

THE APPLICABILITY OF DOMESTIC LAW IN INTERNATIONAL BUSINESS CONTRACTS: A STUDY ON INDONESIAN COURTS' CASES

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ABSTRACT

This article explores the application of domestic law and forum selection clauses in international business contracts within Indonesian legal system. It provides an analysis of the legal reasoning behind two significant court cases: *Beauchamp & Guerin v. Gunarsa and AXN v. Karyamegah*. Utilizing a normative legal research methodology, the study examines these cases alongside relevant statutes, adopting a case-based approach rather than a strictly statutory one. The selected cases were chosen for their relevance to the intersection of international business contracts and domestic law, particularly in relation to forum selection clauses. The analysis is grounded in legal reasoning, demonstrating that the principles of choice of law and choice of forum support the applicability of domestic law and forum selection clauses in international business contracts, bolstered by Indonesian contract law. In *Beauchamp & Guerin v. Gunarsa*, the court upheld the domestic law by affirming the validity of the contract and recognizing issues of nonperformance and damages in accordance with Indonesian law. Similarly, in *AXN v. Karyamegah*, the court asserted its jurisdiction over the case, finding grounds for nonperformance and damages as well. The findings presented in this article are significant for Indonesia, particularly in light of the absence of specific legislation governing international business contracts. Thus, this research serves both theoretical and practical purposes, filling a gap in existing literature that has predominantly focused on the application of foreign national laws and forums while overlooking the importance of domestic legal frameworks.

Keywords: Choice of Forum; Choice of Jurisdiction; Choice of Law; Governing Law; International Contracts; Indonesia

INTRODUCTION

Based on the doctrine in international business contracts as a part of international private law or conflict of law rules, the parties to international business contracts, except with a few exceptions, can choose the law and the forum applicable to their contractual relationships. The parties' freedom or autonomy to choose the law or forum in the international business contract is part of the implementation of the broader principle of

freedom of contracts also called the principle of party autonomy¹. In other words, the principle of choice of law and the principle of choice of forum in international business contracts are derivative principles originating from the main principle of the freedom of contract or the party autonomy.

The principle of freedom of contract itself is a fundamental principle in contract law, including in international business contract law². The principle has been integrated into various sources of modern contract law, including the Unidroit Principles of International Commercial Contracts (PICC) and the Indonesian Civil Code (ICC). Under the ICC, the principle is implicitly regulated in Article 1338 paragraph (1) which provides, “All agreements that are made legally shall apply as the law between the parties thereto.”³

In everyday practices, however, there is a tendency in international business contracts, to provide domestic law or forum selection clauses, rather than other laws or forums in the contract clauses, for certain reasons. For Indonesian citizens or companies, for example, there will be more efficiency and gain better legal certainty to choose the Indonesian law or forum rather than choosing the national law of another party or other laws⁴. Likewise, the other party from foreign countries has also similar tendency to choose its own national law and forum. Based on the principle of the freedom of contract, choice of law, and choice of forum the final decision on these matters depend on the bargaining power of the parties. Every clause in the operative parts of international business transactions, is generally, subject to negotiation of both parties based on the above contract law principles.

Not only do the parties tend to choose domestic laws rather than the foreign national laws of other parties or other non-domestic laws, but also the government in certain international business contracts tends to do so, that is, to provide specific rules on applying domestic law of its own. In Indonesia, for example, there are statutory provisions to provide mandatory choice of law in certain subject matters of international

¹ Moh. Ali and Bhim Prakoso, “The Freedom of Contract: The Indonesian Court’s Decisions on International Business Disputes,” *Indonesian Journal of Law and Society* 4, no. 1 (March 31, 2023): 94–125, <https://doi.org/10.19184/ijls.v4i1.38486>.

² Dhaniswara K Harjono, “Standard Agreement in The Concept of Freedom of Contract,” *Russian Law Journal* 11, no. 3 (2023): 652–57, <https://cyberleninka.ru/article/n/standard-agreements-in-the-concept-of-freedom-of-contract>.

³ Rany Mangunsong, *Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata)* (Jakarta: Gramedia Pustaka Utama, 2009).

⁴ Christiana Fountoulakis, “The Parties’ Choice of ‘Neutral Law’ in International Sales Contracts,” *European Journal of Law Reform* 7, no. 3/4 (2005): 303–29, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ejlr7&div=23&id=&page=>.

business contracts. This mandatory choice of law is one of the limitations or exceptions of the applicability of the choice of law principles. Regarding investment contracts, for example, there are mandatory rules on the domestic investment law to only choose the Indonesian law. These include international oil and gas contracts and international franchise contracts. Therefore, even though in general, the choice of law, in international business transactions is also applicable in Indonesia similar to many other countries, there are certain exceptions or limitations to do so, as dictated by public policy or public law rules⁵.

