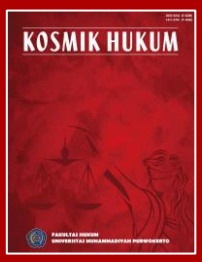

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Law Evasion through Choice of Law Clauses in International Business Contracts: An Indonesian Study

Montayana Meher[1]✉, **Agata Kurniati**[2]

[1] Faculty of Law, Universitas Medan Area, Indonesia
[2] Faculty of Law, Universitas Sumatera Utara, Indonesia

Corresponding: montayanameher@staff.uma.ac.id

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Abstract
This article examines the problem of law evasion through choice-of-law and forum-selection clauses in international business contracts in Indonesia, focusing on how the absence of a codified private international law (PIL) framework generates inconsistent judicial responses. The central research problem concerns the uncertainty surrounding the limits of party autonomy vis-à-vis mandatory rules and public policy, particularly in cross-border transactions intensified by regional economic integration and global supply chains. Using doctrinal analysis, the study synthesizes four leading cases: Nine AM Ltd v. PT BKPL, Asuransi Harta Aman Pratama Tbk v. PT Pelayaran Manalagi, PT Rainbow Indah Karpet v. PT TNT Skypak, and Alexander William Ford v. Man Lee Ford Cheung. This study finds that courts tend to enforce foreign governing-law and forum clauses in highly internationalized and standardized sectors such as marine insurance and logistics, while prioritizing mandatory rules and public policy, most notably the Indonesian-language requirement under Law No. 24 of 2009, when disputes implicate domestically sensitive interests. This selective approach produces vertical and horizontal inconsistencies across court levels and panels, undermining legal certainty, encouraging forum shopping, and creating risks of both under- and over-enforcement of protective norms. To narrow the scope for law evasion while aligning Indonesia with comparative private international law standards and regional commercial expectations, this article recommends: (1) codifying party autonomy as the default governing principle for international commercial contracts; (2) adopting a proportionality-based test to assess the application of overriding mandatory rules and public policy exceptions; (3) clarifying the normative scope, legal consequences, and available remedies under Law No. 24 of 2009 in the context of private contracts; and (4) developing judicial guidance to ensure a consistent assessment of foreign nexus, sectoral sensitivity, and the protection of weaker parties.

Keywords: Law Evasion; International Business Contract

I. Introduction

International business agreements are one of the core foundations of cross-border economic relations as legal instruments ensuring the clarity of commercial transactions beyond borders. In practice, such agreements do not limit their regulation merely to the technical aspect of transactions (price, quality, quantity, payment period, and delivery), but also determine unequivocal rights and responsibilities of the parties (Zhao 2024). With the advancement of globalization and the emergence of an integrated global market in a borderless world,

international business contracts play a crucial role in reducing potential conflicts and ensuring a balanced distribution of interests (Chandra and Lewiandy 2024).

In Southeast Asia, these dynamics are intensified by an intricate system of regional and extra-regional trade and investment agreements, including the ASEAN Trade in Goods Agreement (ATIGA), the ASEAN Trade in Services and Investment frameworks (AFAS/ATISA, ACIA), and broader accords such as the Regional Comprehensive Economic Partnership (RCEP) and Indonesia's bilateral FTAs (Ji-Eun 2013). These instruments reduce barriers, promote supply chains, liberalize services, and protect investment, thereby expanding transactions that depend on predictable choice-of-law and forum-selection outcomes. However, discrepancies amongst juridical traditions, systems of law, law languages, and state economic policies necessitate transparent tools of law that can fend off risks such as divergent interpretation, divergent fora of resolution of disputes or difficulties of enforcing judgments from one forum of law with a difference (Azizah, Armansyah and Yulianingsih 2023).

Within this context, private international law (PIL) assumes a strategic role in fostering legal certainty. PIL provides mechanisms to determine the applicable law (*choice of law*) and the competent forum (*choice of forum*), thereby enhancing the predictability and enforceability of international contracts (Meryadinata, Najib and Bastomi 2025). Clear regulation of these aspects allows parties to anticipate from the outset how their contracts will be interpreted, in which forum disputes will be resolved, and to what extent judgments will be enforceable transnationally (Epstein 2012). In this sense, PIL acts as a bridge between the private autonomy of the parties and the sovereignty of states (de Boer 2010), preventing a legal vacuum in cross-border transactions.

International business contracts also function as instruments of global economic development, driving foreign direct investment, international financing, and technology transfer. Legally enforceable and valid contracts are otherwise required to offset capital flows and investor confidence at the jurisdictional level of environments of legal unpredictability (Yasin, Ratnaningsih and Lawado 2025). Thus, contracts operate at the intersection of private autonomy and public regulation. Although contracts embody the dimension of party autonomy, they remain subject to regulation by the state with a view to safeguarding national interests and further maintaining order and preventing negative practices such as creation of monopolies or corruption or money laundering (UNIDROIT 2004). Effective regulation of international business contracts and choice of law as a component of international business law thus remains a requirement in order to achieve certainty, predictability, and fairness of international economic relations.

Despite its centrality, the practice of choice of law in international contracts presents a fundamental dilemma. While promoting legal certainty and enforcing the principle of party autonomy generally conceived in modern systems of law, on the other hand, it often conflicts with state sovereignty as states, especially protectionist ones, are reticent or even hostile to the application of foreign law because of an argument of public policy or mandatory rules (Penasthika 2022). Public policy acts as a shield from foreign rules attacking core national values, while mandatory rules preserve sovereignty as far as key sectors such as labor, land use, energy, and natural resources (Huang and Gu 2025).

The potential for law evasion in this context is significant. Parties frequently invoke choice-of-law clauses to bypass mandatory national provisions they perceive as burdensome (Freiberger Haber LLP 2022). For instance, foreign investors in Indonesia may designate foreign law in their contracts to avoid obligations under labor law, environmental regulations, or the statutory requirement to use the Indonesian language in contracts under Law No. 24 of 2009 (Koesrianti, Creating clarity in international commercial contracts for guaranteeing legal certainty in Indonesia 2018). Such practices risk undermining the balance between private and public interests, allowing contractual autonomy to override protective domestic legislation.

