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Choice of Law in International Contracts Based on the Hague Principles 2015: Indonesian Positive Law Perspective

Geofani Lingga Meryadinata[1*], Shihaf Ismi Salman Najib[2], Ahmad Bastomi[3]

[1,2] Malang Islamic University, Indonesia

[3] University of Vienna, Austria

**correspondence email :* geofanilinggameryadinata@gmail.com

Abstract

The study aims to examine the principle of choice of law in The Hague Principles 2015, assess the application of choice of law and forum clauses in international contract disputes, and evaluate the relevance and obstacles to its application in Indonesian law to encourage harmonization and legal certainty in cross-border transactions.

This research method used a normative legal approach through a literature study with three approaches: statute, case, and comparative. The focus is on applying The Hague Principles 2015 on the choice of law in international contracts and its relevance to Indonesian positive law to strengthen legal certainty and the parties' autonomy.

The Novelty this study lies in the study of the potential adoption of THP 2015 in the Indonesian legal system, which until now has not officially recognized these principles. In addition, this study discusses the challenges of implementing legal options and forum options in national law and analyzes real cases of international contract disputes.

The study results show that the principle of choice of law in The Hague Principles 2015 upholds the parties' autonomy. However, Indonesian law has not optimally accommodated this principle, causing uncertainty in applying choice of law and forum clauses in international contracts involving national jurisdictions.

The conclusions of the Hague Principles 2015 affirm party autonomy in international contracts, allowing freedom to choose the applicable law. Though non-binding, they influence legal interpretation globally. Integration into Indonesia's legal system is recommended to enhance legal certainty, support cross-border trade, and guide judges, practitioners, and scholars in resolving international contract disputes.

Keywords: Choice of Law; The Hague Principles 2015; International Contracts.

Abstrak

Tujuan penelitian *ini untuk menganalisis penerapan* The Hague Principles on Choice of Law in International Commercial Contracts *2015 dalam kontrak internasional, khususnya dalam perspektif hukum positif Indonesia. Fokus utama penelitian ini adalah bagaimana pilihan hukum dan pilihan forum dapat diterapkan dalam penyelesaian sengketa kontrak internasional.*

Metode Penelitian *ini menggunakan metode yuridis normatif dengan studi literatur sebagai teknik pengumpulan data. Bahan hukum primer yang digunakan meliputi peraturan perundang-undangan dan putusan pengadilan, sedangkan bahan hukum sekunder berupa*

jurnal, buku, dan artikel hukum terkait. Analisis dilakukan secara preskriptif untuk memberikan solusi terhadap permasalahan hukum yang ditemukan.
***Kebaruan penelitian** ini terletak pada kajian mengenai potensi adopsi THP 2015 dalam sistem hukum Indonesia, yang hingga saat ini belum secara resmi mengakui prinsip-prinsip tersebut. Selain itu, penelitian ini juga membahas tantangan implementasi pilihan hukum dan pilihan forum dalam hukum nasional serta analisis terhadap kasus nyata sengketa kontrak internasional.*
***Hasil penelitian** menunjukkan bahwa THP 2015 memberikan fleksibilitas bagi para pihak dalam kontrak internasional untuk menentukan hukum yang berlaku. Namun, penerapannya di Indonesia masih menghadapi hambatan seperti perbedaan sistem hukum, dan keterbatasan pemahaman aparat hukum. Kesimpulannya, THP 2015 berpotensi meningkatkan kepastian hukum dalam transaksi bisnis global, tetapi implementasinya di Indonesia memerlukan harmonisasi regulasi dan peningkatan kapasitas sumber daya hukum.*
***Kesimpulan penelitian** Pilihan hukum dalam kontrak internasional krusial untuk kepastian hukum dan penyelesaian sengketa. THP 2015 memberikan panduan jelas, namun perlu kajian ulang agar selaras dengan hukum Indonesia. Evaluasi praktik konkret diperlukan untuk memastikan implementasi choice of law yang efektif dalam sistem hukum nasional.*
***Kata Kunci:** Choice of Law; The Hague Principles 2015; International Contracts.*

1. INTRODUCTION

In international trade there is a concept known as International Contracts. The foreign element in the contract makes it categorical into the scope of International Civil Law (HPI) or can be called civil law that regulates various international civil law relationships (private international law).[1] When a dispute over an international contract arises, various questions arise regarding the applicable law and which forum has the right and authority to resolve the contract dispute, considering that international contracts involve two countries that have different legal systems from each other. Generally, the parties to the contract who agree to the contract are required to provide the choice of law and choice of forum clauses in the international commercial contract as a representation of the effort to calculate the problem behind the scenes.[2]

The existence of an agreement between two parties, either an individual or a legal entity, shows that the parties have designed provisions in such a way expressively *verbically* about the choice of law and the choice of forum in their contract clauses, so following Article 1338 of the Civil Code, the principle of *pacta sunt servanda* is implemented.[3] Based on these problems, it was decided that the dispute must be resolved in by the agreement of both parties, both from the signing of the contract, legal choices, to the settlement of the dispute. The difference in consideration between individuals or legal entities raises questions about the law and which forum should be applied to resolve international civil disputes.[4]

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[1] Aminah Aminah, "Pilihan Hukum Dalam Kontrak Perdata Internasional," *Diponegoro Private Law Review* 4, no. 2 (2019).
[2] Lileys Glorydei Gratia Gijoh, 'Legal Implementation In International Business Contracts' (2021) 9 Lex Et Societatis.
[3] R Tjitrosudibio Subekti, 'Civil Code'.
[4] Ir Anita Dewi Anggraeni Kolopaking And Mh Sh, The Principle Of Good Faith In Resolving Contract Disputes Through Arbitration (Alumni Publisher 2021).

