

Foreign Law Ascertainment and Private International Law Reform in Indonesia: Strategic Pathways for Institutional Transformation

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ABSTRACT: This article examines the strategic path of legal and institutional reform in Indonesia with a particular focus on foreign law ascertainment and the development of private international law. Since the reform era of 1998, Indonesia has made progress in democratization, decentralization, and strengthening the principle of the rule of law. Nevertheless, the persistence of regulatory fragmentation, overlapping authorities, weak institutional capacity, and corruption continues to hinder the realization of effective and accountable governance. In the context of cross-border civil relations, Indonesia still relies on outdated colonial provisions—Articles 16–18 of the *Algemene Bepalingen*—which are inadequate for addressing contemporary global. This research uses a normative-juridical approach with conceptual analysis and comparison of institutional practices. This article is expected to contribute to the development of academic discourse while offering practical recommendations for policymakers and stakeholders in the reform process. The findings indicate that meaningful reform requires regulatory codification, harmonization with international instruments, judicial capacity-building, and the creation of expert networks and foreign law databases. This article argues that strengthening the mechanisms for foreign law ascertainment is crucial not only for ensuring legal certainty and fairness in international transactions but also for enhancing Indonesia's competitiveness and credibility in the global legal order. The integration of legislative reform, institutional strengthening, and regional cooperation is identified as a strategic pathway toward building a more coherent, accountable, and internationally connected system of private international law.

KEYWORDS: foreign law ascertainment; private international law; legal reform; institutional reform; Indonesia

A. INTRODUCTION

Indonesia's legal and institutional landscape has undergone significant transformation since the reform era of 1998. Despite progress in democratization, decentralization, and strengthening the rule of law, various structural weaknesses remain obstacles to achieving effective and responsive governance.¹ Fragmented regulations, overlapping authority, bureaucratic inefficiencies, and rampant corruption are crucial issues that undermine legal certainty, justice, and accountability.² These conditions underscore the urgency of comprehensive legal and institutional reform. Reform involves not only revising outdated laws and regulations, but also strengthening institutional capacity, improving coordination between state organs, and expanding public participation in governance processes.³ Furthermore, Indonesia's involvement in global dynamics, commitment to human rights, and the demands of sustainable development require a more adaptive and visionary reform strategy. Thus, the primary question is no longer whether reform is necessary, but rather how it can be strategically directed to achieve long-term impact. The "strategic pathways" approach becomes relevant as an analytical framework for identifying priority areas, aligning institutional design with democratic principles, and integrating the reform agenda with national development objectives.⁴ This article aims to analyze the strategic path of legal and institutional reform in Indonesia by examining the challenges, opportunities, and policy directions that can shape a more coherent, accountable, and sustainable system of governance. Thus, the discussion is expected to contribute to the development of academic discourse while offering practical perspectives for policymakers and stakeholders involved in the reform process. Based on the above background, the problems to be examined in this article can be formulated as follows: What are the main challenges in implementing legal and institutional reform in Indonesia? What strategic pathways can be taken to realize effective, accountable,

¹ M. Imam Nasef Ni'matul Huda, *Penataan Demokrasi Dan Pemilu Di Indonesia Pasca Reformasi* (Kencana, 2017). Pp.45.

² Muhammad Hanaf, 'Kedudukan Musyawarah Dan Demokrasi Di Indonesia', *Jurnal Cita Hukum*, 2.1 (2013), pp. 227–46.

³ Roy Marthen Moonti Muten Nuna, 'Kebebasan Hak Sosial-Politik Dan Partisipasi Warga Negara Dalam Sistem Demokrasi Di Indonesia', *Jurnal Ius Constituendum* |, 4.2 (2019), pp. 110–27.

⁴ Firzhal Arzhi Jiwantara, 'Reformasi Peraturan Dan Kebijakan Pengadaan Tanah Untuk Kepentingan Umum', *Media Keadilan: Jurnal Ilmu Hukum*, 11.2 (2020), p. 169, doi:10.31764/jmk.v11i2.2317.

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and sustainable legal and institutional reform? To what extent can legal and institutional reform contribute to strengthening governance and national development in Indonesia?

