant on "Why Must I Keep My Promise?"," *Chicago-Kent Law Review* 81, no. 1 (2005): 48.
[72] Kant, *Groundwork*, 8.
[73] Id. 16.
[74] To be autonomous, and therefore legislative, the will of an agent must not be based on his phenomenal self, which he is subject to external causes, but must be subject to his noumenal self, namely the self as understood as a member of the transcendent realm of pure reason. See Pugh, *Autonomy*, 4.

For this reason, it is necessary to find a will as a will in itself, which is objective and valid for all rational beings.[75] A will that is based solely on ethical motives, that is, motives that arise internally in the form of our conscious expression of respect for obligations and the absolute value of rationality.[76] This will is a will that is capable of subjecting choices to the highest principle of morality,[77] and therefore can be categorical imperative.[78] The intention is to respect and enforce any agreement regarding how a dispute will be resolved, based on the free choice of the parties. Only this maxim can apply to all rational beings, and therefore is legislative in nature. Therefore, this maxim must be a guide for all rational beings, as a categorical imperative, in viewing every choice made by the parties to resolve disputes that occur between them.

Based on the description above, it can be concluded that the party autonomy doctrine is not only limited to the freedom of the parties, based on the autonomy they have, in making every choice in order to resolve their dispute. But more than that, party autonomy is the participation of all rational beings, on the basis of their autonomy, to establish a universal law in view of the freedom of the parties to choose how their dispute is resolved. Accordingly, a transcendental understanding of the party autonomy doctrine has been obtained, which is as respect for all rational beings to recognize and uphold every choice made by the parties in a dispute resolution that occurs.

## IV. Conclusion

Based on the description discussed in this article, Kant's notion of individual moral autonomy can be used to provide a philosophical justification for the party autonomy doctrine. Based on Kant's philosophy, the freedom of the parties to determine for themselves how their disputes are resolved is a good thing in itself. Respect for this freedom is a categorical imperative for all rational beings. This is the main core of the party automomy doctrine. Thus, a transcendental understanding of party autonomy has been obtained, particularly as a respect for all rational beings to recognize and uphold every choice made by the parties in a dispute resolution that occurs.

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[75] For the agent's will to be good, he must have a commitment to act morally and give up any satisfaction from inclinations and motives. See Dean, *The Value of Humanity*, 20.
[76] Hinman, "Kant's Philosophy," 282.
[77] Mehmet Ruhi Demiray, "The Intrinsic Normativity of Law in Light of Kant's Doctrine of Right," *International Journal of Philosophy* 3 (2016): 168.
[78] An action which is objectively necessary in itself without reference to any purpose is valid as an apodeictic law, and therefore is a categorical imperative. See Kant, *Groundwork*, 26.

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