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The Intersection of the Actor Sequitur Forum Rei Principle with the Pacta Sunt Servanda Principle in Determining Relative Competence

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Abstract: This study focuses on the conflict between the principle of pacta sunt servanda (agreement on the choice of court in a contract)and the principle of actor sequitur forum rei (lawsuit filed at the place of residence of the defendant) in determining the relative competence of the court. The purpose of this study is to analyze the construction of the meaning of the agreement, the application of these two principles, and their impact on justice for the disputing parties. The research method employs a normative juridical approach, utilizing a statutory approach, a conceptual approach, and a case approach, which examines legislation, legal concepts, and related court decisions. The results of the study show that the application of the pacta sunt servanda principle or the choice of domicile in accordance with the contents of the contract often conflicts when the lawsuit filed by the plaintiff does not correspond to the domicile chosen in the agreement. In several decisions reviewed, the court determined relative jurisdiction in accordance with thethe chosen domicile without considering the bargaining position of both parties, thuscausing injustice to the weaker party, because judges tend toprioritize the forum selection clause without considering the bargaining position of theparties, even though based on Article 118 paragraph (4) of the HIR, the choice of domicile inan agreement is not absolute, but voluntary. This study recommends the need for a balance between legal certainty and substantive justice, which must be maintained by judges, as well as the strategic role of notaries in providing legal education to parties regarding the consequences of court jurisdiction clauses.
Keywords: Actor sequitur forum rei priciple; agreement; relative competence.

Introduction

Civil claims made by parties who feel harmed by the actions of other parties, be it cases of default or tort, are the right of everyone in order to seek legal certainty over the case they are experiencing. Relationships that give rise to rights and obligations have been regulated in legal regulations are called legal relationships. A legal relationship is a relationship that is regulated by law and becomes the object of law. In civil law, the rights and obligations of people who enter into legal relations are regulated, including written rules in the form of laws and regulations and unwritten rules in the form of customary law and habits that live in society.

All social interactions between the relationships of two or more people who agree to perform certain legal acts, either orally or in writing, and then on the agreement gives rise to rights and obligations, then such legal acts are mutual legal acts (symbiotic mutualism) that are mutually beneficial as long as one party does not break promises (default) or commit illegal acts (*onrecht matige daad*)[1].

[1] G.F. Bell, "Formation of Contract and Stipulations for Third Parties in Indonesia," in *Studies in the Contract Laws of Asia II: Formation and Third Party Beneficiaries* (2018), 365–95 https://doi.org/10.1093/oso/9780198808114.003.0018.

The basis of the bond between the two parties in interacting and negotiating, which is then stated in the agreement between the two parties, which is actually a pledge to obey what they have stated in the agreement[2], so it can be interpreted that the agreement is a law for the two parties who make it (*pacta sunt servanda*)[3].

The agreement made by the parties must be based on the principle of good faith[4], of course, it must meet the requirements as stipulated in Article 1320 of the Civil Code, namely: (1) Agreement, (2) Capable, (3) A certain thing, and (4) A lawful cause. The agreement is outlined in the form of an agreement described in the articles, one of which articles clauses emphasize the agreement on the choice of the place of the Court if there is a dispute that cannot be resolved by deliberation[5].

If there is such an agreement, this will lead to potential clashes (multi interpretation) over the relative competence of the choice of where the Court is located, this is if it turns out that the party who breaks the promise is a party whose residence is not in the place where the Court is located, so the potential to renege on the agreement as in the clause of the article on the choice of where the Court is located in the event of a dispute is very wide open. The position of the civil court, which acts as a judicial institution in resolving disputes arising among members of society who have various problems. There are several types of disputes, including disputes that arise in various kinds, there are default disputes related to agreements and so on (breach of contract), unlawful acts (onrechtmatige daad), intellectual property disputes (property rights), bankruptcy disputes, divorce disputes, disputes over abuse of authority by the authorities[6].

A lawsuit must be filed with a judicial body that is properly authorized to hear this matter.2 Civil procedural law applies in the examination of civil cases in court. Therefore, talking about civil procedural law will not be separated from the judicial system in Indonesia. Based on Article 24 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), judicial power is exercised by the Supreme Court and the judicial bodies under it and a Constitutional Court. Each judicial environment has relative competence [7].

Relative competence is which regional court is authorized to hear and decide [8]. Observing the description above, the researcher will examine relative competence related to the area of adjudicating a case, because in this relative competence issue relates to which court has the right to

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[2] D.A. Bakung, Z. Abdussamad, and M.H. Muhtar, "The Principle of Freedom of Contract in Agricultural Product Sharing Based on Islamic Law," *Jambura Law Review* 4, no. 2 (2022): 344–58 https://doi.org/10.33756/jlr.v4i2.11645.

