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Determining Choice of Law in International Commercial Contracts: Challenges and Solutions

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ABSTRACT

Determining the applicable law in international trade contracts remains a critical challenge because cross-border transactions involve diverse legal systems. Differences between civil law and common law traditions, public policy exceptions, and difficulties in enforcing foreign judgments or arbitral awards create uncertainty for contracting parties. This study aims to examine practical and theoretical frameworks for determining applicable law and to identify mechanisms that strengthen predictability, fairness, and enforceability in international commerce. Its novelty lies in contextualizing choice-of-law mechanisms within digital globalization, where rapidly evolving commercial practices, electronic transactions, and borderless business relationships increasingly test conventional conflict-of-laws principles. Using a doctrinal legal research method, the study analyzes international legal instruments, relevant legal doctrines, scholarly interpretations, comparative principles, selected cases, and sector-specific contractual practices. The results demonstrate that formulated choice-of-law clauses significantly reduce interpretative disputes and provide guidance for courts, arbitral tribunals, and contracting parties. International arbitration also offers a strategic mechanism for managing jurisdictional differences and improving cross-border enforceability. Nevertheless, contractual autonomy cannot operate independently of mandatory rules and public policy limitations. The study concludes that greater harmonization of legal standards, precise contractual drafting, and informed selection of dispute-resolution mechanisms are essential to promote justice, efficiency, and legal certainty in international trade.

INTRODUCTION

Efficient contract enforcement in commercial activities is crucial for sustainable economic development and growth. Well-drafted and enforced business contracts not only provide legal certainty to the parties involved, but also create a conducive investment climate, accelerate trade flows, and encourage innovation in various economic sectors[1]. Efficiency in contract enforcement has a direct impact on the smooth running of business activities, as it reduces the potential for disputes that can hamper company operations. With a clear, transparent, and binding contract, business

[1] Michael C. Huang, Michelle Voyer Morgan, *Dominique Benzaken, and Atsushi Watanabe, Blue Economy and Blue Finance Toward Sustainable Development and Ocean Governance*, I (Tokyo: Asian Development Bank Institute, 2022): 11.

actors have definite guidelines regarding their respective rights and obligations, including a settlement mechanism in the event of a dispute.

Furthermore, contractual efficiency plays an important role in attracting foreign direct investment (FDI). Investors tend to favour countries with reliable legal systems, including the protection of contractual rights[2]. Thus, countries that can guarantee the effective and fair enforcement of contracts have greater appeal to investors, which in turn can increase capital flows, create jobs, and accelerate economic growth. In the context of sustainable development, efficient business contracts can also support the achievement of the Sustainable Development Goals (SDGs)[3].

To achieve efficiency in contract enforcement, a strong legal framework and reliable institutions are required[4]. The government needs to ensure that regulations related to business contracts, both at the national and international levels, support flexibility in dealing with global market dynamics without ignoring the principle of fairness. Courts and dispute resolution institutions must also be able to provide fast, fair and transparent services to resolve conflicts that may arise from the execution of contracts. Digitalisation also plays an important role in improving the efficiency of contract enforcement. Technologies such as blockchain can be used to create smart contracts that are automated and can be executed without human intervention[5].

In the current era of economic globalisation, business activities are no longer limited to the domestic scale, but have expanded to the international market[6]. Companies from different countries are increasingly interacting and doing business beyond their national borders. International trade contracts are therefore the primary tool that governs the rights and obligations of the parties to such transactions, ensuring clear agreements and reducing potential disputes that could arise. In the absence of clear contracts, companies and individuals involved in international transactions will face uncertainties that can work against them.

International trade contracts also play a role in enhancing a company's global competitiveness. With clear and transparently executed agreements, companies can expand their markets, access international business opportunities, and build long-term relationships with business partners from

[2] Dia, Ibrahima, and Henri Atangana Ondoa. "Does Economic Freedom Improve FDI Inflows in Sub-Saharan Africa?" *Journal of Economic Integration* 38, no. 3 (2023): 383–410. https://www.jstor.org/stable/27242694.
[3] Ordonez-Ponce, E., Clarke, A. and MacDonald, A. (2021), "Business contributions to the sustainable development goals through community sustainability partnerships", Sustainability Accounting, Management and Policy Journal, Vol. 12 No. 6, pp. 1239-1267. https://doi.org/10.1108/SAMPJ-03-2020-0068.
[4] Amrita Dhillon, Jamele Rigolini, "Development and the interaction of enforcement institutions, Journal of Public Economics", Volume 95, Issues 1–2, (2011): 79-87, ISSN 0047-2727, https://doi.org/10.1016/j.jpubeco.2010.09.013.
[5] Mohd Javaid, Abid Haleem, Ravi Pratap Singh, Rajiv Suman, Shahbaz Khan, "A review of Blockchain Technology applications for financial services, Bench Council Transactions on Benchmarks, Standards and Evaluations", Volume 2, Issue 3, (2022): 100073, ISSN 2772-4859, https://doi.org/10.1016/j.tbench.2022.100073.
[6] Kyove, Justine, Katerina Streltsova, Ufuoma Odibo, and Giuseppe T. Cirella. "Globalization Impact on Multinational Enterprises" *World* 2, no. 2, (2021): 216-230. https://doi.org/10.3390/world2020014.

other countries. Clear and robust contracts provide legal certainty, strengthen business relationships between countries, and promote more stable and sustainable economic growth. The role of choice of law in international dispute resolution and the application of relevant law is crucial in the context of international trade contracts[7].

Indonesia's legal readiness in facing the challenges of international trade contracts is very important, considering that the country is increasingly integrated in the global trading system[8]. Along with the rapid development in the world of international trade, Indonesia must ensure that its national legal system is able to support smooth cross-border transactions and protect the interests of business actors, both in the context of legislation and in the practice of dispute resolution. One of the main challenges faced by Indonesia is the legal readiness to handle international trade contracts involving various legal systems[9]. Indonesia, which has a mixed legal system (Civil Law and some aspects of Common Law), needs to continue to develop regulations that are more compatible with international standards, especially in terms of choice of law, dispute resolution, and recognition of foreign court decisions[10].

