

## BOOK REVIEW “INDONESIAN PRIVATE INTERNATIONAL LAW” BY DR. AFIFAH KUSUMADARA

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We live in an open society ‘where borders open for individuals, goods, services, capital, and data.’<sup>1</sup> This is a time when conflicts arise in a very complicated way, involving variables that cross borders and jurisdictions. There’s never been a time like this, when the existence and development of private international law is so important across the globe.

As one of the fastest growing regions in the 21<sup>st</sup> century,<sup>2</sup> there are a few English-written books studying Private International Law in the South East Asian region, especially those focusing on Indonesia. “Indonesian Private International Law” comes to fill this gap. Written by Dr. Afifah Kusumadara and her team of scholars from the Faculty of Law at Brawijaya University in Malang, Indonesia, this book provides a comprehensive study on the subject.

The book comprises six chapters, explaining the topics systematically and thoroughly. It moves from fundamental to contemporary matters of private international law. For non-Indonesian

readers, a brief history of Indonesian private international law in the first chapter will help to understand the context of the country. The complexity of legal pluralism and the challenging road to reach legal uniformity, especially in the field of this subject, are explained concisely. This short but important topic is very important for non-Indonesian readers to build further understanding of the application, development, and modernization of the law along with its challenges.

The main issues of private international law, such as jurisdictions and choice of laws, are elaborated in chapter two and three. The book explains the application of the jurisdiction in personam, jurisdiction in shipping claims, and immunities from jurisdiction. The doctrines and principles of jurisdiction in private international law have been developing really fast. Not all are recognized in current Indonesian written law such as the doctrine of forum non-conveniens, anti-suit injunctions, and unjust enrichment. However, some judicial practices accommodate them.

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1 Jurgen Basedow, *The Law of open Societies: Private Ordering and Public Regulation in the Conflict of Laws*, Netherlands: Brill, 2015, p.28.

2 Marcus Kuusinen, Kacper Pierzynowski, and Ghia Yuson, *The Rise of The SouthEast Asian Tigers*, Business Sweden 2<sup>nd</sup> Edition, p.4.

Chapter two provides many important cases that will show how the written law and judicial practice interact in fulfilling the needs of the recent development in private international matters – and in some way also points the needs of changing the current Indonesian written law.

Chapter three provides a broad coverage on how Indonesian private international law being applied in various field of laws. It discusses not only the classic fields of this study, such as family law, contracts, and the law of property, but also intellectual property and the law of corporations, insolvency, and bankruptcy which are full of dynamics and changes in the recent borderless economic society. In every topic, related laws and cases are studied briefly. This is one of the book's strength since it is not easy to find a literature that tries to cover all of those fields in one strike, considering the width and the complexity of each topic.

The implications of these arrangements are that some parts may seem too short or too shallow. Some readers may feel that some cases or examples deserve more room to be discussed, especially those related to his/her interest. However, as a book that attempt to give a complete package and general view of this vast and complex study, it is understandable that the author has a limited space to explore.

For those unfamiliar with the country's legal system and its history, some

parts may prompt confusion since the author sometimes uses both the Dutch Colonial laws (along with its terms) and the Indonesian laws to explain certain topics really quick. Readers may need time to digest when entering those parts. However, the author uses a consistent way to express this complicated legal system. A careful reading eventually will lead readers to understand the key points of the systems, and it will be easier to follow the following chapters.

Chapter four highlights the issue of recognition and enforcement of foreign judgments. It is very interesting that referring to current written law, foreign judgements are not recognized and, therefore, cannot be enforced in Indonesia. In this chapter, the author navigates some cases displaying the complexity of this issue in practice such as in the case of PT. Indah Kiat Pulp and Paper Tbk. v Bank America National Trust Company; et.al. and Perusahaan Pertambangan Minyak dan Gas Bumi Negara (Pertamina) v Karaha Bodas Company LLC. This short chapter, like the others, adds another important issue to be discussed on the development of Indonesian private international law.

The last two chapters of the book cover two important development in Indonesian private international law: arbitration and harmonization of private international law. These two topics enrich the spectrum of the book and intrigue the readers to talk about the future of

Indonesian private international law. Both chapters display how international laws and practices play great influence in the development of law in Indonesia. On the other hand, the author also objectively mentions the shortcomings of the current laws and practices and challenges that may arise in the future, especially in the process of harmonizing national law with international laws.

At present, Indonesian law continues to draw heavily from Dutch colonial law, and the attempt to codify private international law, for unknown reasons, has never succeeded. In 2009, the National Law Development Agency conducted a study to develop private international law. The document contains the bill of a new Indonesian private international law, but even though it was completed in 2015, the Bill still has not reached the Parliament.

In the midst of this "stagnation", in the final chapter, the author recommends concrete steps and strategies to modernize the laws, an action that needs to be taken as soon as possible. She reminds us that the "commercial world has not stood waiting for legislative action."<sup>3</sup> Until the last pages, the books still discussed sharply the course of the future development of Indonesian private international law.

For a long time, there has not been enough attention and spotlight given to Indonesian private international

law literature both domestically and internationally. This subject usually becomes only a sub-section, a chapter, of (international) law textbooks or proceedings. Some up-to-date research are still can be found, yet scattered in many journals. It is clear that there is a very limited choice available for the English-written book on Indonesian private international law, while the need to understand this subject is on the rise.

Published in 2021, this book gives the most updated development on Indonesian private international law. This is another point that differs from older literature, such as Sudargo Gautama's books on Indonesian private international law, which still use Dutch law and practices as references a lot, both in terms and case studies/examples. Afifah's book, on the other hand, provides rich examples of cases that happened after Indonesia gained independence. It really helps to portray an up-to-date and contextual version of Indonesian private international law and its shortcomings in this fast-growing world – the gap between it and international practices.

Considering the wide coverage of the books, including the last chapter that speaks strongly about the legal policy of the future development of Indonesian private international law, this work will be a great resource for both Indonesian and non-Indonesian readers that want to have a holistic view on this subject.

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3 Afifah Kusumadara, *Indonesian Private International Law*, Great Britain: Hart Publishing, 2021, p.223.

Law scholars and practitioners who want to understand the complex legal system of the country will benefit greatly from reading this book.

Those involved in law and regulation making in private international law issues should also read these books to understand the urgency to modernize the laws and what can be done to achieve

that. From chapter to chapter, we will see how outdated Indonesian written law compare to the international development in private international law fields. The need for modernization is evident, and this book will definitely be a great guide and rich source for the policymaker to work on this important agenda.

## Curriculum Vitae of Reviewer

**Viona Wijaya** is a junior legal analyst in the National Law Development Agency. She studied law in Padjadjaran University, specialized in Constitutional Law. She got her Master of Laws in 2020 from the Australian National University. Her graduate research focused on elaborating how contemporary regulatory theories can inform Indonesia's regulatory reform agenda with Solar Energy Regulations as case study. She takes great interest in regulatory reform, law and society, and national law development issues. She can be contacted through her email: [wijaya.viona@gmail.com](mailto:wijaya.viona@gmail.com)

