

Legal Enforceability of Forum Selection Clauses in Preliminary Sale and Purchase Agreements for Cross-Regional Transactions

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Abstract

The increasing use of Preliminary Sale and Purchase Agreements (*Perjanjian Pengikatan Jual Beli*/PPJB) in cross-regional land transactions has generated legal uncertainty regarding the enforceability of forum selection clauses, particularly where the parties, the designated forum, and the immovable property are located in different judicial

jurisdictions. This study aims to examine the legal basis for the validity of forum selection clauses under Article 118 of the *Herziene Indonesisch Reglement* (HIR) and Article 1338 of the Indonesian Civil Code, as well as their implications for the relative jurisdiction of district courts and the delegated execution of judgments. The study employs normative legal research using statutory, conceptual, and case approaches through qualitative analysis of legislation, legal doctrines, and Supreme Court jurisprudence. Unlike previous studies that discuss forum selection clauses in isolation, this research develops an integrated analytical framework by linking the legal character of PPJB, contractual autonomy, relative jurisdiction, Supreme Court jurisprudence, and delegated execution involving immovable property. The findings demonstrate that a forum selection clause incorporated into a valid PPJB constitutes a binding manifestation of the principle of freedom of contract and is enforceable under Article 118(4) HIR in conjunction with Article 1338 of the Civil Code. Nevertheless, such contractual autonomy applies only to the adjudication stage and does not override the territorial principle governing the execution of judgments under Article 195 HIR. Accordingly, judgments rendered by the designated court remain enforceable through delegated execution by the district court where the immovable property is located. This study contributes to the harmonization of Indonesian contract law and civil procedural law while providing practical guidance for judges, notaries, and legal practitioners in resolving disputes arising from cross-regional PPJB transactions.

KEYWORDS

Article 118 of the HIR, Choice of Forum, Cross-Regional Enforcement, Preliminary Sales and Purchase Agreement (PPJB), Relative Jurisdiction.

Introduction

In the practice of civil law in Indonesia, the existence of a contract as the basis for legal relationships between legal entities not only reflects the agreement between the parties but also embodies the application of the principle of *pacta sunt servanda* that is, every contract validly entered into is binding as law upon the parties who entered into it.¹ The Preliminary Sale and Purchase Agreement (*Perjanjian Pengikatan Jual Beli*/PPJB) is one of the contractual instruments that most frequently generates legal disputes in Indonesian land transactions. As a preliminary agreement, the PPJB establishes the parties' contractual rights and obligations before the formal transfer of land rights is completed through the execution of the Sale and Purchase Deed (*Akta Jual Beli*/AJB).² PPJBs often include a clause known as a “choice of forum clause,” which explicitly designates which court has jurisdiction to hear and adjudicate disputes should a disagreement arise between the parties in the future. This clause forms part of the implementation of the principle of freedom of contract as set forth in Article 1338(1) of the Civil Code (KUHPerdata), which grants the parties the freedom to determine the content, form, and execution of the agreement as long as it does not conflict with the law, public order, and public morality.³

Recent studies reinforce the relevance of this topic. Margaretha demonstrates that choice of law and choice of forum play a vital role in creating legal certainty for international contracts,⁴ while Amalia and Hamdan emphasize the importance of limiting such clauses so that they do not conflict with absolute jurisdiction or the public interest.⁵ Okoli and Kusumadara examine global trends among courts in interpreting

¹ R. Subekti, *Hukum Perjanjian* (Intermasa, 2008).

² Uniska Law Review, *Uniska Law*, 4, no. 2 (2023): 251–61.

³ R. Soeroso, *Pengantar Ilmu Hukum* (Sinar Grafika, 2012).

⁴ Nina Vernia Margaretha et al., “Penerapan Klausula Pilihan Hukum (Choice of Law) Dan Pilihan Forum (Choice of Forum) Dalam Penyelesaian Sengketa Kontrak Internasional,” *Diponegoro Law Journal* 12, no. 3 (2023): 1–18, <https://doi.org/10.14710/dlj.2023.38990>.

⁵ Rizky Amalia and Fairuz Z. Z. Hamdan, “The Limitation in Choice of Law and Choice of Forum Within International Business Contract,” *International Journal of Social Science Research and Review* 6, no. 3 (2023): 147–57, <https://doi.org/10.47814/ijssrr.v6i3.908>.

both explicit and implied jurisdiction agreements,⁶ while Pratama highlights the conflict between contractual forum clauses and absolute jurisdiction in sharia economic disputes.⁷

Problems arise in practice when such a forum selection clause conflicts with the provisions of civil procedure law regarding the relative jurisdiction of courts, as set forth in Article 118 of the *Herziene Indonesisch Reglement* (HIR). This article reaffirms the classical principle of *actor sequitur forum rei*, which means the plaintiff must file a lawsuit in the defendant's place of residence.⁸ This principle is intended to protect the defendant from the burden of attending hearings in a distant location and to ensure the principle of accessible justice. Developments in modern contract law allow the parties to agree on a specific court of jurisdiction through a written agreement, as permitted by Article 118(4) of the HIR, which states that if the parties have agreed in writing to a specific court to resolve a dispute, then that court has relative jurisdiction to hear the case.⁹

Legal issues arise in this practice, particularly when there is a change in the parties' domicile or a discrepancy between the location of the subject matter of the agreement and the parties' domicile or the agreed-upon venue. For example, in a specific case often cited in academic contexts, A and B are domiciled in Malang and enter into a Preliminary Sales and Purchase Agreement (PPJB) before a notary in Malang, with the subject matter being land located in Blitar. In that PPJB deed, the parties agreed that should a dispute arise, it would be resolved in the Malang District Court. However, several years later, A moved to Bogor and B moved to Garut. When a dispute later arose regarding the PPJB, the question arose: which district court has relative

⁶ Chukwuma S. A. Okoli, "Implied Jurisdiction Agreements in International Commercial Contracts," *Journal of Private International Law*, ahead of print, 2023, <https://doi.org/10.1080/17441048.2023.2294615>.