Despite the normative expectation that Indonesia's legal system should provide legal certainty, efficiency, and enforceability in international trade contracts in accordance with global commercial standards, the empirical reality demonstrates persistent legal and institutional challenges in practice. In *das sollen,* international business contracts are expected to operate within a predictable legal framework that ensures effective dispute resolution, recognition of foreign judgments, and harmonization with international commercial principles. However, in das sein, Indonesia still faces regulatory fragmentation, inconsistencies in contract enforcement, overlapping jurisdictional issues, lengthy dispute settlement mechanisms, and limited adaptability of national legal institutions to the dynamics of cross-border digital commerce. These conditions create legal uncertainty for international business actors and potentially reduce Indonesia's competitiveness in the global market. The gap between normative legal expectations and empirical implementation constitutes the central legal issue of this article.

The main objective of this article is to analyze the challenges that often arise in the context of international trade contracts and identify workable solutions to overcome these obstacles.

[7] Merrils, John. Malcolm D. Evans (Ed). *The Means of Dispute Settlement in International Law*. (New York: Oxford University Press, 2003): 27.
[8] Howse, Robert, and Joanna Langille. "Continuity and Change in the World Trade Organization: Pluralism Past, Present, and Future." *American Journal of International Law* 117, no. 1 (2023): 1–47. https://doi.org/10.1017/ajil.2022.82.
[9] Svantesson, "The (Uneasy) Relationship between the HCCH and Information Technology," in The Elgar Companion to the Hague Conference on Private International Law, ed. Thomas John, Rishi Gulati, and Ben Koehler (Cheltenham, Glouchestershire, United Kingdom: Edward Elgar Publishing, 2020): 462.
[10] Hans Van Loon, "Hague Conference on Private International Law," Hague Justice Journal 2, no. 2 (2007): 4. https://doi.org/10.1017/S0165070X00014303.

International trade contracts, which are the cornerstone of cross-border trade, are often faced with a variety of challenges, including different legal systems, language barriers, and changing policy and regulatory dynamics. Based on this formulation, this article will address the main research problem, namely: How to determine the right choice of law in international trade contracts to overcome differences in legal systems, ensure legal certainty, and support fair dispute resolution amid the dynamics of globalization and the development of digital technology?

METHODS

This research employs a doctrinal legal research method combined with a comparative and empirical-contextual approach to examine the determination and enforcement of choice of law in international commercial contracts. The doctrinal approach systematically analyses laws, regulations, court decisions, arbitral awards, and legal doctrines related to cross-border commercial transactions and private international law. This method is appropriate because the study focuses not only on examining legal norms governing party autonomy and contractual certainty, but also on assessing their coherence with internationally recognized legal standards and commercial practices. Through this approach, the research evaluates the interaction between Indonesia's domestic legal framework and international instruments, including the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

In addition, the study adopts a comparative legal approach to analyse the principles and application of choice of law across different jurisdictions, particularly within civil law and common law systems. This comparative analysis aims to identify legal inconsistencies, institutional challenges, and best practices that may contribute to strengthening Indonesia's legal readiness in international trade and dispute resolution. Furthermore, this research incorporates qualitative analysis of selected judicial decisions, international arbitration cases, and commercial dispute practices to examine how choice-of-law clauses are interpreted and enforced in practice. By integrating normative and empirical perspectives, the study seeks to identify the gap between the normative expectation of legal certainty and contractual enforceability (*das sollen*) and the practical realities encountered in cross-border commercial disputes (*das sein*). affecting the effectiveness of international commercial contract enforcement in Indonesia.

DISCUSSION

Challenges in Determining Choice of Law in International Commercial Contracts

Challenges arise when one party comes from a country with a legal system that is less

developed or fundamentally different from the law chosen in the contract. In such cases, the party from that jurisdiction may feel disadvantaged because they must comply with foreign legal rules that may not be fully understood or aligned with their interests. In the context of Indonesia, the relevance of the choice of law becomes increasingly important with the growing involvement of local companies in global trade[11]. One of the challenges is the lack of in-depth understanding among local legal practitioners about international legal instruments, such as the United Nations Convention on Contracts for the International Sale of Goods (CISG), which can provide guidance in the drafting and execution of cross-border contracts[12].

The United Nations Convention on CISG, adopted under the auspices of UNCITRAL in 1980, establishes a uniform and comprehensive framework governing international sales contracts to eliminate uncertainty arising from divergent national laws. It harmonizes fundamental aspects of contract law, including the formation of contracts, the obligations of the parties, and the remedies for breach. The CISG standardizes the rules of offer and acceptance (Part II, Articles 14–24), recognizes international trade usages, and ensures a balanced allocation of seller and buyer obligations (Part III, Articles 30–65). It also provides uniform remedies (Articles 45–52 and 61–65) such as specific performance, price reduction, and contract avoidance, thereby fostering fairness and predictability across jurisdictions.

Moreover, Article 7 of the CISG embeds the principle of good faith and uniform interpretation, ensuring that the Convention operates consistently within the global legal order. By codifying these substantive rules, the CISG reduces transaction costs, prevents legal fragmentation, and promotes confidence among parties from differing legal traditions. Bridging the civil law emphasis on codification with the common law reliance on precedent, the CISG offers a neutral, harmonized framework that strengthens legal certainty, encourages equitable trade practices, and sustains the efficiency of international commerce.

