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TRANSFORMATION OF CIVIL LAW: UNDERSTANDING AND HISTORY OF CIVIL INTERNATIONAL LAW

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Abstract

Civil law transformation includes changes and developments in the civil law system that occur over time. These changes are influenced by various factors, including social, economic, political and technological. The aim of this transformation is to ensure that civil law remains relevant and capable of regulating legal relationships between individuals and entities in an ever-evolving society. Indonesian Civil Law aims to determine which law applies and which courts have authority in civil cases across national borders. The history of Private International Law begins during feudalism in Europe. The transformation of Private International Law occurred in line with changes in the structure of society which increasingly tended towards a territorialistic society throughout Europe. In the Indonesian context, Private International Law has an important role in protecting the rights and interests of Indonesian citizens abroad, facilitating international trade, resolving international disputes, international cooperation, and protecting intellectual property rights.

Keywords: transformation, civil law, history, scope, private international law

INTRODUCTION

The relationship between humans and the state does not only apply in one area. Every country is interconnected with other countries. Both in terms of economics, defense, politics, support, health and other fields. Therefore, in this relationship there is a need for laws or regulations that are binding and control all forms of activities that are taking place. There is no exception for civil matters, both individual and state. In international relations, international private law is the legal basis (Uzelac, A., & Van Rhee, 2018).

According to Merryman, J., & Pérez-Perdomo, R. (2018) International Private Law is a dynamic field of law because it always follows developments with the times, International Private Law is a set of legal regulations and decisions that determine which law applies in legal or relationship matters. law involving various legal systems in various countries. Private International Law has a limited scope, private international law only covers relevant legal

issues, It is evident that the choice of law in private international law and a choice of jurisdiction (broader), according to this statement does not only cover conflict issues. Law (choosing the correct law), but also issues of jurisdictional conflict, especially those related to the degree or jurisdiction of a judge, Private international law, including jurisdiction, choice of law, and conditions for foreign nationals. Additionally, private international law describes the state of foreigners (foreigner condition = statuutlingen = statuut), in addition to the choice of law, forum and judge.

Mochtar Kusumaatmadja (Scarfi, J. P. (2017) The entirety of legal regulations governing cross-border civil contacts or the legal framework governing civil law amongst legal actors who are each subject to distinct national civil laws is referred to as international private law.

Then, Roberts, A. (2017) defines international private law as a total if relationships or events between citizens at a particular point in time reveal points of links with legal systems and laws from two or more other countries in terms of authority, place, person, and issues. These legal regulations and decisions serve to establish which legal system applies or what defines law.

The branch of law that deals with circumstances when a relevant fact has a tie to another legal system on a territorial or personal level is known as conflict of laws, or private international law. As a result, it may become unclear whether one's own law should be applied to resolve the dispute or whether foreign courts should have jurisdiction over the matter. This is according to Professor R.H. Graveson's argument.

Prof.'s view Graveson can more or less be translated as follows: Conflict of Laws or International private law is a branch of law that deals with cases that have pertinent facts that demonstrate a connection to another legal system, both geographically and legally. These cases also raise issues regarding the application of one's own laws or other laws, as well as the question of exercising one's own court's jurisdiction over a foreign court. Prof. J.G. Sauveplanne is of the belief that the full body of regulations governing civil-law relationships with international components and relationships with foreign nations is known as international private law, or internationale privaatrecht, so that the question can be asked whether direct submission to foreign law that is without having to submit to internal law (Sands, 2017).

Taulbee, J. L., & Von Glahn, G. (2022) stated that international private law is the totality of legal regulations and decisions that determine which law applies in the event of a dispute between two or more people with different nationalities. This law questions in which jurisdiction a dispute should be

resolved and which law applies. The transformation of International Private Law occurred in line with changes in the structure of society which increasingly tended towards a territorialistic society throughout Europe.

In Northern Europe, feudalism developed and this had an impact on the law, namely the law of landlords which was exclusive to anyone within their territory. Meanwhile in Southern Europe, the growth of trading cities in Italy made private international law play an important role in resolving disputes between parties. In the Indonesian context, a Draft Law on Private International Law is being drafted to provide legal certainty and regulate cases involving parties from various countries. The Draft Law on Private International Law will also be a guide for judges in determining their authority to adjudicate in resolving private international law cases (Orakhelashvili, 2022).

Rajagopal, B. (2017) stated that the transformation of Private International Law is also occurring in terms of digitalization and the use of information technology. The Indonesian government, through the Ministry of Foreign Affairs and the Supreme Court, has carried out a transformation in the bureaucratic structure and improved the quality of cross-border civil legal services with the support of the latest information technology. The Draft International Private Law Law is expected to provide legal certainty and regulate various cases involving parties from various countries, so that Indonesia can be stronger in global competition.

