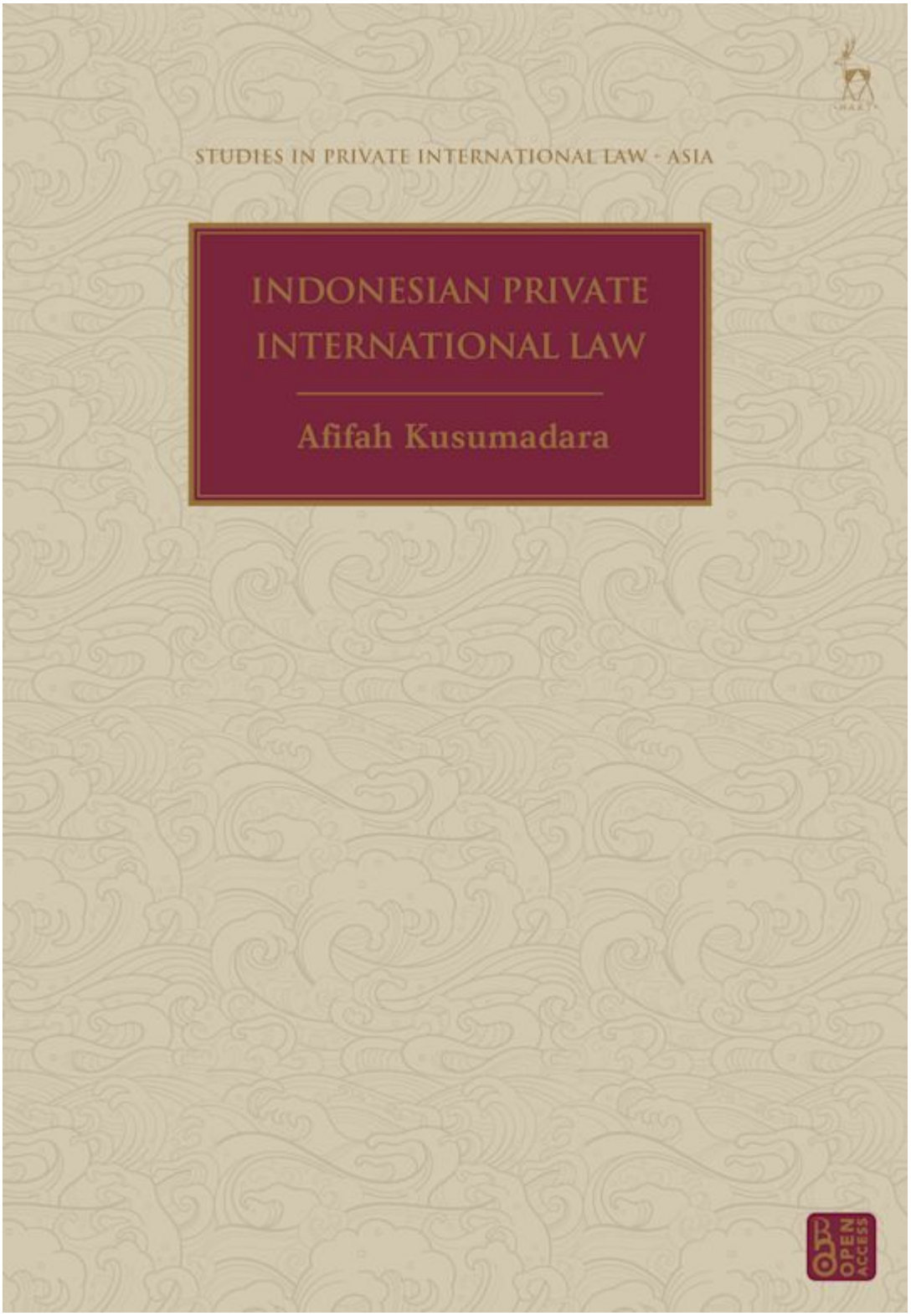
Review of Afifah Kusumadara, Indonesian Private International Law, Oxford: Hart Publishing, 2021, 288 pp, hb $140



After reading and reviewing a thought-provoking book on the choice of law in international commercial contracts in Indonesia last year, I decided to delve further into the subject by picking up a book on Indonesian private international law. The book, titled *Indonesian Private International Law*, is part of the prestigious Hart series on Private International Law in Asia. Authored by Dr. Afifah Kusumadara, with contributions from a team of Indonesian scholars (hereafter referred to as "the authors"), this work was published during the

COVID-19 pandemic. Spanning 226 pages across six chapters, the book aims to be the leading English-language text on private international law in Indonesia. This review provides an overview of its content.

Indonesia, a civil law country, has legal principles influenced by Dutch traditional private international law, owing to its colonial history. However, the book does not adhere strictly to the abstract style typical of civil law texts; instead, it offers helpful explanations of relevant case law.

Chapter 1 discusses the scope of Indonesian private international law, noting that it is somewhat limited, covering issues such as the status of persons, family matters, real property, formalities, international arbitration, choice of arbitral tribunals, and enforcement of foreign arbitral awards. The authors highlight that the sources of Indonesian private international law include legislation, customary law, case law, international treaties, and doctrine. However, Indonesia does not have a comprehensive code on private international law. The chapter also addresses preliminary matters like characterisation, incidental questions, and renvoi; connecting factors such as nationality, domicile, and residence; as well as issues related to substance and procedure, proof of foreign law, evidence in international disputes, public policy, and mandatory rules.