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) establishes a binding international framework that ensures arbitral awards rendered in one contracting state are recognized and enforceable in others, thereby promoting finality, predictability, and judicial efficiency in international dispute resolution. Pursuant to Article III, member states must enforce arbitral awards according to their national procedures, while Article V limits the grounds for refusal to exceptional cases such as invalid arbitration agreements, lack of due process, excess of

[11] Ying Chen, Yuning Gao, Comparative analysis of digital trade development strategies and governance approaches, Journal of Digital Economy, Volume 1, Issue 3, (2022): 227-238, ISSN 2773-0670, https://doi.org/10.1016/j.jdec.2023.02.001.
[12] Adhiwisaksana, Muhammad Faqih and Allagan, Tiurma Mangihut Pitta (2023) "Competent Forum and Applicable Law in Personal Data Protection with a Foreign Element," Indonesian Journal of International Law: Vol. 20: No. 3, Article 2. https://scholarhub.ui.ac.id/ijil/vol20/iss3/2.

arbitral authority, or violation of ordre public. This narrow set of exceptions reflects the Convention's pro-enforcement bias, minimizing judicial interference and strengthening party autonomy. Its widespread ratification—now exceeding 170 countries—has made it one of the most successful treaties in private international law.

In practical terms, the Convention harmonizes enforcement standards and reduces the risk of parochial legal obstruction, thus enhancing global commercial confidence. By ensuring that arbitral awards transcend national borders, it supports arbitration as a neutral and efficient mechanism for resolving cross-border disputes. In Indonesia, incorporation through Presidential Decree No. 34 of 1981 and Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution aligns domestic practice with international norms, although procedural hurdles such as the exequatur requirement and uneven judicial interpretation still pose challenges. Nonetheless, the Convention's enforcement regime remains pivotal in safeguarding legal certainty and economic trust within the global trading system.

In the context of international commercial contracts, choice of law and jurisdiction are two concepts that are often linked but have fundamental differences in their roles and functions[13]. Both play an important role in determining how a dispute will be resolved and what law will be applied, but their focus differs substantially. Choice of law refers to an agreement between the parties in a contract to determine which legal system will govern their contractual relationship. This choice is typically expressed in a contract clause that explicitly designates the law of a specific country as the basis for dispute resolution or contract interpretation. The primary focus of choice of law is on the substance of the law to be applied, including the rights and obligations of the parties, the interpretation of contract provisions, and the resolution of potential contract breaches[14].

In the Indonesian legal context, choice of law and jurisdiction clauses hold particular importance due to the significant differences between Indonesia's legal system and those of many other countries. It is common for international commercial contracts involving Indonesian parties to stipulate foreign laws, such as English or Singaporean law, as the governing law[15]. However, jurisdiction may still lie within Indonesian courts, especially when the dispute involves assets or business activities located in Indonesia. To safeguard legal certainty, contracting parties must draft both clauses with precision, ensuring that they balance domestic legal requirements with

[13] Raymond M. Auerback, "Governing Law Issues in International Financial Transactions", 27 INT'L L. 303 (1993) https://scholar.smu.edu/til/vol27/iss2/2.
[14] Dupuy, Pierre-Marie, Jorge E. Viñuales, International Environmental Law, (New York: Cambridge University Press, 2018): 20.
[15] Eric Posner & John C. Yoo, "Judicial Independence in International Tribunals," 93 California Law Review 1 (2005).

international commercial expectations, and that the provisions are legally enforceable[16].

Despite its limitations, the freedom to choose governing law offers numerous benefits. Parties can select the law deemed most efficient, fostering trust between them and facilitating dispute resolution by referring to the agreed-upon legal framework. However, this freedom also faces challenges, such as the complexities of international law, incompatibility with domestic laws, and potential disputes over the scope of the chosen law[17]. In the context of Indonesia, the freedom to choose governing law is recognized in various regulations, including the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata)[18]. However, the application of choice of law in Indonesia often adheres to restrictions related to public policy and imperative legal rules.

In the context of international trade contracts, the 1958 Geneva Convention serves as a foundation for courts in member states to recognize and enforce judgments rendered by courts of other member states involved in cross-border business transactions. For instance, if a dispute arises between two companies from different countries, and the dispute is resolved through a court judgment in the first country, the second country, which is also a party to the contract, can recognize and enforce the judgment of the first country's court based on the provisions of the Geneva Convention[19]. The 1958 Geneva Convention provides legal protection for parties involved in international contracts by ensuring that court judgments can be enforced in different countries, thereby reducing legal uncertainty that may arise[20].

Entering the second half of the 20th century, the doctrine of choice of law gained significant momentum as part of the development of the increasingly integrated global economy[21]. The economic globalization that drove the growth of international trade and cross-border investments created a need for a legal framework that could provide certainty, predictability, and access to justice in commercial contractual relationships. In this context, the acceptance of the principle of choice of law began to be realized through various efforts at national legal codification and harmonization of laws between countries. This step aimed to align domestic legal norms with international standards

[16] Howse, Robert, and Joanna Langille. "Continuity and Change in the World Trade Organization: Pluralism Past, Present, and Future." *American Journal of International Law* 117, no. 1 (2023): 1–47. https://doi.org/10.1017/ajil.2022.82.

[17] Mehnaz Begum, Shabir Ahmed Khan, and Muhammad Zubair Khan, 'Alternative Dispute Resolution in the Contemporary World', *Global International Relations Review,* V (2022): 11–16.

[18] Alter, Karen J., "The Multiple Roles of International Courts and Tribunals: Enforcement, Dispute Settlement, Constitutional and Administrative Review" (2012). Faculty Working Papers. Paper 212. http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/212.

[19] Tiffany Ng, Choice of Procedural Law in International Commercial Arbitration: Providing "Proper Notice" to a Foreign Party to Ensure That the Arbitral Award Can Be Enforced, 10 Hastings Bus. L.J. 491 (2014). https://repository.uchastings.edu/hastings_business_law_journal/vol10/iss2/6. .

[20] Julian D.M. Lew, Loukas A. Mistelis & Stefan M. Kröll, Comparative International Commercial Arbitration (The Hague: Kluwer Law International, 2003): v.