[3] S. Azam and D. Harianto, "The Undue Influence Doctrine and Its Function in Consumer Financing Cases," *Jurnal Media Hukum* 27, no. 2 (2020): 240–51. https://doi.org/10.18196/jmh.20200154.

[4] M.C. Nugrahenti and A. Hernawan, "Good Faith Principle in Indonesian Contract Law: How to Set the Definition and Its Benchmarks," *Journal of Infrastructure, Policy and Development* 8, no. 10 (2024). https://doi.org/10.24294/jipd.v8i10.7358.

[5] T. Tarmizi, "The Principle of Consensualism and Freedom of Contract as a Reflection of Morality and Legal Certainty of Contract Laws in Indonesia," *Webology* 17, no. 2 (2020): 336–47, https://doi.org/10.14704/WEB/V17I2/WEB17036.

[6] Hairul Maksum, "Batasan Kewenangan Mengadili Pengadilan Umum Dalam Penyelesaian Sengketa Perbuatan Melawan Hukum Yang Melibatkan Badan Negara Atau Pejabat Pemerintah (Ditinjau Dari Peraturan Mahkamah Agung Nomor 2 Tahun 2019)," *Juridica : Jurnal Fakultas Hukum Universitas Gunung Rinjani* 2, no. 1 (November 2020): 4–16.

[7] Sujayadi Sujayadi and Sugeng Bambang A.S, *Hukum Acara Perdata (Dokumen Litigasi Perkara Perdata)* (Jakarta: Kencana, 2011).

[8] A. Kusumadara, "Jurisdiction of Courts Chosen in the Parties' Choice of Court Agreements: An Unsettled Issue in Indonesian Private International Law and the Way-Out," *Journal of Private International Law* 18, no. 3 (2022): 424–49. https://doi.org/10.1080/17441048.2022.2148905.

hear a case, so that later there will be no errors in filing the case [9]. This relative competence has something to do with the problem to be studied, namely the principle of forum domicile in the case, because this principle is a principle of relative competence.

The choice of the place of the Court as stated in the article clause in the agreement has the potential to clash with relative competence, which each party will maintain the choice of the place of the Court (Relative competence), by referring to the agreement in the agreement (pacta sunt servanda principle) and based on the principle of actor sequitur forum rei, so that it has an impact on the clash of norms of principles in civil procedural law.

Method

The research method employed by the author utilizes a normative juridical approach, which centers on the analysis of legal principles, statutory regulations, and primary literature relevant to the application of the principle of pacta sunt servanda in agreements and the principle of actor sequitur forum rei in determining relative competence. This approach involves both statutory and conceptual analyses, examining the relevant laws, regulations, and expert opinions to address the legal issues under study. By focusing on these methods, the research aims to provide a comprehensive understanding of how these legal principles are interpreted and applied within the Indonesian legal system, particularly in the context of contract law and jurisdictional competence.

The legal materials used in this research consist of primary, secondary, and tertiary sources, all of which are directed toward evaluating the implementation of legal rules or principles in Indonesia's positive law. The use of these varied sources allows for a thorough assessment of the practical application of pacta sunt servanda, which is recognized as a binding principle in both national and international contexts, as reflected in Article 1338 of the Indonesian Civil Code and supported by court decisions and legal scholarship. This methodological framework ensures that the research not only addresses the doctrinal aspects of the principles but also considers their real-world implications and the dynamics of their enforcement in Indonesian law.

Result and Discussion

Agreement Construction

The definition of an agreement is regulated in Article 1313 of the Civil Code, which reads "an agreement is an act by which one or more people bind themselves to one or more people". Many legal experts have commented on the definition of an agreement according to the Civil Code, because it is considered to contain too narrow and too broad a meaning. It is considered to contain too narrow a meaning because in this definition, it is said, "one or more people bind themselves to one or more people". This sentence gives the impression that only one or more people are actively binding themselves, while the other parties are only passive, as in a unilateral agreement, while reciprocal agreements are not accommodated in this definition. The word "action" in the definition

[9] S. S.H and H. Sugiyono, "Government Policy in Indonesian Contract Law That Still Uses Contract Law Inherited from Dutch Product," *International Journal of Law and Management* 66, no. 1 (2024): 1–10. https://doi.org/10.1108/IJLMA-09-2022-0203.

of the agreement is also considered to contain a broad meaning because it is also interpreted to include voluntary actions (zaakwarneming) and also unlawful acts (onrechtmatige daad)[10].

The principle of Pacta Sunt Servanda is a core concept in contract law, stating that legally made agreements are binding and must be honored by the parties involved. This principle means that an agreement, once validly formed, has the force of law for those who make it, and cannot be withdrawn unilaterally except under certain legal conditions.

