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Critical Review of Applying Party Autonomy and Lex Fori in Indonesia's Cross-Border Business PIL Bill

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Abstract:

This research critically examines the application of the party autonomy principle and the lex fori principle in the Draft Law on Indonesian Private International Law (RUU HPI) and its implications for cross-border business transactions. As the first codification of private international law in Indonesia, the RUU HPI systematically regulates the choice of law and jurisdiction, but creates tension between the freedom of the parties and state sovereignty. This normative legal research uses a statutory, conceptual, and comparative approach, with primary legal materials in the form of the RUU HPI, the Rome I Regulation, and related international instruments. The analysis is conducted qualitatively with grammatical, systematic, and teleological interpretations. The results of the research show that in the principle of party autonomy, the RUU HPI recognizes the freedom to choose the law, but restrictions through public policy and lois de police are formulated without clear parameters, thus potentially reducing legal predictability. In the principle of lex fori, the RUU HPI grants broad jurisdiction to Indonesian courts through exclusive jurisdiction and the doctrine of forum non conveniens, but does not explicitly regulate respect for the choice of court agreement of the parties. The imbalance between these two principles risks reducing Indonesia's attractiveness as a dispute resolution forum. This study recommends reformulating the limits of party autonomy with objective criteria, proportional limitations on exclusive jurisdiction, and explicit recognition of the parties' choice of forum to create a balance between freedom of contract and state sovereignty in the HPI Bill.

Keywords: Party Autonomy; Lex Fori; Indonesian International Civil Law; PIL Bill

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Introduction

Economic globalization has fundamentally changed the landscape of legal relations between countries, giving rise to a wave of complex and multidimensional cross-border business transactions, ranging from foreign direct investment contracts, international franchise agreements, to operational cooperation involving legal subjects from various jurisdictions. In every transaction containing foreign elements, two basic questions always arise: which country's law applies to the agreement (choice of law) and which court has the authority to adjudicate the dispute that arises (choice of forum). (Calster 2022) The two main pillars that serve as the foundation for answering these questions are the principle of party autonomy, which gives the parties the freedom to determine the law and forum that will govern their relationship, and the principle of lex fori, which reflects the sovereignty of the country where the court is located, which emphasizes that judges are bound by the procedural law and principles of public order of their own country.

The tension between universally recognized individual freedoms in international business practices and the public interest safeguarded by the state through lex fori creates a dynamic normative landscape, and the balance between the two is a key test for any system of private international law (IPL), especially for developing countries like Indonesia, which is striving to build a modern, predictive, and investment-friendly legal framework. Indonesia is currently at a crucial moment in its legal reform history, as the Draft Law on Private International Law (RUU HPI) has been designated as a priority in the National Legislation Program. (Farrington 2022)This codification of IPL is highly anticipated given that for more than a century, Indonesian private international law has been unwritten (onrechtelijk recht) and scattered across various articles in the Civil Code (KUHPerdata), the Herziene Inlandsch Reglement (HIR), and inconsistent jurisprudence, creating legal uncertainty that often acts as a non-tariff barrier for foreign businesses and investors.

The HPI Bill comes with a big ambition to systematically regulate aspects of determining applicable law, judicial jurisdiction, and the recognition and enforcement of foreign judgments, however, a number of substances in the Bill, especially those related to the application of the principles of party autonomy and lex

fori in cross-border business transactions, require in-depth critical review because they have the potential to give rise to ambiguous interpretations and even be counterproductive to the aim of creating a conducive business climate.

Specifically, in its choice of law clause, the Draft Law on the Indonesian Penal Code (IPR) recognizes the parties' freedom to choose the law governing their contracts. However, this freedom is significantly limited by provisions on public policy and lois de police, which unfortunately do not explicitly define their operational parameters. (Kusumadara 2022)This provision raises concerns that in the future, judges could easily override the parties' choice of law on the grounds of violating national public order, the definition of which is still flexible, thereby reducing the predictability that has been the main attraction of arbitration and litigation in a neutral forum.