Concrete examples include the Supreme Court Decision No. 601 K/Pdt/2015, which invalidated a loan agreement between Nine AM Ltd. (US) and PT Bangun Karya Pratama Lestari (Indonesia) because the latter was drafted entirely in English while Law No. 24 of 2009 mandated utilization of Indonesian. Conversely, the Amlapura District Court (Decision No. 254/Pdt/2019) ruled otherwise and applied a share purchase agreement with choice of law involving a foreign

law. Despite the failure of the agreement to yield an Indonesian translation and being drafted entirely in English, the latter impacted neither the validity of the agreement. Other examples include Supreme Court Decision No. 1238 K/Pdt/2014, involving PT Rainbow Indah Karpet and PT TNT Skypak International Express, where the parties designated Dutch law and the Rotterdam Court as the forum, yet litigation was pursued in the Jakarta Selatan District Court. In another case, PT Asuransi Harta Aman Pratama Tbk. and PT Pelayaran Manalagi had agreed to English law, but the dispute was later brought before the Jakarta Pusat District Court. In yet another example involving PT Indah Kiat Pulp and Paper Tbk. v. international lenders headed by Bank America National Trust Company, a choice of New York law created tensions pitting those favoring foreign litigation from that of Indonesia's preferred domestic jurisdiction during the Asian financial crisis. These are indicative of the process through choice-of-law provisions are used as an avenue of avoiding mandatory national provisions..

Within Indonesian practice, particularly under the Civil Code (KUHPer), the fundamental issue lies in delineating the limits of party autonomy in international contracts. While autonomy is recognized, Article 1339 KUHPer stipulates that agreements must not contravene propriety, custom, statutory provisions, or the prevailing legal system. Three of such limitations may be summed up thus: (1) illegitimacy of violation of laws of breaching, of public order, morals, or decency; (2) appreciation of the fact that international contracts are still governed by certain laws of nations like the principle of sovereign immunity through which freedom of binding or suing a state or a state entity under private treaties might be limited; and (3) commercial practices once applied by the parties, although not necessarily binding per se (Siagian 2023).

Non-codified PIL rules of Indonesia also fuel this issue. Judges rely upon doctrine, jurisprudence, or judicial discretion and consequently issue inconsistent judgments (Meryadinata, Najib and Bastomi 2025). Courts may adopt divergent connecting factors, such as *lex loci contractus* (the law of the place where a contract is concluded), *lex loci solutionis* (the law of the place where contractual obligations are to be performed), the proper law of contract, or the most characteristic connection in which resulting in outcomes that vary significantly across cases (Taufiqurrahman 2020). Non-uniformity besides devolving legal certainty further creates law evasion avenues since parties avail themselves strategically of foreign law with an eye towards evading national mandatory rules (O'Hara and Ribstein 2009). Such practices not only destabilize the balance between private and public interests but also erode national legal sovereignty.

II. Research Problems

For such purposes, this study aims at critically investigating international business agreements' choice of law pillars, determining the law evasion possibility with extra-territorial choice-of-law rules, and investigating Indonesian judicial practice discrepancies. Ultimately, it aspires to make recommendations towards increasing legal certainty and protecting national interests while governing cross-border commercial acts.

III. Research Methods

This study adopts a doctrinal legal research design complemented by comparative analysis. Indonesian court decisions involving foreign choice-of-law or choice-of-forum clauses constitute the central corpus of study with an interest in four of the leading cases frequently cited in practice: Nine AM Ltd. v. PT Bangun Karya Pratama Lestari (MA No. 601 K/Pdt/2015), PT Asuransi Harta Aman Pratama Tbk. v. PT Pelayaran Manalagi (MA No. 1935 K/Pdt/2012), PT Rainbow Indah Karpet v. PT TNT Skypak International Express (MA No. 1238 K/Pdt/2014), and Alexander William Ford v. Man Lee Ford Cheung (PN Amlapura No. 254/Pdt/2019). Statutes and soft-law instruments (e.g., KUHPer, Law No. 24 of 2009, Arbitration Law; Hague Principles on Choice of Law in International Commercial Contracts) and secondary commentary (Symeonides, Muir Watt, Born) supply the normative benchmarks.

Cases were purposefully selected to reflect variation in sector (marine insurance/shipping, lending, corporate shares), forum posture (trial, appellate, cassation), and

regulatory sensitivity (language, public policy, mandatory rules). Constraints are the non-exhaustive sampling of cases and reliance on available translations; where translations are author-created, accuracy with the dispositive reasoning has been a priority. No human participants were involved; sources are publicly available judicial records or published research.

IV. Result and Discussion

1. The Potential for Law Evasion through the Choice of Foreign Law in International Business Contracts in Indonesia

1) Definition of Law Evasion in International Business Contacts

Law evasion in general is defined as the deliberate act of contracting parties in cross-border agreements to designate foreign law in order to avoid the application of mandatory national law (Tetley 1994). This concept is closely related to the doctrine of *abuse of rights*, namely the excessive or disproportionate exercise of contractual freedom that results in harm to the other party or to the public interest that national law is designed to protect (Byers 2002). In practice, law evasion often assumes the character of a choice of a foreign law that a party finds softer, more investor-friendly, or with fewer protection features compared with domestic law and therefore secures a loophole in the regulatory function of national law in the protection of public interests.

Within the framework of PIL, law evasion generally arises when a contract has no substantial connection with the foreign law chosen (O'Hara and Ribstein 2009). In principle, PIL has discovered a variety of connecting factors, e.g., *lex loci contractus* (the law of the place of conclusion of the contract), *lex loci solutionis* (the law of the state of performance of the contract), and proper law of the contract (the law best suited or connected with the contract). If such connecting factors are absent or are lacking in efficacy, the adoption of a choice of a foreign law could well be considered an attempt at law evasion with a view to escape from the jurisdiction of national law (Bouwers 2023). In such cases, a choice-of-law clause ceases to represent legitimate party autonomy and instead becomes an instrument of law evasion to circumvent the mandatory rules of the forum state (Ogunranti 2017).