Every agreement is governed by certain fundamental principles that must be followed during its creation. One of these is the Pacta Sunt Servanda principle, which requires that parties who enter into an agreement are legally bound to fulfill its terms. In effect, a valid agreement holds the same authority as law for those involved, and it cannot be revoked unless both parties consent or specific legal reasons allow it. This principle is established in Article 1338 paragraphs (1) and (2) of the Civil Code, which state that all legally made agreements are binding as law for the parties, and can only be canceled by mutual agreement or for reasons recognized by law.[11]

The actor sequitur forum rei principle in civil procedure law generally requires that a lawsuit be filed in the court where the defendant resides, making it a mandatory rule with certain exceptions. Even when parties agree on a specific court (domicile of choice), this principle remains the default unless the agreement fulfills legal requirements. Actor sequitur forum rei means that the competent court is the one located in the defendant's domicile, serving as the main guideline for determining a court's relative jurisdiction. However, parties can make a written agreement to bring their dispute before a different court, not necessarily where the defendant lives—this is called a domicile of choice. Still, the actor sequitur forum rei principle continues to be the primary basis for court authority, and the chosen domicile is only valid if it meets the conditions set out in Article 118 (1) HIR / Article 142 RBg and does not violate legal provisions. According to Article 1313 of the Civil Code, an agreement is an act where one or more persons bind themselves to others, involving at least two parties and creating obligations between them.

This paraphrase is supported by research showing that actor sequitur forum rei is the foundational rule for determining court jurisdiction in civil law systems, linking jurisdiction to the defendant's domicile and providing protective aspects for the defendant. While parties may agree on a different court, such agreements are only recognized if they comply with specific legal conditions, and the default remains the defendant's domicile unless otherwise stipulated by law[12].

The Civil Code uses an open system for agreements, allowing parties to freely determine the terms of their contract. This is the opposite of the closed system used for objects, where the law strictly defines what is allowed. The rules in the law of agreements are supplementary, meaning parties can override them with their own terms. If the parties do not specify certain terms, such as the choice of court location, the default legal provisions will apply, following the principle that the defendant's court is the proper forum.

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[10] Anggitariani Rayi Larasati Siswanta, "Penerapan Asas Pacta Sunt Servanda Dalam Perjanjian Standar Yang Mengandung Klausula Eksonerasi Tanpa Menerapkan Asas Itikad Baik," *Jurnal de Jure Universitas Jenderal Soedirman* 1, no. 15 (April 2023): 49–50.

[11] Syaeful Bahri and Jawade Hafidz, "Penerapan Asas Pacta Sunt Servandapada Testamentyang Dibuat Di Hadapan Notaris Dalam Perspektif Keadilan," *Jurnal Akta* 4, no. 2 (June 2017): 152.

[12] Kartini Muljadi and Gunawan Widjaja, *Perikatan Pada Umumnya* (Jakarta: PT. Raja Grafindo, 2003).

Pacta Sunt Servanda Principle

Pacta sunt servanda comes from Latin with the meaning 'promises must be kept' (agreements *must be kept*)[13]. Referred to the official website of Medan Area University, this principle is generally known in countries with civil law principles[14]. On the other hand, countries that apply the common law system also have something similar[15]. It's just that the term used is different, namely, the principle of the sacredness of the contract, or commonly called the sanctity of contract.

In daily life, humans will interact with each other based on personal interests. With these interests, a bond is formed[16]. This bond is binding on both parties[17]. This bond is binding on both parties (Ikonomi & Zyberaj, 2022). In a sense, each party must fulfill the contents of the bond as it should. The reason why a human being is willing to abide by this bond is the moral and ethical demands that he or she has[18].

In countries with civil law systems, ethical and moral rules cannot be applied before they are included in the law[19]. Referred from the official website of Binus University, the regulation of pacta sunt servanda can be found in the Civil Code (KUHPer), to be precise, article 1388 paragraph (1) and (2), which reads: All agreements made legally shall apply as law to those who make them[20].

The Pacta Sunt Servanda principle is a cornerstone of contract law, requiring that valid agreements are honored and cannot be unilaterally withdrawn by one party without the other's consent or a legal basis [21].The principle of freedom of contract grants parties the autonomy to decide whether or not to enter into an agreement, select their contracting partner, determine the purpose (causa) and object of the contract, and set the terms and conditions, including the ability to accept or deviate from non-mandatory legal provisions, as long as these choices respect the boundaries set by law, public order, and fairness; this principle is fundamental in civil law, allowing individuals to structure their legal relationships according to their own interests and needs, provided they act within the framework of reasonableness, good faith, and legal norms[22].

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[13] P. Rott, "Information Obligations and Withdrawal Rights," in *The Cambridge Companion to: European Union Private Law* (2015), 187–200, https://doi.org/10.1017/CCO9780511777714.014.