Developments in international civil law have attracted much attention with the emergence of various instruments of legal synchronization at the regional and/or international level, which allows laws to be applied to a contract or agreement. This synchronization effort began to develop in the second half of the 20th century. At the regional level, the 1980 Convention on Law Applicable to Contractual Obligations was found, namely the 1980 Rome Convention for all EU member states, which was later replaced by the Regulation on Law Applicable to Contractual Obligations of 2008 (Rome I Regulation).[5]

For various countries in Latin America, the Inter-American Convention on which law applies to international contracts in 1994 has been ratified, namely the Mexico Convention 1994. At the international level, there has also been a convention that regulates this, namely the Hague Convention of 1955 concerning the law enacted for the international sale of goods, namely The Hague Convention 1955 and The Hague Convention 1986 concerning the Law Applicable to the Contract for the International Sale of Goods (The Hague Convention 1986), both of which have indeed been made and explicitly ratified for sale and purchase agreements at the international level.[6]

The main problem in this study lies in the existence of a legal gap or normative obstacle in the Indonesian legal system, especially in accommodating the principles of choice of law in international contracts as regulated in The Hague Principles on Choice of Law in International Commercial Contracts 2015 (THP 2015). Although the parties' autonomy principle is a key element in modern cross-border transactions, Indonesian national law has not explicitly provided a strong legal basis for the parties to determine the applicable law in international contracts. It impacts legal uncertainty, especially when disputes arise and the parties face difficulties enforcing the agreed choice of law clause.

Until now, there has been no specific regulation in the Indonesian legal system, either in the Civil Code or sectoral regulations that expressly regulate the scope and limitations of the application of choice of law as proposed by THP 2015. Reliance on judges' interpretation and the lack of harmonization with international principles create a gap between global contract law practices and domestic legal provisions. Therefore, this issue is not only of a legal, technical nature but also strategic in the framework of increasing the competitiveness of the Indonesian legal system in supporting safe, fair, and predictable international transactions.

This study has similarities with previous studies that discussed the choice of law in the context of international contract law, especially from the perspective of The Hague Principles on Choice of Law in International Commercial Contracts 2015. The study conducted by Priskila Pratita Penasthika highlights the principle of good faith in the choice of law in foreign direct investment contracts in Indonesia. Meanwhile, the study of Rizky Amalia, Hilda Yunita Sabrie, and Widhayani Dian Pawestri focused more on the choice of law in various aspects of international civil law. However, the novelty of this study is to examine the implementation of

[5] Uti Possidetis And Others, Tacit Choice Of Law In The Metaverse : What Law Applies ?, Vol 5 (2024).
[6] Nandang Sutrisno, Advancing The Interests Of Developing Countries In The Wto System, Vol 4 (Institute For Migrant Rights Press 2012).

real choice of law in contract law in Indonesia, including the challenges faced in practice and comparisons with the national legal system. Thus, this study not only focuses on the theoretical aspects of choice of law but also explores how this principle is applied in commercial contracts involving foreign law, the obstacles that arise, and solutions that can be applied in the Indonesian legal system to increase legal certainty in cross-border transactions.

2. METHOD

The study used is a normative juridical approach, in which the study is conducted through a literature review comprising both primary and secondary legal materials. This normative legal research aims to examine legal norms,[7] explore legal principles, and analyze their applicability, particularly in the field of private international law, focusing on the issue of choice of law in international commercial contracts as regulated in The Hague Principles on Choice of Law in International Commercial Contracts (2015), and how these principles align with the Indonesian legal system.

This method enables the researcher to identify, interpret, and apply general legal doctrines in cross-border contractual relations. The study utilized three main approaches.[8] Statute Approach: The study examined applicable legal instruments, including Indonesian legislation such as the Civil Code (KUHPerdata), Law Number 24 of 2000 on International Treaties, and other relevant regulations. In addition, the study refers to The Hague Principles 2015 as a form of soft law guiding parties' autonomy in selecting applicable law. This approach helps to assess the compatibility and gaps between Indonesian positive law and international legal standards concerning choice of law. Case Approach: The study also analyzed relevant jurisprudence or court decisions-both domestic and foreign-that involve disputes regarding international contracts and the application of choice of law clauses. This approach provided practical insights into how legal principles are interpreted and implemented in real-world contexts, especially when conflicts of law arise. Comparative Approach: Through this method, the researcher compared legal frameworks and practices from various jurisdictions that have adopted or referred to The Hague Principles 2015. It included examining how other legal systems, such as those of the Netherlands, Singapore, or other civil and common law countries, approach the concept of party autonomy in contract law. The goal is to understand the differences and similarities in legal treatment and to draw relevant lessons for the Indonesian legal context.

