

Getting To Know International Civil Law: When Cross-Border Laws Meet

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Abstrak: Globalization has encouraged increasing interactions among individuals and legal entities originating from different countries. Developments in technology, international trade, foreign investment, and cross-border population mobility have given rise to various legal relationships containing foreign elements. These conditions create legal issues that cannot be resolved solely based on a single national legal system. In such circumstances, Private International Law plays a role as a branch of law that regulates private legal relationships connected to more than one country. This article aims to examine the definition, scope, fundamental principles, and role of Private International Law in resolving cross-border legal issues. This study employs a normative legal research method using statutory and conceptual approaches through library research. The findings indicate that Private International Law has an important function in determining judicial jurisdiction, the applicable law, as well as the recognition and enforcement of foreign judgments. The existence of Private International Law provides legal certainty and protection for parties involved in legal relationships containing foreign elements. As cross-border relations continue to increase, the role of Private International Law becomes increasingly important in realizing justice and legal certainty in the era of globalization.

Keywords: Private International Law, foreign element, conflict of laws, globalization, cross-border disputes.

INTRODUCTION

The development of globalization has encouraged the increase in legal relations that cross national borders. Advances in information technology, communication, transportation, and international trade allow individuals and legal entities from various countries to carry out various legal activities more easily and quickly. Legal facts show that currently there are more and more legal relationships that contain foreign elements, such as mixed marriages, international trade transactions, foreign investment, child adoption between countries, overseas asset ownership, and cross-border electronic transactions. This condition has led to the emergence of various legal disputes involving more than one national legal system, thus raising



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questions about the applicable law, the authority of the court, and the recognition and implementation of foreign judgments.¹

The regulation of legal relations that contain foreign elements is basically based on various provisions of national law and international instruments. In Indonesia, the legal basis related to International Civil Law can be found in *the Algemene Bepalingen van Wetgeving voor Indonesië* (AB), especially Article 16, Article 17, and Article 18 which regulate the personal status, property, and legal acts that have foreign elements. In addition, provisions regarding international legal relations are also spread in the Civil Code (KUHPerdata), Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as well as various international conventions that have been ratified by Indonesia. The existence of this legal basis shows the importance of an arrangement that is able to provide legal certainty for cross-border legal relations.²

However, the development of increasingly complex international legal relations still raises various legal issues in the practice of International Civil Law. From the aspect of vague *norms*, there is still uncertainty about the legal determination that applies in various cross-border digital transactions involving many jurisdictions. From the aspect of conflict of *norms*, there are often differences in regulation between the national law of one country and the law of another country, causing conflict in determining the jurisdiction and law that must be applied. Meanwhile, from the aspect of the vacuum of *norms*, the development of digital technology, artificial intelligence, and internet-based economic activities often has not been balanced with adequate legal arrangements, thus causing difficulties in resolving disputes that contain foreign elements. Therefore, the existence of International Civil Law is very important to provide legal certainty, justice, and legal protection in various cross-border legal relations.³

METHODOLOGY

This research uses normative legal research methods with a statutory approach and a conceptual approach. The legislative approach is carried out by examining various international legal instruments that regulate the territorial boundaries of countries, such as the 1945 United Nations (UN) Charter, the 1982 United Nations Convention on the Law of the Sea (UNCLOS), as well as the provisions of national law related to the territory of the country. Meanwhile, a conceptual approach is used to analyze the concept of state sovereignty and territorial boundary regulation in the perspective of international law.

The legal materials used consist of primary legal materials in the form of laws and regulations, international conventions, and international court decisions, as well as secondary legal materials in the form of books, scientific journals, and expert opinions. The collection of legal materials is carried out through library research, then analyzed qualitatively with descriptive-analytical methods to obtain conclusions

¹ Bayu Seto Hardjowahono, *Basics of International Civil Law* (Bandung: Citra Aditya Bakti, 2013), pp. 1–5.

² *General Provisions of Legislation for Indonesia* (AB), Article 16, Article 17, and Article 18; Indonesia, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution; Sudargo Gautama, *Indonesian International Civil Law*, Volume I (Bandung: Alumni, 2004), pp. 25–30.