[14] F. Zoll, "The Binding Power of the Contract: Protection of Performance in the System of the Common European Sales Law," *Journal of International Trade Law and Policy* 11, no. 3 (2012): 259–65, https://doi.org/10.1108/14770021211267360.

[15] N. Witzleb, *Contract Law in Changing Times: Asian Perspectives on Pacta Sunt Servanda*, Contract Law in Changing Times: Asian Perspectives on Pacta Sunt Servanda (2022), 268, https://doi.org/10.4324/9781003280248.

[16] H.H. Edlund, "Imbalance in Long-Term Commercial Contracts," *European Review of Contract Law* 5, no. 4 (2009): 427–45, Scopus, https://doi.org/10.1515/ERCL.2009.427.

[17] E. Ikonomi and J. Zyberaj, "THE CONTRACTUAL RIGHT TO WITHDRAW: COPYRIGHT CONTRACT V COMMERCIAL CONTRACT," *Balkan Social Science Review* 19 (2022): 123–37, https://doi.org/10.46763/bssr2219123i.

[18] C. Sánchez Hernández, "THE RESPONSE TO THE SUPERVENING CHANGE IN CONTRACTUAL CIRCUMSTANCES DUE TO SOCIAL AND ECONOMIC VULNERABILITY," *Actualidad Juridica Iberoamericana*, no. 16 BIS (2022): 2318–37.

[19] C. Sieber-Gasser, "Flexibility in International Economic Law vs. Pacta Sunt Servanda: Maintaining Legitimacy Over Time," in *Economic Analysis of Law in European Legal Scholarship* (2021), 10:201–20, https://doi.org/10.1007/978-3-030-69154-7_9.

[20] C.G. Paulus, "The Erosion of a Fundamental Contract Law Principle Pacta Sunt Servanda vs. Modern Insolvency Law," *JUS Rivista Di Scienze Giuridiche* 2024, no. 1 (2024): 5–17, https://doi.org/10.26350/004084_000167.

[21] R. Kolb, "The Basis of Obligation in Treaties of Ancient Cultures - Pactum Est Servandum?," in *Brill's Arab and Islamic Laws Series* (2019), 14:110–26, https://doi.org/10.1163/9789004388376_007.

[22] Anggitariani Rayi Larasati Siswanta and Maria Mu'ti Wulandari, "Penerapan Asas Kebebasan Berkontrak Pada Perjanjian Baku Dalam Perjanjian Kerja," *Soedirman Law Review* 4 (November 2022): 409–20.

The binding force of an agreement can be limited by two main factors[23]; the requirement of good faith and the occurrence of force majeure (overmacht). These limitations are recognized in both legal doctrine and court practice, especially in situations where unforeseen events disrupt contractual obligations.

Agreements must be carried out in good faith, as mandated by Article 1338 of the Civil Code. This principle ensures that parties act honestly and fairly in fulfilling their contractual duties. Courts often assess whether parties have acted in good faith, especially when disputes arise over contract performance during challenging circumstances such as the Covid-19 pandemic. Good faith serves as a mitigating factor, promoting fairness and encouraging renegotiation or adjustment of contract terms rather than immediate termination or litigation.

Force majeure refers to extraordinary events beyond the control of the parties, such as natural disasters or pandemics, which make it impossible to fulfill contractual obligations. When force majeure occurs, the defaulting party may be exempt from liability if they can prove the event was unforeseeable, unavoidable, and not due to their fault. In such cases, courts may suspend or terminate contractual obligations, but only if the affected party has acted in good faith and the event meets the legal criteria for force majeure [24]

Actor Sequitur Forum Rei Principle

The basis of this relative competence stems from the rules that determine which court the lawsuit is filed in so that the lawsuit meets the formal requirements. In connection with that, so that the filing of a lawsuit is not wrong and wrong, it must be considered the benchmark determined by the law in determining relative competence[25].

Forum domicile, or in Latin called actor sequitur forum rei, is a term of principle regarding the relative competence of the court, which this principle relates to the factor of residence of the Defendant. This benchmark is regulated in Article 118 paragraph (1) HIR, which confirms that "Civil lawsuits which at the first level fall under the authority of the District Court, must be filed with a request letter signed by the Plaintiff or by his representative according to Article 123, to the chairman of the district court in the jurisdiction where the Defendant resides or if his place of residence is unknown, his actual residence".

According to this provision, the relative competence of the District Court is determined by the residence of the Defendant. Which means the relative authority of the District Court to hear a case if the Defendant resides in the jurisdiction of the relevant District Court. Matters relating to this principle are as follows: (1) Residence of the Defendant. According to the law what is meant by a person's residence includes: a place of residence or a certain address, or actual residence. Actual residence is the place where a person actually lives; (2) Sources for Determining Residence. In this case, which is a legal and official source in determining the residence of the Defendant consists of

[23] D. Davison-Vecchione, "Beyond the Forms of Faith: Pacta Sunt Servanda and Loyalty," *German Law Journal* 16, no. 5 (2015): 1163–90, https://doi.org/10.1017/S2071832200021076.