This study is based on a doctrinal literature study in which legal materials are sourced from applicable statutory instruments, international conventions, soft law instruments like The Hague Principles, and scholarly literature. The analytical approach is used to critically examine the harmonization potential between Indonesia's national law and evolving international principles, particularly concerning the protection of contractual freedom and legal certainty in international transactions.[9]

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[7] Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).
[8] Marzuki.
[9] Irwansyah Irwansyah, "Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel," *Yogyakarta: Mirra*

3. DISCUSSION

3.1. Applicable Legal Principles and Provisions Regarding Choice of Law Contained in *The Hague Principles* 2015

Since 2006, the Hague Conference on International Civil Law, an international intergovernmental body involved in the development of uniform instruments of conflict of law, has taken on the task of drafting instruments on choice of law in international commercial contracts. In November 2012, forty-two Member States attended a special meeting of The Hague Conference[10]. The countries present supported the Hague Principles on Choice of Law in International Commercial Contracts unanimously. This non-binding instrument supports a broad definition of the autonomy of parties in choice of law but also moves into uncharted territory by recognizing the possibility that state courts may affect the designation of non-state law by the parties to an international commercial contract. The instrument adopted at the meeting consisted of twelve black rules. A broad comment was then drafted to accompany the black rule, which has since been approved by Member States, a process that was finally completed in March 2015. Indonesia is not a member of HCCH, but based on Presidential Regulation Number 2 of 2021, dated January 5, 2021.[11] Indonesia accesses the 1961 Hague Agreement, which removes the need for the legalization of foreign public documents.[12]

The discussion on the formation of THP 2015 was initiated with The Hague Conference on Private International Law (HCCH) after the study of propriety and propriety, which began in the first quarter of 2006, to be precise. After about nine years of preparation, THP 2015 was officially accepted by HCCH on March 19, 2015.[13] The official THP 2015 product consists of an introduction, 12 articles that detail the choice of law in the contract, and the accompanying comments in each article. Comments on each article function as an explanatory representation and interpretation tool to clarify understanding of each article. Therefore, the articles in the THP 2015 should be read simultaneously with the accompanying comments because they are an inseparable unit.[14]

With the primary intention of forming rules like role models at the international level that regulate the provisions of choice of law, three groups are the main objects of THP 2015 beneficiaries. First, the 2015 THP legislators are intended to be a model or reference for national, regional, and/or international legislators in developing or compiling regulations regarding legal choices. Due to its nature that does not provide binding force, THP 2015 allows

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Buana Media 8 (2020).

[10] Malcolm N Shaw Qc, International Law (Nusamedia 2019).

[11] Presidential Regulation Of The Republic Of Indonesia Number 2 Of 2021 Concerning Pen Gesahan Coiywntion Abolish In G Th E Requ Ir Ement Of Lecalisation For Foretgn Public Dokumen S (Convention On The Elimination Of Legalization Requirements For Foreign Financial Documents) 2021.

[12] Jan von Hein, "The Role of the HCCH in Shaping Private International Law," in *The Elgar Companion to the Hague Conference on Private International Law* (Edward Elgar Publishing, 2020), 112–27.

[13] Alvito Raihandany Karim And Elan Jaelani, 'Analysis Of Choice Of International Contract Law Reviewed From The Core Convention Hcch Principle On Choice Of Law International Comercial' (2024) 2 Causa: Journal Of Law And Citizenship 1.

[14] Gary Born and Cem Kalelioglu, "Choice-of-Law Agreements in International Contracts," *Ga. J. Int'l & Comp. L.* 50 (2021): 44.

legislators to take the benefits in whole or in part, which can be adjusted to the needs of each country. Second, the parties to a regional and/or international contract, including attorneys and/or legal consultants representing their clients.[15]

THP 2015 is intended to be used as a guideline and consideration in an agreement made by the parties and their attorneys and/or legal consultants in bidding and agreeing, including choosing the law applicable to the contract they have agreed to. Third, the choice of forum in the context of resolving problems in the event of a dispute from the contract, either in the form of litigation and/or non-litigation. THP 2015 is also coveted to be used as the primary reference or firm reference for judges, arbitrators, mediators, conciliators, and other legal practitioners in the field of business law to resolve disputes, especially on the issue of choice of law and choice of forum in commercial contract disputes at the national, regional, and/or international levels. Thus, THP 2015 can provide good utility through litigation and/or non-litigation in a dispute resolution forum. The provisions related to the choice of law regulated in THP 2015 are prepared to be able to provide usefulness in various forums for resolving business legal disputes.[16]