This article, however, does not focus on the mandatory choice of domestic national law rules of certain international business contracts above because there is no freedom to choose the law within these business arrangements. This article discusses other areas of international business contracts where the parties are free to choose a law and to choose a forum based on international private law principles, by providing such clauses in their contracts. This article focuses in two general business contracts where no such mandatory rules which was subject to dispute and the courts in Indonesia have rendered their decisions on the cases, that is, the international lease contracts and the international distribution contracts. Both contracts fall within the scope on international business contracts as used as part of the title of this article.

Article 9 of the international lease contract provides a choice of forum clause that “all disputes that may arise from the contract will be settled through the District Court of Amlapura, Bali, Indonesia.”⁶. Whereas, Paragraph 2 of the international agency contract provides a choice of forum and choice of law clause that, “...Channel Provider shall have the right to bring any collections related claims against AORA in the courts of Indonesia under Indonesian law.”⁷.

In the disputes, however, both parties in each case argued about the applicability of Indonesian law and forum to the case, besides the main cause of action of cases on nonperformance of the international business contracts. But, in these cases, lastly, the court held that the choice of Indonesian law and forum were applicable. The findings are

⁵ Istianah ZA et al., “Freedom of Contract and Judicial Intervention: Does the Courts Have the Right?,” *Revista Opinião Jurídica (Fortaleza)* 21, no. 36 (February 6, 2023): 205–21, <https://doi.org/10.12662/2447-6641oj.v21i36.p205-221.2023>.

⁶ Pengadilan Negeri Ampenan, *Beauchamp & Guerin v. Gunarsa* (Decisions of PN Ampenan Number 239/Pdt.G/2018/PN Amp) (2018).

⁷ Pengadilan Tinggi DKI Jakarta, *AXN v. Karyamegah* (PT DKI Number 124/PDT/2016/PT DKI) (2016).

valuable for Indonesia because so far it does not have specific legislation on international business contracts. Therefore, they are essential for both theoretical and practical purposes, whereas previous research mainly concentrates on applying foreign national or other non-domestic national law and forum, neglecting their focus on domestic national law and forum.

The first legal issue of this article is whether domestic law and forum selection clauses of international business contracts is applicable in Indonesia and under what grounds. The second legal issue is what are the court's legal reasonings in *Beauchamp & Guerin v. Gunarsa*? The third legal issue is what are the court's legal reasonings in *AXN v. Karyamegah*?

After describing the introduction in the beginning part above, Part B of this article discusses the research method used. Part C provides research outcome and discussion. Firstly, it explains the relevant principles and rules for applying domestic law and forum selection clauses of international business contracts in Indonesia. Secondly, it describes the legal reasonings in *Beauchamp & Guerin v. Gunarsa*. Thirdly, it provides legal reasonings in *AXN v. Karyamegah*. Part D summarizes the whole content of the article as the conclusions.

RESEARCH METHOD

This article used normative legal research. Normative legal research is a type of legal research that focuses on legal norms. The two cases were synthesized and analyzed based on relevant principles and rules obtained mainly from relevant statutes and legal doctrines. Therefore, within the normative legal research, this research employed the case approach, besides the statute approach.

The legal authorities used in this research were mainly the primary legal authorities, that is relevant court decisions or also called as case law, besides statutes. In addition, secondary legal authorities⁸, and tertiary legal authorities are also used when they are necessary.

The analysis was performed by interpreting the above legal authorities through legal reasoning. The used of synthesis method in this research is parallel with Bentham's

⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta : Kencana Prenada Media Group , 2013).

thoughts on synthesis in relation to analysis and generalization⁹. Here, the approaches used within the normative legal research were the statutory approach and the case approach. The cases used were final and binding Indonesian court decisions (*in kract van gewijsde*)¹⁰. These were *Beauchamp & Guerin v. Gunarsa* and *AXN v. Karyamegah*. The first case was on nonperformance dispute of an international lease contract. The second case was on nonperformance dispute of an international agency contract. Both types of contracts fall within the field of international business contracts.

This type of research is not only important as a mean of communication or socialization of the court decisions to more readers or the public because provides more plain language, rather than original court decisions which is often not easy to read by the general public, but also as a mean of teaching law for students, which is rare before. This is because the current curriculum of the faculty of law in Indonesia, directs or encourages the use of case study method in teaching and learning process, rather than the use of other traditional methods, depending mainly on the studies of statutes with series of lectures. Therefore, there is a move from only statutes' to also uses case law, and from only lecture metho to case study method. Therefore, the role of the case as object of the studies is becoming more important to be researched, studied, and published now.