³ Sunaryati Hartono, *Principles of International Civil Law* (Bandung: Binacipta, 1989), pp. 10–18; Peter Hay, Patrick J. Borchers, and Symeon C. Symeonides, *Conflict of Laws* (St. Paul: West Academic Publishing, 2010), p. 15.

about the juridical implications of setting state boundaries on the implementation of sovereignty in the perspective of international law.

RESULTS AND DISCUSSION

A. Definition, Scope, and Principles of International Civil Law

International Civil Law (HPI) is a branch of law that regulates civil law relations that contain foreign elements. These foreign elements can arise due to differences in the nationality of the parties, domicile, place of residence of legal entities, location of legal objects, places where agreements are made or executed, or places where a legal event occurs. The existence of this foreign element is what distinguishes International Civil Law from national civil law which only regulates legal relations in one country's jurisdiction.⁴

Although it uses the term "international", International Civil Law is not a part of Public International Law that governs relations between countries or international organizations. In contrast, HPI focuses on private legal relationships involving individuals or legal entities that have ties to more than one national legal system. Therefore, HPI is more appropriately understood as a national law that functions to resolve conflicts of laws that arise due to the presence of foreign elements in a legal relationship.⁵

The development of globalization has made International Civil Law even more important. Increasing human mobility, advances in information technology, electronic trade, foreign investment, and transportation developments have caused cross-border legal relations to become increasingly complex. Mixed marriages, international business transactions, overseas asset ownership, interstate child adoption, and electronic contracts made through digital platforms are real examples of legal relationships that require regulation through HPI.⁶

In practice, the scope of International Civil Law is very broad because it covers almost all aspects of civil law relations that have foreign elements. One of the main areas is international family law which regulates the issue of mixed marriage, cross-border divorce, child custody, interstate child adoption, and the determination of citizenship status. These problems often involve more than one legal system so that they require an appropriate legal determination mechanism in order to achieve legal certainty and protection of the rights of the parties.⁷

In addition to family law, HPI also regulates international inheritance law. Inheritance disputes can be very complex if the heirs have different nationalities, reside in another country, or leave assets scattered across several countries. In such circumstances, the question arises about which law is used to determine

⁴ Sudargo Gautama, *Indonesian International Civil Law*, Volume I (Bandung: Alumni, 2004), p. 3.

⁵ Bayu Seto Hardjowahono, *Basics of International Civil Law* (Bandung: Citra Aditya Bakti, 2013), p. 8.

⁶ Sunaryati Hartono, *Principles of International Civil Law* (Bandung: Binacipta, 1989), p. 15.

⁷ Sudargo Gautama, *Indonesian International Civil Law*, p. 45.

the heirs, the distribution of assets, and the implementation of court decisions. Therefore, HPI plays a role in determining the most relevant legal system based on principles that have developed in international practice.⁸

Another area that has developed very rapidly is international contract law. Business relationships between countries often involve companies or individuals from different jurisdictions entering into agreements by choosing a particular law as the law governing their contract (choice of law). If the parties do not determine the choice of law, then HPI functions to determine the law that has the most significant relationship to the contract. This mechanism is very important in providing legal certainty for the international business world.⁹

In addition, HPI also regulates international property law related to the legal status of movable and immovable objects that are outside the territory of a country. Ownership of land, buildings, ships, and other assets located in a foreign country must pay attention to the laws of the country where the object is located. This aims to respect state sovereignty and maintain legal certainty in the control and transfer of property rights.¹⁰

The scope of HPI also includes the settlement of international disputes through courts and arbitration. In this context, HPI functions to determine the competent court (jurisdiction), applicable law, and the mechanism for the recognition and implementation of foreign judgments. These three aspects are at the core of International Civil Law because they are the basis for the effective and fair settlement of various cross-border disputes.¹¹

In resolving these legal conflicts, HPI uses several basic principles that have developed in international judicial doctrine and practice. The first principle is the **principle of nationality (lex patriae)**, which is the principle that determines that a person's personal status follows the laws of the country of his or her citizenship. Indonesia as a country that adheres to the tradition of the Continental European legal system still uses the principle of nationality in various arrangements regarding the personal status of citizens¹².