THP 2015 also provides that the law that can be applied in a regional and/or international contract is chosen, agreed, and agreed upon by the parties. The parties to a contract have the freedom to be able to choose the law of a country or a non-state law, which THP 2015 refers to as the *"rules of law,"* as the law that can be applied to a legal contract chosen, agreed, and agreed upon by the parties to an agreement or contract is the most important aspect of international civil law. However, the legal issues of commercial contracts in the international sphere become more complex when the parties do not make a choice of law or explicitly state their choice. Therefore, HPI theory in the field of contracts is critical, including efforts to establish appropriate contract laws.[17]

The Hague Principles on Choice of Law in International Commercial Contracts (2015) stipulates that this principle only applies to contracts that meet two main conditions, namely international and commercial. In this context, a contract is considered an international contract if the parties have a domicile in different countries or if the elements of the contract are related to more than one country. On the other hand, if all parties involved are in the same country and all elements of the contract are only connected to that country, then the contract cannot be qualified as an international contract, even if the parties explicitly choose foreign law as the applicable law. In addition, factors such as negotiations conducted abroad or the use of foreign languages in contracts are also not enough to change the status of a domestic contract to an international contract according to the definition set out in *The Hague Principles 2015.*[18]

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[15] Nicholas Loadsman and Michael Douglas, "The Impact of the'Hague Principles on Choice of Law in International Commercial'contracts," *Melbourne Journal of International Law* 19, no. 1 (2018): 1–23.

[16] Sagi Peari, "Choice of Law in International Contracts: Global Perspectives on the Hague Principles," *Banking & Finance Law Review* 37, no. 2 (2022): 391–99.

[17] Rachmatsyah Akbar, 'The Role Of The State In The Resolution Of International Trade Disputes (Case Study Of Indonesian Cigarette Trade Lawsuit Against Australia Through The World Trade Organization)'.

[18] Loadsman and Douglas, "The Impact of the'Hague Principles on Choice of Law in International Commercial'contracts."

Meanwhile, although the preamble and title of The Hague Principles 2015 use the term "commercial," Article 1 of the principles does not explicitly include the term. Instead, this principle is applied to contracts where the parties act as actors of a particular trade or profession. This approach avoids different interpretations regarding the term "commercial contract," which can have different connotations in different jurisdictions. In this context, "trade and profession" includes a wide range of economic activities, including traders, manufacturers, craftsmen, and professionals such as lawyers, architects, and tax consultants. Thus, various types of business contracts, such as insurance contracts, intellectual property licensing contracts, agency contracts, and franchise contracts, are included in the scope of application of The Hague Principles 2015.[19]

However, this principle expressly excludes consumer contracts and employment contracts from their scope. The main reason for this exception is that these contracts generally involve parties who have an unequal position in the bargaining position (weaker parties), so the state usually regulates legal protection provisions more strictly. In this context, the state actively balances the interests of business actors and workers or consumers. Thus, The Hague Principles 2015 cannot be used as a basis for determining the law applicable to contracts involving workers or consumers as the weaker party in the legal relationship.[20]

Furthermore, applying this principle must also consider the specific context of the transaction, not just the legal status of the contracting parties. For example, a person can sign a contract as a craftsman or trader, which makes his contract fall within the scope of The Hague Principles 2015. However, if the same person agrees to another contract in his capacity as a consumer, then the contract is no longer within the scope of application of this principle. In addition, contracts made electronically remain subject to The Hague Principles 2015 as long as the parties sign them in the context of their trade or profession. As such, this principle provides flexibility in its application but still has apparent limitations to ensure that only business and professional transactions can be within its scope.

Suppose a dispute settlement clause is not present in the international contract. In that case, the HCCH convention relating to the principles of choice of international law may be used as an alternative to dispute resolution. Although not binding, countries that implement this convention usually use these principles to resolve contractual disputes.[21]

THP 2015 represents the designers' plan to give the contracting parties the freedom to choose the law that can be applied to their international commercial contracts. They also seek to ensure that the law chosen by the parties has a broad reach while still being subject to predetermined limits. THP 2015 reaffirms that the parties have an important role in

[19] Rizky Amalia, Hilda Yunita Sabrie, and Widhayani Dian, "The Principle of Good Faith in the Choice of Law of Foreign Direct Investment Contracts in Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 12, no. 2 (2018): 170–80.

[20] Charlene Fortuna Tania, "Tinjauan Yuridis Hubungan Penerapan Choice Of Law Dengan Kewenangan Mengadili Oleh Pengadilan (Analisis Putusan Mahkamah Agung Republik Indonesia Nomor 1935 K/Pdt/2012)" (Universitas Sumatera Utara, 2017).