RESEARCH OUTCOME AND DISCUSSION

1. The Relevant Principles and Rules for Applying Domestic Law and Forum Selection Clauses in International Business Contracts

a. The Principles of Choice of Law and the Choice of Forum

This part discusses the law and forum applicable to international business contracts. For a pure domestic or national contract the law applicable is the law as regulated in domestic or national law of that state. This is different from the international business contract, where that may also be that the law applicable is not the domestic or national law of that state. Here, the law applicable may be the national or domestic law of a foreign

⁹ Muhammad Nuruddeen, "The Legal Critical Literature Review," *UUM Journal of Legal Studies* 6, no. 1 (2015): 13–32, <https://repo.uum.edu.my/id/eprint/22074/>.

¹⁰ M Syamsudin and Salman Luthan, *Mahir Menulis Studi Kasus Hukum* (Jakarta: Prenamedia Group, 2018).

country because of certain reasons. One of the most important reasons is that one of the parties to the contract is from that foreign country.

Within the field of international business contracts, the applicable law is subjected to the choice of law principles. Based on the choice of law principle the parties are free to choose the applicable law for their contractual relationships. Therefore, the parties can choose their own, laws applicable to the contracts, with certain limitations. The parties often choose the domestic or the national law of one of the parties, but other laws are also possible, such as the law of a third country that has certain strengths in that area of law or the law of a neutral country. Besides the domestic or the national law of the parties, other choices include the law of a third country, new *lex mercatoria*, and may also international law¹¹. Generally, the courts or the arbitration tribunals will apply the applicable law chosen by the parties in the contract clauses. This clause of international business contract that applies the choice of law principle is often called the choice of law clause or the governing law clause¹².

The problems will arise when the parties to the international business contract do not choose the law on their own in the operative part of the contract. Here, the judges or the arbiters who are on duty to settle the case have to find the law applicable. When encountering this type of situation, the judges or arbiters in charge can rely on the doctrine or the principles of international private law or conflict of laws¹³. Under the doctrine of international private law, the choices available. These include, among others, the most characteristic connections, the *lex loci contractus*, the *lex loci solutionis*, the *lex fori*, and the proper law¹⁴. This article will focus only on the choice of Indonesian law and forum in certain international business contracts, to show how Indonesian law and forum clauses in international business contracts apply to court cases. The meaning of the choice of law is different from the meaning of the choice of forum¹⁵. Choice of forum related to the institution that has the right to settle disputes. Therefore, it relates, among others, to what

¹¹ Aditya Rizky, Sunardi, and Joko Setiono, "Lex Mercatoria as Substantive Applicable Law of International Sale and Purchase Contracts," *International Journal of Law and Politics Studies* 5, no. 2 (April 18, 2023): 80–86, <https://doi.org/10.32996/ijlps.2023.5.2.8>.

¹² Budiono Kusumohamidjajo, *Analisis Dan Perancangan Kontrak (Contract Analysis and Drafting)*. (Bandung: Yrama Widya, 2022).

¹³ Miklos Kiraly, "International Sales Law and Its Interpretation," *Russian Law Journal* 12, no. 1 (2024): 643–55, <https://www.russianlawjournal.org/index.php/journal/article/view/3746>.

¹⁴ Olga V. Fonotova and Lidiya E. Belyaeva, "Bargaining Inequality: Ways to Overcome It in International Commercial Law and in Private International Law," *RUDN Journal of Law* 27, no. 4 (December 1, 2023): 1043–64, <https://doi.org/10.22363/2313-2337-2023-27-4-1043-1064>.

¹⁵ Huala Adolf, *Dasar-Dasar Hukum Kontrak Internasional* (Bandung : PT Refika Aditama, 2007).

court or arbitration that has the authority to settle the case. It is mainly about the choice of the court or the arbitration. When the arbitration tribunal is chosen, the court has no longer the authority to settle the case¹⁶. However, when the arbitration tribunal is chosen, the court still has a role in enforcing foreign arbitral awards¹⁷. Based on the principles of choice of law and choice of forum above, if the applicable law is domestic national law, the courts then can apply the domestic national law of Indonesia similar to the case of domestic contract law disputes. The domestic law here, is the Indonesian law of contracts. This includes, if they becomes the legal issues or the cause of action, includes rules on validity, nonperformance, and remedies of the contracts, as explained below.

b. The Rules on Validity of International Business Contracts

This part discusses the rules on the validity of international business contracts when Indonesian law is applicable. When Indonesian law applies to international contracts, both because the Indonesian law was chosen by the parties in the international contract clauses and because it is dictated by the doctrine of International private law or conflict of law, the validity of a contract is judged based on Indonesian national or domestic law. Therefore, here Article 1320 of the ICC is applicable¹⁸.