⁷ Abdul Hakim Pratama et al., "The Position of Choice of Forum and Alternative Dispute Resolution Principles in Contemporary Sharia-Based Property Dispute," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 184–207, <https://doi.org/10.32332/milrev.v4i1.10140>.

⁸ Emi Puasa Handayani et al., "Liability Without Fault Dalam Penyelesaian Sengketa Lingkungan Hidup Di Indonesia," *ADHAPER: Jurnal Hukum Acara Perdata* 4, no. 2 (2019): 1, <https://doi.org/10.36913/jhaper.v4i2.74>.

⁹ Pemerintah Hindia Belanda, "Herzien Inlandsch Reglement (HIR)," preprint, *Staatsblad Tahun 1941 Nomor 44*, 1941.

jurisdiction to hear the lawsuit? Is it still the Malang District Court in accordance with the agreed-upon forum specified in the agreement? Can the case be filed with the Garut District Court based on the principle of *actor sequitur forum rei* under Article 118(1) of the HIR, given that the defendant is now domiciled in Garut? Or is the Blitar District Court actually the competent court because the subject matter of the dispute—the land—is located within its jurisdiction, in accordance with the principle of *forum rei sitae* as provided in Article 118(3) of the HIR?¹⁰

Issues such as this are not merely of a technical-legal nature, but touch upon the theoretical foundations of the civil procedural system itself, particularly regarding the relationship between contract law (substantive) and procedural law (formal). A forum selection clause essentially lies at the intersection of two legal regimes: on the one hand, it is an expression of freedom of contract under substantive civil law; on the other hand, it must comply with the mandatory provisions (*dwingendrecht*) of civil procedural law in determining court jurisdiction.¹¹ It is this tension that often gives rise to differing interpretations among judges, legal practitioners, and civil law scholars.

From a theoretical perspective, the choice-of-forum clause is rooted in the concept of party autonomy or the autonomy of will in contracts which grants the parties the freedom to determine for themselves the method of dispute resolution, including selecting a court that is considered neutral, professional, or close to the place where the agreement was made.¹² This principle is also widely adopted in the practice of international private law, particularly in international contracts, where the parties often select a court or arbitration institution in a specific country as the forum for dispute resolution.¹³ However, within the context of Indonesian national law, the application of this clause must be harmonized with a procedural legal system that adheres

¹⁰ M. Yahya Harahap, *Hukum Acara Perdata: Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Sinar Grafika, 2015).

¹¹ Retnowulan Sutantio and Iskandar Oeripkartawinata, *Hukum Acara Perdata Dalam Teori Dan Praktik* (Mandar Maju, 2005).

¹² Mariam Darus Badruzaman, *Kompilasi Hukum Perikatan* (Citra Aditya Bakti, 2001).

¹³ Gary Born, *International Civil Litigation in United States Courts* (Kluwer Law International, 2014).

to the territorial principle namely, that court jurisdiction is determined based on administrative regions as defined by law.¹⁴

Normatively, Article 118(4) of the HIR provides an explicit legal basis for the enforceability of forum selection clauses in Indonesia. This provision affirms that a written agreement between the parties regarding the court that will hear the dispute is binding and supersedes the general provision of Article 118(1) concerning the defendant's place of residence.¹⁵ Thus, if A and B have expressly chosen the Malang District Court as the forum for dispute resolution in the Preliminary Sales and Purchase Agreement (PPJB), the Malang District Court retains relative jurisdiction even if the parties have changed their domicile. The principle of freedom of contract in this case supersedes the forum rei principle in the interest of legal certainty for the parties who have agreed on the choice of forum from the outset.¹⁶

However, it cannot be overlooked that although the Malang District Court has the authority to hear and decide the case, enforcement of the judgment must still be carried out at the location where the property is situated, namely in Blitar. Pursuant to Article 195(1) of the HIR and Supreme Court Circular (SEMA) No. 04 of 2016, the execution of a judgment regarding immovable property must be carried out by the Chief Judge of the District Court in the jurisdiction where the property is located.¹⁷ This means that the relative authority to adjudicate a case and the authority to execute the judgment may differ without constituting a violation of civil procedure law. In this context, the Malang District Court remains the forum for litigation, but the execution is delegated to the Blitar District Court. This demonstrates that civil procedural law recognizes a mechanism for coordination among courts in the enforcement of civil judgments across jurisdictional boundaries.¹⁸

The role and responsibilities of notaries in drafting such forum selection clauses also need to be examined. As public officials authorized

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana, 2017).

¹⁵ Belanda, "Herzien Inlandsch Reglement (HIR)."

¹⁶ Pemerintah Republik Indonesia, "Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)," preprint, n.d.

¹⁷ Belanda, "Herzien Inlandsch Reglement (HIR)."