B. DISCUSSION

1. Legislative Reforms

a. Enactment of a Specific Legal Framework on Foreign Law Ascertainment

In 2014, the National Legal Development Materials Agency (BPHN) of the Ministry of Law and Human Rights produced an Academic Paper and Draft Law (RUU) on Private International Law. The drafting team consisted of university graduates with experience and expertise in the field. The bill was intended to replace the provisions of colonial civil international law, namely Articles 16, 17, and 18 of the *Algemene Bepalingen van Wetgeving for Nederlands Indie (AB) Staatsblad 1847 No. 23* which is considered no longer appropriate to the dynamics of current needs related to the dynamics of trade globalization.⁵

This academic paper is the result of in-depth research and scientific study to provide scientific justification for the immediate need for legal reform of the basic provisions governing Indonesian international civil law.⁶ The creation of this academic paper is required by Law No. 12. 2011 concerning the Establishment of Legislation related to the preparation and drafting of a Bill. Based on the Academic Paper, it has been further formulated into a Bill entitled the Bill on International Private Law. The Bill on International Private Law as *Ius Constituendum* will later function as a codification of regulations concerning international private law that are adjusted to the dynamics of the development of international private law at the present time. Because Indonesia in recent decades has been actively involved in various international trade activities with other countries, it requires national legal principles, in the form of laws, that regulate international private law issues.

The legal reform efforts indicate the need for a legal reform or renewal of the regulations on determining foreign law in Indonesia, considering that for a long time there has been no legal reform of various colonial laws and regulations which, based on Article II of the Transitional Provisions of the 1945 Constitution, were "forced" to be re-enacted to fill the legal vacuum and as long as there has not been a new one to replace it. Among the various colonial laws and regulations, one of them is Article 16, 17 and 18 AB which has been the legal basis related to international civil law.⁷

In fact, the spirit contained in Article II of the Transitional Provisions is very clear, that the re-implementation of various laws and regulations that existed before Indonesian independence is temporary, namely as long as there are no new ones according to the 1945 Constitution. This temporary nature must not be allowed to continue to drag on, lulled into complacency so that without realizing it, time continues to move, which has now entered 73 years of Indonesian independence. In fact, the applicable colonial provisions, including Articles 16, 17 and 18 AB, must be immediately replaced with new laws and regulations made by the Indonesian Government that are adjusted to the actual and urgent needs at this time. National legal policy related to the renewal of international private law is a systematic effort to formulate a clear and definite direction and objectives in accordance with the mandate of the 1945 Constitution. The Draft Law on International Private Law in the consideration section states that:⁸

- a. That in order to realize the goal of establishing an Indonesian State Government that protects all Indonesian people and all Indonesian territory and advances general welfare and enlightens the life of the nation, it is necessary to have a guarantee of legal certainty for the community to carry out its activities in the context of globalization in various fields;
- b. That with the increasingly rapid development of globalization in the economic, social, cultural, scientific and technological fields today, it has given color to the development of law so that there is a need for legal codification as a set of legal rules that are arranged systematically and can provide guidance towards a fair resolution of legal issues that contain foreign elements;
- c. That Articles 16, 17 and 18 AB which have been used in international civil law issues are no longer in accordance with the development of the needs of society, so that it is necessary to form a law to guarantee legal certainty in society.
- d. The considerations in letters a, b, and c provide a clear explanation of the reasons why the International Private Law Act needs to be created. They contain an affirmation that there is a need for legal certainty and also as a guide to resolving legal issues that contain foreign elements in global economic activities. Participation in activities The global economy is carried out in such a way but still in order to protect the rights and interests of Indonesian citizens and the state in the event of legal problems.

However, the state objectives stated in the Preamble to the 1945 Constitution, which include the phrase:to protect all Indonesian people and promote the general welfare, remain the primary basis for implementing these legal reforms. In one way or another, the provisions of current private international law, articles 16, 17, and 18 AB, were created by the Colonial Government,

⁵ Muh. Risnain, "Optimalisasi Peranan Hukum Perdata Internasional Sebagai Hukum Antar Tata Hukum Ekstern Dalam Pembangunan Perekonomian Nasional Dan Globalisasi", *Unizar Law Review*, Vol. 1, Issue. 2, 2018, hlm. 178-188.

⁶ Ibid.

⁷ Olivia Rizka Vinanda, dkk., "Urgensi Harmonisasi Hukum Perdata Nasional Dengan Dinamika Hukum Global", *Jiic: Jurnal Intelek Insan Cendikia*, Vol. 10, No. 1, Desember 2024, hlm. 7832.

⁸ Ibid.