Thus, law evasion within the framework of PIL and Indonesian business contract law highlights the limitations of national legal systems in confronting global contractual strategies. Non-codified PIL regime of the Republic of Indonesia has forced judges to tremendously rely on non-uniform doctrines of academia and non-uniform jurisprudence, thus raising divergence of judicial results and further amplifying unpredictability of law. This situation not only undermines the role of national law as a guardian of the public interest but also harms the business community, which relies on certainty and predictability in legal frameworks for cross-border commercial activities.

2) Literature Review on Law Evasion and Choice of Law

The discourse on law evasion in PIL has attracted sustained scholarly attention, especially as globalization intensifies the scale and complexity of cross-border transactions. Scholars highlight that while party autonomy in contract law enhances predictability and commercial flexibility, its misuse can erode the regulatory safeguards embedded in national legal systems.

Symeon C. Symeonides, in his seminal work Codifying Choice of Law Around the World (2014), provides the most comprehensive comparative survey of codifications, conventions, and judicial practices across continents. He demonstrates that while party autonomy has become commonplace, nearly all codifications insert restrictions and limits and, above all, through the vehicle of public order and mandatory rules (Symeonides 2014). These safeguards ensure that contractual freedom cannot be exploited to evade fundamental national interests, a problem he explicitly connects to law evasion strategies. For example, Rome I allows broad party autonomy but stipulates that when all elements of a contract are linked to one state, the mandatory rules of that state must prevail. This illustrates a global trend in which party autonomy is celebrated, yet disciplined by non-derogable provisions designed to prevent law evasion. Recourse by Indonesia

to Article 31 of Law No. 24 of 2009 (obligation of Indonesian language in contracts) fits with these comparative exceptions and frames its approach as part of international practice elsewhere.

At a more theoretical level, Horatia Muir Watt has extensively analyzed the doctrine of law evasion as it intersects with the principle of private autonomy. She identifies a fundamental paradox as law evasion both exploits and undermines party autonomy (Watt, 'Party Autonomy' in international contracts: from the makings of a myth to the requirements of global governance 2010). She argues that PIL has historically insulated private economic power by allowing excessive contractual autonomy, thereby providing "immunity and impunity to abusers of private sovereignty" (Watt, Private International Law Beyond the Schism 2012). Law evasion reveals less as a simple contractual opportunism and as a symptom of structural imbalances of global commerce where hegemonic actors (i.e. multinational corporations, financiers) resort strategically to international choice-of-law clauses as an escape device from domestic rules of regulation designed to protect powerless stakeholders. In her later work on legal pluralism, Muir Watt calls for a revival of conflict-of-laws as a tool of global justice, urging courts to acknowledge the distributive consequences of choice-of-law and to treat law evasion as a matter of equity and democratic legitimacy rather than mere technical manipulation (Watt, Conflicts of laws unbounded: the case for a legal-pluralist revival 2016).

Gary Born, through his extensive body of work, emphasizes the dominance of choice-of-law and arbitration clauses in international business. He mentions that international border contracts involving more than 90% of international business are covered with choice-of-law clauses presumed valid through courts and arbitral tribunals with an aim of providing certainty (G. B. Born, International Commercial Arbitration 2021). But as he also recounts, national methods differ from one state to the next, from the U.S. Restatement (Second), with a requirement of a "reasonable relationship," while others prohibit non-state law identifications of the sort of *lex mercatoria* (law merchant/transnational commercial rules, customs, and practices that developed during the Middle Ages from the international merchant guilds and international trade fairs) (Born and Kalelioglu 2021), thus creating significant uncertainty in jurisdictions lacking codification, such as Indonesia. Party autonomy as a cornerstone of predictability and efficiency also finds staunch advocacy with Born, albeit with a concession that a carve-out of public order cannot do without a device of shielding a weaker party and core values (i.e., labour law, environment, and consumer protection). And last but definitely not least, forum and choice-of-law clauses interplay may also be emphasized by Born, as forum supports autonomy yet a public policy exception ensures that sovereignty issues supersede when there are threats to national legal order from abroad (G. B. Born, International Arbitration: Law and Practice 2012). Collectively, Born's analysis highlights a global consensus favoring contractual autonomy, tempered by sovereignty-based safeguards, a tension that resonates acutely in Indonesian judicial practice.

These scholarly traditions meet at a similar conclusion: law evasion cannot be understood as a technical error of contract drafting, but as a fundamental conflict between global market integration and domestic regulatory sovereignty. Comparative codifications (Symeonides), critical theory (Muir Watt), and arbitral practice (Born) all conclude similarly that party autonomy is the international commerce cornerstone but requires balancing with safeguards that keep the interests of the vulnerable stakeholders and of the public preserved. For Indonesia, where judicial argumentation still disjointed and codified private international law non-existent, lessons from abroad emphasize both risks and opportunities. Without further doctrinal clarity, foreign choice-of-law clauses risk being exploited as weapons of destroying labour, environmental, or linguistic protections and inconsistent judgments dent investor confidence. Comparison of lessons from abroad suggests that Indonesian course involves neither rejection of party autonomy, but purposive articulation of constraints through codification, judicial review, and proportionality tests balancing freedom of contract and sovereignty compulsions. In this way, law evasion becomes as much a challenge of doctrine as a trial of Indonesian ability to gain access to global commerce while preserving the integrity of the order of law.

3) Contractual Strategies of Law Evasion

Law evasion does not arise in isolation; it stems from deliberate contractual strategies designed to bypass national mandatory rules. These maneuvers are premised upon the rule of party autonomy best known and understood worldwide, as well as under Indonesian law through Article 1338 of the Civil Code (KUHPer). Nevertheless, as opposed to increasing legal certainty, such activities frequently imperil national legal sovereignty as well as neglecting and disregarding public interests.