[24] S.-I. Lekkas and A. Tzanakopoulos, "Pacta Sunt Servanda versus Flexibility in the Suspension and Termination of Treaties," in *Research Handbook on the Law of Treaties* (2014), 312–40, https://doi.org/10.4337/9780857934789.00020.

[25] J.C. González, "The Defendant's Domicile In The Brussels The Regulation 1215/2012'. A Critical Approach of The Actor Sequitur Forum Rei Rule," *Cuadernos de Derecho Transnacional* 11, no. 1 (2019): 112–38, https://doi.org/10.20318/cdt.2019.4616.

several types of deeds or documents, including the Identity Card (KTP), Household Card, Tax Letter and Company Articles of Association.

Filing a lawsuit with the District Court outside the area of residence of the defendant, is not justified. This is considered as a legal rape of the defendant's interest in defending himself. The ratio of the enforcement of the actor sequitur forum rei or domicile forum, aims to protect the defendant. Anyone is not prohibited from suing someone, but the interests of the defendant must be protected by conducting an examination in the District Court where he lives, not where the plaintiff lives. If the benchmark is the plaintiff's residence, it can cause misery and difficulty to the defendant, if the plaintiff's residence is far from the defendant's residence, for example, the plaintiff residing in Papua sues someone who resides in Surabaya, then if the benchmark is based on the competence of relatih at the plaintiff's residence, it means that the defendant who resides in Surabaya, must appear and appear before the Papua District Court. This is considered unfair. Naturally, someone who files a lawsuit against another person, must dare to face that person at the defendant's residence.

However, when the lawsuit filed by the plaintiff is based on an agreement that has been made jointly between the parties contained in the agreement clause, namely "in the event of a dispute, the domicile of the Surabaya District Court will be chosen (for example), and tenyata the plaintiff's domicile is in Surabaya, then according to the clause, the relative competence is in the Surabaya District Court, this is because there is an agreement to choose the domicile of relative competence, then it is bound by the principle of pacta sunt servanda, the agreement made by the parties makes the law for those who make it.

Problems arising from the agreement on the selection of the domicile of relative competence will not be a significant problem, if it turns out that in the example case above, the defaulting party is a party domiciled in Surabaya, so that the lawsuit can be filed in the Surabaya District Court (according to the principle of actor sequitur forum rei), but if the defaulting party (defendant) is a party domiciled in Papua, then here there will be a clash of the two principles, because the lawsuit should be addressed in the Papua District Court where the Defendant resides.

The Choice of Domicile Does Not Absolutely Exclude the Principle of Actor Sequitur Forum Rei

The parties' agreement regarding the choice of domicile is, in principle, subject to the principle of freedom of contract outlined in Article 1338 of the Civil Code. Therefore, the agreement is binding (blinding), however, the provisions of Article 118, paragraph (4) of the HIR itself, limit the level of the degree of its strength. Not absolute, but voluntary. The parties, in this case the party acting as plaintiff[26]; (1) If he likes or if he wants and wishes, can file a lawsuit to the District Court that has been selected and agreed upon; (2) Thus, if the plaintiff wishes or wishes, the District Court that has relative competence to hear the case is based on the domicile of choice.

This can be drawn from the words of Article 118 paragraph (4) HIR, which states: "... then the plaintiff, if he likes, can submit the lawsuit to the chairman of the district court in the jurisdiction where the chosen domicile is located."

The selection of the domicile of relative competence outlined in Article 1148 paragraph (4) HIR, Article 142 paragraph (4) RBG or Article 99 paragraph (16) Rv, is related to Article 118 24 of the

[26] M. Yahya Harahap, *Tentang Gugatan, Persidangan, Penyitaan, Pembuktian Dan Putusan Pengadilan*, (Jakarta: Sinar Grafika, 2009).

Civil Code. The substance of these Articles is basically the same. Even clearer are the provisions stipulated in Article 24 of the Civil Code, which says [27] : *(1) In civil disputes before the judge, both parties, even one of the parties, have the right and freedom to choose another place of residence from their actual residence; (2) The right and freedom of choice is stated in the deed. a) May be an authentic deed (notarial deed), or b) It can also take the form of an underhand deed (onderhands akta); (3) The nature of the domicile election: a) Can be absolutely valid from the lawsuit to the implementation of the decision, or b) Can also be limited in accordance with what is desired and agreed upon by the parties; (4) In the event that there is a domicile selection, the parties remain open to choice a) To choose the agreed District Court8, or b) To choose the District Court in the place where the defendant resides (actor sequitur forum rei).*

The freedom to choose relative competence in the event that there is an agreement on the choice of domicile, according to the law is entirely up to the plaintiff, not to the defendant. In the context of equality and justice in seeking legal certainty for the parties in civil disputes in the District Court, when the parties agree in one article clause to choose the domicile of relative competence, then this creates space or potential imbalance between the parties.