[21] Muhammad Shoumi Aditya And Elan Jaelani, 'Settlement Of International Trade Disputes According To The Perspective Of Choice Of Court Convention (2005)' (2024) 2 Causa: Journal Of Law And Citizenship 21.

determining the law applicable to the contractual legal relationship they have agreed upon because they are responsible for designing and executing the contract's content. Therefore, their role is considered important.[22]

The THP 2015 can only be enforced when the parties to a contract have chosen the law that applies to their contract. They do not provide a provision or remedy in cases where the parties have not exercised any choice of law for a contract they have agreed to. This restriction has two reasons. First, the primary purpose of THP 2015 is to encourage and offer the broadest possible acceptance of legal options. Second, until now, there has been no global agreement on methods and arrangements in determining the law that applies to contracts if there is no choice of law.[23]

Each country has its legal system, so the THP 2015 is designed to accommodate the choice of law for countries that do not have relevant rules or still have significant restrictions. Countries that have enacted a choice of law can also use the 2015 THP to regulate contracts that meet commercial and international conditions. The 2015 THP defines a contract as commercial, but a domestic contract does not automatically become international because it refers to foreign law. If there are no other elements that lead to foreign law, the treaty is not considered international under the THP 2015.[24]

Negotiations conducted in countries other than Indonesia or using foreign languages in domestic agreements are not enough to make them international contracts according to the meaning of THP 2015. Although the term "commercial" is used in the title and preamble of THP 2015, Article 1 does not mention the term in explaining the scope of its application. Article 1, the first paragraph, states that THP 2015 applies to contracts where the parties act in a commercial or professional activity of the related party.[25]

THP 2015 allows the use of more than one applicable law in a single contract, especially when the performance of a contract involves multiple jurisdictions. This practice is called *dépeçage*, where different laws govern certain parts of the contract. For example, Indonesian law can regulate payment terms, while English law regulates insurance protection. Although flexible, *dépeçage* can allow to create contradictions or inconsistencies about contractual obligations and rights.[26]

Furthermore, THP 2015 emphasizes that the rules chosen by the parties will regulate all aspects of international commercial contracts unless the parties agree otherwise. The regulated aspects include, among others;[27] (1) Interpretation of Agreements/Contracts; (2) Obligations and rights arising from the contract; (3) The implementation of the contract and

[22] Mohammad Zamroni, Interpretation Of Judges In Contract Disputes: A Study Of Court Theory And Practice (Scopindo Media Pustaka 2020).
[23] Marianna A Kalashyan, "The Main Characteristics of the Hague Principles," 2016.
[24] Jan L Neels, "The Nature, Objective and Purposes of the Hague Principles on Choice of Law in International Commercial Contracts," *Journal of South African Law/Tydskrif Vir Die Suid-Afrikaanse Reg* 2015, no. 4 (2015): 774–83.
[25] Karim And Jaelani (N 10).
[26] H Veithzal Rivai And Others, Islamic Transaction Law In Business (Bumi Aksara 2022).
[27] Deputy General Leader And Member Of The Editorial Board, 'Volume 7 Number 2, August 2018'.

the consequences of its breach, one of which is the assessment of compensation; (4) Various ways to fulfill obligations and time restrictions; (5) Validity and consequences of contract invalidation; (6) Pressure of proof and legal assumptions; and (7) Obligations before the contract.

Changes in the choice of law in the contract can be made if agreed upon by the parties. However, such changes cannot prejudice the validity or invalidity of formal contracts or the rights of third parties. The doctrine of choice of law governs that the law chosen by the parties determines the contract's validity. If the choice of law is changed afterward, the new law may not cancel a previously deemed valid contract. The choice of law can be expressed explicitly or implicitly. Based on the THP 2015, the implicit choice of law must be visible from the provisions in the contract. For example, if a marine insurance contract uses a policy form, this indicates that UK law applies. However, the choice of forum for dispute resolution, whether through court or arbitration, is different from the choice of law and can only be considered as an additional factor in determining the choice of law.[28]

The law determined by the parties governs the entire terms of an international commercial contract unless otherwise specified. These aspects include the interpretation of the contract, arising rights and obligations, achievements and consequences of default, settlement of obligations, validity of contracts, burden of proof, and pre-contract obligations. This list is unlimited, and the law chosen governs the contract from start to finish to ensure legal certainty and uniformity of the award.[29]

In international commercial contracts, the freedom to choose law is not absolute. The 2015 THP stipulates that the forum's coercive rules and public order limit legal options. The forum may also consider binding and orderly rules from third-party countries as a boundary line against choices made by the parties. THP 2015 also introduced the possibility of choosing "rules of law" in addition to the national laws of a country. This term describes a non-state law that a sovereign state cannot issue. Examples of "*rules of law*" include UNIDROIT, PICC, and PECL. However, the appointment of these instruments has drawn criticism because they are considered not to meet generally accepted legal criteria and do not go through a democratic legislative process.[30]

Another novelty presented by THP 2015 is the affirmation of the nature of the separation of a choice of law agreement. Choice of law is considered an agreement independent of the contract the parties have made. The existence and validity of a choice of law agreement do not depend on the validity of an international commercial contract. The validity of a choice of law is not binding on certain formal conditions, such as written form or witnesses, unless the parties agree otherwise. The goal is to ensure that the choice of a law is not limited by formal

[28] H Salim Hs And Others, Contract Design & Memorandum Of Understanding (Mou) (Sinar Grafika 2023).
[29] Loadsman and Douglas, "The Impact of the'Hague Principles on Choice of Law in International Commercial'contracts."
[30] Jürgen Basedow, "The Hague Principles on Choice of Law: Their Addressees and Impact," *Uniform Law Review* 22, no. 2 (2017): 304–15.

conditions that can prevent the validity of the contract that has been agreed upon. The THP 2015 aims to provide flexibility and legal certainty in an international commercial contract by allowing both parties to choose the applicable law and ensuring that the dispute resolution forum respects such choice.