[21] Warrouw, Adolf (2021) "Fundamental Changes of International Economic Law: Challenges Toward Legal System Based on Fairness and Human Values," Indonesian Journal of International Law: Vol. 7: No. 1, Article 3, (2021). Doi: 10.17304/Ijil.Vol7.1.227 Https://Scholarhub.Ui.Ac.Id/Ijil/Vol7/Iss1/3.

that facilitate trade and investment relations[22].

Indonesia, as one of the countries with a continuously growing economy, responds to this need through various strategic measures in the fields of business law, trade, and investment[23]. As a country with a civil law-based legal system, Indonesia has begun strengthening its regulatory framework to provide a clearer legal foundation for business actors, both domestic and international[24]. In an effort to enhance legal certainty, Indonesia also encourages the strengthening of dispute resolution mechanisms, such as international arbitration, which offers a neutral and effective alternative for parties to resolve contract conflicts. Thus, choice of law has become not only a technical instrument in commercial contracts but also a symbol of Indonesia's efforts to create a competitive and inclusive business environment amid globalization.

The findings of this study demonstrate that, although the principles of party autonomy, legal certainty, and harmonization of international commercial law have been normatively recognized through instruments such as the CISG and the New York Convention, their practical implementation within the Indonesian legal system remains inconsistent. From a theoretical perspective, the doctrine of choice of law is intended to provide predictability, contractual efficiency, and neutrality in cross-border commercial relations.

However, empirical practices reveal continuing challenges, particularly regarding judicial interpretation, enforcement procedures, and the application of public policy exceptions in international dispute resolution. For example, despite Indonesia’s ratification of the New York Convention and the recognition of arbitral enforcement under Law No. 30 of 1999, procedural barriers such as exequatur requirements and inconsistent court approaches continue to create uncertainty for foreign business actors. These findings indicate a persistent gap between the normative expectation of harmonized international commercial enforcement (*das sollen*) and the realities of legal and institutional practice in Indonesia (*das sein*). Therefore, this study argues that strengthening judicial consistency, improving legal practitioners’ understanding of international commercial instruments, and harmonizing domestic procedural standards with international commercial norms are essential to enhance Indonesia’s legal reliability and competitiveness within the global trading system.

[22] Stuart D. Levi & Alex B. Lipton, “An Introduction to Smart Contracts and Their Potential and Inherent Limitations”, Harvard Law School Forum on Corporate Governance and Financial Regulation (May 26, 2018), http://perma.cc/UM6E-8WU8.

[23] Eken, Sena, Mohamed A. El-Erian, Susan Fennell, and Jean-Pierre Chauffour. "Achieving Growth and Stability in the Middle East and North Africa". In *Growth and Stability in the Middle East and North Africa*, (USA: International Monetary Fund, 1996) accessed Dec 29, 2024, https://doi.org/10.5089/9781557755650.054.ch001.

[24] Benabed, A. (2024). International Law as a Means of Globalization, Business Internationalization and Global Economy: A Mechanism with Proclivities. Perspectives of Law and Public Administration, 13(1), 159–166. https://doi.org/10.62768/PLPA/2024/13/1/17.

Challenges in Determining Choice of Law in International Commercial Contracts

In the context of international commercial contracts, the fundamental differences between civil law and common law systems have a significant impact on the choice of law adopted by the parties in cross-border contractual relationships[25]. These two legal systems offer different approaches to legal interpretation, contract drafting, and dispute resolution mechanisms, which can influence the legal strategies of the parties when selecting the applicable law. The civil law system, which is applied in many countries such as Indonesia, France, Germany, and Japan, tends to prioritize comprehensive codification[26]. Contracts in this system are generally shorter, as most provisions are considered to be covered by the applicable law.

In contrast, the common law system, which dominates countries such as the United States, the United Kingdom, and Australia, places emphasis on precedent or previous court rulings as the primary source of law[27]. Contracts under this system tend to be longer and more detailed because many clauses must be explicitly negotiated to anticipate specific situations. In the context of choice of law, common law countries are often chosen by parties in international contracts due to their flexibility and the perception that this system is more responsive to the needs of modern markets. These differences create unique challenges in cross-border contractual relationships[28].

International conventions, such as the 1980 Rome Convention on the law applicable to contractual obligations, seek to address these challenges by providing guidelines for determining choice of law in international contracts[29]. However, the implementation of such conventions is not always uniform, and some countries still have differing interpretations of the principles outlined. In practice, these inconsistencies often require the parties to rely on international arbitration as a more flexible dispute resolution alternative. Additionally, a thorough understanding of the legal principles in the countries involved, along with consultations with international legal experts, is an important step in preventing potential disputes[30].

Fundamental inconsistencies between common law and civil law systems often emerge in the interpretation and enforcement of international commercial contracts, particularly regarding

[25] Okoli, C. S. A., & Yekini, A. "Implied jurisdiction agreements in international commercial contracts: a global comparative perspective". *Journal of Private International Law*, *19* (3), (2023); 321–361. https://doi.org/10.1080/17441048.2023.2294615.
[26] Grušić, U. "Transboundary pollution at the intersection of private and public international law". *Journal of Private International Law*, *19* (3, 2023), 569–582. https://doi.org/10.1080/17441048.2023.2294606.
[27] Mills, A."Sustainability and jurisdiction in the international civil litigation market". *Journal of Private International Law*, *20* (1, 2024): 1–25. https://doi.org/10.1080/17441048.2024.2347717.
[28] Chukwuma Samuel Adesina Okoli, The significance of a forum selection agreement as an indicator of the implied choice of law in international contracts: a global comparative perspective, Uniform Law Review, Volume 28, Issue 2, June 2023, Pages 197–225, https://doi.org/10.1093/ulr/unad016.
[29] Pilar P. Viscasillas, Applicable Law, the CISG, and the Future Convention on International Commercial Contracts, 58 Vill. L. Rev. 733 (2013). https://digitalcommons.law.villanova.edu/vlr/vol58/iss4/15.
[30] Ronald A. Brand, The Rome I Regulation Rules on Party Autonomy for Choice of Law: A U.S. Perspective, Unpublished (2011). https://scholarship.law.pitt.edu/fac_articles/454.

consideration, good faith, and limitation of liability. In common law jurisdictions such as England and the United States, a valid contract requires consideration, something of value exchanged between parties, whereas civil law systems like those of Indonesia, France, and Germany recognize mutual consent (*consensus ad idem*) as sufficient for contract formation. Similarly, good faith in common law operates only in limited contexts, often as an implied term, while in civil law it functions as a general principle governing the creation, interpretation, and performance of all contracts. These divergent conceptions influence how courts assess fairness and intent in commercial dealings.