In general, three principal tactics can be identified in the practice of law evasion within international business contracts:

1. Choosing foreign law to avoid national mandatory rules

   The most straightforward form of law evasion occurs when parties designate foreign law in contracts that have a strong and substantive connection to Indonesia. For example, a contract where all parties are Indonesian legal entities, business operations are located in Indonesia, and the object of the contract is situated in Indonesia, but the governing law chosen is English or Singapore law (Indrawan, Soeliongan and Mirdania 2024). The purpose is typically to avoid restrictive national provisions, such as: (1) the statutory obligation to use Bahasa Indonesia in contracts involving Indonesian parties under Law No. 24 of 2009 on the National Flag, Language, and State Symbols (Akset 2019); (2) labor law, when parties perceive foreign labor laws as less burdensome compared to Indonesian law; and (3) environmental regulations, including licensing requirements, the precautionary principle, and strict liability in pollution cases.

   Such choice-of-law strategem betrays how party autonomy could be overstretched from its proper object of giving effect to the parties' intent of evading national protections (Trachtman 2017). In Indonesia, courts have repeatedly faced disputes where choice-of-law clauses designating foreign jurisdictions were invoked even though the contracts had little to no foreign nexus (Hosen, Kingsley and Lindsey 2021). For instance, loan and share purchase agreements drafted entirely in English and governed by laws of other nations were set aside by Indonesian courts as violative of mandatory statutory rules, principally the language rule of Law No. 24 of 2009. These are symptomatic of the fact that although the choice of a foreign law is technically feasible through choice-of-law clauses, it becomes controversial as a strategem of evading national policies of protection of labor, environment protection, and use of the national language. In effect, such practices transform choice-of-law clauses into instruments of law evasion, thereby raising questions about the balance between contractual freedom and the preservation of national public order.

2. Establishing shell companies to benefit from international investment treaties.

   A more sophisticated strategy is the creation of shell companies in third countries to benefit from Bilateral Investment Treaties (BITs). In practice, domestic investors may establish an entity in a jurisdiction that maintains a BIT with Indonesia and then channel investments back into Indonesia through that entity (Aqila 2023). The goal is to gain protections available only to foreign investors, including the right to bring disputes before international arbitral forums such as ICSID (Aji 2021). This tactic gives rise to treaty shopping or nationality planning, where corporate structures are engineered solely to exploit foreign legal jurisdictions.

   This practice has been subjected to widespread criticism as it blurs the line between legitimate foreign investment and disguised domestic investment. Even though BITs were originally designed as a means of protecting legitimate foreign investors from state interference or expropriation, abuse of shell companies negates that purpose through extension of treaty coverage of purely domestic contentious issues. In the Indonesian context, such practices are at high risk of abuse: they may allow domestic investors an exemption from restrictions on foreign ownership of sensitive sectors such as natural resources, banks or telecoms sectors and still grant them access to influential international arbitral fora through challenging state regulation. This undermines the state's regulatory sovereignty and creates an uneven playing field as domestic investors that do not resort to treaty shopping are deprived of the same protection.

3. Inserting arbitration clauses that designate foreign forums

   Another common tactic is the inclusion of arbitration clauses referring disputes to foreign forums, even when the contract and dispute object are substantially connected to Indonesia (Sugianto, et al. 2025). Popular choices include the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), or the International Chamber of Commerce (ICC) in Paris (Dunham 2004). The rationale often cited is to avoid national court intervention, expedite dispute resolution, and secure global legitimacy through reputable arbitral institutions (Purba, Amalia and Trisnamansyah 2025).

   In the Indonesian context, while Indonesia has become a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the courts often considered whether such clauses unreasonably contradict domestic court jurisdiction or violate public policy (Adolf 2021). For example, in several commercial matters, Indonesian courts invalidated foreign arbitral awards with the pretext of their inconsistency with mandatory rules or national interests and particularly with public order while valid arbitration agreements were reached. Such inconsistency produces legal unpredictability: while foreign arbitration clauses are generally considered instruments of neutrality and efficiency, their efficacy still remains uncertain in Indonesia and reveals the permanent contradiction of the principle of autonomy of contracts with the interests of state sovereignty (Kristy and Jing 2013).

In practice, Indonesian parties to business transactions often resort to such techniques at the formation of the contract stage. Typical practices are as follows: (1) drafting choice-of-law clauses referring to "pro-investor" jurisdictions (i.e., England, Singapore, or New York); (2) specifying choice of forum or arbitration clauses referring to famous international centers of arbitration; and/or (3) restructuring corporate structures, including with the use of shell companies or special purpose vehicle (SPV) structures from third jurisdictions, with a possible creation of a perception of foreign nexus. The practical objective is that of limiting the scopes of domestic mandatory rules (language, work, environment, or restrictions of foreign ownership) and achieving access to jurisdictions deemed as neutral or superior with reference to the effectiveness of exercising rights (i.e., international arbitration or international litigation) (Na'im 2006).

When disputes arise, the typical litigation strategy is to pursue proceedings in the most favorable forum (*forum shopping*). In practice, this can take the form of plaintiffs filing suits simultaneously in domestic courts and foreign arbitration, or award-holders seeking recognition and enforcement of foreign arbitral awards in Indonesian courts (Vietnam International Arbitration Centre 2019). Others deliberately wait until a foreign judgment is obtained and then target debtor assets located in enforcement-friendly jurisdictions (Bartlett 2025). At this stage, contractual tactics are tested against Indonesia's mandatory provisions: can a choice-of-law clause override statutory language requirements, administrative obligations, or sectoral restrictions? Judicial experience demonstrates a lack of uniformity in answers.

On the judicial side, Indonesian courts have responded inconsistently (Adolf 2021). In some cases, courts honor foreign choice-of-law and forum clauses and decline jurisdiction where parties have agreed to foreign forums. Yet in many other cases, courts elevate mandatory rules and public policy as absolute barriers, invalidating contracts that fail to comply with the language requirement or appear designed to evade sectoral regulations. This pattern is evident in decisions refusing to enforce foreign arbitral awards or nullifying foreign-language contracts, while other cases with seemingly similar facts uphold contractual autonomy. Even within the same court level, or the same judicial panel, dissenting opinions reveal diverging approaches (Harahap 2018).