The Hague Principles, which refer to guidelines established to harmonize international legal frameworks, particularly regarding private international law and resolving cross-border legal issues, have practical implications in Indonesia, especially in conflict of laws, family law, and international civil procedure. Indonesia's adoption of the Hague Principles is reflected in its approach to international conventions and treaties it has ratified, particularly those concerning child protection, international adoption, and the recognition and enforcement of foreign judgments.

E.g Indonesia is a party to the Hague Convention on the Civil Aspects of International Child Abduction, which influences the country's legal approach to resolving international child abduction cases. Indonesian courts also apply the principles outlined in the Hague Convention on the Law Applicable to Trusts and Their Recognition, which governs the recognition and enforcement of foreign trusts.

Although Indonesia, as a civil law country, does not automatically incorporate all Hague principles into its legal system, these international instruments guide the application of Indonesia's legal norms in cases involving foreign elements. In practice, Indonesian courts may reference the Hague Principles in cross-border disputes, particularly when addressing issues such as jurisdiction, applicable law, and enforcing foreign judgments. However, Indonesia's domestic laws, Islamic principles, and the country's specific legal and cultural context often nuanced the application. Thus, while the Hague Principles provide a framework for international cooperation, their practical application in Indonesia requires a careful balance between international standards and national legal traditions.

3.2. Application of Choice of Law Clauses and Choice of Forum in International Contract Dispute Resolution When Reviewed Based on The Hague Principles 2015

In contracts that include a choice of law clauses and forums, the application of these provisions follows what has been agreed upon by the parties while not conflicting with the law, public order, and decency. If there are multiple contracts in a legal relationship and a dispute arises, then the question arises about which legal options and forum should be applied to resolve the dispute. The determination of the law and the appropriate forum will come back to the agreement contained in the contract that the parties have agreed.[31]

Based on the Model *Arbitration Law* 1985 (UNCITRAL), Article 28 paragraph)[32] states that if there is a problem in an international agreement, the arbitral institution will decide the dispute based on the law chosen by the parties in its substance. If there are several contracts that each govern different legal options and forums, the arbitral tribunal will assess and select

[31] Nina Vernia Margaretha, Aminah Aminah And Herni Widanarti, 'Application Of Choice Of Law And Choice Of Forum Clauses In International Contract Dispute Resolution' (2023) 12 Diponegoro Law Journal.
[32] Novela Christine And Mohamad Fajri Mekka Putra, 'Arbitration As A Choice Of Forum In Dispute Resolution Regarding Deed Of Agreement' (2022) 11 Legal Brief 1087.

the appropriate provisions based on the clauses of the contract that are relevant to the substance of the dispute.[33]

In International Business Law, there is a concept of "split proper law" that is internationally recognized through the resolution of the International Law Institute (ILA) in 1979, known as "The Proper Law of the Contract in Agreements Between a State and a Foreign Private Person." This resolution provides that in a contract, the parties may choose to apply several different systems to the terms of the contract according to the substance of the agreement. This happens because there may be parts of the agreement that are not entirely governed by one legal system, so different aspects of the contract can be subject to different legal choices.

In determining the choice of law and the forum used from several contracts, it is important to assess the position of each agreement based on the existing rules. Whether the provisions in the agreement are interrelated and become a unit (*accessoir*), or each agreement stands alone. The *accessoir* agreement depends on the principal agreement, so the provisions in the supplementary contract follow the principal agreement unless there are other provisions by the parties. If a contract takes place as an additional agreement, then the provisions in the agreement can be set aside if they have been stipulated in the principal agreement.

Regarding the choice of forum, although the choice of forum in the form of an arbitral body is listed in the supplementary agreement, its entry into force is not automatically subject to the agreement due to the principle of separability in arbitration. Furthermore, the principle of separability states that the arbitration agreement stands alone and is separate from the principal agreement. Hence, the arbitration clause does not affect the validity or implementation of the merits in the principal agreement. On the other hand, if the forum choice clause is in the form of an institution or judicial body, such as the court of a country, then the clause still applies as an addition or *accessoir* to the agreement.

In general, there are no legal provisions governing the implementation of choice of law clauses and forums in contracts, whether according to national or international law. The provisions only recognize the principle of freedom of contract, where both parties have the right to choose the law and forum for dispute resolution. The application of the choice of law and forum is returned to the terms of the agreed contract. If there are no express provisions in the contract, the decision is left to the judicial body based on relevant legal considerations.[34]

To analyze the correctness of the application of the choice of law clause and forum in international treaty disputes, it is necessary to look at Article 1348 of the Civil Code concerning the Interpretation of Consent in Contracts[35]. This article states that "all promises given in one agreement shall be interpreted in relation to each other. Each promise shall be interpreted in relation to all consents". Based on this understanding, the parties agreed on several

[33] Indah Sari, "Keunggulan Arbitrase Sebagai Forum Penyelesaian Sengketa Di Luar Pengadilan," *Jurnal Ilmiah Hukum Dirgantara* 9, no. 2 (2019).
[34] Sh Serlika Aprita, St Rio Adhitya And M Kn Sh, International Trade Law (Pt Rajagrafindo Persada-Rajawali Pers 2020).
[35] Tjitrosudibio Subekti (N 2).

agreements in legal relations. However, each contract has its objects and provisions and regulates different legal options and forums.