¹⁸ R. Subekti, *Hukum Perjanjian* (Intermasa, 2004).

to draw up authentic deeds, notaries have a responsibility to ensure that the content of the agreements they draft does not give rise to legal ambiguity in the future.¹⁹ Thus, when drafting a Preliminary Sales and Purchase Agreement (PPJB) involving property located outside the local jurisdiction, the notary must explain the legal consequences of the specified choice of forum, including the implications for relative jurisdiction and the enforcement of judgments.²⁰

Based on the above discussion, this study aims to address two key issues: first, what is the legal basis that legitimizes the validity of a choice-of-forum clause in a Preliminary Sales and Purchase Agreement (PPJB) under the provisions of Article 118 of the HIR and Article 1338 of the Civil Code; second, what are the legal implications of applying a choice-of-forum clause on the relative jurisdiction of district courts and the enforcement of judgments when the parties and the subject matter of the agreement are located in different jurisdictions. Through a normative legal approach using the statute approach and conceptual approach, this study seeks to elucidate the systemic relationship between the principle of freedom of contract and the provisions on relative jurisdiction in Indonesian civil procedure law.²¹

The following are three nearly identical studies from the past five years that address the topic of forum selection clauses in civil agreements. The first, titled “Legal Consequences of Islamic Banking Dispute Resolution Agreements (A Study of Forum Selection Clauses for Dispute Resolution in District Courts),” was conducted by Hasana N. and published in 2023 in *Al-Muamalat, Jurnal Ekonomi Syariah*, Vol. 10, No. 2, which discusses forum selection clauses in the context of Islamic banking.²² Second, titled “The Application of Choice of Law and Choice of Forum Clauses in the Resolution of International Contract Disputes” by Nina Vernia Margaretha, published in 2023 in the *Diponegoro Law Journal* (Vol. 12, No. 3), which examines choice

¹⁹ Habib Adjie, *Hukum Notaris Indonesia* (Refika Aditama, 2011).

²⁰ Adjie, *Hukum Notaris Indonesia*.

²¹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (RajaGrafindo Persada, 2015).

²² Nurul Hasana and et al., “Akibat Hukum Perjanjian Penyelesaian Sengketa Perbankan Syariah (Kajian Terhadap Klausula Pilihan Forum Penyelesaian Sengketa Di Pengadilan Negeri),” *Al-Muamalat: Jurnal Ekonomi Syariah* 10, no. 2 (2023): (halaman mulai) 133-(halaman selesai) 156.

of forum and choice of law clauses in international contracts.²³ Third, titled “Analysis of Choice of Forum Clauses in Standard E-Commerce Contracts in Indonesia: A Study from the Perspective of Consumer Protection Law” by Sarping Saputra, published in 2025 in *Jurnal Hukum & Pembangunan Masyarakat* (Vol. 17, No. 8), which discusses choice of forum clauses in digital (e-commerce) contracts and aspects of consumer protection.²⁴

This study offers a novel perspective compared to previous research, as it not only examines the validity of forum-selection clauses in general but also directly links them to cross-regional enforcement mechanisms and the notary’s responsibilities in drafting such clauses. This study is expected to make a conceptual contribution to the development of civil procedural law that is adaptable to modern contractual practices, without neglecting the principle of legal certainty and the territorial principle of court jurisdiction.²⁵

Unlike previous studies that primarily examine forum selection clauses in the contexts of international commercial contracts, Islamic banking disputes, or electronic commerce, this study develops a more comprehensive analytical framework by integrating the legal character of the Preliminary Sale and Purchase Agreement (PPJB), the interaction between Article 118 of the HIR and Article 1338 of the Civil Code, Supreme Court jurisprudence on relative jurisdiction, and the mechanism of delegated execution involving immovable property located outside the territorial jurisdiction of the adjudicating court. By examining these interconnected legal dimensions, this study contributes to the development of Indonesian civil procedural law through a systematic harmonization of contractual autonomy and procedural jurisdiction, while providing practical guidance for judges, notaries, and legal practitioners in resolving disputes arising from cross-regional land transactions.

²³ Margaretha et al., “Penerapan Klausula Pilihan Hukum (Choice of Law) Dan Pilihan Forum (Choice of Forum) Dalam Penyelesaian Sengketa Kontrak Internasional.”

²⁴ Sarping Saputra, “Analisis Klausula Choice of Forum Dalam Kontrak Standar E-Commerce Di Indonesia: Kajian Berdasarkan Perspektif Hukum Perlindungan Konsumen,” *Jurnal Hukum & Pembangunan Masyarakat* 17, no. 8 (2025): 210–27.

²⁵ - Penulis, “Analisis Klausula Pilihan Forum Dalam PPJB Atas Tanah Lintas Wilayah,” preprint, 2025.

The research questions include the following: 1) What is the legal basis that legitimizes the validity of a choice-of-forum clause in a Preliminary Sales and Purchase Agreement (PPJB) under the provisions of Article 118 of the HIR and Article 1338 of the Civil Code? and 2) What are the legal implications of applying a choice-of-forum clause on the relative jurisdiction of district courts and the enforcement of judgments when the parties and the subject matter of the agreement are located in different jurisdictions?