On the other hand, regarding forum choice, the HPI Bill strongly adopts the lex fori principle by granting exclusive jurisdiction to Indonesian courts for certain types of disputes, such as those relating to land rights in Indonesia or those involving State-Owned Enterprises, without providing clarity on whether the parties are still permitted to have a choice of foreign forum or international arbitration clause. (Permatasari dkk. 2024)Practices in various developed jurisdictions show that overly broad restrictions on exclusive jurisdiction will actually make Indonesia viewed as a less arbitration-friendly jurisdiction and encourage business actors to choose Singaporean or English law and foreign arbitration forums, ultimately harming Indonesia's bargaining position as an investment host.

Furthermore, the HPI Bill still leaves ambiguity in the application of the forum non conveniens doctrine, which although it provides flexibility for judges to refuse to try cases that are more suitable to be tried in another country, but without clear criteria it can be abused to avoid handling complex cases, or conversely to impose Indonesian jurisdiction on cases that have very weak links to Indonesian jurisdiction, thereby harming the principles of justice and legal certainty that are the main objectives of HPI. (Sudirta 2025) Amid these challenges, the HPI Bill also shows a progressive spirit by adopting the proximity principle and provisions for the protection of weak parties in asymmetric contracts, such as insurance agreements,

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employment contracts, and consumer agreements, which reflect a paradigm shift from absolute freedom to substantial justice in modern HPI.

The urgency of conducting a critical review of the HPI Bill from the perspective of party autonomy and lex fori is particularly pressing for two main reasons. First, academically, there is still little literature that comprehensively examines the individual articles of the HPI Bill using a comparative law approach and regulatory impact analysis. Consequently, dialogue between academics, practitioners, and lawmakers remains limited to normative discussions that do not address practical implications on the ground. (Susanti 2026)Second, practically, the ongoing drafting of the HPI Bill represents a golden opportunity to incorporate critical input so that the final product is not only theoretically modern but also functional in supporting the cross-border business ecosystem that forms the backbone of the national economy. Without a proper balance between respect for the autonomy of the parties guaranteed by the principle of party autonomy and state authority protected by the principle of lex fori, there is concern that the HPI Bill will become a new source of uncertainty and give rise to unproductive judicial nationalism amidst Indonesia's efforts to improve its Ease of Doing Business ranking and attract foreign investment post-pandemic. (Takahashi 2022)Based on this background, this paper will critically examine how these two fundamental principles are regulated and reconciled in the Indonesian Draft Bill on International Civil Law, and offer a normative reconstruction that can bridge the need for legal certainty for cross-border business actors with national interests in maintaining sovereignty and public order, so that ultimately the codification of Indonesian International Civil Law can become a solid foundation for the implementation of international legal relations that are just and globally competitive.

Method

This research uses a normative legal research method (normative juridical) with a statute approach, a conceptual approach, and a comparative approach The (Atikah 2022)primary legal materials used include the Draft Law on Indonesian International Civil Law, international legal instruments such as *the Rome I Regulation,* and related laws and regulations.(Vickya dan Allagan 2023) Secondary

legal materials consist of literature, journal articles, and expert opinions on the principles of *party autonomy* and *lex fori* Tertiary legal materials consist of legal dictionaries and encyclopedias. The collection of legal materials was conducted through library research The analysis was conducted qualitatively using grammatical, systematic, and teleological interpretation methods, and using deductive reasoning to draw conclusions regarding the balance between the freedom of the parties and state sovereignty in the Indonesian Draft Law on the Rights of the Indigenous People.