Article 1320 of the ICC provides, “For the validity of an agreement needs four qualifications: 1. the consent of those who bind themselves; 2. the capacity to create an agreement; 3. a particular object; and a lawful cause.” Based on Article 1320 of the ICC there are four requirements or elements for the validity of contracts¹⁹. First, consent. The consent element is fulfilled as stated in Article 1321 of the ICC when there is no mistake violence or fraud. Second, capacity. The capacity to contract element can fulfilled by any legal subject, unless otherwise declared by the law, including minor persons and persons put under custody, as provided by Article 1329 of the ICC and Article 1330 of the ICC. Third, certainty. The certainty of the object or transaction can be fulfilled by the description at least its types can be determined, and the quantity can be fixed or calculated

¹⁶ Andi Muhammad Iqbal Latief, Juajir Sumardi, and Iin Karita Sakharina, “Kedaulatan Hukum Nasional Dalam Putusan Arbitrase Internasional: Sengketa Negara versus Pihak Swasta,” *Amanna Gappa* 31, no. 1 (2023): 57–69, <https://journal.unhas.ac.id/index.php/agjl/article/view/26139>.

¹⁷ Paula Karlina Watt, “Peranan Pengadilan Indonesia Dalam Penyelesaian Sengketa Melalui Proses Arbitrase,” *Lex Privatum* 11, no. 3 (2023): 1–10, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/47404>.

¹⁸ Agus Suwandono and Deviana Yuanitasari, “Perkembangan Penyalahgunaan Keadaan Sebagai Dasar Pembatalan Perjanjian Dalam Sistem Hukum Perjanjian Di Indonesia,” *JUSTICES: Journal of Law* 2, no. 1 (February 14, 2023): 1–13, <https://doi.org/10.58355/justices.v2i1.31>.

¹⁹ Kusumohamidjojo, *Analisis Dan Perancangan Kontrak (Contract Analysis and Drafting)*. .

later on, as provided by Article 1333 of the ICC. Fourth, legality. The legality or a lawful cause element can be fulfilled if it is not contrary to the law, good morals, or public order, as dictated by Article 1337 of the ICC²⁰.

Article 1320 of the ICC and related rules above are closely related to Article 1338 of the ICC, Article 1338 of the ICC provides, “All agreements that are made legally shall apply as the law between the parties thereto. An agreement is not revocable except with the consent of both parties or for reasons that by the law are sufficient therefore. An agreement must be performed in good faith.”²¹ Paragraph one of Article 1338 above uses the word “all” meaning all contracts. This implies the application of the fundamental principle of freedom of contract or party autonomy. It means that any legal subject is free to enter or not to enter into a contract. When a party enters into a contract with another party has to fulfill the requirement for the validity of the contract as is Article 130 of the ICC, and when fulfilled, the contract becomes binding as the law for the parties. The phrase, “as the law” implies the application of another important principle of the contract law, that is, the principle of the binding force of the contract (*pacta sunt servanda*). This second principle of the contract law can also implied from the wording of Paragraph two of Article 1338 of the ICC which has the intention to achieve legal certainty of the contractual relationship. On the other side, to achieve a delicate balance with another objective of the law, that is justice, provided by Paragraph three of Article 1338 provides another principle of contract law called the principle of good faith (*bonafides*)^{22/}

c. The Rules on Nonperformance of International Business Contracts

This part discusses the rules on the nonperformance of international business contracts when Indonesian law is applicable. When Indonesian law applies to the nonperformance of international business contracts, the rules applicable are available under the ICC. Before understanding the meaning and rules of nonperformance, an understanding of the meaning of performance is necessary. Article 1234 of the ICC provides a formal description of the meaning of performance. by stating the following, “Every agreement is to give something, to do something, or not to do something.” Therefore, there are three main forms of performance. First, is giving something, second

²⁰ Mangunsong, *Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata)*.

²¹ Mangunsong.

²² Mariam Darus Badruzaman, *Hukum Perikatan Dalam KUH Perdata Buku Ketiga: Yurisprudensi, Doktrin, Serta Penjelasan* (Bandung: PT Citra Aditya Bakti, 2015).

is doing something, and third is not doing something. These three forms of performance embrace all types of obligations of the debtor to be fulfilled for the creditor.