Such inconsistency has several tangible repercussions. First, legal unpredictability intensifies because the corporations cannot always predict whether a choice-of-law provision or a foreign award will be respected or enforced in Indonesia. Secondly, forum shopping and parallel proceedings are facilitated and a cost incurred both at the judges' level and at the distributable-expenditure level. Third, when foreign arbitral awards are denied recognition in Indonesia, award-creditors pursue enforcement in other jurisdictions, thus weakening

Indonesia's legal and economic standing and incurring diplomatic and practical costs. Fourth, judicial inconsistency creates room for contractual manipulation in which sophisticated actors can experiment with structures and forums until they find the most advantageous combination, while weaker parties (e.g., consumers, workers, or local communities) are deprived of protections that domestic law was designed to guarantee.

4) Law Evasion in Choice of Law: Between State-Sovereignty and Party-Sovereignty Perspectives

Amongst private international law writings, a long-standing controversy issue comprises the degree of toleration of law evasion admissible under international business contracts. Controversy arises from the natural contradiction of state sovereignty and autonomy of private parties as underlying fundamental values as often contradicting choice of law practice (Yunus, Sholeh and Susilowati 2023). On one side, the state-sovereignty approach maintains that states have the authority to restrict the application of foreign law in order to safeguard national interests (Koesrianti, International Cooperation Among States in Globalized Era: The Decline of State Sovereignty 2013). Under this perspective, public policy and mandatory rules function as chief filters. In harmony with this vision, cross-border contracts should at no time contradict the fundamental values enshrouded with the domestic order of law, e.g., labour right, ecosystem protection and consumer protection and the compulsive requirement of linguistic use of the national language. From this perspective, any choice-of-law provision designed as a law evasion facilitator ought to qualify as invalid and unenforceable irrespective of that it has been voluntarily and consciously concluded (Zhang 2015). This approach emphasizes that the principle of contractual freedom is not absolute but is subject to restrictions designed to uphold public interest.

Conversely, the party-sovereignty perspective prioritizes respect for the autonomy of the parties in determining the law governing their contracts. Adherents of said approach argue that international commerce necessitates flexibility and law relations certainty (Nishitani 2016); consequently, freedom of choice of foreign law should remain (Ugli 2024), and said choice should be motivated with a desire of escape from binding domestic rules. From this angle, state action under the pretext of public policy should remain restricted and minimal and should remain confined to the upholding of only corest of a state's law norms, i.e., laws against discrimination, protection of fundamental human rights and refusal of practices generally refused (e.g., human trafficking or corruption). Within this framework, law evasion is not regarded as inherently problematic so long as the chosen law does not violate *jus cogens* (non-derogable) norms of international law.

In the Indonesian context, Penasthika (2022) highlights that the Indonesian legal system aligns more closely with the state-sovereigntist paradigm. This is evident in several court decisions that prioritize national public policy and mandatory rules over the contractual autonomy of the parties (Penasthika 2022). A prominent example is the case of *Nine AM Ltd. v. PT Bangun Karya Pratama Lestari*, where the Supreme Court (Decision No. 601 K/Pdt/2015) annulled a loan agreement drafted entirely in English on the grounds that it violated the statutory obligation under Law No. 24 of 2009 to use the Indonesian language. By contrast, in PN Amlapura No. 254/Pdt/2019, the court upheld a share purchase agreement drafted in English and governed by foreign law, reasoning that the absence of an Indonesian version did not affect its validity as long as the essential elements of a contract under the Civil Code were satisfied. In *PT Asuransi Harta Aman Pratama Tbk. v. PT Pelayaran Manalagi* (MA No. 1935 K/Pdt/2012), the Supreme Court applied English law in a marine insurance contract and underscored party autonomy as exercised in a fully international maritime business. In *PT Rainbow Indah Karpet v. PT TNT Skypack International Express* (MA No. 1238 K/Pdt/2014), the Court followed both the choice of Dutch law and the Rotterdam Court's exclusive jurisdiction and affirmed international commercial practice prevailing in logistics at an international level. Taken together, these cases illustrate a fragmented jurisprudential landscape. Some judgments uphold mandatory rules and public policy as ultimate limits of parties' contractual freedom while others affirm parties' choice of law and forum clauses abroad as per international commercial practice prevailing at the international

level. This divergence reflects a persistent tension between the imperatives of national sovereignty and the functional demands of cross-border trade, producing uncertainty for both domestic and foreign actors engaged in Indonesia's international business environment.

Nevertheless, the state-sovereignty approach has deep challenges. For international bulk trade, protectionist desires could be theorized as hurdles that restrict making Indonesia a desirable target of investment through the creation of exterior unpredictability. On the other hand, a shift into a party-sovereignty approach would entrench predictability of law and concurrently restrict the freedom of regulation of the state with regard to transactions involving sensitive public interests. This persistent dilemma sits at the core of scholarly debate, namely the extent to which law evasion should be tolerated in international contracts and whether greater weight should be given to safeguarding national interests or to advancing contractual autonomy and predictability in cross-border trade.

2. The Inconsistency of Indonesian Judicial Practice toward Foreign Choice of Law

1) Nine AM Ltd. v. PT Bangun Karya Pratama Lestari (BKPL)

Conflict at Nine AM Ltd. v PT BKPL stemmed from a loan accord established during the initial years of the 2010s since BKPL looked at raising funds as an aid towards business activities involved with the construction and real estate venture. Nine AM Ltd. was a US company that acted as creditor as opposed to their Indonesian rival PT BKPL as the debtor. The contract established repayment obligations for both principal and interest, to be fulfilled by BKPL within a specified period.

A key point of contention was that the loan agreement was drafted entirely in English without an official Indonesian version. From the standpoint of party autonomy in international contracts, the choice of law might appear legitimate, particularly given that Nine AM Ltd. was domiciled abroad. However, since the loan was fully performed in Indonesia and the debtor was an Indonesian company, the contract bore a strong substantive connection to Indonesian jurisdiction.