The second principle is the **principle of domicile**. In contrast to the principle of nationality, this principle determines that a person's legal status follows his permanent residence or domicile. Countries with

⁸ Riduan Syahrani, *The Intricacies and Principles of International Civil Law* (Bandung: Alumni, 2008), p. 62.

⁹ Peter Hay, Patrick J. Borchers, and Symeon C. Symeonides, *Conflict of Laws* (St. Paul: West Academic Publishing, 2010), p. 132.

¹⁰ Bayu Seto Hardjowahono, *Fundamentals of International Civil Law*, p. 118.

¹¹ J.G. Castel, *Canadian Conflict of Laws* (Toronto: Butterworths, 2002), p. 54.

¹² Pasal 16 *General Provisions of Legislation for Indonesia* (AB).

common law systems, such as the United Kingdom and the United States, use the principle of domicile more because it is considered to reflect more of a person's real relationship with a country.¹³

The next principle is **lex loci contractus**, which is the law by which the contract is made. This principle is used to determine the law that applies to an agreement if the parties do not specify the choice of law in the contract. In modern international trade practice, the application of this principle is often combined with the principle of freedom of contract so that the parties can determine for themselves the law to be used as long as it does not conflict with public order.¹⁴

Furthermore, there is the principle **of lex rei sitae**, which is the law where objects are located. This principle is generally applied to immovable objects such as land and buildings. Thus, any dispute over land rights must be subject to the laws of the country in which the land is located. This principle is widely recognized in HPI practice because it is closely related to the state's sovereignty over its territory.¹⁵

Another principle that is no less important is **lex fori**, which is the law of the country where the court examines cases. Based on this principle, the court always uses the procedural law of its own country even if the applied material law comes from another country. Thus, procedural law still follows the national legal system of the courts that examine the case.¹⁶

These five principles show that International Civil Law does not aim to standardize all legal systems in the world, but rather provides a method to determine the most appropriate law to be applied to a legal relationship that has a foreign element. Therefore, HPI functions as an instrument to create legal certainty, justice, and the effectiveness of dispute resolution in the midst of differences in the legal system between countries.¹⁷

With the increasing global economic activity, electronic trade, international investment, and cross-border community mobility, the existence of International Civil Law will be increasingly strategic. Doctrinal development, regulatory harmonization, and international cooperation are inevitable needs so that the settlement of cross-border civil disputes can take place effectively, provide legal protection to the parties, and support the creation of legal certainty in the era of globalization.¹⁸

B. The Role of International Civil Law in Cross-Border Legal Relations and Its Challenges in the Digital Era

The development of globalization has significantly changed the pattern of legal relations between the world's people. Advances in information technology, transportation, communication, and increasing

¹³ J.G. Castel, *Canadian Conflict of Laws*, p. 77

¹⁴ Peter Hay, Patrick J. Borchers, and Symeon C. Symeonides, *Conflict of Laws*, p. 240.

¹⁵ Bayu Seto Hardjowahono, *Fundamentals of International Civil Law*, p. 141

¹⁶ Riduan Syahrani, *The Intricacies and Principles of International Civil Law*, p. 94.

¹⁷ Sunaryati Hartono, *Principles of International Civil Law*, p. 103

¹⁸ Hague Conference on Private International Law, *Private International Law: Overview of HCCH Instruments*, terbaru.

international trade activities have caused legal relations to no longer be limited to the territory of a country. Individuals and legal entities can now carry out various cross-border legal activities, such as investment, trade, mixed marriage, electronic transactions, and dispute resolution through international arbitration. This condition makes International Civil Law (HPI) have a very important role in creating legal certainty for legal relations that contain foreign elements.¹⁹