When the performance is not considered adequate, there is an indication of nonperformance of the international business contract. Satrio defines nonperformance as, “an event or situation, when debtor did not fulfill well the obligation of the performance, and the debtor did not has wrong.” The form of nonperformance can be divided into three categories. First, full nonperformance. Second, partly or mistaken performance. Thirdly, late performance.²³

To be effective a nonperformance, certain requirements need to be fulfilled. The creditor should provide a warrant letter or a reminder letter (*sommatie, ingebreke stelling*) to the nonperforming debtor. This requirement is provided by Article 1238 of the ICC. Article 1238 of the ICC states, as follows, “The debtor is negligent if, by a warrant or similar kind of deed, he has been declared as negligent, or for the agreement itself, if such determines, that the debtor shall be deemed as having default by the lapse of the agreed period”²⁴.

Regarding this reminder letter²⁵ elaborates that three alternative methods can be followed. The methods include the following. First, the court order letter from the bailiff of the court. Second, the imperatives warrant the due date from the creditor. Thirdly, an automatic reminder when the due date clause of performance is available in the clause of the contract.

d. The Rules on Remedies for Nonperformance of International Business Contracts

This part discusses the rules on remedies for the nonperformance of international business contracts when Indonesian Law is applicable as the consequence of the nonperformance of the contract, ICC provides several types of private law sanctions or

²³ Vita Febiyanti, Murry Darmoko, and Karim, “Tinjauan Hukum Terhadap Konsumen Yang Melakukan Wanprestasi Pembelian Kredit Secara In- House ,” *Jurnal Judiciary* 9, no. 1 (2020): 1–11, http://eprints.ubhara.ac.id/2394/1/3.%20TINJAUAN%20HUKUM%20TERHADAP%20KONSUMEN_Vita-Judiciary20.pdf.

²⁴ Mangunsong, *Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata)*.

²⁵ Badruzaman, *Hukum Perikatan Dalam KUH Perdata Buku Ketiga: Yurisprudensi, Doktrin, Serta Penjelasan*.

remedies²⁶. This is regulated, among other things, in Article 1243, Article 1244 to 1246, and Article 1248 of the ICC. There are several types of remedies for nonperformance available under Indonesian law. These include specific performance, damages, and dissolution²⁷. One can choose alternatively or cumulatively these choices.

The most common form of remedy for a nonperformance of a contract is damages. The damages based on ICC may include costs, loss, and interest. The ICC, however, provides borders or limitations to the total amount of the damages so that it is not excessive. In practice, however, it is not easy to ascertain exactly the total amount of the damages. The case law from the law of the Netherlands shows that the courts used objective or abstract indicators based on the damage that may be faced by any debtors in such a situation, rather than it based on subjective or concrete indicators faced by that certain debtor²⁸. Following this part, the article provides a summary of the two cases selected for this writing, as mentioned below.

2. The Court Legal Reasonings in *Beauchamp & Guerin v. Gunarsa*

The following is the case brief of *Beauchamp & Guerin v. Gunarsa* (Decisions of PN Ampenan Number 239/Pdt.G/ 2018/PN Amp, PT Denpasar Number 91/Pdt/2019/PT DPS, and MARI Number 1094 K/Pdt/ 2020). The systematic of the brief below consists of the facts, the issue, the holding, and the legal reasoning of the case, as follows.

Gaston *Beauchamp* and Manon *Guerin* (*Beauchamp & Guerin*), the plaintiff, are both Canadian citizens. Whereas *Gunarsa* (*Gunarsa*), the defendant, is an Indonesian citizen.²⁹ Plaintiffs sued the defendant for nonperformance of an international lease contract in Bali, Indonesia. In November 2010 the plaintiffs and the defendant met first at a Joglo Restaurant, where then on 22 January 2016 the defendant as the owner of a villa offered the villa to the plaintiffs based on an international lease contract, with the rent of Rp500.000.000 for five years duration. On 31 October 2016, the plaintiffs asked

²⁶ Lona Puspita et al., "Rights and Obligations of the Parties Against International Arbitration Awards in Indonesia," *International Journal of Social Science Research and Review* 6, no. 4 (2023): 185–91, <https://doi.org/https://doi.org/10.47814/ijssrr.v6i4.978>.

²⁷ Sudargo Gautama, *Indonesian Business Law* (Bandung : Citra Aditya Bakti, 2006).

²⁸ Margaretha Yermia Claudia et al., "Komparasi Penyelesaian Sengketa Wanprestasi Perkreditasi Atau Pembiayaan Melalui Pengadilan Pada Perbankan Konvensional Dan Perbankan Syariah," *Locus Journal of Academic Literature Review* 3, no. 1 (January 4, 2024): 127–40, <https://doi.org/10.56128/ljoalr.v3i1.281>.