The principle of pacta sunt servanda in this case is more dominant to override the principle of actor sequitur forum rei in determining relative competence, as stipulated in Article 118 paragraph (4) HIR, which basically gives discretion to the Plaintiff to determine its relative competence, but the determination of relative competence for the plaintiff must have chosen the domicile closest to the plaintiff's residence.

This intersection of determining relative competence, if referring to the agreement (pacta sunt servanda), if the selection of the domicile of relative competence that has been chosen is the same as the provisions of relative competence according to the principle of actor sequitur forum rei, and it turns out that it shows that the two provisions support each other and do not conflict, then the application of relative competence based on the agreement can be considered valid and legally binding. Thus, the determination of domicile chosen by the parties will remain valid and binding, and facilitate the implementation of judicial proceedings related to the dispute

The Judgement Violates Justice When There Is A Conflict Of Principles

Several court decisions regarding the determination of relative competence in lawsuits against financing institutions are utilized to strengthen the analysis in this study. In the Decision of the Kudus District Court Number 39/Pdt.G/2012/PN.Kds dated 13 December 2012, between Marwi and the financing institution PT. Swadharma Bhakti Sedaya Finance (ACC Kudus), the District Court granted the defendant's exception and declared that the Kudus District Court did not have the authority to examine the case. The lawsuit was filed by Marwi at the Kudus District Court, which was the plaintiff's domicile, whereas the contract stipulated a choice of court clause different from the plaintiff's residence at the time of the dispute.

In a similar dispute, Decision Number 917/Pdt.G/2022/PN Sby dated 2 February 2023 rejected the plaintiff's claim (Muh. Sholichuddin) against the first defendant, the financing institution PT. Mizuho Balimor Finance, on the grounds that the Surabaya District Court was not competent to adjudicate the case. The contract clause specified that the legal domicile in the event of a dispute would be in Jakarta, a location far from the plaintiff's domicile in Surabaya. Likewise, in

[27]M. Yahya Harahap, *Tentang Gugatan, Persidangan, Penyitaan, Pembuktian*…2009.

Decision Number 9/Pdt.G/2021/PN Mre, the Muara Enim District Court also declared itself incompetent to adjudicate the case.

These court decisions demonstrate that judges tend to emphasize legal certainty and the enforcement of contracts according to their terms, rather than considering substantive justice or protection for the weaker party. This is evident in decisions that bind the plaintiff to the contract, even when the contract clearly disadvantages the plaintiff, who lacks bargaining power. In fact, Indonesian contract law recognizes the principles of justice and good faith, which should be considered by judges, especially in standard form contracts that may result in unfairness.[28]

The principle of actor sequitur forum rei, which places the lawsuit at the defendant's domicile to protect the defendant's rights as stipulated in Article 118(4) HIR, is not absolute but rather voluntary. The parties, particularly the plaintiff, may file a lawsuit at the District Court chosen and agreed upon in the contract's choice of forum clause, but if the plaintiff does not wish to do so, the matter is left to the plaintiff's discretion.

Nevertheless, as reflected in the aforementioned court decisions, this is often disregarded when the contract contains a forum selection clause. Judges tend to uphold such clauses based on the principle of pacta sunt servanda, even if this results in injustice for plaintiffs who must litigate outside their domicile, especially when the plaintiff is economically or legally disadvantaged.

Judicial decisions that prioritize the choice of forum clause in contracts without considering the parties' bargaining positions may harm weaker plaintiffs, because[29]: (1) Plaintiffs must bear greater costs and administrative burdens to litigate outside their domicile; (2) In standard form or adhesion contracts, forum clauses are often not fairly negotiated, exacerbating inequality; (3) Rigid application of pacta sunt servanda may disregard principles of justice and consumer protection.

The tendency of judges to rigidly enforce pacta sunt servanda in determining relative competence often neglects protection for weaker plaintiffs, particularly in standard form contracts. This creates injustice, as such contracts are typically drafted unilaterally by the stronger party, leaving the weaker party with no room to negotiate or choose, including on the forum selection clause that may disadvantage the plaintiff's legal position

Standard form contracts frequently contain one-sided clauses, where the stronger party (e.g., large businesses) sets terms favorable to itself, including the determination of a court domicile far from the weaker party's residence. In practice, judges tend to strictly apply pacta sunt servanda, adhering to the principle that a valid agreement is binding as law for the parties (Article 1338 of the Civil Code), without considering bargaining imbalances and the potential for substantive injustice experienced by the plaintiff.