Chapter 2 covers jurisdiction in personam, dividing the discussion into general and special rules. The primary rule for jurisdiction in personam in Indonesia is to sue the defendant in their home court. For general jurisdiction, the principle of forum non conveniens is recognised in Indonesia's judicial practice, though it has not been codified. Similarly, the doctrine of lis alibi pendens is part of Indonesian civil procedure, though rarely used in cases pending in foreign courts between the same parties and subject matter. Anti-suit injunctions have been issued by Indonesian courts, albeit not codified, usually to protect Indonesia's judicial interests and those of its citizens.

Written choice of court agreements are permitted in Indonesia, though the country's civil procedure rules do not specifically address foreign choice of court agreements. In practice, a choice of court agreement is likely to be enforced if it designates Indonesian courts and the defendant resides in Indonesia. Indonesian judges often conflate choice of court agreements with choice of law, leading them to decline jurisdiction when there is an express choice of foreign law.

Service of court processes, both within and outside the jurisdiction, is allowed under Indonesia's civil procedure rules. However, the authors of the book note that Indonesian law does not explicitly address the service of foreign proceedings within Indonesia, and they recommend that Indonesia accede to the 1965 Hague Service Convention to address this gap.

The discussion then moves to special rules governing specific contracts, torts, unjust enrichment, trusts and charitable foundations, property law (including immovable property, intangible property, and succession), intellectual property, family law (covering marriage, divorce, nullity, separation, and child welfare), corporate law, insolvency, personal bankruptcy, and competition law. Notably, this structure is largely mirrored in Chapters 3 and 4, which focus on choice of law and the recognition and enforcement of foreign judgments.

Following this, Chapter 2 delves into jurisdiction over shipping claims.

Finally, Chapter 2 addresses immunities from jurisdiction. The authors note that the Indonesian government advocates for the doctrine of absolute immunity to protect the state's interests in foreign courts. However, Indonesian courts apply the doctrine of restrictive immunity to safeguard the interests of Indonesian nationals involved in commercial transactions with foreign states within Indonesia. Notably, diplomatic immunity under the Vienna Conventions on Diplomatic and Consular Relations is considered waived when foreign legal representatives enter into employment contracts with local staff, as demonstrated in the case of *Brazilian Embassy in Jakarta v. Luis F.S.S. Pereira* (Supreme Court decision 376 K/Pdt. Sus-PHI/2013, 29 October 2013, pp. 97, 111-112).

Chapter 3 focuses on the choice of law. Indonesian legislation and court practice generally uphold the principle of party autonomy. In situations where the applicable law is not specified, Indonesian scholars tend to favor the law of the habitual residence of the characteristic performer, although judicial practice in this area remains uncertain. The authors mention that there are Indonesian Private International Law Bills that support this principle, but I do not know whether these have been currently enacted into law.

The chapter then explores formal validity, material validity, capacity, and mandatory rules. It also delves into specific types of contracts, such as consumer contracts, employment contracts, insurance contracts, contracts for the sale and

hire of goods, contracts of carriage, negotiable instruments, letters of credit, contracts involving the transfer of foreign currency, and agency agreements.

While Indonesian Private International Law does not explicitly address the law applicable to torts, the prevailing doctrine is *lex loci delicti commissi* (the law of the place where the tort was committed). However, Indonesian judges often apply *lex fori* (the law of the forum) to protect Indonesian citizens. The authors note that there are also Indonesian Private International Law Bills that support the position of *lex loci delicti commissi*. The chapter further discusses the law applicable to specific torts, including negligence, nuisance, wrongful interference with goods, defamation, and environmental damage and pollution.

Finally, Chapter 3 revisits other topics previously covered in Chapter 2, examining them from a choice of law perspective

Chapter 4 addresses the recognition and enforcement of foreign judgments. In general, foreign judgments, particularly condemnatory judgments, are not recognised or enforced in Indonesia, except in cases involving general maritime average where Indonesian parties are involved. However, certain foreign judgments, such as declaratory and constitutive judgments, may be recognised and enforced if the issuing countries provide reciprocal treatment to Indonesian judgments and the judgment does not conflict with Indonesia's public policy. The authors explain that declaratory and constitutive judgments confirm a legal status or establish a new legal condition for the parties, as seen in cases involving property ownership, adoption, or divorce.

Finally, Chapter 4 revisits topics previously covered in Chapters 2 and 3, examining them from the perspective of recognition and enforcement of foreign judgments.

Chapter 5 covers commercial arbitration in Indonesia. The authority of arbitral tribunals in the country is based on party consent, which is upheld as long as it does not conflict with Indonesia's public policy. This principle similarly applies in the context of choice of law. Indonesia has acceded to the 1958 New York Convention and has incorporated it into its legal system. However, the authors point out that Indonesian courts have not consistently interpreted this law, particularly regarding the definition of public policy.

The chapter also addresses investment treaty arbitration, discussing aspects such

as jurisdiction, choice of law, and the recognition and enforcement of arbitral awards. Indonesia is a signatory to the ICSID Convention, which governs international investment disputes.

Chapter 6, the final chapter, discusses the harmonisation of private international law, including Indonesia's involvement in global initiatives such as The Hague Conference, UNCITRAL, and UNIDROIT. The chapter concludes with comments on the future of private international law in Indonesia. The authors observe that Indonesia has played a limited role in global efforts to harmonise private international law and propose numerous ways for the country to better align its private international law rules with current global realities.

Overall, *Indonesian Private International Law* is a well-written and informative book, particularly valuable for those unfamiliar with Indonesia's legal landscape. While a basic understanding of private international law is necessary to fully appreciate the text, the book is accessible and enlightening. Despite a few minor typographical errors, it was a pleasure to read, and I highly recommend it.