One of the main functions of the HPI is to determine the jurisdiction of the court that has the authority to examine and adjudicate a case. In disputes involving parties from different countries, the question often arises as to which court has absolute authority to hear the case. The determination of jurisdiction is important so that there is no overlap of authority between countries that can hinder the dispute resolution process. Therefore, HPI provides rules that are used to determine dispute resolution forums objectively based on the legal relationship of the parties with a country.²⁰

In addition to determining jurisdiction, HPI also functions to determine the applicable law on an international legal relationship. Not all cases examined by Indonesian courts must use Indonesian law as material law. Under certain conditions, the court can apply the laws of other countries if based on the rules of HPI, the law is the most appropriate law to regulate the legal relationship between the parties. This function is very important to ensure justice while respecting the legal relationship that has been established by the parties.²¹

The next role is to provide a legal basis for the recognition and enforcement of foreign court decisions. In the practice of international legal relations, a court judgment often has to be enforced in another country because the losing party's assets are outside the country where the judgment was rendered. Without a mechanism for the recognition of foreign judgments, the settlement of cross-border disputes will lose effectiveness. Therefore, various countries have developed rules regarding the recognition and implementation of foreign judgments based on the principle of reciprocity and international agreements.²²

HPI also has a great contribution in supporting international trade. Certainty about applicable law, dispute resolution forums, and protection of the rights of parties are important factors that affect the confidence of business actors in conducting cross-border transactions. Investors and multinational companies tend to choose countries that have a clear HPI system because it can provide certainty for dispute resolution in the event of a default or contractual dispute.²³

¹⁹ Bayu Seto Hardjowahono, *Basics of International Civil Law* (Bandung: Citra Aditya Bakti, 2013), p. 165

²⁰ Sudargo Gautama, *Indonesian International Civil Law*, Volume II (Bandung: Alumni, 2004), p. 28

²¹ Peter Hay, Patrick J. Borchers, & Symeon C. Symeonides, *Conflict of Laws* (St. Paul: West Academic Publishing, 2010), p. 287

²² J.G. Castel, *Canadian Conflict of Laws* (Toronto: Butterworths, 2002), p. 615.

²³ United Nations Commission on International Trade Law (UNCITRAL), *UNCITRAL Texts and Status*, 2023.

In addition, HPI functions to provide legal protection for the rights and obligations of the parties. This protection is not only given to citizens, but also to foreign citizens and foreign legal entities that have legal relations with Indonesia. Thus, HPI is an important instrument in realizing the principle of equality before the law and ensuring that every party receives legal protection fairly without discrimination based on citizenship.²⁴

The development of digital technology has presented new challenges for International Civil Law. Electronic transactions made through the internet allow parties from different countries without ever meeting in person. For example, a consumer in Indonesia can buy goods from a company domiciled in Japan through a digital platform whose servers are located in Singapore and whose payment system is processed by a company domiciled in the United States. This kind of legal relationship raises complex issues regarding jurisdiction and applicable law in the event of a dispute.²⁵

Electronic commerce (e-commerce) is one of the fields that causes the most HPI problems. In contrast to conventional transactions that have a clear physical location, digital transactions are often carried out without territorial boundaries, making it difficult to determine the birthplace of the agreement or the place where the default occurred. As a result, the application of classical HPI principles such as *lex loci contractus* requires adjustments to remain relevant to the development of information technology.²⁶

In addition, the development of artificial intelligence (AI) also presents new challenges in HPI. The use of AI systems in contract drafting, customer service, and business decision-making raises questions about who is responsible in the event of a loss. Until now, many countries are still developing regulations that regulate legal responsibility for the use of such technology, so international law harmonization is needed to avoid jurisdictional conflicts²⁷.