The Principle of Party Autonomy in the HPI Bill: Between Recognition and Restriction

The principle *of party autonomy* is a fundamental principle in international civil law that grants the parties the freedom to determine the law governing their agreements. In the context of cross-border business transactions, this principle is a key pillar that ensures certainty, flexibility, and predictability of legal relations. The Indonesian Draft Law on International Civil Law (RUU HPI) explicitly recognizes this principle in its provisions regarding choice of law for agreements, reflecting the adoption of developments in modern international contract law as outlined in the European Union's *Rome I Regulation and the UNIDROIT Principles of International Commercial Contracts* (Adolf 2024)However, this recognition is not absolute because the RUU HPI also limits this freedom with a number of exceptions stemming from national interests, public order, and coercive legal provisions (*lois de police*), thus creating a normative tension between respect for the autonomy of will and protection of fundamental state values.

The restrictions on *party autonomy* in the HPI Bill are commonplace in international civil law systems across various countries, given that no country grants unlimited freedom if it conflicts with its sovereignty and public interest. The main problem lies in the unclear operational parameters regarding what constitutes *lois de police* and *public policy* in the Indonesian context. The HPI Bill lacks adequate

normative guidance, either in the form of article explanations or criteria that judges can use to apply these exceptions. (Aljarallah 2022)Consequently, there is the potential for broad, subjective, and unpredictable interpretations by judges when assessing whether a foreign choice of law should be set aside for violating Indonesian public order. This situation can significantly reduce the legal predictability *that* is essential for business actors in planning contracts and managing jurisdictional risks, and has the potential to give rise to *judicial nationalism* that is counterproductive to efforts to create a conducive investment climate.

Furthermore, the provisions regarding *lois de police* in the HPI Bill are formulated in a general manner without distinguishing between mandatory legal provisions that truly reflect vital public interests, such as environmental law, minimum wage labor law, and competition law, and administrative provisions that should not interfere with the parties' choice of law in commercial contracts. This less than clear-cut approach risks disproportionate *over-riding,* whereby a choice of law agreed upon by the parties in good faith can easily be overruled by a judge under the pretext of protecting national (Chen 2022)*lois de police* Furthermore, the HPI Bill also adopts provisions for the protection of the weaker party in asymmetric contracts, such as insurance agreements, employment contracts, consumer agreements, and agency contracts, where freedom of choice of law is more strictly limited by the requirement to maintain minimum protection based on the law of the consumer's place of residence or place of habitual employment.

Conceptually, the weak party protection approach aligns with developments in modern international private law, which no longer views *party autonomy* as absolute freedom but rather as an instrument that must be balanced with substantial justice. However, from the perspective of cross-border business transactions, these regulations need to be carefully designed to avoid creating uncertainty and excessive compliance burdens, particularly in business- *to -business (B2B) contracts* involving entities with equal bargaining power. (Dharmawan 2023)The current Draft Law on the Protection of Weak Parties (HPI) does not clearly distinguish between consumer contracts, which require special protection, and commercial contracts, which should provide greater freedom to the parties. In international practice, a more

proportionate approach is to limit protection only to contracts where there is a significant imbalance of information and bargaining power, while for B2B contracts agreed upon by parties assisted by legal counsel, the principle of *party autonomy* should be given high priority.

Indonesian Criminal Procedure Code (HPI) shows that although the principle *of party autonomy* is formally recognized within the codification framework, restrictions that are not accompanied by clear criteria and measurable parameters have the potential to shift the balance towards excessive dominance of the lex fori principle. When judges are given too broad discretion to determine *public policy* and *lois de police,* and apply protection of the weak party without clear limits, the legal certainty intended to be achieved through the codification can actually be eroded. (Ningsih 2023)The subsequent impact, Indonesia risks losing its attractiveness as the forum or jurisdiction of choice in international contracts, because parties tend to avoid uncertainty by choosing the laws of other countries with more predictable *public policy restrictions, such as Singaporean or* English law, and choosing arbitration forums abroad that are known to have a strong tradition of respecting *party autonomy*

Therefore, in the finalization process of the HPI Bill, a sharper reformulation of *the party autonomy limitation clause is needed,* by providing an operational definition of *public policy* that is limited to fundamental values that are truly upheld by the Indonesian legal system, and emphasizing that *lois de police* only includes provisions that explicitly state their coercive nature and have a direct relationship to vital public interests. (Okoli 2022)With this sharpening, it is hoped that the HPI Bill can achieve an ideal balance between recognizing the freedom of parties in cross-border business transactions and protecting legitimate national interests, so that the codification of Indonesian private international law truly becomes a solid foundation for the implementation of just, modern, and competitive legal relations at the global level.