²⁹ Pengadilan Negeri Ampenan, *Beauchamp & Guerin v. Gunarsa* (Decisions of PN Ampenan Number 239/Pdt.G/2018/PN Amp).

the defendant to pay the rent, and the plaintiff paid Rp600.000.000. On 15 February 2017, the plaintiff lives in the disputed villa with an additional payment of Rp4,700.000 for two weeks of rent. On 9 March 2017 both the plaintiff and defendant came to a public notary office to make an international lease deed No. 16.883. Article 4 and Article 5 of the contract clauses mainly provide that all maintenance and repair should be paid by the defendant and if there is nonperformance by the defendant, he should reimburse the rent and related fees. However, after receiving of rent for Rp600.000.000 above, the defendant did not perform his obligations based on the above contract (notarial deed). The plaintiff then several times reminded the defendant to perform his obligations. The defendant then stated that he would return the rent of 31 Oktober 2016 above. However, then, the defendant was still not performed, then the plaintiff through a registered post letter sent consecutively two reminder letters (*sommatie*) to the defendant. The international lease contract has a choice of forum clause in Article 9 provides that all disputes that may arise from the contract will be settled through the District Court of Amlapura, Bali, Indonesia. The plaintiffs then sued the defendant for cause of action of nonperformance of the contract with the damages of Rp813.885.000 for material damages and Rp500. 000 for immaterial damages³⁰.

The legal issue of this case includes, among others, first, whether the District Court of Amlapura, Bali, Indonesia has the authority to settle the case based on the choice of forum clause under Article 6 of the International Lease Contract. The court first has to decide procedural issue regarding it authority to settle, if it has, the court will examine the case further. Secondly, whether the international lease contract was valid under Article 1320 and Article 1338 of the Indonesian Civil Code. If the court has the authority to settle the case, then solve the question of the contract validity. If the contract is valid, the court has to solve the issue regarding the party's rights of obligation based on the valid contract clauses and related rules of contract law. Thirdly, whether there was a nonperformance of contract by the defendant based on the Indonesian Civil Code. Based on the contract clauses and related rules of contract law, then the court has to decide the issue of nonperformance of contract, also called a breach of contract. Finally, whether the defendant has the right to damages because of the nonperformance of the contract. If the

³⁰ Pengadilan Negeri Ampenan.

nonperformance exists, then the court has to decide on the amount of damage that has to be paid by the plaintiff to the defendant who won the case.

To answer the above legal issues, The District Court of Amlapura, Bali, Republic of Indonesia mainly held, as follows:³¹ First, The District Court of Amlapura, Bali, Indonesia has the authority to settle the case based on the choice of forum clause under Article 6 of the International Lease Contract. Secondly, the international lease contract was valid under Article 1320 and Article 1338 of the Indonesian Civil Code. Thirdly, there was no nonperformance of the contract by the defendant based on the Indonesian Civil Code. Finally, there was no defendant's right to damages because of the nonexistence of nonperformance of the plaintiff.

Because the case was then subjected to an appeal to the higher court, the Court of Appeal, Denpasar, Bali, Republic of Indonesia then ruled a similar holding to the District Court of Amlapura above³². Lastly, because the case then subject to a cassation, the Supreme Court of the Republic of Indonesia decided to annul the decision of the Court of Appeal which maintained and strengthened the decision of The District Court of Amlapura the above, and rendered its own decision mainly as follows³³. First, the Supreme Court has the jurisdiction to settle the case. Secondly, the contract law as in the notarial deed of the international lease contract was valid and binding. Thirdly, there was the defendant's nonperformance of the contract. Finally. the defendant because of his nonperformance of the contract, has to compensate for the material damages of Rp542.385.000,00.

The legal reasoning behind those holdings is provided by all levels of courts involved, including the District Court of Amlapura, Bali, Indonesia. Here, the court in responding to the exception proceedings of the defendant through his attorney that the court has no authority to settle the case, reasoned that there is a legal relationship between both parties based on an international lease agreement that has been described by the plaintiff clearly in his statement of claim, therefore, the exception proceedings were rejected. The court also reasoned that the international lease agreement has fulfilled the

³¹ Pengadilan Negeri Ampenan.

³² Pengadilan Tinggi Denpasar, *Beauchamp & Guerin v. Gunarsa* (PT Denpasar Number 91/Pdt/2019/PT DPS (2019).

³³ Mahkamah Agung Republik Indonesia, *Beauchamp & Guerin v. Gunarsa* (MARI Number 1094 K/Pdt/2020) (2020).

requirement for the validity of the contract as stipulated in Article 1320 of the ICC, therefore it was valid, and, the plaintiff's claim in this matter was admitted³⁴.