This study employs a normative legal research method, which focuses on positive legal norms as the primary subject of study.²⁶ This approach is used to analyze the validity, binding force, and legal implications of the forum selection clause in the Preliminary Sales and Purchase Agreement (PPJB) based on the provisions of Article 118 of the HIR regarding relative jurisdiction and Article 1338 of the Civil Code regarding the principle of freedom of contract.²⁷ This normative study aims to identify the consistency between applicable legal rules and the general principles of civil law, particularly the principles of *pacta sunt servanda* and *actor sequitur forum rei*. Therefore, this study does not utilize empirical field data but focuses on the analysis of written legal materials of a doctrinal and conceptual nature.²⁸

The types of approaches used in this study include the statutory approach and the conceptual approach.²⁹ The statutory approach involves analyzing the laws and regulations governing the relative authority of courts and freedom of contract, while the conceptual approach is used to understand the legal principles underlying these regulations.³⁰ The legal materials used consist of primary legal sources, namely statutes such as the HIR, the Civil Code, and SEMA No. 04 of

²⁶ Zainal Arifin et al., “Urgency Supreme Court Circular Letter Number 2 of 2023 in the Judicial Process of Interfaith Marriage Registration,” *Journal of Law and Legal Reform* 5, no. 1 (2024): 137–78, <https://doi.org/10.15294/jllr.vol5i1.2101>.

²⁷ Zainal Arifin et al., *Development of a Compensation Mechanism and Legal Reporting Framework for Consumers*, 4, no. 3 (2024): 275–88.

²⁸ Handayani et al., “Liability Without Fault Dalam Penyelesaian Sengketa Lingkungan Hidup Di Indonesia.”

²⁹ Handayani et al., “Liability Without Fault Dalam Penyelesaian Sengketa Lingkungan Hidup Di Indonesia.”

³⁰ Zainal Arifin, *Formulasi Kebijakan Tindak Pidana Kekerasan Pada Wartawan Saat Bertugas Dalam Undang-Undang Pers Di Masa Mendatang*, 334, no. 1951 (2016): 336–52.

2016; secondary legal sources, such as literature, textbooks, and scholarly articles on civil law; and tertiary legal sources, such as legal dictionaries and encyclopedias. The analysis was conducted qualitatively by interpreting legal norms and principles, then drawing deductive conclusions to identify the logical relationship between freedom of contract and the determination of the courts' relative jurisdiction in civil contracts.³¹

A. Legal Basis for the Validity of the Choice of Forum Clause in a Preliminary Sales and Purchase Agreement (PPJB) under Article 118 of the HIR and Article 1338 of the Civil Code

In Indonesian civil law practice, the existence of a choice-of-forum clause is a direct consequence of the application of the principle of freedom of contract as stipulated in Article 1338(1) of the Civil Code (KUHPerdara), which states that all validly entered into agreements are binding as law upon the parties who entered into them.³² This provision serves as the primary basis for the parties to determine for themselves the terms governing their legal relationship, including the forum for dispute resolution should a dispute arise in the future. Thus, the choice-of-forum clause holds a strong legal standing as an embodiment of the parties' autonomy of will in the realm of contract law.

Forum selection clauses are commonly found in agreements that involve elements spanning the jurisdictions of different district courts, such as in a Preliminary Sales and Purchase Agreement (PPJB) where the subject matter is located in a different area from where the parties

³¹ Zainal Arifin et al., "Implikasi Hukum Perubahan Kedua Undang-Undang Informasi Dan Transaksi Elektronik: Menyeimbangkan Kebebasan Berpendapat Dan Partisipasi Publik Dalam Demokrasi Digital," *Litigasi* 26, no. 1 (2025): 165–200, <https://doi.org/10.23969/litigasi.v26i1.21555>.

³² R. Subekti, *Pokok-Pokok Hukum Perdata* (Intermasa, 2003).

are domiciled or where the agreement was executed.³³ In this context, determining the forum for dispute resolution is crucial to providing legal certainty regarding which court has relative jurisdiction. This is in line with the principle set forth in Article 118(1) of the *Herziene Indonesisch Reglement* (HIR), which stipulates that civil lawsuits must be filed with the district court in the defendant's place of residence.³⁴ However, this provision is not an absolute rule, as Article 118(4) of the HIR provides for an exception if the parties have agreed otherwise in a contract.

The relationship between Article 1338 of the Civil Code and Article 118 of the HIR is complementary in this regard. Article 1338 of the Civil Code provides substantive legitimacy for the parties' freedom to include a forum selection clause, while Article 118 of the HIR provides procedural legitimacy for the enforceability of such a clause in the context of the relative jurisdiction of district courts.³⁵ It means that the court chosen by the parties in a valid agreement becomes the competent forum, provided that such choice does not conflict with public policy (*ordre public*).

Sudikno Mertokusumo explains in the literature on civil procedural law that relative jurisdiction can essentially be set aside by agreement between the parties because it is relative *ratione loci*, not *absolute ratione materiae*.³⁶ In other words, the parties may deviate from the provisions of Article 118(1) of the HIR through a written agreement, provided that such deviation is made voluntarily and does not harm the interests of public law. This view reinforces the position of the forum selection clause as a manifestation of the principle of freedom of contract in civil procedural law practice.

Subekti also emphasized that freedom of contract includes the freedom to choose the law and the court that will resolve disputes between the parties.³⁷ Therefore, as long as such a clause is validly drafted, free from defects of consent, and not contrary to law, the court

³³ Penulis, "Analisis Klausula Pilihan Forum Dalam PPJB Atas Tanah Lintas Wilayah."

³⁴ "HIR Pasal 118 Ayat (1)," preprint, n.d.

³⁵ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Liberty, 2010).

³⁶ Mertokusumo, *Hukum Acara Perdata Indonesia*.

