

[BILL ON]

THE LAW OF THE REPUBLIC OF INDONESIA

REGARDING

PRIVATE INTERNATIONAL LAW

BY THE GRACE OF THE GOD ALMIGHTY  
The PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. That to realize the objectives of the establishment of the Government of the Republic of Indonesia, which, amongst others, are to protect the whole Indonesian nation and the homeland of Indonesia, and to accelerate public welfare, as well as to enhance the nation's intellectuality, legal certainty is required for members of society in order to engage their activities in the era of globalization in all fields;
- b. That the rapid development of globalization in the fields of the economy, society, culture, science and technology today has coloured the development (of the law) and caused a need for the codification of laws as the set of legal rules that systematically arrange and that further could provide guidance for a settlement that is considered fair towards any case that has foreign elements;
- c. That Articles 16, 17 and 18 AB which have prevailed in cases of Private International Law have been no longer updated to the current needs of society, and for that purpose, there is a need to have an Act to guarantee legal certainty towards society;
- d. That based on the considerations as stated in point a, point b, and point c, there is a need to establish an Act regarding Private International Law;

In the view of: Article 5 (1) and Article 20 of the Indonesian Constitution of 1945

With the approval of

THE HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF  
INDONESIA  
AND THE  
PRESIDENT OF REPUBLIC OF INDONESIA

Decided on: THE ACT ON PRIVATE INTERNATIONAL LAW.

CHAPTER I  
GENERAL PROVISIONS

Article 1

In this Law:

1. Indonesian Internal Law is all the prevailing rules and regulations which apply in Indonesia in any legal event and any legal relationships with no foreign element.
2. Indonesian Law is a positive law that applies within the territory of the Republic of Indonesia.
3. National Law is the law of a state that is applicable to a person based on the the principle of nationality.

4. Private International Law is the national law that governs any (legal) events and civil legal relationships that have a foreign element.
5. Rules of Foreign Law are the rules of other states.
6. Inter-Legal Law is the law which is applicable to any legal events or relationships that have two or more legal systems which are connected because of state differences.
7. Internal Inter-legal Law is the law which is applicable in the event that a state has two or more sub-systems of internal-legal law that are connected in a legal event or relationship.
8. Personal Status is the status and nationality of a person, included in the scope of family law.

#### Article 2

#### THE PRINCIPLES ON DETERMINATION OF THE APPLICABLE LAW

The basic principles on the establishment of norms:

- a. The nationality principle, the principle which applies the national law of a person as the applicable law in defining his personal status.
- b. The domicile principle, the principle that applies the law where a person has his domicile as the applicable law to define his personal status.
- c. The Freedom of Contract Principle, is the general principle as vested in the law on the drafting of contracts, as provided in Art. 1338 of the Civil Code.
- d. The *lex fori* principle, the principle which applies the law of the court in the event when PIL applies.
- e. The *lex loci contractus* principle, the principle which applies the law of the place where the contract was entered into.
- f. The *lex loci solutionis* principle, the principle which applies the law where the relevant performance occurs.
- g. *The proper law of the contract [principle]*, the principle which applies the law that has the most connecting factors.
- h. *The most characteristic connection [principle]*, the principle which applies the law of the party to the contract which has the most characteristic connection.

#### Article 3

Private International Law is implemented based on:

- a. General principles of PIL must be applied in a PIL case in the absence of the rules on PIL or in the other law and regulation in which PIL governs.
- b. In the event that the National Law of a person is applied, but his National Law reasserts Indonesian Law as his applicable law, internal Indonesian Law is implemented as the applicable law.
- c. A foreign law that initially should apply pursuant to the PIL regulation shall not be applied if it contradicts public order and morality.
- d. In the event that the national law of a person is applied, but the respective person has two or more nationalities, the applicable law is the law appointed by the most effective and active nationality (of the person).  
In the event of any dispute concerning the citizenship of a person having two or more nationalities, and one of the nationalities

(concerned) is the Indonesian nationality, the applicable law is Indonesian law.