Transformation of Private International Law refers to changes or evolution of civil law that regulates legal relations between countries or that involves foreign elements. This transformation covers various aspects, including legal sources, the principles used, and the approaches taken by various countries in handling civil cases involving international elements. Transformations reflect the dynamics of the developments taking place in international law in private international law relations, the global economy, and technological advances. Adaptation and harmonization of international private law is important to ensure that law can keep up with the times and the needs of global society (Chimni, 2018).

RESEARCH METHOD

This research in-depth investigates the transformation of civil law: the meaning and history of international private law using a literature review approach. The results include a comprehensive understanding of the meaning and scope understanding of international private law, its background, and its

significance for Indonesia. A thorough examination of the literature on the nature, application, and meaning of international private law is known as a literature analysis. With a strong conceptual foundation, this research makes an important contribution to enriching the discussion regarding what and how the transformation of international private law contains the meaning, scope and history of private international law.

RESULT AND DISCUSSION

Definition and Scope of Private International Law

Prof. J.G. Sauveplanne expressed the opinion that Private International Law is the entirety of laws governing international civil law interactions and international legal relationships with other nations (Carty, 2024).

Meanwhile, Sudargo Gautama, a legal expert, defines the body of legislation known as private international law and rulings that specify which legal system is applicable or what is considered law if interactions or occurrences between individuals at a specific period demonstrate particular characteristics. relationships with the laws and legal systems of two or more distinct nations about topics, persons, places, and powers (Peters, 2017). Private international law can also be referred to as the law of international relations since it is fundamentally concerned with the social interactions within the international community.

International relations are defined as follows: national private law continues to be the basis for international private law regulations. We shall learn about Germany, England, and Indonesia all have international private law, Dutch international private law, and other national private laws since every nation in the world has its own international private law.

Private International Law is a branch of law that regulates civil relations that cross national borders. Private International Law focuses on cases involving foreign elements. This foreign element determines whether a problem or case falls within the parameters of international private law or not. Private International Law includes legal regulations and rulings that specify the applicable legal system or what qualifies as law, whether interactions or occurrences between citizens during a specific period of time are related to the legal systems of two or more countries that differ in power, place, person, and questions (Su, 2019).

The scope of international private law covers various aspects, including (Born, G. B., & Rutledge, 2022):

1. Jurisdiction: The ability of a nation to resolve legal disputes involving citizens or legal organizations within its borders is known as jurisdiction. When it comes to private international law, jurisdiction can be national (based on state law) or international (based on bilateral or multilateral agreements between countries).
2. Property Ownership: Private International law also regulates aspects of property ownership in an international context.
3. Cross-Border Marriage and Divorce: International Private law regulates marriage and divorce involving couples from different countries. This includes regulations regarding the validity of marriage, the rights and obligations of spouses, as well as the recognition and enforcement of divorce decisions in other countries.
4. Inheritance and Inheritance: HPI International Civil Law also regulates the inheritance and distribution of inherited assets among heirs from different countries.

Depending on the relevant legal system, each country may have a different private international law scope. International private law can also involve conflicts of terms or contraditio in terminis, where the terms used in Private International law in one country may differ from the terms used in another country. In carrying out its duties, International Private Law can also consider the rules of Private International Law to resolve cases involving foreign elements. In private international law in Indonesia there has been a terminological dispute; that is, despite the fact that civil law is applicable in Indonesia, it is not universally applicable (SA, C. F., & MINISTERS, C. O).

The coexistence of multiple equal legal systems throughout the world is the foundation for the development of private international law. Every nation's legislators and implementers essentially develop laws based on the particular circumstances or national context that they find themselves in. Occasionally, though, legal events take place that demonstrate a link to or significance for the legal systems of other nations.

The scope of Private International Law is (Slagter, T. H., & Van Doorn, 2022):

1. Private international law as the Right to Override

   The scope of private international law is restricted to relevant legal matters. This conversation is restricted to matters concerning the legislation that has to be put into effect. The HPI field does not include other issues pertaining to judges' qualifications, citizenship, or foreign status. The Private International Law of the Netherlands and Germany both use this type of framework.

2. Private International Law as Choice of Law + Choice of Jurisdiction
   According to this system, international private Law encompasses not only matters of conflict of law (exact choice of law), but also matters of conflict of jurisdiction (precise choice of jurisdiction), specifically matters concerning the qualifications or powers of judges. Thus, Private International Law not only concerns the issue of the law being enforced, but also about the authority of the selected judges. This broader The United States and England both have a system known as private international law and other Anglo Saxon countries.
3. Choice of Law + Jurisdiction + Condition des Etrangers in Private International Law
   In this system, foreigners' status (condition des etrangers = statuutlingen = statuut) is a matter of concern for Private International Law in addition to the issues of choice of law, forum, and judge. Latin American nations, such as Italy, Spain, and South American nations, are familiar with this type of structure.Private International Law as Choice of Law + Choice Jurisdiction
4. Nationalite + Condition des Etrangers
   This approach states that private international law deals with matters of citizenship, foreigner status, forum or judge preference, and choice of law. The question of citizenship pertains to the acquisition and revocation of citizenship. The majority of authors on private international law also follow this extremely expansive framework, which is recognized in French private law.