³⁷ Subekti, *Hukum Perjanjian* (2004).

selected in the agreement must be considered to have relative jurisdiction. Subekti even referred to the forum selection clause as an embodiment of the principle of *pacta sunt servanda*—that is, that promises must be kept in accordance with the law.³⁸

The Preliminary Sales and Purchase Agreement (PPJB), in the context of the forum selection clause, serves a very important practical function. This agreement is often executed before a notary in one region, while the subject property is located in another region, and the parties are domiciled in different areas. These circumstances create potential uncertainty regarding relative jurisdiction in the event of a dispute. With a forum selection clause, the parties can designate the court they deem most efficient and accessible for dispute resolution.³⁹

A forum selection clause may not override mandatory provisions of law (*dwingend recht*). Yahya Harahap states that even though the principle of freedom of contract is recognized, its application must remain within the bounds of applicable laws and regulations and must not disproportionately harm the other party.⁴⁰ Thus, a forum selection clause that is unilaterally determined or creates an imbalance for one of the parties may be declared invalid.

In practice, the Supreme Court of the Republic of Indonesia has on several occasions affirmed the validity of forum selection clauses through significant rulings. One ruling frequently cited as a reference is Supreme Court Decision No. 115 PK/Pdt/1983, in which the Court affirmed that if the parties have agreed to designate the competent court in their agreement, that agreement must be respected and is binding on the parties. This decision demonstrates legal recognition of the principle of *pacta sunt servanda* in the context of the relative jurisdiction of courts.

Supreme Court Decision No. 3528 K/Pdt/1991: In that decision, the Court affirmed that a forum selection clause validly agreed upon by the parties binds them not to file a lawsuit outside the designated court, except in extraordinary circumstances provided for by law. This decision reinforces that an agreement regarding the forum for dispute resolution

³⁸ Subekti, *Hukum Perjanjian* (2004).

³⁹ M. Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan* (Sinar Grafika, 2017).

⁴⁰ Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan*.

has the same legal force as statutory provisions, provided it does not conflict with public order or morality.

Both decisions form the basis of case law that reaffirms the enforceability of forum selection clauses as an integral part of contractual freedom. Thus, when the parties to a Preliminary Sales and Purchase Agreement (PPJB) agree that disputes will be resolved in the Malang District Court, for example, that agreement is binding even if the parties subsequently move their *domicile* to another jurisdiction or the subject matter of the agreement is located outside the jurisdiction of the Malang District Court.⁴¹

From a procedural law perspective, such a forum selection serves to prevent forum shopping—that is, the act of a party filing a lawsuit in a court deemed more favorable to it.⁴² A forum selection clause provides both legal certainty and efficiency in the judicial process, as the agreed-upon court has the authority to hear and decide the case without the need to re-examine issues of relative jurisdiction.

In doctrinal analysis, a forum selection clause is also regarded as an instrument to strengthen the principles of legal certainty (*rechtszekerheid*) and good faith (*goede trouw*) in contractual relationships.⁴³ When the parties consciously designate a forum for dispute resolution, they demonstrate good faith in submitting to a legal mechanism that is certain and predictable. Therefore, a violation of such a clause may be considered a breach of contract, which carries its own legal consequences.

Furthermore, in notarial practice, notaries play a crucial role in ensuring that forum selection clauses are included in a clear, unambiguous manner that leaves no room for multiple interpretations. This is in line with the notary's responsibility to ensure the clarity and validity of the contents of authentic deeds, as stipulated in the Notary Public Act.⁴⁴ The inclusion of a choice-of-forum clause in a PPJB deed is not only legally valid but also carries full probative force in court.

⁴¹ Zainiah Anis, "Analisis Kekuatan Hukum Akta Notaris Tentang Perjanjian Perkawinan Pada Penetapan Perkara Perdata No 264/Pdt. P/2010 Di Pengadilan Negeri Malang," preprint, Universitas Islam Negeri Maulana Malik Ibrahim, 2011.

⁴² Ridwan Khairandy, *Hukum Perjanjian* (FH UII Press, 2014).

⁴³ Satjipto Rahardjo, *Ilmu Hukum* (Citra Aditya Bakti, 2000).

⁴⁴ Tentang Jabatan Notaris et al., *No Title*, 2014.

In the context of comparative law, the concept of a choice-of-forum clause is also widely recognized in both common law and civil law systems. In countries such as the Netherlands and France, such clauses are recognized provided they are made in good faith and do not conflict with the principle of a fair trial.⁴⁵ This demonstrates that the recognition of the freedom to choose a forum is a universal principle acknowledged in modern contract law.

The validity of forum selection clauses in the Indonesian legal system must be understood within the framework of a balance between the principle of freedom of contract and the principle of legal protection for the parties. The principle of freedom of contract allows the parties to choose the forum, but the principle of legal protection requires that such a choice not result in injustice.⁴⁶ Therefore, judges retain the authority to assess the validity of such a clause if it is proven to have been used manipulatively to evade legal liability.

Forum selection clauses are also closely related to the enforcement of judgments. As noted by H. R. Daeng Naja, although the competent court may be determined by agreement, enforcement must still be carried out by the court where the subject matter is located, in accordance with the principle of *forum rei sitae*.⁴⁷ It means that even if a dispute is heard in the Malang District Court, the enforcement of a judgment regarding land in Blitar must still be carried out by the Blitar District Court based on the delegation of authority for the enforcement of civil judgments. This principle maintains a balance between contractual flexibility and the certainty of legal enforcement.

The legal basis for the validity of the forum selection clause in the PPJB can be summarized as stemming from three main pillars: first, the principle of freedom of contract under Article 1338 of the Civil Code; second, the provision on exceptions to relative jurisdiction in Article 118(4) of the HIR; and third, the consistent recognition by Supreme Court case law of the validity of such clauses.⁴⁸ These three foundations

⁴⁵ Willem Grosheide and Katharina Boele-Woelki, *The Future of European Contract Law*, 2007.