- e. For a person who, according to Indonesian law, is a stateless person (apatride), the applicable law is the law where he has his habitual residence. This provision is effective as long as it relates to the status and authority to commence any legal action, whereas in relation to any other matters, a stateless person (apatride) is deemed to be a foreign national. e.
- f. In any case before an Indonesian court a foreign law is applicable, however if the respective foreign law and Indonesian Law have different qualifications, the qualification of the legal relationship is to be determined by Indonesian law. f.
- g. If in a PIL context a law of a state recognizes that an internal inter-legal law must apply, the applicable law is the law that is appointed by such an internal inter-legal law. g.
- h. A limited liability company, association, and any legal entity is subject to the law where such an entity is established and which determines its nationality. A legal entity established outside the territory of RI which conducts its activities within the territory of RI is subject to Indonesian law. h.
- i. If a law of a foreign state that should apply cannot be adequately understood and clearly comprehended by the judge, the applicable law is Indonesian Internal Law. i.
- j. Unless stipulated otherwise by the PIL law, or other laws and regulations, the validity of a legal action is determined by the law where such legal action takes place. In any legal action related to immovable goods, the law where the immovable goods are situated will apply to govern the required form of action and the validity of such legal action. j.
- k. The capacity and incapacity of a person to take legal action is subject to his national law. k.  
Any foreign national who conducts any legal action in Indonesia is considered to have legal capacity to do so provided that Indonesian Law determines that he is able to do so.

Such capacity does not apply to any legal action in Family Law and Inheritance Law.

In relation to legal action concerning immovable goods, the capacity of a person is subject to the law where the goods are situated.

- l. The legal status and authority of an Indonesian national who is abroad is subject to Indonesian Law. l.  
The legal status and authority of a foreign national who is within the territory of RI are subject to his National Law.  
The legal status and authority of a foreign national who has had his domicile within the territory of RI continuously for a period of 10 years are subject to Indonesian law.
- m. All matters in relation to a person *in absentia* or a missing person and their legal consequences are subject to the law of his nationality. m.  
The legal consequences in relation to immovable assets within the territory of RI are subject to the law of Indonesia.
- n. Indonesian courts shall not subject a foreign national to any form of guardianship (*curatele*) based on grounds that are not justified by Indonesian Law, even though similar grounds are recognized in the national law of the respective foreign national.
- o. The guardianship of an Indonesian national who has his domicile or residence abroad is subject to Indonesian law.

## CHAPTER II OBLIGATIONS

Any agreement containing foreign element(s) is subject to the choice of law agreed upon by the parties, either explicitly or implicitly, in the respective contract.

The field of international contracts adopts the freedom of contract to make a choice of law, provided that it does not contradict the principle of public order.

In the absence of a choice of law [between the parties], the applicable law is the law of the domicile or residence of the parties which has the most characteristic connections.

### Part One

With regard to sales and purchasing Agreements and the delivery of movable goods, they are subject to the law where the seller or the deliverer has its habitual residence.

### Part Two

A company agreement, a power of attorney agreement, a representation agreement or an agency agreement, a commission agreement, a transportation agreement, an expedition agreement, trade goods, a consignment agreement and a storage agreement are all subject to the law where the contract is performed, and the law where the grantor, the grantee, the representative or agent, the commissioner, the transporter, the expediter and the storage receiver have their domicile.

For insurance agreements, the applicable law is the law where the insurance company has its domicile when the insurance agreement is performed.

### Part Four

For any publishing agreement, the applicable law is the law where the issuing company has its domicile when the issuing letter is performed.

### Part Five

For any agreement in relation to the activity of a company, and performed in the domicile of the respective legal entity or the domicile of a person who is a party to the agreement, the applicable law is the law where the company has its domicile.