The Principle of Lex Fori as a Determinant of Jurisdiction and Forum Limits

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In contrast to the principle of *party autonomy,* which emphasizes the freedom of parties to choose the law governing their agreements, *the lex fori principle* reflects state sovereignty in determining procedural law and the limits of its courts' jurisdiction. This fundamental principle serves as the basis for each country to maintain its authority to resolve disputes within its jurisdiction. In the Draft Law on Indonesian Private International Law (RUU HPI), *the lex fori principle* dominates provisions regarding Indonesian judicial jurisdiction, particularly in determining the authority to adjudicate civil cases containing foreign elements. (Oppusunggu 2025)This dominance is clearly evident in the jurisdictional regulatory structure, which grants Indonesian courts broad authority to examine cases based on various interconnected points, while also providing the basis for judges to apply national procedural provisions in assessing the validity of the parties' choice of forum. This approach, which places a strong emphasis on *the lex fori principle,* is understandable in the context of a country that is only just developing a codified version of private international law. However, if not formulated proportionally, it has the potential to create legal uncertainty and reduce Indonesia's competitiveness as a dispute resolution forum in cross-border business transactions.

The Indonesian Criminal Procedure Code (HPI) establishes several jurisdictional bases for Indonesian courts, including the defendant's domicile (*actor sequitur forum rei*), the place of performance, the location of the disputed object (*forum rei sitae*), and the place where the unlawful act occurred. This diversity of jurisdictional bases allows plaintiffs to choose the most advantageous forum (*forum shopping*), which in practice can create uncertainty for defendants who do not know for certain where they can be sued. In addition to these general jurisdictional bases, the HPI Bill also regulates *exclusive jurisdiction,* which grants Indonesian courts absolute authority to hear certain cases, thus prohibiting parties from choosing foreign forums or international arbitration. (Qu 2022)Cases covered by this exclusive jurisdiction include disputes related to property rights to land and buildings located in Indonesia, disputes regarding the validity and dissolution of legal entities established in Indonesia, and cases involving public legal entities or State-Owned Enterprises in certain fields as stipulated by statutory regulations. This exclusive jurisdiction provision strictly limits the freedom of the parties to choose the desired

forum, a limitation which, although conceptually justifiable to protect vital national interests, if formulated too broadly and without clear limitations, can actually give rise to negative perceptions among foreign investors who strongly desire the neutrality of the dispute resolution forum as one of the main determining factors in making cross-border investments.

In the context of forum choices made by parties in international contracts, the Draft Law on the Indonesian Criminal Procedure Code (HPI) shows significant weaknesses because it does not expressly regulate the position of foreign forum choice clauses (*choice of court agreements*), which are a manifestation of the principle *of party autonomy* in the jurisdictional realm. The absence of clear regulations regarding the extent to which Indonesian judges are obliged to respect the forum choices agreed upon by the parties creates dangerous legal uncertainty for business actors, because they cannot predict whether the clauses they have carefully negotiated will be respected by Indonesian courts or ignored based on *the lex fori principle* which gives judges the authority to determine their own jurisdiction. (Rifai 2022)Current judicial practice shows that in the absence of explicit regulations, judges tend to use their discretionary authority to declare themselves authorized to adjudicate cases even though the parties have agreed to choose a foreign forum, on the grounds that the choice of forum is not binding because it is contrary to *the lex fori principle* or because it is considered to violate public order. This attitude of lacking respect for the parties' choice of forum is contrary to the global trend of increasingly recognizing the importance of *party autonomy* in determining the forum, as reflected in the 2005 *Hague Convention on Choice of Court Agreements* which requires participating states to respect the parties' choice of exclusive forum except in very limited circumstances.(Santoso 2023)