At the next court level, the Court of Appeal, Denpasar, Bali, Republic of Indonesia reasoned that the decision of the District Court of Amlapura has been considered properly and correctly based on law, and it can also be used as the legal reasoning of this case. Therefore, the judgment of the district court was maintained and strengthened. Besides, based on the explanation of both the plaintiff and defendant and the evidence provided, there was the defendant performance to perform his obligations to repair and maintain the villa, therefore, the nonperformance was nonexistent³⁵.

The court of last resort is the Supreme Court of the Republic of Indonesia. Here, the court reasoned that the legal reasoning of the District Court and the Court of Appeal were incorrect in the application of the law, because based on facts in the decisions they inadequately consider the law. Besides, the reality the defendant did not perform his obligation as in the contract, so the defendant was in nonperformance of contract, and had to pay for damages to the plaintiff³⁶.

3. The Court Legal Reasoning in *AXN v. Karyamegah*

The following is the case brief of *AXN v. Karyamegah* (Decisions of PN Jakarta Pusat Number 483/Pdt.G/2014/PN-Jkt.Pst, PT DKI Number 124/PDT/2016/PT DKI, and MARI Number 1322 K/Pdt/2017). The systematic of the brief below consisting of the fact, the issue, the holding, and the legal reasoning as follows.

AXN Holdings, LLC (AXN) was a corporation established under the law of the State of Delaware, the United States of America, plaintiffs. Whereas PT Karyamegah Adijaya (*Karyamegah*) is a corporation established under the law of the Republic of Indonesia, defendant. The plaintiff sued the defendant for nonperformance of international agency contracts in Jakarta, Indonesia³⁷. 1 March 2010 both the plaintiff and the defendant signed the international agency contract, named with Distribution Term Sheet. Then, on 21 December 2010 and 20 Maret 2012, they signed two addendums of the contract,

³⁴ Pengadilan Negeri Ampenan, *Beauchamp & Guerin v. Gunarsa* (Decisions of PN Ampenan Number 239/Pdt.G/2018/PN Amp).

³⁵ Pengadilan Tinggi Denpasar, *Beauchamp & Guerin v. Gunarsa* (PT Denpasar Number 91/Pdt/2019/PT DPS).

³⁶ Mahkamah Agung Republik Indonesia, *Beauchamp & Guerin v. Gunarsa* (MARI Number 1094 K/Pdt/2020).

³⁷ Pengadilan Tinggi DKI Jakarta, *AXN v. Karyamegah* (PT DKI Number 124/PDT/2016/PT DKI).

respectively. The operative part of the contracts provides clauses on rights and obligations, television channel, distribution, subscription fee, payment, duration, termination of the contract, and choice of law and dispute settlement. The First Addendum was made on 21 December 2010. This first addendum changes several clauses. These clauses include the duration, the television channel, rights and obligations, and subscription fee. The Second Addendum was made on 20 March 2012. This second addendum further changes several clauses. These include the change of name and miscellaneous³⁸. The international agency contract has choice of Indonesian law and forum clauses in Paragraph 2 providing that, "...Channel Provider shall have the right to bring any collections related claims against AORA in the courts of Indonesia under Indonesian law."³⁹. This shows that the parties to contracts agreed on the choice of Indonesian law and forum in their contract. Then, in the implementation of the contract with its addendums above, the defendant has been in a situation of nonperformance because of three situations. First, the defendant terminated early the distribution of the television channels (that is beTV, Animax, and SET) before the time frame agreed, on 31 December 2013. Therefore, the defendants did not get the subscription fee for November 2013 and December 2013. Secondly, did not continue to pay the monthly subscription fee on time as per the payment terms of the contract. In this regard, the plaintiff has sent the invoice informing the amount that the defendant has to pay and the due date of the payment within 30 days. However, then the defendant did not perform his duties. Therefore, the plaintiff in 30 Oktober 2013 and 18 June 2014 sent two reminder letters (*sommatie, ingebereke stelling*) to the defendants. Similarly, there was no response from the defendant until this lawsuit started. Thirdly, the defendant continued to distribute the television channel after the time frame of the contract ended. Even though the contract ended on 31 December 2013, since January 2014 until this lawsuit started, the defendant was still distributing the television channels to the subscribers. Therefore, for this action, the plaintiff has sent the invoice. There is also no response to the invoice sent by the plaintiff⁴⁰.

The main legal issues involved in this case includes as follows. First, whether the District Court of Central Jakarta has the authority to settle the case. This means that the

³⁸ Pengadilan Tinggi DKI Jakarta.

³⁹ Pengadilan Tinggi DKI Jakarta.