### Part Six

For an exchange agreement (*bursa*), the applicable law is the law where the exchange takes place. This stipulation also applies to agreements in general markets.

## CHAPTER III

### GOODS

The law which is applicable to goods and the rights to goods are subject to the law where the respective goods are situated. This is derived from the principle of *lex rei sitae*. This principle is applied to either movable or immovable goods.

The stipulation regarding movable goods in transit from one state to another state shall be governed or regulated by the parties. If the parties have not regulated any carriage provisions, the law of the state where the goods are situated is applied. In the event that the goods are on the high seas, the law of the state where the claim is submitted is applied.

Goods in transit (*in transitu*) should be governed in particular regulations concerning their applicable law, the law of the destination state or the state where the goods should have been accepted.

## CHAPTER IV FAMILY

### Part One Marriage

Marriage and its procedural requirements shall be governed by the law where the marriage takes place (*lex loci celebrationis*).

The substantive requirements to marry are subject to the law of the nationality of the marrying couple, provided that the national law where the marriage takes place does not state otherwise.

The validity of a marriage is determined by the law where the marriage takes place (*lex loci celebrationis*).

These stipulations are also applied to parties who have left their domicile to avoid the procedures and law applied in their previous domicile.

### Part Two Marital Property

Marital Property Law is all provisions regarding joint property, community property, and separate property. If a husband and wife have the same nationality, the applicable law is their national law.

If the national law of a husband and wife allows them to enter into a prenuptial agreement, their marital assets are subject to the provisions set forth in the respective prenuptial agreement and must meet all the requirements of their national law.

The marital property of a husband and wife who have different nationalities is subject to the choice of law made by the parties, provided that:

- the choice of law by the parties is the national law of the husband or wife when the choice of law is made;
- [the choice of law of the parties is] the law of the state where the husband and wife have their habitual residence when the choice of law is made;
- [the choice of law of the parties] is the law of the state where the husband and wife have their first habitual residence after the marriage takes place.

### Part Three Divorce

Divorce is included within the scope of personal status; therefore the nationality principle is applicable in this case. A divorce between a husband and wife who have the same nationality is subject to their national law.

If the husband and wife have a different nationality but they live in the same state, the applicable law is the law where the husband and wife have their habitual residence.

However, if they have a different nationality and both of them also have a different domicile in different states, the applicable law is the law where the divorce is filed.

The above principle is in line with modern opinions in landmark decisions and by scholars of PIL, which give priority to applying the law where the husband and wife have their habitual residence if they have a different nationality.

A divorce based on a mutual agreement between the husband and wife can only occur if the law of each party and the law where the divorce is filed allow this.

In Indonesian practice, divorces based on the mutual consent of the couple are acceptable.

Legal jurisprudence in Indonesia accepts divorces based on an 'irretrievable breakdown' of the marriage (*keretakan yang tidak dapat diperbaiki lagi*). This is stipulated in Article 19 of Government Regulation No. 9 of 19975 as the implementing regulation of the Law of Marriage (Law No. 1 of 1974).

A marriage annulment is governed by the law which is applicable in assessing the material requirements.

If the reason for a marriage annulment is an error/mistake, fraud and forced/coercion, the applicable law is the law where the marriage takes place.

#### Part 4

#### The Nationality of a child

The legitimation of a child is subject to the law of the husband of the mother of the child concerned when the child is born.

If, when the child is born, the father has died, the legitimation of the child concerned is subject to the national law of the father when he died.

The national law of the husband also applies to any claim to deny the legitimation of a child.

The rights and obligations between parents and their legitimate children are subject to the national law of the father.

If a child is born to an unmarried woman, the rights and obligations between the mother and the child are subject to the national law of the mother.

The legitimation of a child is subject to the national law when such legitimation takes place.

If at the moment of legitimation the father has died, the applicable law is the national law when the father dies.