The dispute emerged when BKPL allegedly defaulted on its repayment obligations. Nine AM Ltd., as the creditor, initiated legal proceedings to demand repayment of the loan and accrued interest. BKPL, in response, filed a counterclaim seeking to have the loan agreement declared null and void on the grounds that it was drafted solely in English, without an Indonesian translation, thereby violating Article 31 of Law No. 24 of 2009 on the National Flag, Language, State Symbols, and National Anthem. The West Jakarta District Court through Court Decision No. 451/Pdt.G/2012/PN.Jkt.Bar granted BKPL's claim, ruling that the agreement was formally defective because it contravened the statutory obligation to use the Indonesian language in contracts involving Indonesian parties (PT Bangun Karya Pratama Lestari v. Nine AM Ltd. 2013).

On appeal and cassation, the Jakarta High Court with Court Decision No. 48/PDT/2014/PT.DKI (*Nine AM Ltd v. PT Bangun Karya Pratama Lestari*, 2014), and the Supreme Court with Decision No. 601 K/PDT/2015 (*Nine AM Ltd v. PT Bangun Karya Pratama Lestari*, 2015), respectively affirmed the judgement of the trial court and insisted that the language requirement of Law No. 24 of 2009 constitutes an obligatory rule and cannot override party autonomy. But one voice of dissent came from Justice Sudrajad Dimyati as he argued that the language requirement should be viewed as an administrative requirement and not as a condition of the validity of the contract. In his view, breach of the language requirement should not automatically nullify an otherwise valid contract, provided the essential elements of a contract under Article 1320 of the Indonesian Civil Code were satisfied.

In this case, signs of law evasion are evident on both sides. Nine AM Ltd. used an evasion strategy through writing the loan agreement entirely in English, although the transaction was practically grounded in Indonesia. This indicates a possible attempt at eluding Indonesian mandatory rules, e.g., the rule of statutory language. In response, BKPL used a defensive counterevasion through annulling of the contract under Article 31 of Law No. 24 of 2009 and exonerated itself from the obligation of repayment (Hosen, Kingsley, & Lindsey, 2021). Although this measure was ultimately supported by the West Jakarta District Court, the Jakarta High Court, and the Supreme Court.

At the doctrinal level, some scholars argue that agreements subject to Article 31 of Law No. 24/2009 on the National Flag, Language, State Symbols, and National Anthem should be limited to those within the sphere of public law, while private law contracts remain valid so long as they meet the essential requirements of Article 1320 of the Civil Code (Sugesty, Saptono and Prananigtyas 2016). In this line of thinking, the dogmatic extension of Article 31 of private commercial contracts risks extending the statute beyond what it should.

2) PT Asuransi Harta Aman Pratama Tbk. v. PT Pelayaran Manalagi

The conflict between PT Asuransi Harta Aman Pratama Tbk. and PT Pelayaran Manalagi originated from a marine hull and machinery insurance contract entered into between the two. The subject of insurance was the cargo ship KM Bayu Prima with an insured value of USD 1.2 million. The insurance contract expressly reserved a choice-of-law clause such that the contract was governed by English law and international practice of maritime law.

On 26 April 2006, the KM Bayu Prima caught fire while docked at Batu Ampar Port, Batam, during its voyage from Tanjung Perak Port, Surabaya, to Batu Ampar Port, Batam, and Belawan Port, Medan. As the fire could not be controlled, the vessel was intentionally beached, resulting in a total loss for PT Pelayaran Manalagi. Subsequently, the company submitted a claim for total loss under the policy. However, PT Asuransi Harta Aman Pratama Tbk. refused to honor the claim, arguing that the claimant had breached contractual provisions by transporting hazardous (flammable) goods without the requisite approval and by providing vessel construction data inconsistent with the information stated in the policy.

Accordingly, PT Pelayaran Manalagi filed an action at the Central Jakarta District Court against PT Asuransi Harta Aman Pratama Tbk., seeking payment under the insurance. Choice of forum took into consideration the fact that the insurance contract did not express a judicial forum; it consequently was filed at the district court of the domicile of the defendant. In its Decision No. 52/Pdt.G/2010/PN.Jkt.Pst, dated 20 October 2010, the Central Jakarta District Court granted the claim, held the contract valid, and declared PT Asuransi Harta Aman Pratama Tbk. to be in breach of contract (PT Pelayaran Manalagi v. PT Asuransi Harta Aman Pratama Tbk. 2010). This decision was subsequently upheld by the Jakarta High Court in Decision No. 297/PDT/2011/PT.DKI, dated 24 November 2011 (PT Asuransi Harta Aman Pratama Tbk v. PT Pelayaran Manalagi 2011).

However, upon appeal to the Supreme Court, the outcome shifted significantly. In Supreme Court Decision No. 1935 K/Pdt/2012, the justices overturned both the District Court and High Court rulings, reasoning that the contract had expressly designated English law as the governing law (PT Asuransi Harta Aman Pratama Tbk. v. PT Pelayaran Manalagi 2013). Consequently, the dispute should not have been resolved with Indonesian law. What this indicates is an acceptance of foreign choice-of-law clauses on the part of the Supreme Court and a departure from lower courts' tendency of resorting to domestic principles of fairness and contractual obedience.

In this case, the English choice-of-law rule of a marine insurance contract was reaffirmed through the Supreme Court setting aside the Central Jakarta District Court and Jakarta High Court applying Indonesian law. The Supreme Court elaborated further that since the contract voluntarily submitted itself to English law, Indonesian courts could neither presume jurisdiction and settle the matter under domestic law rules (Rani 2018). In global terms, this disposition follows international norms of transborder commerce. Adoption of English law through the Court mirrors international maritime practice while insurance contracts frequently resort to a law other than their state of performance or incorporation due to their international nature (Fras 2019). However, inconsistency features at the level of judicature. Domestic fairness and substantive conformity were applied by the District Court and High Court while the Supreme Court privileged greater significance to contractual autonomy and international norms.

3) PT Rainbow Indah Karpet v. PT TNT Skypak International Express

The dispute arose from a contractual relationship between PT Rainbow Indah Karpet, an Indonesian company, and PT TNT Skypak International Express, an Indonesian-registered entity affiliated with the global TNT network. PT Rainbow engaged TNT's services to transport spare

parts for Carpet Tuffing Machinery from Germany to Jakarta under an airway bill. These spare parts were of critical value, directly linked to the continuity of PT Rainbow's production operations.