⁴⁶ Agus Yudha Hernoko, *Asas Proporsionalitas Dalam Kontrak Komersial* (LaksBang Pressindo, 2010).

⁴⁷ H. R. Daeng Naja, *Eksekusi Putusan Perdata* (Sinar Grafika, 2012).

⁴⁸ “HIR Pasal 118 Ayat (1).”

complement one another to create a civil law system that is adaptable to the needs of society and modern business practices.

The validity of the forum selection clause can be affirmed not only on the basis of normative legitimacy but also on strong philosophical and jurisprudential grounds. In the context of Indonesian civil law, this clause is a concrete manifestation of the spirit of *pacta sunt servanda* and the principle of legal certainty.⁴⁹ The forum selection clause in a PPJB remains valid, binding, and must be respected by the parties and enforced by the courts, as long as it does not conflict with public policy.

Accordingly, this study aims not only to determine the legal validity of forum selection clauses in Preliminary Sale and Purchase Agreements (PPJB) under Indonesian civil procedural law, but also to critically evaluate the interaction between contractual autonomy and the rules governing relative jurisdiction in cross-regional land transactions. Through a normative and jurisprudential analysis of statutory provisions, legal doctrines, and Supreme Court decisions, this study seeks to develop a more coherent framework for harmonizing Article 118 of the HIR with Article 1338 of the Civil Code. The findings are expected to contribute both theoretically, by strengthening the conceptual relationship between substantive contract law and civil procedural law, and practically, by providing legal guidance for judges, notaries, legal practitioners, and contracting parties in drafting and enforcing forum selection clauses in PPJB involving immovable property across different judicial jurisdictions.

B. Legal Implications of the Application of Forum Choice Clauses on Relative Jurisdiction and the Enforcement of Judgments

The application of a choice-of-forum clause in civil agreements, particularly in Preliminary Sales and Purchase Agreements (PPJB), has

⁴⁹ Subekti, *Hukum Perjanjian* (2004).

implications not only for the legal status of the parties but also for the mechanisms of civil procedure, especially regarding the determination of the relative jurisdiction of district courts and the enforcement of judgments.⁵⁰ In the context of procedural law, relative jurisdiction determines which court has the authority to hear a case based on its territorial jurisdiction, while a choice-of-forum clause allows the parties to contractually designate that forum. Thus, there is a functional relationship between the principle of freedom of contract (Article 1338 of the Civil Code) and the principle of relative jurisdiction (Article 118 of the HIR), both of which must be harmonized to avoid legal uncertainty.

A forum selection clause serves as an instrument that can functionally strengthen legal certainty and the efficiency of judicial proceedings.⁵¹ Through this agreement, the parties have determined from the outset where their dispute will be heard should it arise in the future. This prevents debates over relative jurisdiction, as often occurs in litigation practice. In Supreme Court Decision No. 152 K/Pdt/1984, the Court affirmed that an agreement regarding the forum for dispute resolution is binding and cannot be disregarded merely because one of the parties has changed their domicile.⁵² Thus, the application of a forum selection clause has direct implications for the stability of civil court jurisdiction.

The application of this clause must also be limited by the principles of justice and fairness. In Indonesian civil procedure law, the principle of actor sequitur forum rei (the plaintiff follows the defendant's forum), as set forth in Article 118(1) of the HIR, is a general principle that guarantees the defendant's right not to be sued outside the jurisdiction of their domicile without a valid reason.⁵³ A forum selection clause that is unilaterally drafted and creates an imbalance in bargaining power may be declared invalid because it violates the principle of procedural justice. In practice, judges often apply this principle of justice to assess the validity of forum clauses in cases involving parties with weaker economic standing.

⁵⁰ Mertokusumo, *Hukum Acara Perdata Indonesia*.

⁵¹ Yahya Harahap, *Hukum Acara Perdata* (Sinar Grafika, 2015).

⁵² Putusan Mahkamah Agung No. 152 K/Pdt/1984 (1984).

⁵³ "HIR Pasal 118 Ayat (1)."

In addition to affecting jurisdictional aspects, the forum selection clause also has implications for the enforcement of court decisions. According to Article 195 of the HIR, the enforcement of civil judgments is carried out by the Chief Judge of the District Court that decided the case, unless the subject matter of the dispute is located outside the court's jurisdiction, in which case enforcement may be delegated to the court where the subject matter is located.⁵⁴ In the case of a PPJB, if the land in question is located in Blitar while the forum selection clause designates the Malang District Court as the competent court, the Malang District Court's judgment remains valid and can be enforced at the Blitar District Court through the mechanism of *delegatie van executie* (delegation of enforcement).⁵⁵ Thus, the forum selection clause does not eliminate the local court's authority to carry out enforcement, but merely determines the forum for hearing the case.

This view is also supported by H.R. Daeng Naja, who stated that relative jurisdiction applies only during the trial phase, whereas enforcement is subject to the principle of *forum rei sitae*—that is, the court where the property is located.⁵⁶ Therefore, the choice of forum in the Preliminary Land Purchase Agreement (PPJB)—which designates the Malang District Court as the forum for disputes over the land in Blitar—does not violate the law, because during the enforcement stage, the Malang District Court may still delegate enforcement to the Blitar District Court in accordance with the principle of the jurisdiction of the location of the property.⁵⁷ This view demonstrates that the Indonesian legal system accommodates flexibility in contracts without compromising the effectiveness of enforcement.