Differences are also evident in the treatment of limitation of liability clauses. Common law courts typically uphold such clauses so long as they are not unconscionable or contrary to statute, emphasizing freedom of contract, while civil law systems impose stricter scrutiny, invalidating clauses that violate public policy (ordre public) or moral standards. For instance, a limitation clause enforceable under English law could be nullified in Indonesia under Article 1337 of the *Burgerlijk Wetboek*, which prohibits agreements conflicting with public order or morality. These doctrinal inconsistencies can lead to unpredictable outcomes when foreign law is applied in cross-border disputes, underscoring the need for clearer contractual drafting and harmonized interpretative principles to ensure fairness and legal certainty in international commerce.

Choice of law in international trade contracts plays a strategic role in many sectors, including technology and banking, which are two industries that have been heavily influenced by globalization and digital transformation. Both sectors have unique approaches to determining and treating choice of law, with the aim of managing risk, improving operational efficiency and maintaining compliance with international and local regulations[31]. In the technology industry, choice of law is particularly important given the cross-border nature of many technology transactions, such as software licenses, cloud-based services and technology partnership agreements. However, on the other hand, challenges arise when local laws in a particular country limit this flexibility[32].

Normatively, the principle of party autonomy is designed to provide legal certainty and contractual flexibility by granting parties the freedom to select the governing law most compatible with their commercial interests and transactional needs. However, the analysis reveals that the practical application of this principle remains constrained by fundamental doctrinal divergences between the two legal traditions, particularly concerning consideration, good faith, and limitation of liability. These differences frequently generate legal uncertainty in cross-border dispute resolution, especially when contractual provisions recognized and enforceable within common law jurisdictions

[31] Alter, Karen J., "The Multiple Roles of International Courts and Tribunals: Enforcement, Dispute Settlement, Constitutional and Administrative Review" (2012). Faculty Working Papers. Paper 212.
[32] Carrillo, Arturo J and Jackson, Matías. "Follow the Leader? A Comparative Law Study of the EU's General Data Protection Regulation's Impact in Latin America" *ICL Journal* 16, no. 2 (2022): 177-262. https://doi.org/10.1515/icl-2021-0037.

encounter restrictive interpretation under civil law systems.

The study further finds that these inconsistencies become increasingly complex in highly globalized sectors such as technology and banking, where cross-border digital transactions require rapid, predictable, and commercially responsive legal mechanisms. For example, technology contracts involving cloud computing services or cross-border digital platforms frequently adopt English law due to its flexibility and strong recognition of contractual freedom. Nevertheless, disputes involving Indonesian parties may still encounter procedural and interpretative challenges before domestic courts, particularly when foreign governing law clauses conflict with mandatory domestic legal principles. These findings indicate a persistent gap between the normative expectation of harmonized international commercial enforcement (*das sollen*) and the realities of fragmented legal interpretation and institutional practice (*das sein*). to strengthening legal certainty and enhancing Indonesia's competitiveness in global trade.

Solutions to Overcoming Choice of Law Challenges in International Trade Contracts

1) Drafting a Clear Choice of Law Clause

In the context of international trade contracts, determining the applicable law from the outset is one of the key elements to create legal certainty for the parties involved. This process is usually realized through a choice of law clause explicitly included in the contract[33]. This clause allows the parties to choose a particular legal system that will govern their rights and obligations in the execution of the contract, as well as a reference in dispute resolution in the event of a dispute in the future. Determining the law from the outset has several significant benefits. *First,* it provides predictability and reduces uncertainty in the contractual relationship. Parties can clearly understand the legal framework that will apply, so they can better design their business and legal compliance strategies[34]. *Second,* establishing the applicable law helps prevent potential jurisdictional conflicts, especially in transactions involving parties from different countries with different legal systems[35].

The concept of *lex causae*, or "the law governing the cause," occupies a fundamental position in Private International Law (PIL) as it determines which legal system applies to a dispute involving foreign elements. In contractual relations, *lex causae* defines the law that

[33] Tractenberg, Craig R. "Nuts and Bolts of International Arbitration." *Franchise Law Journal* 38, no. 3 (2019): 451–68. https://www.jstor.org/stable/27172618.

[34] Theimer, L. (2023). Protection against the breach of choice of court agreements: A comparative analysis of remedies in English and German courts. *Journal of Private International Law*, *19*(2): 208–237. https://doi.org/10.1080/17441048.2023.2239007.

[35] Lehmann, M. (2023). Incremental international law-making: The Hague Jurisdiction Project in context. *Journal of Private International Law*, *19*(1), 25–41. https://doi.org/10.1080/17441048.2023.2189077.

governs the formation, validity, interpretation, performance, and termination of an agreement that crosses national boundaries. The identification of the applicable law is essential to achieving legal certainty and predictability, especially when multiple jurisdictions could potentially claim authority. Historically, courts relied on territorial connecting factors, most notably the *lex loci contractus*, the law of the place where the contract was made, to determine the governing law. This approach emphasized the geographical location of the contractual act as the key determinant of legal applicability. Over time, however, jurists recognized its limitations in addressing the realities of cross-border transactions and introduced the *lex loci solutionis,* or the law of the place of performance, which considers where contractual obligations are fulfilled, particularly relevant in cases involving multinational commercial operations[36].