⁴⁰ Pengadilan Tinggi DKI Jakarta.

court has to examine and decide first the question of court authority to settle this case. If the answer yes, the court then decide other legal issues. Secondly, whether there was nonperformance of contracts by the defendant when he performed early termination of the contract, late payment of the subscription fee, and illegal distribution of the television after the duration of the contract ended. This means the next legal issue has to decide by the court is regarding nonperformance of contract. Finally, whether the plaintiff has the right to damages because of the nonperformance of the contract by the defendant. This means the court when the nonperformance exist, as requested has also to examine the civil suit sanction of the number of damages or monetary compensation as a remedy for the nonperformance.

To solve the above legal issues at the first court level, the District Court of Central Jakarta held as follows⁴¹. First, the District Court of Central Jakarta has the right to settle the case. Secondly, there is nonperformance of the contract by the defendant when he performed early termination of the contract, late payment of the subscription fee, and illegal distribution of the television after the duration of the contract ended. Finally, the plaintiff has the right to damages because of the nonperformance of the contract by the defendant.

Then, the court in the second level, The Court of Appeal of DKI Jakarta, Republic of Indonesia rendered a similar holding to the District Court of Central Jakarta above⁴². Lastly, the court in the third level or cassation level, the Supreme Court of the Republic of Indonesia rendered a similar holding to the Court of Appeal above by holding that the cassation was rejected⁴³.

The legal reasoning behind the above decisions includes, as follows. The Court of Appeal of DKI Jakarta, Republic of Indonesia reasoned⁴⁴,as follows. First, based on Paragraph 2 of the Distribution Term Sheet, which has the choice of jurisdiction of the Indonesian court, that is, The District Court of Central Jakarta, the Court of Appeal of DKI Jakarta, Republic of Indonesia has authority to settle the case. Therefore, the exception was rejected. Secondly, the legal reasoning of the District Court of Central Jakarta was appropriate and correct, therefore, it can be taken over as the legal reasoning

⁴¹ Pengadilan Tinggi DKI Jakarta.

⁴² Pengadilan Tinggi DKI Jakarta.

⁴³ Mahkamah Agung Republik Indonesia, AXN v. Karyamegah (MARI Number 1322 K/Pdt/2017) (2017).

⁴⁴ Pengadilan Tinggi DKI Jakarta, AXN v. Karyamegah (PT DKI Number 124/PDT/2016/PT DKI).

of the Court of Appeal of DKI Jakarta. In other words, the decision of the previous court was maintained and strengthened.

The reasoning of the Supreme Court of the Republic of Indonesia reasons as follows⁴⁵. First, the reasons for cassation are not true, because the legal reasoning of the Court of Appeal of DKI Jakarta strengthened the legal reasoning of The District Court of Central Jakarta, has provided adequate considerations, and has no contradiction to the law, where the defendant was in the situation of nonperformance of contract, and therefore, had to pay for damages to the plaintiff. Secondly, because the above decisions were not contrary to law, the application for cassation by the defendant was rejected.

CONCLUSIONS

The key principles and rules governing the application of domestic law and forum selection clauses in international business contracts in Indonesia include the principles of choice of law and choice of forum, alongside regulations pertaining to contract validity, nonperformance, and remedies available under domestic law. This framework indicates that Indonesian law recognizes and enforces both choice of law and forum selection clauses within international business contracts. Such clauses must be mutually agreed upon by the parties involved. Given the validity of these selections and the court's authority to adjudicate, Indonesian domestic law is employed to resolve disputes arising from these cases.

Legal issues amenable to resolution under domestic law and forum selection encompass various aspects of contract law, including the validity of contracts, instances of nonperformance, and remedies for such nonperformance.

In the case of *Beauchamp & Guerin v. Gunarsa*, the court's legal reasoning primarily established that it possessed jurisdiction over the matter, confirmed the international business contract met the validity requirements, and determined that the defendant had failed to fulfill their contractual obligations, which constituted nonperformance. Consequently, the court ordered the defendant to pay damages to the plaintiff. This ruling offers legal certainty regarding the applicability of domestic law and forum selection clauses in international business contracts, clarifying the legal framework for assessing contract validity, nonperformance, and available remedies.

⁴⁵ Mahkamah Agung Republik Indonesia, *AXN v. Karyamegah* (MARI Number 1322 K/Pdt/2017).

Similarly, in *AXN v. Karyamegah*, the court reiterated its authority to adjudicate the case and found the defendant liable for nonperformance, thus requiring the payment of damages to the plaintiff. As with the previous case discussed in this article, the court upheld the principles of choice of law and choice of forum as part of the broader tenet of party autonomy-the freedom to contract. These principles are foundational to international business contracts and underscore the universal principle of freedom of contract, which is essential for fostering and advancing international business transactions globally, extending well beyond Indonesia.

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