2015 THP affects the preparation of national and regional legal instruments and has also been adopted by decision-making institutions, including arbitration. These institutions use the THP 2015 as a guideline for interpreting legal options for the problems they solve, which is in line with the primary goal of THP 2015, which is to support dispute resolution institutions such as arbitration.

In October 2020, HCCH issued a publication table listing institutions that have respected and implemented legal options following the provisions of the 2015 THP. The HCCH also noted eight arbitral institutions that used these principles. However, the table is non-exhaustive, so there is still a possibility that other arbitral institutions have referred to the 2015 THP but have not been recorded by the HCCH.

HCCH also asked other arbitral institutions to report if they applied the THP 2015 as a reference in interpreting the choice of law in the agreement. HCCH plans to update the publication annually to ensure that the list remains relevant and reflects the latest developments in the application of the THP 2015 by arbitral institutions around the world.

The 2015 THP states that arbitral institutions are important in resolving international commercial contract disputes. To take advantage of these principles, arbitral institutions can provide more consistent and fair decisions, following the choice of law that has been agreed upon by the parties. This strengthens the confidence of the parties in choosing arbitration as a dispute resolution forum and increases legal certainty in international business transactions.[36]

Implementing the Hague Principles in Indonesia faces challenges related to the national legal system, inadequate regulations, and aspects of the rule of law that are the primary concern in accepting international law. As a country that adheres to the civil law system, Indonesia prioritizes written regulations over international legal principles that develop through jurisprudence practice. It contrasts with countries that adhere to the standard law system, where applying the Hague Principles is more flexible because it depends on judges' interpretation and developing legal practices. As a result, although the Hague Principles on Choice of Law in International Commercial Contracts offer clarity in determining the law applicable in cross-border transactions, its application in Indonesia has not been optimal because no specific regulation comprehensively regulates international civil law.

In addition, the national legal sovereignty factor is often an obstacle in applying the Hague Conference on Private International Law (HCCH) principles. The Indonesian government tends to be cautious in adopting foreign legal rules to avoid conflict with applicable national legal norms, especially in civil law, contracts, and dispute resolution. One concrete example is the limitations of the mechanism for recognizing and enforcing international arbitral awards and foreign court awards in Indonesia, which still depends on the principle of reciprocity and does not always run efficiently. In addition, the many differences between domestic regulations

[36] Rudi Natamiharja And Others, 'International Dispute Settlement Law 2nd Edition'.

and the rules applied in various international agreements cause challenges in harmonization of regulations, which have the potential to create legal uncertainty for business actors and parties involved in international transactions.

Another challenge is the lack of readiness for legal infrastructure and human resources that have expertise in international civil law. Law enforcers, judges, and legal practitioners in Indonesia are still limited in understanding and applying international civil law, including principles derived from the Hague Principles. It has led to slow adoption and implementation of these principles in national legal practice. In addition, the lack of socialization and training in international law for stakeholders, including judicial officials and business actors, further complicates the application of these principles in cross-border transactions. Therefore, concrete steps are needed to overcome this challenge, such as strengthening international civil law regulations, increasing human resources capacity, and efforts to harmonize between national law and international principles so that Indonesia can be more optimal in implementing the Hague Principles.

As far as this article is concerned, no international contract has been found that includes a clause on the implementation of a choice of law that refers to the Hague Principles 2015. However, suppose there are international contracts that have implemented the choice of law clause, such as in several international contracts between PT Budi Semesta Satria and Toepfer International.[37] In the legal relationship between PT Budi Semesta Satria and Toepfer International Asia. In that case, three agreements regulate cooperation between the two parties. Of the three agreements, two of them are the source of legal disputes, especially related to the application of choice of law and choice of forum in dispute resolution.

One of the agreements that is the basis of the dispute is the Stock Financing Agreement, which generally regulates financing aspects. In this agreement, specifically in Article 17 paragraphs (1) and (2), it is explicitly stated that in the event of a dispute relating to the contract, the parties have agreed that the dispute resolution will be subject to Indonesian law and resolved through the Central Jakarta District Court located in Jakarta, Indonesia. With this clause, both parties have expressly determined that the Indonesian judicial jurisdiction has the authority to resolve disputes arising from this agreement.

On the other hand, another agreement is also a source of dispute, namely Sales Contract Number 21204150, which explicitly regulates the main provisions in selling and purchasing soybeans. This agreement has an Arbitration clause stipulating that the choice of applicable law is English law, and the agreed dispute resolution forum is the FOSFA Arbitration Board located in London. With this clause, in the context of disputes arising from this agreement, English law shall prevail, and dispute resolution shall be conducted through an arbitration mechanism under FOSFA regulations.