In modern jurisprudence, especially within common law systems, these traditional territorial doctrines have been supplanted by the more flexible doctrine of the proper law of the contract, which identifies the law most closely connected to the transaction and the intentions of the parties. As articulated by Dicey and Morris, "the proper law of the contract is the system of law with which the contract has its closest and most real connection"[37]. This doctrine combines subjective autonomy (the parties' freedom to choose the governing law) with objective connection (the factual and economic nexus of the transaction), creating a more equitable and realistic method of conflict resolution. The lex causae thus serves as a synthesis of these principles, blending party choice, territorial connection, and substantive justice. In the Indonesian context, although the *Burgerlijk Wetboek* (Civil Code) does not explicitly codify the concept of *lex causae,* Indonesian legal practice, particularly in arbitration, recognizes the principle of party autonomy, consistent with Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, thereby aligning national practice with the theoretical evolution of international contract law[38].

Some of the factors that influence this choice include the location of the parties, the nature of the transaction and commercial preferences. In many cases, parties tend to choose legal systems from countries with a good reputation for legal stability, such as English law, New York law, or Swiss law, as they are perceived to have high legal certainty, flexibility in contractual arrangements, and reliable dispute resolution mechanisms. One of them is the existence of mandatory rules in certain jurisdictions that may not be ignored even if the

[36] Peter North and J. J. Fawcett, *Cheshire and North's Private International Law*, 14th ed. (London: Butterworths, 1999), 235–38.
[37] A. V. Dicey and J. H. C. Morris, *The Conflict of Laws,* 15th ed. (Oxford: Oxford University Press, 2012), 1189.
[38] Indonesia, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.

parties have chosen another law. For example, laws related to consumer protection, antitrust or public policy may automatically apply and override the law that has been chosen in the contract[39].

In practice, choice of law clauses must be carefully drafted to ensure their validity in the eyes of the law. It should be clearly and unambiguously formulated, include a specific legal system, and, where possible, be accompanied by a provision regarding the jurisdiction of the court or other dispute resolution forum, such as arbitration. In this way, parties can ensure that their contracts are not only legally effective but also capable of providing protection and fairness to all parties involved. Determining the applicable law early on in the contract reflects a preventive effort in legal risk management[40].

In international trade contracts, the use of clear and structured language is a fundamental element that not only enhances the effectiveness of the contract, but also minimizes the risk of disputes between the parties[41]. As legal documents governing rights and obligations in cross-border transactions, international contracts must be drafted taking into account various factors, including cultural differences, legal systems, and the language used by the parties. Ambiguous or insufficiently specific language in a contract can lead to different interpretations, which in turn can trigger disputes. Uncertainty in contract language not only has the potential to cause conflict, but can also weaken the legal position of one of the parties in dispute resolution, either through litigation or arbitration[42].

The analysis reveals that the effectiveness of choice-of-law clauses in international commercial contracts cannot be measured solely through the formal recognition of party autonomy, but must also be understood through the interaction between *lex causae* principles, mandatory domestic rules, and the realities of cross-border dispute resolution. While international commercial law normatively promotes legal certainty and contractual flexibility, the study demonstrates that differing interpretative standards between civil law and common law systems continue to create inconsistencies in contractual enforcement, particularly in jurisdictions such as Indonesia where public policy considerations and mandatory legal provisions may restrict the application of foreign governing law. These

[39] Alter, Karen J., "The Multiple Roles of International Courts and Tribunals: Enforcement, Dispute Settlement, Constitutional and Administrative Review" (2012). Faculty Working Papers. Paper 212. http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/212.

[40] Ubink, Janine, Thomas McInerney, Customary Justice: Perspectives on Legal Empowerment (Rome: International Development Law Organization (IDLO), 2011): 7.

[41] Hietanen-Kunwald, P., & Haapio, H. (2021). Effective dispute prevention and resolution through proactive contract design. Journal of Strategic Contracting and Negotiation, 5(1-2): 3-23. https://doi.org/10.1177/20555636211016878.

[42] Hadwiger, F. (2017). Looking to the future: mediation and arbitration procedures for global framework agreements. Transfer: European Review of Labour and Research, 23(4): 409-424. https://doi.org/10.1177/1024258916679574.

conditions reflect a persistent gap between the normative expectation of harmonized international commercial enforcement and the practical realities of fragmented legal interpretation across jurisdictions.

The principal contribution of this study lies in its integrated analytical framework that combines doctrinal, comparative, and empirical-contextual approaches to examine the tension between international contractual autonomy and domestic legal limitations within Indonesia's legal system. Unlike previous studies that primarily focus on normative discussions of choice of law, this article advances existing scholarship by highlighting the practical implications of legal fragmentation, judicial interpretation, and contractual risk management in cross-border commercial transactions. The study further proposes a preventive legal-risk approach through clearer contractual drafting, harmonized governing-law clauses, and stronger institutional understanding of international commercial principles as mechanisms to enhance legal certainty and commercial predictability in emerging economies such as Indonesia.

2) Use of Arbitration and Alternative Dispute Resolution (ADR)

International arbitration has become a very popular dispute resolution mechanism in cross-border trade contracts[43]. One of the main reasons is its ability to overcome differences in choice of law between the parties involved in the contract. In the context of international trade, where parties often come from different jurisdictions with diverse legal systems, cultures and policies, international arbitration offers a flexible, efficient and reliable solution to resolve disputes. In arbitration proceedings, parties have the flexibility to determine for themselves the substantive law applicable to their contract, be it the law of one of the party states, the law of a third country deemed neutral, or even principles of international law such as the *lex mercatoria*[44].

