

TABLE OF CONTENTS

Acknowledgments	vii
List of Figures	xiii
List of Tables	xiii
Abbreviations	xv
Chapter 1 Introduction	1
1.1 An Outline of the Research Background	1
1.1.1 The Deviation of Choice of Law in Indonesia	1
1.1.2 The Continuous Advancement of Choice of Law	4
1.2 Research Questions and Objectives	7
1.3 Scope and Limitation of the Research	8
1.3.1 Central Concepts	8
1.3.2 Why Choice of Law	9
1.3.3 Why Indonesia	10
1.4 Choice of Research Methodology and Sources	12
1.4.1 Doctrinal Method	12
1.4.2 Interviews	14
1.5 Academic and Societal Relevance of the Research	16
1.6 Structure of the Research	18
Chapter 2 The Labyrinth of Choice of Law	21
2.1 Overview	21
2.2 The Evolvement of Choice of Law	21
2.2.1 The Early Days	21
2.2.2 The Rise of Acknowledgement	27
2.2.3 The Remaining Reluctance	32
2.2.4 The Continuing Harmonisation Attempts	34
2.3 Theoretical Justification	38
2.3.1 State-Sovereigntist Perspective	39
2.3.2 Party-Sovereigntist Perspective	41
2.4 Functioning Choice of Law	43
2.4.1 Internationality of the Contract	43
2.4.2 Type of Contract	45
2.4.3 The Validity of Choice of Law Agreement	46

TABLE OF CONTENTS

2.4.4	The Chosen Law	48
2.4.5	Choice of Invalidating Contract	50
2.5	Limits of Choice of Law	52
2.5.1	Public Order (Ordre Public)	52
2.5.2	Mandatory Rules	53
2.6.	Conclusions	55
Chapter 3	Civil Law, PIL, and Choice of Law in Indonesia	57
3.1	Overview	57
3.2	The Arrival that Changed the East Indian Archipelago	58
3.2.1	Vereenigde Oost-Indische Compagnie	59
3.2.2	Introduction of Dutch Laws to the Dutch East Indies	60
3.3	Indonesian Civil Law	64
3.3.1	Application of the Burgerlijk Wetboek voor Indonesië	65
3.3.2	Contract Law	67
3.4	Indonesian Civil Procedure	71
3.4.1	The Law of Civil Procedure	71
3.4.2	The Judicial System	72
3.4.3	Yurisprudensi	74
3.5	Indonesian Private International Law	77
3.5.1	Historical Context	77
3.5.2	The Work of Sudargo Gautama	79
3.5.3	Sources of Indonesian Private International Law	83
3.5.4	The Role of Court Decisions	86
3.5.5	The Attempts to Codify PIL Rules	88
3.5.6	Participation in International Conventions	89
3.6	Choice of Law in Indonesia	90
3.6.1	A Doctrine Introduced by Indonesian Scholars	90
3.6.2	More Recent Scholarly Writings	98
3.6.3	Stipulation in National Legislation	106
3.6.4	Choice of Law Provisions in the Indonesian PIL Bill	108
3.7	Conclusions	110
Chapter 4	Choice of Law and the Indonesian Judicial Practice	111
4.1	Overview	111
4.2	Data Collection: General Aspects	111
4.3	The Court Decisions	114
4.3.1	Refusing Jurisdiction on the Basis of Choice of Foreign Forum	114
4.3.2	Refusing Jurisdiction on the Basis of Choice of Foreign Law	120

4.3.3	Disregarding Choice of Foreign Forum and Choice of Foreign Law	130
4.4	The Judicial Practice: Findings and Observations	144
4.4.1	General Observations	144
4.4.2	Tactics for Linking Disputes to Indonesia	147
4.4.3	Conflation of Choice of Law and Choice of Forum	152
4.4.4	Reference to a Misleading Court Decision	156
4.4.5	Historical Influence on the Judicial Practice	157
4.4.6	The Role of an Expert Witness	159
4.4.7	Scepticism Regarding the Judges	161
4.4.8	Freedom of Contract Principle as the Legal Source of Choice of Law	163
4.4.9	Reliance on the Objective Factor with Regard to PIL Rules	164
4.5	Conclusions	165
Chapter 5	The Challenges in Applying Choice of Foreign Law in Indonesia: Interviews Findings	167
5.1	Overview	167
5.2	Data Collection: General Aspects	167
5.3	Choice of Law: Legal Practitioners' Views	171
5.3.1	Familiarity with Choice of Law	171
5.3.2	Freedom of Contract Principle as the Legal Source of Choice of Law	173
5.3.3	The Importance of Choice of Law	174
5.4	International Commercial Contract Disputes: Legal Practitioners' Views	175
5.4.1	Jurisdiction of the Indonesian Court	175
5.4.2	Choice of Foreign Law by the Parties	179
5.4.3	Peculiarities in the Court Practice	185
5.5	Difficulties Encountered by Legal Practitioners	188
5.5.1	Limited Regulatory Frameworks	188
5.5.2	Shortcomings in the Judicial System	190
5.5.3	The Negative Public Perception of the Courts	197
5.5.4	Language	199
5.6	Conclusions	200
Chapter 6	Conclusions	203
6.1	Overview	203
6.2	Theoretical Discourse and Regulatory Framework of Choice of Law	203
6.3	Unravelling Choice of Law in Indonesia	207
6.3.1	Scholarly Works	207

TABLE OF CONTENTS

6.3.2	Regulatory Frameworks	210
6.3.3	The Judicial Practice	211
6.3.4	Factors Influencing the Reluctance and Unpredictability	214
6.4	Recommendations and Further Research	223
6.4.1	The Ways Forward	223
6.4.2	Improving the Understanding of Choice of Law	224
6.4.3	Improving the Regulatory Frameworks Involving Choice of Law	227
6.4.4	Improving the Judicial Practice	229
6.5	Final Remarks	232
	Bibliography	235
	List of Regulations	261
	List of Cases	269
	Annexes	273