History of Private International Law

According to Dobson, A. (2017) Private International Law has a long history and has developed since ancient times. At the beginning of its development, HPI grew from trade with foreigners. In ancient Roman times, problems arising from relations between Romans and foreign merchants were resolved by special court judges called praetor peregrinis. Apart from that, principles such as lex rei sitae (lex situs), lex domicili, and lex loci contractus have also grown and become important principles in the modern era of Private International Law.

International private law continued to develop along with the growth of trading cities in Italy. These cities are tied together because they live in the same city residence and have diverse local legal systems. This growth is supported by the intensity of trade between cities (Eslava, L., Fakhri, M., & Nesiah, 2017). During the Roman Empire, private international law also

developed into public or territorial international law known as Ius Gentium. The principle of Lex Rei Sitae (Lex Site) has also developed as an important principle in international private law, which states that the law that applies to an object is the law of the place where the object is located. Along with the development of western culture in Europe, the principles and mindset of international private law have existed since the time of the Roman Empire. However, the term Private International Law used in Indonesia today comes from the Continental European legal tradition.

A subset of law known as international private law governs civil legal interactions involving foreign parties, whether in the form of legal subjects, legal objects, or legal events. The following is an outline of the history of the development of Private International Law Bersier, N., Bezemek, C., & Schauer, F. (2022):

1. Middle Ages
   Feudal Europe: During this time, laws were local and fragmented. Each region has its own laws that apply to local residents and there are no rules governing cross-regional relations.
2. 16th and 17th centuries
   Universalist View: Thinkers such as Hugo Grotius and Ulrich Huber began to develop the theory that there were universal legal principles that could be applied in various countries. Grotius is considered the father of International Law with his work "De Jure Belli ac Pacis" (1625).
3. 18th and 19th centuries
   Codification and Unification of Laws: Several countries began to codify their laws and tried to implement uniform principles of civil law. For example, France with its Civil Code (1804) or Code Napoleon which greatly influenced civil law in Europe and outside Europe.
4. 20th century
   International Conferences and Conventions: A number of international conventions and treaties began to emerge to regulate various aspects of civil law involving foreign elements. For example, the Hague Convention on Private International Law (1893) which aims to unify the principles of privat international law in various countries.
   World Wars and Their Impact: World Wars I and II brought major changes in international relations and the enforcement of international law, including private international law. The formation of the United Nations (UN) also strengthened efforts to harmonize international law.
5. 21st century

Globalization: With increasing globalization, interactions between countries are intensifying, including in civil relations. This brings new challenges for HPI in dealing with various cross-jurisdictional issues such as international trade, migration and human rights protection.

Technology and International Private Law: Developments in information and communication technology also influence HPI, especially in the fields of e-commerce, personal data protection, and international contracts.

The main principles of international private law are as follows (Marks, 2017):

1. Lex Loci Contractus: The applicable law is the law of the place where the contract is made.
2. Lex Loci Solutionis: The applicable law is the law of the place where the obligations in the contract are carried out.
3. Lex Domicilii: The applicable law is the law of the permanent residence of the parties concerned.

The history of Private International Law shows how this law developed from fragmented local law to a more structured and harmonious legal system at the global level.

The scope of the HPI narrowly covers relevant legal issues, such as choice of law and choice of jurisdiction. However, more broadly, HPI also covers issues of legal conflict and civil legal relationships that cross national borders (Pargendler, 2018).

The Importance of Private International Law for Indonesia

Previously, private international law adhered to Articles 131 and 163 IS. The population in Indonesia is divided into various population groups, namely the bumiputera (indigenous Indonesian population, inlanders) who apply their respective customary laws. The European group is equated with the application of the Civil Code or bulgerlijk wetboek, the Eastern Chinese group, and Indonesian citizens of Chinese descent apply the Civil Code with slight changes (Lailam et al., 2024).

In simple terms, international private law is national civil law for issues of an international nature. The following are examples of international private law issues which have been summarized from the module prepared by Zulfa Djoko Basuki, et al as follows (Putra, H. M., & Ahyani, 2022):

1. Marriage and Divorce

   Marriage or divorce can occur between Indonesian citizens and foreigners or foreigners and foreigners in Indonesia or other countries. Considering

that divorce is a matter of personal status (article 16 AB applies analogously), national law will apply to those who do not recognize divorce. Even though Indonesia knows divorce. Meanwhile, this kind of case clearly shows a foreign element, or is HPI in nature, because the parties are Filipino or Spanish citizens, residing in Jakarta and filing the case at the District Court in Jakarta.