Theoretically, the validity of a forum selection clause in the context of relative jurisdiction must be understood within the framework of the principle of proportionality.⁵⁸ According to Agus Yudha Hernoko, the principle of proportionality in modern contracts requires a balance between freedom of contract and legal protection for

⁵⁴ “HIR Pasal 195,” preprint, n.d.

⁵⁵ R. Subekti, *Pokok-Pokok Hukum Perdata*, ed. Edisi Terbaru (Intermasa, 2022).

⁵⁶ Daeng Naja, *Eksekusi Putusan Perdata*.

⁵⁷ Daeng Naja, *Eksekusi Putusan Perdata*.

⁵⁸ Hernoko, *Asas Proporsionalitas Dalam Kontrak Komersial*.

the weaker party.⁵⁹ In the context of forum selection clauses, this principle requires that the choice of forum not impose an unreasonable burden on either party, for example, when the defendant's domicile is very far from the designated forum. Judges have the authority *ex officio* to assess this proportionality in order to ensure substantive justice.

From a practical standpoint, the application of forum selection clauses can also influence the parties' litigation strategies. Plaintiffs tend to choose a forum considered more "favorable" to their position, while defendants may invoke the *exceptio declinatoria* defense to challenge the relative jurisdiction of a court that does not align with the agreement.⁶⁰ In such cases, the court is required to first determine whether the lawsuit was filed in the court agreed upon in the contract. If not, the lawsuit may be declared inadmissible (*niet ontvankelijk verklaard*).⁶¹

The Supreme Court, in Decision No. 1653 K/Pdt/2005, affirmed that if a contract contains a forum selection clause, a lawsuit filed outside that forum must be declared inadmissible because it violates the principle of legal certainty.⁶² This decision underscores that a violation of a forum selection clause not only breaches a civil contract but also violates the rules of civil procedure governing relative jurisdiction. Thus, a forum selection clause possesses dual legal force: it is contractually binding and, procedurally, determines judicial jurisdiction.

From the perspective of procedural justice, a forum selection clause also serves as a mechanism to prevent overlapping jurisdiction among district courts.⁶³ In litigation practice in Indonesia, it is common for two or more courts to claim jurisdiction over the same case due to differing interpretations of jurisdictional boundaries. With a forum selection clause in place, such disputes can be avoided because the forum has already been predetermined by the parties. This supports the efficiency of the judicial administration and reduces the caseload in the courts.

The inclusion of a forum selection clause in an agreement is also consistent with the spirit of the modernization of Indonesian civil law,

⁵⁹ Hernoko, *Asas Proporsionalitas Dalam Kontrak Komersial*.

⁶⁰ Ridwan Khairandy, *Hukum Perjanjian* (FH UII Press, 2014).

⁶¹ Harahap, *Hukum Acara Perdata*.

⁶² Putusan Mahkamah Agung No. 1653 K/Pdt/2005 (2005).

⁶³ Rahardjo, *Ilmu Hukum*.

which prioritizes the principles of legal certainty and efficiency.⁶⁴ As noted by Ridwan Khairandy, modern contract law requires predictability in the enforcement of agreements, so that the parties can assess legal risks from the outset.⁶⁵ A forum selection clause provides this predictability by clearly specifying where disputes will be resolved. This is an important aspect of good contract governance in notarial and business practice.

Nevertheless, the courts retain the authority to intervene regarding forum selection clauses if such clauses are used abusively. For example, if a forum clause is established with the intent to hinder one party's access to justice, a judge may deem the clause invalid based on the principle of *ex aequo et bono*.⁶⁶ In several civil cases, the Supreme Court has affirmed that a forum selection clause cannot be used to deprive a person of the right to effective justice.⁶⁷ This means that the principle of freedom of contract is not absolute but is limited by the principles of justice and fairness.

Forum selection clauses also have significant implications for the relationship between civil courts and administrative courts. In some public contract disputes, forum clauses designating district courts are sometimes challenged because the subject matter of the contract involves a government agency.⁶⁸ In such situations, a forum selection clause does not automatically preclude the absolute jurisdiction of administrative courts if the dispute relates to an administrative decision. This indicates that the freedom to choose a forum applies only in the realm of purely civil matters, not to transfer absolute jurisdiction between courts.

In the context of PPJB, the choice of forum is highly relevant to the exercise of the parties' rights and obligations once the agreement takes effect. For example, in the event of a breach of contract regarding payment or the transfer of land, the aggrieved party may immediately file a lawsuit with the agreed-upon court without the need to further

⁶⁴ Khairandy, *Hukum Perjanjian* (FH UII Press, 2014).

⁶⁵ Khairandy, *Hukum Perjanjian* (FH UII Press, 2014).

⁶⁶ Subekti, *Pokok-Pokok Hukum Perdata*, ed. Terbaru.

⁶⁷ Putusan Mahkamah Agung No. 3179 K/Pdt/2002 (2002).

⁶⁸ Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia* (Gadjah Mada University Press, 2011).

debate relative jurisdiction.⁶⁹ Thus, this clause expedites the dispute resolution process and prevents the legal uncertainty that often arises in practice.

The forum selection clause not only provides certainty but also facilitates coordination among judicial institutions. The enforcement of a judgment delegated from the District Court that heard the case to the District Court where the subject matter is located (for example, from Malang to Blitar) demonstrates the flexibility of the Indonesian civil procedure system.⁷⁰ This delegation allows for the effective enforcement of the law without having to repeat the examination of the merits of the case. In this context, the principles of *locus regit actum* and *forum rei sitae* are applied in a balanced manner to ensure judicial efficiency.