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and therefore contain philosophical rationales and an air of colonial indifference that are no longer appropriate for Indonesia, which has been independent for 80 years in the current context of globalization. In recent decades, Indonesia has undertaken various sectoral legal reforms related to private international law issues.⁹

It can be said that in the current era of economic and trade globalization, national borders have become limitless, resulting in the rapid exchange of goods and services between Indonesia and other countries. Export and import activities between Indonesia and its partner countries contribute to the rapid growth of economic and trade activities. These activities certainly have legal implications, especially international civil law, because they concern the legal relationship between Indonesia, both the state, legal entities, and individual legal subjects with its trading partners in other countries, both states, legal entities, and individual legal subjects. The provisions in the Draft Law on International Civil Law are very important to be enacted immediately, in order to provide legal certainty for the parties making international trade contracts and for judges in the event of disputes between the parties.¹⁰

In his article entitled "Legal Updates Between Indonesian Legal Systems in the Context of Supporting Economic Development in the Era of Globalization", Wibowo argues that the substance of the provisions of Articles 16, 17 and 18 AB made by the Colonial Government is outdated, no longer in accordance with Indonesia's current needs and no longer in accordance with the dynamics of international trade, so it needs to be immediately revoked and replaced with international civil law made by the Indonesian Government. Legal politics concerning legal updates by enacting the Law on International Civil Law is an urgent need for Indonesia to improve the Indonesian economy related to trade globalization. The National Legal Development Agency (BPHN) needs to immediately perfect the existing International Civil Law Bill by asking for input (again) from stakeholders before submitting it to the Government to be submitted as a Government-initiated Bill and included in the Priority - National Legislation Program.¹¹

Specifically, reform of private international law or inter-legal system law in the Indonesian context must be based on the noble values of Pancasila, which uphold justice, humanity, and equal rights, as well as the sovereignty of national law in interacting with the international legal system. The principles of sovereignty and respect for the laws of other countries are implemented in a balanced and dignified manner. Therefore, reform of private international law in Indonesia is a systematic process to update and build a national legal system that regulates civil legal relations involving foreign elements (cross-border private legal relations). This reform includes a paradigm shift, improvements to legal substance, the creation of new legislative instruments, and increased institutional capacity and legal human resources to address the complexities of global legal interactions.

In the context of its scope, the reform of international civil law in Indonesia will include four main components, including:

- a. Establishment of a National PIL Law: To replace the current partial system, a written law is needed that regulates the principles of PIL, the determination of applicable law (choice of law), international jurisdiction, recognition of foreign decisions, and limitations on the application of foreign law.
- b. Alignment with International Instruments: Reform aims to align national laws with international conventions (such as the Hague Convention, UNCITRAL Model Laws) and best practices from developed countries.
- c. Integration of PIL in Civil Law Recodification: In the process of updating the Indonesian Civil Code, PIL norms need to be accommodated to ensure harmony between areas of private law.
- d. Strengthening Institutions and Human Resource Capacity: Training is needed for law enforcement officers, updating the legal education curriculum, and developing study and research centers on PIL.

In general, the goal of inter-legal system law reform in Indonesia is to promote integrated economic development and commercialization. This includes, among other things, ensuring legal certainty and justice in international civil disputes. Furthermore, providing a conducive legal framework for international investment and trade. Furthermore, providing fair legal protection for citizens abroad and foreigners in Indonesia. Furthermore, enhancing national legal sovereignty in the face of globalization and legal liberalization and strengthening the competitiveness of the Indonesian legal system internationally.

A legal framework specifically addressing the mechanism for determining applicable law in Indonesia would provide clarity on the procedures and criteria for applying foreign law. This could reduce disparities between court decisions and increase legal predictability for the parties. With the increasing number of cross-border contracts and legal relations, a legal framework that is adaptive to foreign law is a necessity so that the Indonesian legal system can compete globally and provide legal certainty to international business actors. The orderly application of foreign law must remain within the framework of protecting basic national legal principles, human rights, and public order. Therefore, a sound legal framework can be an instrument for balancing legal transparency and national legal sovereignty.

⁹ Z.D Basuki, *Teori-Teori Umum Hukum Perdata Internasional Yang Dapat Mengesampingkan Berlakunya Hukum Asing Dengan Memberlakukan Hukum Nasional Sang Hakim*. *Jurnal Hukum dan Pembangunan*, *Jurnal Hukum dan Pembangunan*, Vol. 26, No. 3, 2016, hlm. 200-202.

¹⁰ Ibid.

¹¹ Basuki Rekso Wibowo, "Pembaruan Hukum Antar Tatahukum Indonesia Dalam Rangka Mendukung Perkembangan Ekonomi Di Era Globalisasi", *Jurnal Rechtsvinding*, Vol. 7, No. 2, 2018, hlm. 15-16.