In execution, the shipment failed to arrive as scheduled. Upon further tracking, the spare parts were declared lost due to TNT's negligence. The loss forced PT Rainbow to halt its factory operations, resulting in substantial material and immaterial damages, including the cancellation of both domestic and export orders. Consequently, PT Rainbow filed a breach of contract claim against TNT before the South Jakarta District Court.

In its defense, TNT raised an objection, arguing that under the Rates Agreement governing the parties' relationship, all disputes were subject to Dutch law and the exclusive jurisdiction of the Rotterdam Court. TNT contended that the South Jakarta District Court lacked jurisdiction. The court accepted this objection in Decision No. 353/Pdt.G/2011/PN.Jkt.Sel, declaring itself incompetent to hear the case (PT Rainbow Indah Karpet v. PT TNT Skypak International Express 2011). This ruling was subsequently affirmed by the Jakarta High Court in Decision No. 30/PDT/2013/PT.DKI (PT Rainbow Indah Karpet v. PT TNT Skypak International Express 2013).

PT Rainbow appealed to the Supreme Court, contending that TNT, as an Indonesian legal entity, remained subject to the jurisdiction of Indonesian courts. Rainbow further argued that the forum selection clause in the airway bill constituted a unilateral adhesion contract, never genuinely negotiated between the parties. Nevertheless, the Supreme Court, in Decision No. 1238 K/Pdt/2014, rejected the cassation petition. The Court emphasized that, since the parties had explicitly agreed on both a choice-of-law clause and a choice-of-forum clause in the Rates Agreement, the dispute should indeed be adjudicated before the Rotterdam Court under Dutch law (PT Rainbow Indah Karpet v. PT TNT Skypak International Express 2014).

Based on this case, the Supreme Court decision aligns with international norms, where forum selection and choice-of-law clauses are broadly respected, particularly in commercial shipping and logistics. It is consistent with the New York Convention and the principle of pacta sunt servanda, which emphasize honoring contractual agreements in cross-border trade. Nevertheless, inconsistency arises when this case is compared to others in Indonesia, such as *Nine AM Ltd. v. BKPL*. While the Court respected party autonomy in the Rainbow-TNT dispute, it prioritized national mandatory rules in Nine AM. The pattern shows selective enforcement: when the dispute concerns international shipping, courts tend to respect foreign law, but when domestic regulatory issues (like language) are involved, they prioritize mandatory national provisions. This selective approach complicates the predictability of judicial outcomes for foreign and domestic businesses alike.

4) Alexander William Ford v. Man Lee Ford Cheung

The dispute between Alexander William Ford, a British national, and Man Lee Ford Cheung, a Chinese national, arose from a share purchase agreement in PT Alba Indah, a limited liability company domiciled in Karangasem Regency, Bali. The two individuals, who were previously husband and wife and married in Macau, Hong Kong, in 2008, had been residing in Bali since 2009. PT Alba Indah operated in the tourism sector, specifically providing marine tourism and water sports services. Pursuant to Deed No. 14 concerning the General Meeting of Shareholders of PT Alba Indah, issued by a notary in Denpasar, Alexander William Ford held 51% of the company's shares and served as commissioner, while Man Lee Ford Cheung held 49% of the shares and acted as director.

On 22 April 2019, the parties executed a Receivable and Liability Agreement drafted entirely in English without any Indonesian translation. Under this agreement, Alexander William Ford agreed to transfer his 51% shareholding, valued at USD 1.5 million, to Man Lee Ford Cheung. The payment mechanism consisted of an initial installment of USD 300,000 payable within the first seven days, with the remaining USD 1.2 million to be paid in monthly installments of USD 10,000 until fully settled.

Subsequently, disputes emerged between the parties concerning the valuation of assets, payment schedules, and specific contractual clauses, such as the provision of visa and

accommodation facilities for Alexander William Ford. Alexander then filed a lawsuit before the Amlapura District Court seeking annulment of the contract, arguing, inter alia, that the agreement was invalid for failing to comply with Article 31(1) of Law No. 24 of 2009 on the National Flag, Language, State Symbols, and National Anthem, which requires the use of the Indonesian language in contracts involving Indonesian parties. Alexander contended that an agreement drafted solely in English without an Indonesian counterpart was unlawful and therefore null and void.

In Decision No. 254/Pdt/2019/PN Amp, the Amlapura District Court rejected Alexander's claim. The court reasoned that although Article 31 of Law No. 24 of 2009 imposes a mandatory requirement to use the Indonesian language in contracts involving Indonesian or foreign parties, non-compliance with this obligation did not constitute a violation of the objective validity requirements of contracts under Article 1320(4) of the Indonesian Civil Code (KUHPerdata). The panel of judges emphasized that as long as the motive for entering into the contract was not fraudulent, prohibited by law, or contrary to morality or public order, a contract that fails to meet the language requirement remains valid and binding upon the parties (vide Article 1336 KUHPerdata). Accordingly, the Amlapura District Court held that the contract between the parties was legally valid and binding (Alexander William Ford v. Man Lee Ford Cheung 2019).

Based on this case, the court reasoning closely aligns with global practice. Courts in most jurisdictions treat language requirements as administrative or regulatory issues, not as grounds for nullifying contracts, unless the omission compromises fairness or legality. By focusing on the substantive validity of the agreement, the Amlapura District Court's approach is more consistent with the principles endorsed in the Hague Principles (Article 2, 6, 9, and 11) and other global instruments such as Rome I (Article 3) or New York Convention (Article V(2)b).

Yet the decision is inconsistent with earlier Indonesian rulings, notably *Nine AM Ltd. v. BKPL*. Whereas the Supreme Court invalidated a loan agreement for failing to use Bahasa Indonesia, the Amlapura District Court upheld a similar English-only contract. This divergence illustrates how different Indonesian courts interpret the same statutory requirement in contradictory ways, sometimes as a mandatory nullifying rule, sometimes as an administrative formality. The result is heightened legal uncertainty and a lack of uniform guidance for businesses drafting international contracts in Indonesia.