Strict enforcement of pacta sunt servanda in standard form contracts risks neglecting protection for the weaker party and causing injustice, especially regarding unilaterally determined forum selection clauses. Judges must balance legal certainty and substantive justice by considering the parties' bargaining positions in standard form contracts.

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[28] Yoga Tri Cahyo and Marisa Kurnianingsih, "Pacta Sunt Servanda: Legal Dynamics in Indonesian Context," *Walisongo Law Review (Walrev)*, ahead of print, April 30, 2023, https://doi.org/10.21580/walrev.2023.5.1.14585.

[29] Hannah Buxbaum, "Adhesive Forum Selection Agreements and Access to Justice: The Function and Limits of Anti-Waiver Protections," *German Law Journal*, ahead of print, August 6, 2025, https://doi.org/10.1017/glj.2025.10140.

The Role of Judges in Creating Justice

The role of judges is crucial in realizing substantive justice, especially when there is a conflict of relative jurisd The Role of Judges in Creating Justice**.** The role of judges is crucial in realizing substantive justice, especially when there is a conflict of relative jurisdiction. Where the chosen domicile in a contract is recognized as valid according to the principle of pacta sunt servanda, which conflicts with the principle of actor sequitur forum rei. Here lies the important role of judges. Judges are not only tasked with formally enforcing the law, but must also ensure that the decisions made truly reflect substantive justice, especially for parties who have a weaker bargaining position in standard agreements.

The principle of pacta sunt servanda, as stipulated in Article 1338 of the Civil Code, affirms that a valid agreement is binding on the parties as law. However, the application of this principle is not absolute. In practice, judges may exclude the strict application of this principle if there is injustice, for example in cases of force majeure or when there is a clear imbalance in bargaining power between the parties. This is what happens in financing agreements by leasing companies that apply standard contracts to consumers, so that consumers have no bargaining power.

When analyzed using Rawls' theory of substantive justice, which asserts that justice must be realized through two main principles, namely that every individual is entitled to equal basic freedoms, and that socioeconomic inequality can only be justified if it benefits the least fortunate in society. In the context of contract law, this principle requires that protection be given to vulnerable parties, such as consumers, workers, or small business owners, so that contracts do not merely become instruments of domination by the stronger party.[30]

The theory of relational justice complements this approach by emphasizing the importance of equal reciprocal relationships and respect for autonomy and substantive equality between parties to a contract, so that contract law not only regulates freedom of contract but also ensures fairness in the process and outcome of agreements, including protection against exploitation, information imbalance, and structural vulnerability. Thus, both justice as fairness and relational justice require that contract law function as a mechanism for protection and empowerment, not as a means of oppression or reinforcement of injustice.[31]

In agreements containing standard clauses, the weaker party is often placed in an unbalanced position. Although the law provides freedom of contract, in reality, standard clauses are often exploited by the stronger party by using standard contracts that do not provide choices or equal standing in the contract. Therefore, judges must actively assess whether the domicile clause in the contract was truly agreed upon freely or imposed by the party with the stronger bargaining position.

As discussed in the sub-chapter above, the principle of actor sequitur forum rei, which is regulated in Article 118 of the HIR, stipulates that lawsuits must be filed at the domicile of the defendant. However, this principle is not absolute and can be set aside if there are reasons of fairness or protection of the weaker party. In certain cases, such as divorce disputes or consumer protection, the court may determine a more equitable forum for the party whose bargaining position is vulnerable in the civil relationship.

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[30] John Rawls, "A Theory of Justice," *Princeton Readings in Political Thought*, ahead of print, December 31, 1971, https://doi.org/10.4324/9781315097176-4.

[31] M. Said and Yati Nurhayati, *A Review On Rawls Theory Of Justice*, 2021, https://consensus.app/papers/a-review-on-rawls-theory-of-justice-said-nurhayati/b95d70a616d15f7683e114a84f38e3e6/.

If the judge only adheres to the domicile chosen in the contract without considering the bargaining positions of the parties, the decision has the potential to violate substantive justice. The theory of substantive justice requires judges to assess the substance of contractual relationships, not just the formalities of clauses. Judges must be able to consider whether the clause causes injustice or denies access to justice for weaker parties. Judges have the authority to interpret and even override contract clauses that conflict with the principles of justice, propriety, and protection of the weaker party. Judges can use the ex aequo et bono principle or the principle of dignity justice to balance legal certainty and substantive justice.

In addition to Article 1338 of the Civil Code and Article 118 of the HIR, protection for weaker parties is also supported by the Consumer Protection Law, the Manpower Law, and progressive Supreme Court jurisprudence. Judges are also bound by their oath of office to uphold justice as fairly as possible in accordance with the 1945 Constitution. In deciding cases, judges must critically assess the choice of domicile clauses, especially if there are indications of an imbalance in bargaining power. Judges may refuse to apply such clauses if they are proven to be detrimental to the weaker party and contrary to the principle of substantive justice.