The guardianship (*perwalian*) of minors, the grounds for guardianship, and the authority and obligations of a guardian towards the minors in question are subject to the national law of the minor concerned, considering the interests of the minor in question. The authority of a guardian in relation to immovable assets is subject to the law of the state where the assets are situated.

This is an exception to the nationality principle, whereby the applicable law where the immovable goods are situated is in line with the principle of *lex rei sitae*.

In the event of any revocation of parental authority, the applicable law is the law where the child concerned has his habitual residence.

The obligation to provide suitable living conditions is subject to the law of the state where the minor concerned has his habitual residence. The application of the law where the child has his habitual residence is in line with the social function of alimentation, that is protection for the child. Priority is given to the law where the child has his daily residence in a *de facto*, economic and social sense where that child must be raised and grows up.

PIL conventions, among others the Convention regarding Maintenance (Article 1 of the Hague Convention of 1956), contain the same provision that the law where the child concerned has his habitual residence is applied to all matters concerning alimentation.

## CHAPTER V ADOPTION

Any inter-country adoption is subject to the national law of the adopter and adoptee, if they have the same nationality.

If the adopter and adoptee have different nationalities, the capacity and requirements concerning adoption are subject to the law of the state where the adopter concerned has his residence.

Child adoption is centralized at the place where the child has his habitual residence.

The principle in the Hague Convention of 1965 (Convention on Jurisdiction, Applicable Law and the Recognition of Decrees Relating to Adoption) is accepted: if the nationality of the adopter and adoptee are the same, their national law is applied.

Any legal consequence of child adoption, either concerning the adopter or adoptee, is subject to the law of the state where the adopter concerned has his residence.

Any legal consequence of child adoption between the adoptee and his biological family is subject to the law of the state where the adoptee concerned has his residence.

## CHAPTER [VI] INHERITANCE

Any inheritance, will and another legal event arising from death are subject to the national law of the testator.

The principle of the unity of law in inheritance, meaning that there is no distinction between movable assets and immovable assets, is accepted, in line with Indonesian landmark decisions; either in PIL or in the Internal Inter-legal Law.

In relation to a will or testament, the stipulations are open in the broadest senses to any possibility to acknowledge any will that has been made.

This is in line with the principle of *favor testamenti*, which is accepted in, among others, PIL conventions, for instance the Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions, 1961.

Any testament or will is made in a form which is subject to:

- the national law of the testator when he made his will or upon his death; or
- the law where the testator had his domicile when he made his will or upon his death; or
- the law where the testator had his habitual residence when he made his will or upon his death, or
- the law of the state where the immovable assets are situated as long as it is in relation to the immovable assets.

## CHAPTER [VII] INDONESIAN INTERNATIONAL PROCEDURAL CIVIL LAW

Any cases containing a foreign element which are brought before the Indonesian courts will be examined according to and subject to the stipulations of Indonesian Procedural Law, either criminal procedural law, civil procedural law or administrative procedural law, even though such a case is brought by a foreign claimant or is related to an immovable or movable asset situated abroad or any event or action or negligence or matters that occur abroad.

In other words, Indonesian Procedural Law is applied for any examination to cases brought by a foreign plaintiff, or involving a foreign defendant, or any case that contains a foreign element.

CHAPTER [VIII]  
OTHER PROVISIONS

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CHAPTER [IX]  
TRANSITIONAL PROVISIONS

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CHAPTER [X]  
CLOSING PROVISIONS

By the promulgation of this law, the stipulations as laid down in Arts. 16, 17, and 18 of the *Algemene Bepalingen van Wetgeving* shall no longer prevail and be effective.

Signed in Jakarta

On ...  
PRESIDENT OF THE REPUBLIC OF INDONESIA  
JOKO WIDODO

Enacted in Jakarta

On ...

MINISTER OF LAW AND HUMAN RIGHTS OF  
THE REPUBLIC OF INDONESIA

AMIR SYAMSUDIN

THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF ...  
NUMBER ...