5) Doctrinal Synthesis: Patterns in Indonesian Courts' Treatment of Foreign Choice of Law

Indonesian jurisprudence reveals a dual approach to foreign choice-of-law clauses. On one hand, the Supreme Court has shown willingness to enforce such clauses where contracts display a genuine transnational character or are embedded in globally standardized industries. This can be seen in PT Asuransi Harta Aman Pratama Tbk. v. PT Pelayaran Manalagi, where the Court reversed the lower courts' rulings and upheld the application of English law under a marine insurance policy. Similarly, in PT Rainbow Indah Karpet v. PT TNT Skypak International Express, the Court respected both the designation of Dutch law and the exclusive jurisdiction of the Rotterdam Court. These decisions align with global trends in international commercial practice, where party autonomy is privileged in order to secure predictability and uniformity, particularly in sectors such as shipping, logistics, and marine insurance.

In contrast, the courts have invalidated foreign governing law clauses where they were perceived to undermine mandatory rules or public policy. A striking example is Nine AM Ltd. v. BKPL, in which the Supreme Court treated the statutory requirement under Law No. 24 of 2009 to use the Indonesian language in contracts as a mandatory rule, thereby voiding a loan agreement drafted exclusively in English. At the trial level, the Amlapura District Court reached a similar conclusion in a share purchase agreement, treating the absence of an Indonesian version as a fatal defect that rendered the contract void. Other panels, however, have treated the same provision as an administrative obligation rather than a ground for nullity. These contrasting outcomes reflect a sovereignty-first approach that elevates mandatory domestic provisions over contractual autonomy, especially where the foreign nexus appears weak and performance is substantially centered in Indonesia.

Across these decisions, several patterns of inconsistency can be observed. Vertical inconsistency arises between different court tiers where lower courts often apply domestic fairness and sovereignty filters, while the Supreme Court sometimes later enforces the parties' choice of foreign law, as in the PT Asuransi Harta Aman Pratama Tbk. v. PT Pelayaran Manalagi. Horizontal inconsistency also emerges across different judicial panels, particularly regarding the interpretation of Law No. 24 of 2009. In some cases, such as Nine AM, the rule is treated as a nullifying mandatory provision, while in others, such as in PN Amlapura, it is framed as a non-nullifying administrative requirement. A further inconsistency appears in the subject matter of the contracts where enforcement of foreign law is more likely in sectors that are highly internationalized and standardized, such as marine insurance and logistics, while invalidation is more frequent in contracts involving sensitive domestic policies, such as labor, environment, and the use of the national language.

The doctrinal implications of these inconsistencies are significant. Indonesian courts appear to be operating along two competing trajectories: a party-autonomy track, which privileges commercial predictability and aligns with international frameworks such as the Hague Principles, and a state-sovereignty track, which prioritizes public order and national mandatory rules. The absence of a codified framework of private international law means that judges toggle between these tracks, relying on broad concepts such as public policy, mandatory rules, or connecting factors. This judicial discretion, while flexible, magnifies unpredictability and creates a risk of opportunistic law evasion by parties.

From a reform perspective, there is an urgent need to develop clearer doctrinal criteria for distinguishing between legitimate party autonomy and law evasion. Courts should presume the enforceability of foreign governing law where the contract displays substantial foreign elements or operates within international industries, unless a clear violation of core national values is demonstrated. At the same time, before declaring contracts void, courts should apply a proportionality test to determine whether non-compliance with national rules truly undermines protected interests, or whether less severe remedies, such as requiring translation or imposing administrative penalties, would suffice. Codification of such standards would not only harmonize judicial reasoning but also provide predictability for international investors, while still preserving the state's ability to protect labor rights, environmental sustainability, and linguistic sovereignty.

V. Conclusion

This study shows that Indonesian courts oscillate between two conflict-of-laws paradigms. In sectors with a strong transnational character (e.g., marine insurance and logistics), higher courts tend to honor party autonomy by enforcing foreign governing-law and forum clauses. Conversely, where disputes implicate domestically sensitive policies, most visibly the statutory language requirement under Law No. 24 of 2009, courts elevate public policy and mandatory rules, sometimes to the point of nullity. The result is a fractured jurisprudence that weakens legal certainty and encourages forum shopping, precisely when regional integration under ATIGA/ATISA/ACIA, RCEP, and Indonesia's bilateral FTAs is multiplying cross-border transactions that depend on predictable enforcement.

Doctrinally, the case analysis confirms that the absence of a codified private international law framework leaves Indonesian judges to toggle among disparate connecting factors and open-textured concepts (public order, mandatory rules, "closest connection"). This flexibility has benefits, but it also produces vertical and horizontal inconsistencies across court levels and panels. Without clearer guardrails, choice-of-law clauses can be weaponized to evade labor, environmental, consumer, or linguistic protections, while over-expansive public-policy review can chill investment and complicate supply chains.

The paper recommends a calibrated reform package. First, Indonesia should adopt a PIL statute or Supreme Court regulation that (i) recognizes party autonomy as the default in international commercial contracts; (ii) codifies a proportionality test for mandatory rules and public policy; (iii) clarifies the scope of Article 31 of Law No. 24 of 2009 (administrative

compliance for private contracts vs. validity only where core interests are at stake); and (iv) aligns with the Hague Principles and comparative standards (e.g., Rome I) on overriding mandatory provisions. Second, judicial guidance via circulars or jurisprudential guidelines should standardize the assessment of foreign nexus, sector sensitivity, and weaker-party protections. Third, practical measures (model clauses, bilingual templates, and targeted judicial training) can reduce avoidable formal defects and improve enforcement outcomes.

Limitations include a focused case set and reliance on available texts. Future research should expand the dataset across sectors and regions, incorporate econometric evidence on enforcement's impact on FDI and trade flows, and study interactions between domestic courts and arbitral tribunals. Implemented together, these reforms would better reconcile contractual autonomy with sovereign regulatory interests, enhance Indonesia's credibility as a regional commercial hub, and reduce the space for law evasion through choice-of-law engineering.

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