With two agreements having different provisions regarding the choice of law and choice of forum, a legal issue arises as to which provision should be prioritized in resolving the dispute between PT Budi Semesta Satria and Toepfer International Asia. Based on the principle of pacta

[37] Margaretha, Aminah And Widanarti (N 18).

sunt servanda as stated in Article 1338 of the Civil Code, the parties are legally bound to the agreement they have agreed upon. Therefore, in the first instance decision, the judges of the Central Jakarta District Court decided that the dispute settlement should be conducted following the clause in the Sales Contract, namely through arbitration in London with the application of common law.

However, in further developments, at the appeal and cassation levels, the DKI Jakarta High Court and the Supreme Court made decisions that differed from the decision of the Central Jakarta District Court. In their reasoning, both judicial bodies stated that the authorized jurisdiction to handle this case remains under the Central Jakarta District Court and the applicable law is Indonesian law, as specified in the Stock Financing Agreement.

The difference in decisions between these judicial bodies raises fundamental questions regarding which law should be applied and which forum can resolve the international contract dispute between PT Budi Semesta Satria and Toepfer International Asia. It also demonstrates the challenges in the application of choice of law and choice of forum in international contracts, especially when there is more than one agreement governing the legal relationship between the parties with different provisions regarding aspects of dispute resolution. Therefore, resolving these differences in interpretation is important in ensuring legal certainty for parties involved in international business contracts. Nina Vernia Margaretha, Aminah Aminah, and Herni Widanarti in their article discussing this case argue that in the context of international contract dispute resolution between PT Budi Semesta Satria and Toepfer International Asia, the decisions issued by the panel of judges of the DKI Jakarta High Court and the Supreme Court are considered inappropriate in applying the principles of choice of law and choice of forum.[38] This error occurred because the object of the dispute at issue originated from the Sales Contract (SC), which explicitly stipulated that the applicable law was English law and the forum for dispute resolution was the Arbitration Board in London.

In the international legal system, when the parties have expressly determined the choice of law and choice of forum in their agreement, the principle of pacta sunt servanda as stipulated in Article 1338 of the Civil Code must be upheld. In this case, the SC agreement has also stipulated a dispute resolution forum in arbitration. With the arbitration provision in the agreement, the principle of separability applies, which means that the validity of the arbitration agreement must be separated from the main agreement.

This separability principle is explicitly regulated in Article 11, paragraph (1) of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (AAPS Law), which states that the arbitration clause in an agreement continues to have legal force and is binding, regardless of whether the main agreement is valid or not. Thus, even though there is another agreement that regulates the choice of law and the choice of a different forum, in this case, the Stock Financing Agreement (SFA), the court should still refer to the provisions agreed upon in the SC agreement.

[38] Margaretha, Aminah And Widanarti (N 18).

The decisions of the Court of Appeal and the Supreme Court, which determined that the Central Jakarta District Court had jurisdiction to hear the case and applied Indonesian law, ignored the principle of separability and the provisions of the AAPS Law. The Indonesian judiciary should have respected and enforced the agreement of the parties who had chosen to settle the dispute through the London Arbitration Board, following the English law they had previously agreed to. Therefore, the decision can be viewed as an error in the application of law, which has an impact on legal certainty in international business contracts and creates a precedent that has the potential to harm the interests of the business world.

4. CONCLUSION

Based on the discussion of the legal principles and provisions applicable in The Hague Principles on Choice of Law in International Commercial Contracts in 2015, it can be concluded that this instrument provides a clear and flexible legal framework regarding the principle of party autonomy in determining the applicable law (choice of law) in international contracts. This principle emphasizes that the parties to an international contract can determine which national law will govern their contractual relationship, without being bound to the country where the contract is made or implemented. Furthermore, in applying the choice of law and choice of forum clauses in resolving international contract disputes, The Hague Principles 2015 emphasizes the importance of the autonomy of the parties, clarity of the clauses, and compliance with certain limitations such as mandatory rules and public policy. These principles serve as interpretive guidelines in national and international legal systems, including in jurisdictions that have not officially adopted the principle, because it is non-binding soft law but has normative influence. Based on the results of the analysis, it is recommended that national policymakers consider integrating the Hague Principles on Choice of Law in International Commercial Contracts 2015 principles into the national legal system, especially within the framework of private international law. This integration is important to increase legal certainty, facilitate cross-border transactions, and strengthen the position of national law in global competition. In addition, legal practitioners, including advocates and judges, are expected to use the Hague Principles as an interpretive guideline in handling international contract disputes, especially in cases involving unclear or ambiguous choice of law and forum clauses. These principles can be a reference in interpreting the parties' will more fairly and consistently. Furthermore, academics and legal researchers are encouraged to conduct a more in-depth comparative study of the application of choice of law and choice of forum clauses in various jurisdictions, to enrich the legal literature and encourage the harmonization of international contract law practices globally.

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