The Role of Notaries in Providing Legal Education

Notaries hold a strategic role in ensuring that every agreement contains a clear and valid choice of court domicile clause. This role is essential for anticipating potential future disputes, particularly in the context of business agreements and cross-jurisdictional transactions. [32] Notaries are responsible not only for the formal aspects of drafting authentic deeds but also for the legal substance that safeguards the interests of the parties involved.

In addition to preparing authentic deeds, notaries also serve as providers of legal education to the parties. This educational function includes explaining the legal consequences of each clause, including the choice of court domicile, so that the parties fully understand their rights and obligations. Notaries must bridge differences in legal systems that may apply, especially in international agreements. [33]

When drafting a choice of domicile clause for dispute resolution, notaries must ensure that such clauses do not conflict with the principles of civil procedural law, such as the principle of actor sequitur forum rei, which stipulates that lawsuits must be filed at the defendant's domicile. This principle aims to protect the rights of the defendant and ensure procedural justice.[34] However, in practice, parties often select a particular court domicile for convenience or legal certainty.

The choice of court domicile in agreements may give rise to conflicts with the actor sequitur forum rei principle, especially if the chosen domicile differs from the actual domicile of the defendant. Such conflicts frequently occur due to the freedom of contract, which allows parties to determine their own dispute resolution forum.

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[32] Ni Nengah Dwi Dharmayanthi, Benny Djaja, and M. Sudirman, "Notary Liability on Contract Renegotiation in Business Contracts," *Jurnal Indonesia Sosial Teknologi*, ahead of print, July 19, 2024, https://doi.org/10.59141/jist.v5i7.1216.

[33] Merry Koesnadi, John Pieris, and Aarce Tehupeiory, "The Role of a Notary in Making a Choice of Law of an International Business Contract," *International Journal of Social Service and Research*, ahead of print, April 14, 2023, https://doi.org/10.46799/ijssr.v3i4.322.

[34] Sujayadi Sujayadi, Tata Wijayanta, and Herliana Herliana, "ACTOR SEQUITUR FORUM REI: A THEORITICAL STUDY," *Jurnal Bina Mulia Hukum*, ahead of print, March 31, 2023, https://doi.org/10.23920/jbmh.v7i2.896.

Choice of court domicile clauses drafted by notaries may trigger new disputes regarding the relative competence of courts, particularly if one party feels disadvantaged or if the chosen court does not comply with procedural law provisions. These disputes often arise from differing interpretations between the actor sequitur forum rei principle and contractual freedom.

In certain cases, courts may refuse jurisdiction if the chosen domicile lacks a real connection to the parties or the subject matter of the dispute. Such refusals are based on the principles of procedural justice and protection of the weaker party. Therefore, notaries must exercise caution when formulating such clauses.[35]

Notaries must also provide education to the parties to prevent the arbitrary selection of court domicile in agreements. This education is crucial to prevent future disputes arising from inconsistencies between the chosen domicile and applicable legal provisions. Notaries should encourage parties to comply with statutory regulations regarding the relative competence of courts

In the context of Indonesian law, the dualism of civil procedural law (HIR and RBg) also affects the determination of the relative competence of courts. Notaries must understand these differences to provide appropriate legal advice to the parties according to the location and subject matter of the dispute.

Ultimately, the role of notaries in drafting and explaining choice of court domicile clauses is vital for creating legal certainty, preventing disputes, and protecting the interests of the parties. Notaries must always prioritize prudence, legal education, and compliance with statutory regulations

Conlussion

From the above discussion, it can be concluded that there is a conflict between the principle of pacta sunt servanda (agreements are binding as law for the parties) and the principle of actor sequitur forum rei (lawsuits are filed in the place of residence of the defendant) in determining the relative jurisdiction of the court, especially when there is a domicile clause in the contract agreement. Although Article 1338 of the Civil Code and Article 118 paragraph (4) of the HIR give the parties the freedom to choose the domicile of the court, judicial practice shows that judges tend to apply pacta sunt servanda rigidly without considering the bargaining position of the parties, thereby causing injustice to the weaker party, especially in standard contracts where the clauses are made unilaterally by the stronger party. The application of the pacta sunt servanda principle in court decisions may ultimately disregard the principles of substantive justice and consumer protection, as the weaker party often has no room for negotiation in determining forum selection clauses that may be detrimental to their legal position. Therefore, the role of judges is needed to uphold substantive justice, supported by the active role of notaries in providing legal education and ensuring that domicile selection clauses do not conflict with the principles of civil procedure law and protect the interests of all parties in a balanced manner.

[35] 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*, ahead of print, April 30, 2025, https://doi.org/10.32332/milrev.v4i1.10140.

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