The application of the forum selection clause has two implications: first, regarding relative jurisdiction, the clause establishes a valid and binding forum; second, regarding enforcement, the clause does not hinder the enforcement of the judgment because it remains subject to the principle of the location of the property.⁷¹ It means that the forum selection clause does not alter the structure of absolute jurisdiction but merely directs relative jurisdiction based on agreement.

The existence of forum selection clauses within a theoretical framework underscores the direction of the evolution of Indonesian civil law toward a contract system oriented toward legal certainty and efficiency.⁷² The Supreme Court, through its case law, has demonstrated a consistent stance of respecting forum agreements as long as they are validly and fairly entered into. Thus, Indonesian positive law has integrated the modern values of party autonomy into a procedural legal system that was originally rigid.

The legal implications of applying forum selection clauses in preliminary sales and purchase agreements (PPJB) can be emphasized not only in relation to technical procedural aspects but also as a reflection of the evolution of the Indonesian civil law paradigm toward a more flexible, fair, and efficient legal order.⁷³ This clause reinforces the

⁶⁹ Subekti, *Hukum Perjanjian* (2004).

⁷⁰ Daeng Naja, *Ekssekusi Putusan Perdata*.

⁷¹ Harahap, *Hukum Acara Perdata*.

⁷² Hernoko, *Asas Proporsionalitas Dalam Kontrak Komersial*.

⁷³ Mertokusumo, *Hukum Acara Perdata Indonesia*.

principle of *pacta sunt servanda* while expanding the application of the principle of proportionality in contracts. Ultimately, the application of the forum selection clause reflects a balance between freedom of contract, procedural justice, and legal certainty—three fundamental values in the national civil law system.⁷⁴

The application of a choice-of-forum clause in a Preliminary Sale and Purchase Agreement (PPJB) significantly influences the determination of the relative jurisdiction of district courts without eliminating the mandatory procedural rules governing the execution of judgments involving immovable property. A valid forum selection clause, concluded pursuant to Article 1338 of the Civil Code and recognized under Article 118 paragraph (4) of the HIR, binds the parties and authorizes the designated court to adjudicate contractual disputes arising from the PPJB, even where the parties subsequently relocate to different judicial jurisdictions. However, such contractual autonomy operates only at the adjudicative stage and does not alter the territorial principle governing the execution of judgments. In accordance with Article 195 of the HIR, the execution of judgments concerning land must be carried out by the district court within whose territorial jurisdiction the property is located through the mechanism of delegated execution (*delegatie van executie*). Consequently, the legal relationship between Article 118 of the HIR and Article 1338 of the Civil Code should not be understood as a conflict of norms but as complementary provisions that regulate different stages of civil proceedings. Article 1338 legitimizes the parties' contractual autonomy in selecting the competent forum, whereas Articles 118 and 195 of the HIR preserve procedural certainty by governing jurisdiction and execution according to territorial principles. This harmonized interpretation provides greater legal certainty for judges, notaries, legal practitioners, and contracting parties involved in cross-regional land transactions conducted through PPJB.

Conclusion

⁷⁴ Subekti, *Pokok-Pokok Hukum Perdata*, ed. Terbaru.

This study demonstrates that the enforceability of forum selection clauses in Preliminary Sale and Purchase Agreements (PPJB) reflects the harmonization of contractual autonomy and Indonesian civil procedural law rather than a conflict between substantive and procedural legal norms. First, the validity of a forum selection clause derives from the combined operation of Article 1338 of the Indonesian Civil Code, which recognizes the principle of freedom of contract, and Article 118(4) of the HIR, which permits parties to designate a competent court through a written agreement. As a preliminary contractual instrument, the PPJB not only establishes reciprocal contractual rights and obligations before the execution of the Sale and Purchase Deed (AJB) but also provides a legitimate legal basis for determining the forum for dispute resolution. Consequently, a validly agreed forum selection clause remains binding upon the parties notwithstanding subsequent changes in their domicile, provided that it does not contravene mandatory legal provisions, public order, or the principles of procedural fairness. Second, the legal implications of forum selection clauses extend beyond the determination of the relative jurisdiction of district courts to encompass the procedural mechanism for enforcing judgments involving immovable property. Although the selected court possesses relative jurisdiction to adjudicate disputes arising from the PPJB, the execution of judgments remains governed by the territorial principle embodied in Article 195 of the HIR through the mechanism of delegated execution (*delegatie van executie*). Accordingly, contractual autonomy determines the competent adjudicating forum, whereas territorial jurisdiction continues to regulate the execution stage. These legal regimes therefore operate in complementary rather than contradictory spheres, ensuring that judicial efficiency is achieved without undermining procedural certainty. This study contributes to Indonesian legal scholarship by developing an integrated analytical framework that connects the legal character of PPJB, the doctrine of contractual autonomy, the rules on relative jurisdiction, Supreme Court jurisprudence, and delegated execution within a single conceptual analysis. Unlike previous studies that examine these issues separately, this research demonstrates that their systematic harmonization provides a more coherent approach to resolving disputes arising from cross-regional land transactions. The findings therefore enrich the theoretical

development of Indonesian civil procedural law while offering practical guidance for judges, notaries, legal practitioners, and contracting parties in drafting, interpreting, and enforcing forum selection clauses in PPJB. Finally, this study acknowledges that its analysis is limited to normative legal sources and jurisprudential interpretation. Future research should incorporate empirical investigations involving judicial practice, notarial practice, and comparative analyses with other jurisdictions to evaluate how forum selection clauses are implemented in practice and to assess whether further procedural reform is required to accommodate increasingly complex cross-regional land transactions.

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