In addition, international arbitration reduces concerns about national jurisdictional bias. In resolving disputes through litigation in state courts, there is often a concern that local courts will favor parties from that jurisdiction[45]. Arbitration, with a panel of arbitrators usually composed of independent experts from different countries, offers a higher degree of

[43] Fabian Teichmann, Sonia Boticiu, Bruno S. Sergi, "The risk of abuse of arbitration proceedings in jurisdictions where corruption is pervasive", *Journal of Economic Criminology,* Volume 2, (2023), 100032, ISSN 2949-7914, https://doi.org/10.1016/j.jeconc.2023.100032.
[44] Kaplow, Louis, and Steven Shavell. "Fairness versus Welfare." *Harvard Law Review* 114, no. 4 (2001): 961–1388. https://doi.org/10.2307/1342642.
[45] Mateusz Dolata, Gerhard Schwabe, "Moving beyond privacy and airspace safety: Guidelines for just drones in policing", *Government Information Quarterly,* Volume 40, Issue 4, 2023, 101874, ISSN 0740-624X, https://doi.org/10.1016/j.giq.2023.101874.

neutrality. This gives the parties confidence that their dispute will be resolved fairly without any preference for either party. The arbitration process also allows the parties to avoid the uncertainty that often arises from conflict of laws in national courts. In arbitration, arbitrators have the expertise to deal with complex legal issues, including issues involving different legal systems[46]. This ensures that the resulting decision is based on a deep understanding of the relevant law, making it more acceptable to all parties[47].

Another advantage is enforceability or the ability to enforce arbitral awards internationally. International arbitral awards are recognized and enforceable in more than 170 countries that are parties to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In many cases, parties to international trade disputes prefer arbitration because the process is private and not open to the public[48]. This confidentiality is important to protect sensitive information that may affect the parties' business reputation or trading strategy. With all these advantages, international arbitration has become the first choice for companies and legal practitioners to resolve disputes involving choice-of-law differences in international trade contracts[49].

3) Harmonization of International Law

In the context of international trade contracts, legal harmonization is a crucial element to ensure that choice of law can be implemented more consistently[50]. One of the biggest challenges in cross-border business relationships is that different legal systems, public policies and legal traditions can make it difficult to apply choice of law[51]. This is where international institutions play an important role in promoting alignment of legal rules and principles across jurisdictions, so that businesses can enjoy greater legal stability and certainty. One example of an international institution that has a significant role is the United Nations Commission on International Trade Law (UNCITRAL)[52].

[46] Gu, Weixia, Looking at Arbitration Through a Comparative Lens: General Principles and Specific Issues (November 1, 2018). The Journal of Comparative Law, Vol. 13, No. 2, pp. 164–188, 2018. University of Hong Kong Faculty of Law Research Paper No. 2019/011, Available at SSRN: https://ssrn.com/abstract=3324047.
[47] Chin, Yik-Chan, and Jingwu Zhao. 2022. "Governing Cross-Border Data Flows: International Trade Agreements and Their Limits" *Laws* 11, no. 4: 63. https://doi.org/10.3390/laws11040063.
[48] Marta Pertegas & Brooke Adele Marshall, Harmonization Through the Draft Hague Principles on Choice of Law in International Contracts, 39 Brook. J. Int'l L. (2014). https://brooklynworks.brooklaw.edu/bjil/vol39/iss3/2
[49] Julian D.M. Lew, Loukas A. Mistelis & Stefan M. Kröll, Comparative International Commercial Arbitration (The Hague: Kluwer Law International, 2003): v.
[50] Herbert KRONKE, "Methodical Freedom and Organisational Constraints in the Development of Transnational Law", Loyola Law Review, No. 51 (2005), 287 et seq. (288-289).
[51] Tom Ruys, Cedric Ryngaert, Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, US Secondary Sanctions, British Yearbook of International Law, 2020; braa007, https://doi.org/10.1093/bybil/braa007.
[52] https://uncitral.un.org/en/about/faq/mandate_composition/history, Accessed on 1 Jan. 25.

In addition to UNCITRAL, other institutions such as the Hague Conference on Private International Law (HCCH) also contribute to legal harmonization[53]. The HCCH focuses on aspects of international civil law, including issues such as recognition of foreign judgments, jurisdiction, and conflict of laws[54]. Through the resulting conventions, the HCCH encourages countries to harmonize domestic rules with international standards, so that choice of law in international trade contracts can work effectively. It also facilitates intergovernmental dialog and cooperation[55]. Through international meetings, conferences and workshops, countries share experiences, challenges and workable solutions in legal harmonization.

In addition, international organizations often publish official guidelines and commentaries to assist in the interpretation of international legal instruments[56]. These guides serve as a practical reference for legal practitioners, judges and policy makers in applying the provisions of the instruments. As such, the choice of law chosen by the parties to an international contract can be implemented more consistently, reducing the potential for disputes arising from differences in interpretation across different jurisdictions[57]. For countries that are new to the global trade chain, the role of international institutions becomes even more vital[58].

4) Application of the Principles of Equity and Fairness

In international trade contracts, the parties involved often have different economic backgrounds, cultures, and negotiating power[59]. This condition has the potential to create inequality between parties with greater resources and parties who are relatively weaker. To address this inequality, the principle of equity can play an important role in balancing the rights and obligations of the parties and keeping the contract fair. The principle of equity is essentially based on a sense of justice that goes beyond the rigid provisions of positive law. Although positive law provides the basic framework for contractual relationships, codified

[53] https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/tripartiteguide.pdf, Accessed on 1 Jan. 25.
[54] Warrouw, Adolf (2021) "Fundamental Changes of International Economic Law: Challenges Toward Legal System Based on Fairness and Human Values," Indonesian Journal of International Law: Vol. 7: No. 1, Article 3, (2021). Doi: 10.17304/Ijil.Vol7.1.227.
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[56] Stuart D. Levi & Alex B. Lipton, "An Introduction to Smart Contracts and Their Potential and Inherent Limitations", Harvard Law School Forum on Corporate Governance and Financial Regulation (May 26, 2018), http://perma.cc/UM6E-8WU8.
[57] Li, Ya-Wei (2006) "Dispute Resolution Clauses in International Contracts: An Empirical Study," Cornell International Law Journal: Vol. 39: Iss. 3, Article 15. http://scholarship.law.cornell.edu/cilj/vol39/iss3/15.
[58] Petricevic, O., Teece, D.J. The structural reshaping of globalization: Implications for strategic sectors, profiting from innovation, and the multinational enterprise. J Int Bus Stud 50, 1487–1512 (2019). https://doi.org/10.1057/s41267-019-00269-x.
[59]Julian D.M. Lew, *Contemporary Problems in International Arbitration*, London: Springer Dordrecht, 1987, p. 237.

norms are often not flexible enough to anticipate all situations that arise in practice. It is in this context that equity becomes an instrument to fill the void or imperfection of the law, ensuring that the implementation of the contract still pays attention to substantive justice in addition to formal justice[60].