Another challenge arises in the form of cross-border protection of personal data. Digital activities cause a person's personal data to be processed, stored, and transferred to different countries in a very short period of time. Differences in data protection standards between countries can cause legal conflicts regarding the obligations of electronic system operators and the rights of data owners. Therefore, HPI has an important role in determining the applicable laws to disputes related to the protection of personal data.²⁸

In the digital era, legal harmonization between countries is an increasingly urgent need. Various international organizations such as the United Nations Commission on International Trade Law (UNCITRAL) and the Hague Conference on Private International Law (HCCH) continue to develop various international legal instruments to create uniformity in the settlement of cross-border disputes. The

²⁴ Riduan Syahrani, *The Intricacies and Principles of International Civil Law* (Bandung: Alumni, 2008), p. 126

²⁵ Sunaryati Hartono, *Principles of International Civil Law* (Bandung: Binacipta, 1989), p. 115.

²⁶ Peter Hay, Patrick J. Borchers, & Symeon C. Symeonides, *Conflict of Laws*, p. 301.

²⁷ Hague Conference on Private International Law (HCCH), *Private International Law and Digital Economy*, 2023.

²⁸ UNCITRAL, *Electronic Commerce and Digital Trade Publications*, 2022.

harmonization is expected to increase legal certainty while supporting the development of international trade and investment.²⁹

Indonesia, as part of the international community, also needs to continue to update HPI regulations in order to be able to keep up with the development of global legal relations. The establishment of a comprehensive International Civil Law has long been an academic and practical necessity considering that until now most of the HPI arrangements in Indonesia still rely on the *Algemene Bepalingen van Wetgeving voor Indonesië* (AB) which is a product of colonial law. The legal reform is expected to provide better legal certainty for the public and international business actors.³⁰

Thus, it can be understood that International Civil Law has a very strategic function in ensuring legal certainty for various cross-border legal relationships. In addition to carrying out traditional functions in determining jurisdiction, applicable laws, and recognition of foreign judgments, HPI is also required to be able to answer the challenges of increasingly complex digital technology developments. Strengthening national regulations, harmonizing international law, and increasing cooperation between countries are important steps so that HPI remains relevant in facing the dynamics of legal relations in the era of globalization.³¹

CONCLUSIONS

International Civil Law is a branch of law that has an important role in regulating civil law relations that contain foreign elements. The existence of International Civil Law is becoming increasingly relevant along with the rapid development of globalization which encourages increased interaction between individuals and legal entities from various countries. Various activities such as international trade, foreign investment, mixed marriage, overseas asset ownership, and cross-border electronic transactions have given birth to legal relationships that can no longer be resolved based on only one national legal system. Therefore, International Civil Law exists as an instrument that provides guidelines in determining applicable laws, court authority, and mechanisms for the recognition and enforcement of foreign judgments.

In its application, International Civil Law uses various basic principles, such as the principle of nationality, the principle of domicile, *lex loci contractus*, *lex rei sitae*, and *lex fori*. These principles are the basis for resolving legal conflicts that arise due to differences in legal systems between countries. With these principles, dispute resolution containing foreign elements can be carried out in a more targeted manner, providing legal certainty, and ensuring protection of the rights and obligations of the parties involved.

On the other hand, the development of digital technology and the global economy presents new challenges for International Civil Law. Electronic transactions, digital trade, the use of artificial *intelligence*, and cross-border data transfer pose increasingly complex legal issues, especially in determining jurisdiction, applicable law, and dispute resolution mechanisms. This condition shows that

²⁹ Hague Conference on Private International Law, *Overview of HCCH Instruments*, 2023.

³⁰ Bayu Seto Hardjowahono, *Fundamentals of International Civil Law*, p. 201

³¹ Sudargo Gautama, *Indonesian International Civil Law*, Volume II, p. 201.

International Civil Law must continue to develop and be able to adapt to the dynamics of the global community in order to remain effective in providing legal certainty and a sense of justice.

Based on the results of the discussion, it can be concluded that International Civil Law has a very strategic function in creating legal certainty, justice, and legal protection for legal relations that contain foreign elements. Therefore, it is necessary to update national regulations, strengthen international cooperation, and harmonize with various international legal instruments so that the International Civil Law system in Indonesia is able to answer the challenges of globalization and technological developments in the future. Thus, International Civil Law is not only a means of resolving cross-border legal conflicts, but also an important instrument in supporting the creation of orderly, fair international legal relations, and providing legal certainty for all parties.

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