Furthermore, the HPI Bill also adopts *the forum non conveniens doctrine,* which grants judges discretion to refuse to hear cases that are more appropriately heard in another country. This doctrine, in private international law practice, is intended to prevent an unreasonable burden on national courts and prevent excessive *forum shopping However, the forum non conveniens criteria* formulated in the HPI Bill remain very general and flexible, such as "a weak connection between the case and Indonesian jurisdiction" or "an unreasonable burden on Indonesian justice,"

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without being accompanied by measurable and objective parameters. (Sumardjono 2024)Without clear criteria, *the forum non conveniens doctrine* can be abused by judges to avoid handling complex cases on the grounds of a heavy burden of proof, or conversely, to impose jurisdiction on cases that actually have no substantive connection to Indonesia simply because of certain economic or political interests. This situation further reinforces the impression that *the lex fori principle* in the HPI Bill is applied *pro-forum,* providing very broad latitude for judges without being balanced by an adequate obligation to respect the parties' choice of forum.

A critical analysis of the jurisdictional provisions in the Draft Law on International Criminal Procedure (HPI) shows that *the lex fori principle* still tends to be applied *pro-forum,* providing judges with ample latitude to determine jurisdiction without adequately balancing it with the obligation to respect the choice of forum agreed upon by the parties. This approach, which places a strong emphasis on state sovereignty, is not entirely in line with the development of contemporary private international law, which increasingly emphasizes the principle of *comity* and respect for the autonomy of the parties. In the modern private international law system, the balance between *the lex fori principle* and *party autonomy* is realized through the recognition of *choice of court agreements* as a legitimate basis for jurisdiction, the limitation of exclusive jurisdiction to cases that truly concern vital public interests, and the formulation of measurable and predictable criteria for *forum non conveniens* Without sharpening these three aspects, the Draft Law on International Criminal Procedure (HPI) risks creating a jurisdictional system that is unfriendly to cross-border business transactions, as parties will tend to avoid the risk of uncertainty by choosing international arbitration forums abroad or placing their assets in jurisdictions with a stronger tradition of respecting forum choice.(Thontowi 2022)

Therefore, in the process of finalizing the HPI Bill, a more balanced reformulation is needed, namely by adding provisions that explicitly recognize the validity and regulate the mechanism for respecting *choice of court agreements*, formulating the limitations of exclusive jurisdiction in a more limited and proportional manner, and establishing objective and measurable *forum non conveniens criteria* so as not to leave too much discretion for judges. With the right

balance between the principles of *lex fori* and *party autonomy,* the HPI Bill is expected to become the basis for codifying international private law that not only protects national interests proportionally, but also creates a legal climate that supports cross-border business transactions by ensuring certainty, predictability, and respect for the parties' freedom of contract.

Conclusion

The Draft Law on Private International Law places Indonesia at a crucial juncture between respecting *the principle of party autonomy* and asserting sovereignty through lex fori in regulating cross-border business transactions. On the one hand, recognition of choice of law and forum provides opportunities for certainty and predictability for business actors, in line with international practice and instruments such as the Rome I Regulation. On the other hand, restrictions through public policy, lois de police, exclusive jurisdiction, and forum non conveniens, which have not been formulated with clear operational parameters, pose the risk of excessive judicial discretion, judicial nationalism, and a reduced appeal of Indonesia as a dispute forum and rule of law country of choice. Therefore, improvements to the Draft Law on Private International Law must be directed at sharpening the definition of restrictions, explicitly recognizing choice of law and choice of court agreements, and establishing measurable jurisdictional criteria to achieve a balance between national interests and the need for global legal certainty.

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