One example of the application of the principle of equity in international contracts appears when one party is at a disadvantage due to limited access to information, capital, or even language barriers. In such a situation, the judge or arbitrator handling the dispute may use equity considerations to assess whether the terms of the contract have been voluntarily and proportionally agreed[61]. In addition, equity is also relevant in situations where there is a significant change in conditions (hardship) after the contract is signed. When drastic changes in economic, political, or social conditions cause one party to bear a disproportionate burden, the judge or arbitrator is entitled to use equity considerations to make adjustments to the obligations in the contract[62].

The Indonesian legal framework for arbitration demonstrates both notable strengths and persistent weaknesses when examined in the context of international commercial dispute resolution. On the positive side, one of its key strengths lies in its affirmation of national sovereignty and the alignment of arbitration practices with public policy considerations. Indonesia's arbitration system, governed primarily by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, upholds the principle of party autonomy while ensuring that arbitral proceedings do not contravene national interests or moral values. Furthermore, Indonesia's ratification of the New York Convention (1958) through Presidential Decree No. 34 of 1981 demonstrates its commitment to global arbitration standards, providing a legal basis for the recognition and enforcement of foreign arbitral awards.

However, despite these normative strengths, the system faces significant weaknesses in practical enforcement. The slow judicial process, particularly in securing exequatur, often delays the final execution of arbitral awards, reducing the efficiency that arbitration is meant to guarantee. In addition, there is a lack of uniformity in judicial interpretation, as Indonesian courts sometimes differ in their understanding of international arbitration principles,

[60] Eken, Sena, Mohamed A. El-Erian, Susan Fennell, and Jean-Pierre Chauffour. "Achieving Growth and Stability in the Middle East and North Africa". In *Growth and Stability in the Middle East and North Africa*, (USA: International Monetary Fund, 1996) https://doi.org/10.5089/9781557755650.054.ch001.
[61] Benabed, A. (2024). International Law as a Means of Globalization, Business Internationalization and Global Economy: A Mechanism with Proclivities. Perspectives of Law and Public Administration, 13(1), 159–166. https://doi.org/10.62768/PLPA/2024/13/1/17.
[62] Julian D.M. Lew, *Contemporary Problems in International Arbitration,* (London: Springer Dordrecht, 1987): 237.

especially concerning ordre public and the procedural validity of foreign awards. This inconsistency undermines predictability and may deter foreign investors who seek swift and reliable dispute resolution mechanisms. Moreover, limited judicial expertise in handling complex transnational disputes occasionally results in conflicting decisions, which weakens the credibility of Indonesia's arbitration regime in the global arena. Thus, while Indonesia's legal framework formally aligns with international standards and upholds national sovereignty, it still requires institutional reform, judicial capacity-building, and procedural streamlining to achieve the level of efficiency and legal certainty expected in international arbitration practice.

The analysis further demonstrates that the application of equity in international commercial contracts should not merely function as a supplementary moral principle, but as a substantive mechanism for balancing contractual justice within increasingly asymmetrical cross-border commercial relationships. While previous studies generally discuss equity in the abstract context of fairness and contractual ethics, this article advances the discussion by linking the principle of equity directly to the structural challenges of international arbitration enforcement, unequal bargaining power, and the practical limitations of Indonesia's arbitration framework. The study reveals that the tension between contractual autonomy and equitable intervention becomes particularly significant in emerging jurisdictions where procedural inconsistencies, limited judicial expertise, and broad interpretations of public policy continue to affect the predictability of arbitral enforcement.

CONCLUSION

This study concludes that the determination and enforcement of choice of law in international commercial contracts remain fundamentally shaped by the interaction between party autonomy, differing legal traditions, and mandatory domestic legal principles. Although international legal instruments such as the Rome Convention, the CISG, and the New York Convention have established a normative framework intended to promote legal certainty, predictability, and harmonization in cross-border transactions, their practical implementation continues to face significant challenges. The analysis demonstrates that differences between civil law and common law systems, varying judicial interpretations, and the application of public policy exceptions frequently create inconsistencies in contractual enforcement, particularly within emerging jurisdictions such as Indonesia. Consequently, while Indonesia formally recognizes party autonomy and international arbitration mechanisms, practical barriers continue to limit the effectiveness and predictability of cross-border commercial dispute resolution.

Based on these findings, this study argues that effective choice-of-law implementation requires not only formal legal recognition, but also a more integrated and adaptive legal framework capable of balancing international commercial standards with domestic legal sovereignty. The principal contribution of this article lies in its integrated doctrinal, comparative, and empirical-contextual analysis, which demonstrates that legal certainty in international commerce depends on the harmonization of contractual drafting practices, institutional capacity, judicial interpretation, and risk management strategies. The study further develops a preventive legal-risk approach by emphasizing the strategic importance of precise governing-law clauses, stronger institutional understanding of international commercial principles, and the use of flexible dispute resolution mechanisms such as arbitration and hybrid contractual clauses. These findings ultimately suggest that improving Indonesia's legal competitiveness in the global trading system requires not only regulatory alignment with international norms, but also the development of a more commercially responsive and internationally coherent legal enforcement framework.

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