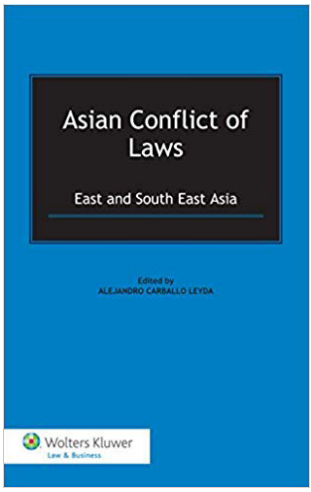
BOOK REVIEW
ASIAN CONFLICT OF LAWS - EAST AND SOUTH EAST ASIA



Given thedivergence of conflict of laws rules and recognition of foreign judicial decisions, a harmonized rules of conflict of laws is highly anticipated to improve legal certainty and cross-border commercial transactions. This book aims to provide a comprehensive overview of various approaches to conflict of lawsof fourteen jurisdictions in East and South East Asia. It emphasizes that an understanding on the different frameworks toward conflict of laws in the region is necessary to encourage the harmonization attempts in the future. Corporate counsels, officials, policymakers, and other practitioners outside East and South East Asia are the intended readers of this book. Thus, the information specified in this book is also purposedto assist the ease of doing cross-border transactions inside and outside the region.

Conflict of law rules of the People's Republic of China, Hong Kong, Indonesia, Japan, the Republic of Korea, Macau, Malaysia, Mongolia, the Philippines, Singapore, Taiwan, Thailand, Timor-Leste, and Vietnam are discussed in this book. This book has 14 chapters, of which each of themis devoted to conflict of law rules from one jurisdiction. Every chapter covers the following subjects: codification of private international law, jurisdiction of local courts in foreign-related cases, applicable law, procedural issues, recognition and enforcement of foreign decision, recognition of other public documents, and treaties for judicial cooperation.Referring to those subjects, this bookdelivers a wide range of conflict of laws topics, while simultaneously promises its readers with detail information on conflict of law rules of the14 jurisdictions.

As to the Indonesian chapter, it is written by HendronotoSoesabdo, Reno Hirdarisvita and Ferry Artionang.While the literature on Indonesian conflict of laws in English remains limited, this book could be an addition to the existing literatures. Nevertheless, there are things that need to be seriouslytaken notice of in reading the Indonesian chapter in this book.

The main provisions of Indonesian conflict of laws are Articles 16– 18 of the *AlgemeneBepalingen van WetgevingvoorIndonesië*1847 (General Provisions of Legislation for Indonesia 1847). Indonesia inherited this provisions from the Dutch East Indies era. These provisions have remained applicable in Indonesia due to Article II of the Transitory Provisions of the 1945 Constitution, which stipulates that all existing laws and regulations shall remain valid provided that new laws and regulation have not yet come into effect according to this Constitution. However, as a result of the Fourth Amendment of the 1945 Constitution in 2002, this provision has been renumbered as Article I.However, the authors only refer to the original version, which is Article II of the Transitory Provisions of the original 1945 Constitution, while the readers are entitled to get the complete and valid information on the main legal

basis of Indonesian conflict of laws.

The information provided by the authors of the Indonesian chapter could have been more credible if it was supported with accurate sources. As to mandatory rules, the authors state Presidential Decree Number 59 of 1972 on Offshore Loan as an exampleof mandatory rule in Indonesia. Presidential Decree Number 59 of 1972 obliges a state-owned company, province-owned company, and private company to obtain permit from the Minister of Finance to get offshore loan. Further, these companies are also required to provide periodical report to Ministry of Finance and the Indonesian Central Bank concerning their offshore loan.However, these provisions have been amended among others by Presidential Decree Number 24 of 1998 and Presidential Decree Number 82 of 2015 on the procedure of issuance of guarantee for obtaining offshore loan.These amendments should have been informedby the authors, otherwise the readers would be misled by the inaccurate information on mandatory rules in Indonesia. Another example is concerning arbitration clause, this chapter indicates that there are cases which Indonesian court take jurisdiction over cases where the relevant parties had chosen arbitration as the dispute settlement forum. However, the authors leave the readers puzzled what the cases are about as there are no further explanation and detail concerning these cases.

With respect to proof of foreign law, it is addressed in this chapter that the Indonesian court relies on the evidence submitted by the parties to apply foreign law in the proceeding. The authors base this statement accordingto civil procedural rule that the party who argues on an issue has the burden to prove its argument. This contradicts the assertion by Sudargo Gautama that the way to prove foreign law should be differentiated with the general rule of proof of evidence in the court. This is because the judges are not bound by the argument of the parties concerning the foreign law, the judges have the freedom to investigate the foreign law themselves. In other words, it is not necessary for the parties to argue and prove the foreign law in the proceeding. If there is discrepancy between what Sudargo Gautama asserted with the practice in the courtin regard to proof of foreign law, the authors shouldalso have specified this. As this book is intended to provide the readers with the frameworks regulating international litigation from the countries in East and South East Asia regions, this chapters should not havegiven the wrong understanding to the readers concerning international litigation in Indonesia.In addition, the authors attempted to justifythe statement about proof of foreign law by referring to three Memoranda of Understanding (MOU) between Indonesia and Australia, Indonesia and Belarus, Indonesia and China. However, this attempt is not convincing as these 3 MOUsdo not address proof foreign law issue. The MOUs set up the base between the countries toexchange information, legal materials, visits, and joint research, instead of the arrangementinapplying foreign law.Thus, these MOUs are irrelevant for this matter.

In general, it should be appreciated the attempt of the authors to provide information concerning Indonesian conflict of laws. However, the Indonesian chapter in this book does not addressaccurate and complete sources and facts concerning Indonesian conflict of laws. Since this book aims to provide a comprehensive overview of the various approaches to conflict of laws in East and South East Asia, the Indonesian chapter in this book hardly meets this objective. It could have been more comprehensive if the authors put more thorough work. Consequently, when reading this chapter, the readers should always bear in mind to have the information and sources provided in this chapter cross-checked with the existing literatures and prevailing regulations on Indonesian conflict of laws.

Title	: Asian Conflict of Laws - East and South East Asia
Chapter	: Indonesia
Authors	: HendronotoSoesabdo, Reno Hirdarisvita and Ferry Artionang.
Editor	: Alejandro Carballo Leyda
Language	: English
Publisher	: Kluwer Law International
Pages	: xxx + 302
Year	: 2015
Reviewer	: PriskilaPratitaPenasthika(Faculty of Law Universitas Indonesia)