2. International Buying and Selling

   For example, there is a sale and purchase contract between an Indonesian businessman and a Singaporean businessman. The signing of the contract may occur in Singapore or be carried out via correspondence, telegram or electronic mail. If a dispute occurs, sometimes the parties have chosen both the law that will apply, and also the forum that has the authority to handle the HPI case if a dispute arises. For example, there is a sale and purchase contract for civet coffee between a civet coffee trader in Lampung and a coffee trader in California, United States. In the contract the parties agreed to choose Indonesian law. However, if a dispute arises, for example there is a delay in delivery, it will be resolved through the American Arbitration Association or International Chambers of Commerce, (ICC), Paris. Choice of law is Indonesian law, but choice of forum chooses foreign arbitration.

3. Dual Citizenship Issues

   The old Citizenship Law, namely Law No. 62/1958, adhered to the strict principle of jus sanguinis. In a mixed marriage, namely a marriage between an Indonesian citizen and a foreign citizen, children born anywhere only acquire the citizenship of their father. For example, if the country where a child is born adheres to the principle of jus soli, which also grants citizenship to the child, then he or she becomes bipatride. Within one year the father must declare that his child will choose to become an Indonesian citizen or foreigner. Otherwise he will become stateless. However, Law no. 12/2006 grants limited dual citizenship to children born in mixed marriages, until the child is eighteen years old. Within three years after turning eighteen he must choose to become an Indonesian citizen or a foreigner. Otherwise he will become apatride.

4. International Adoption

   It is generally known that the problem of child adoption in Indonesia can occur between fellow citizens or can also be carried out by foreigners against Indonesian children or vice versa, foreign children are adopted by Indonesian parents.

Private International Law has an important role for Indonesia in several ways. The following are several reasons why Indonesian Civil Law is important (Komalasari, R., & Mustafa, 2023):

1. Protection of the rights and interests of Indonesian citizens abroad: HPI ensures that Indonesian citizens involved in international transactions or living abroad have adequate legal protection. For example, if a civil dispute occurs between an Indonesian citizen and a foreign party, Indonesian Civil Law can provide a clear legal framework for resolving the dispute.
2. Facilitating international trade: Indonesian Civil law contributes significantly to the facilitation of global trade by offering a clear legal framework for business transactions between countries. This helps encourage economic growth and strengthen Indonesia's trade relations with other countries.
3. International dispute resolution: Indonesian Civil law provides a legal framework for resolving international disputes between individuals, companies, or countries. This may involve selecting applicable law, selecting jurisdiction, and resolving disputes through international arbitration. With the HPI, Indonesia can be involved in resolving international disputes in a fair and effective manner.
4. International cooperation: Indonesian Civil law allows Indonesia to engage in international cooperation in various fields, such as trade, investment, and cultural exchange. By having a clear legal framework, Indonesia can establish good relations with other countries and participate in mutually beneficial cooperation.
5. Protection of intellectual property rights: Indonesian civil law is also important in protecting Indonesian intellectual property rights at the international level. For example, if there is a violation of intellectual property rights by a foreign party, HPI can provide a legal framework to protect these rights and resolve disputes that arise

Thus, International Private Law has an important role in protecting the interests and rights of Indonesian citizens at the international level, facilitating international trade, dispute resolution, international cooperation, and protecting intellectual property rights (Chuasanga, A., & Victoria, 2019).

CONCLUSION

A subset of law known as private international law governs legal interactions involving foreign parties between people, businesses, or nations. The application of one's own law or another country's law, as well as the

question of exercising one's own court's jurisdiction or that of another country's court bodies, are all covered by Indonesian civil law.

The history of Private International Law begins during feudalism in Europe. In Northern Europe, feudalism developed and resulted in landlord laws that were exclusive to anyone within their territory. Foreign rights are not recognized, including rights provided for in international law of public policy. Meanwhile, the development of trading centers in Italy and Southern Europe led to the importance of Private International Law in settling conflicts between parties.

The transformation of Private International Law occurred in line with changes in the structure of society which increasingly tended towards a territorialistic society throughout Europe. This resulted in changes in legal principles and recognition of foreign rights. Principles such as lex rei sitae (lex situs), lex domicili, and lex loci contractus grew and developed into important principles in the modern era of Private International Law.

In the Indonesian context, Private International Law has an important role in protecting the rights and interests of Indonesian citizens abroad, facilitating international trade, resolving international disputes, international cooperation, and protecting intellectual property rights.

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