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b. Integration of Guidelines into Procedural Codes

The integration of private international law into Indonesia's national legal framework as a legislative and harmonization step is a complex process and presents different challenges than other legal integrations. One of these classic challenges is the differences in legal systems between Indonesia and other countries. Indonesia adheres to a mixed legal system that includes customary law, Islamic law, and civil law, while many other countries apply different legal systems, such as common law or civil law.¹² This can lead to conflicting norms and difficulties in the recognition and enforcement of international legal decisions in Indonesia. Research by Ali, N., shows the need for harmonization of norms to facilitate more effective legal integration.¹³ Furthermore, the lack of understanding of private international law among legal practitioners and policymakers in Indonesia is a significant challenge. Research conducted by *Suhendra* found that a lack of education and training in private international law contributes to this lack of understanding, which can lead to misapplication of the law and undermine public trust in the legal system. The study recommends improving the legal education curriculum by incorporating private international law material to improve understanding.¹⁴

Limited resources, both in terms of budget and expertise, also hamper the integration of private international law into national legal systems. Inadequate resources impact the quality of legal services received by the public, thereby reducing access to justice. international has significant implications towards enforcement law in Indonesia. With the increasing the number of cases involving international elements, the need to have a clear and enforceable legal framework accepted in international to become increasingly urgent . The lack of clarity regarding the mechanism law enforcement international can resulting in a decision the law that inconsistent and detrimental to the parties involved.¹⁵ Therefore, it is necessary to establish a special forum or institution that can handle and oversee the implementation of international civil law in Indonesia.

Overall , challenges to the integration of private international law include differences in legal systems, a lack of understanding of private international law, limited resources, and implications for law enforcement . Addressing these challenges requires collaborative efforts from governments, academics, and legal practitioners to create a more responsive and adaptive legal system. to the dynamics global, so that Indonesia can be more effective in addressing international civil law issues and ensuring justice for all people.

Soedargo Gautama defines International Civil Law as national civil law norms that regulate foreign elements, so it is relevant to discuss aspects of Indonesian national civil law that regulate international civil law.¹⁶ Therefore, the focus of the study is the Indonesian AB. However, current legal developments do not only regulate civil and economic relations in the Civil Code alone, but are regulated in various separate laws and regulations. The legal policy adopted does not only regulate aspects of PIL codified in the Civil Code alone, but is regulated in various laws and regulations outside the BW. Even international civil law norms are not only regulated in national law but also regulated in several international agreements such as the 1958 New York Convention on the recognition of foreign arbitral awards and the convention on choice of law.

General *Bepalingen van Wetgeving* for The Dutch Indies (AB) is a Dutch legacy that was later applied in Indonesia through the principle of concordance and is constitutionally regulated in Article 1 of the Transitional Provisions of the 1945 Constitution of the Republic of Indonesia. These rules still apply in Indonesia today. These Dutch legacy rules also regulate the issue of Human Rights in Articles 16, 17, and 18 of the AB. Article 16 of the AB broadly stipulates that for residents of the Dutch East Indies, the laws and regulations regarding a person's legal status and authority remain applicable to them, if they are abroad (personal status). This article regulates, first, individual law (*personenrecht*), including family law. Second, it regulates non-permanent (movable) objects.¹⁷ Article 17 of the AB regulates the application of the principle of *lex rei sitae* to movable and immovable objects, the laws of the country or place where the objects are located apply. Article 18 stipulates that the form of every legal act is assessed according to the laws of the country and the place where the act was carried out (*locus regit actum*).¹⁸

The three articles containing elements of the International Civil Code (PIL) in the AB above are no longer adequate for the increasingly complex development of law and modern human interaction. Therefore, as an independent nation whose citizens engage in civil relations with foreign citizens and even reside in various countries for various purposes, civil relations containing foreign elements should not be regulated solely by the three articles in the AB alone. A more comprehensive regulation is needed that covers aspects of international civil law that follow the development of the doctrine and concept of PIL adopted by most modern nations today. Moreover, as an independent nation with a large population whose residents tend to carry out activities abroad (diaspora),

¹² Santoso, L. (2016). Perbandingan Sistem Civil Law dan Hukum Islam serta Interaksinya dalam Sistem Hukum Indonesia. *Istinbath: Jurnal Hukum*, 13(2), 189-222.

¹³ Ali, N. (2020). Measuring religious moderation among muslim students at public colleges in kalimantan facing disruption era. *INFERENSI: Jurnal Penelitian Sosial Keagamaan*, 14 (1), 1–24.

¹⁴ Geralda Monalisa, *Integrasi Hukum Perdata Internasional dalam Kerangka Hukum Nasional Indonesia: Tantangan dan Implikasi*”

¹⁵ Samekto, F.A. and SH, M., 2018. *Negara dalam dimensi hukum internasional*. PT Citra Aditya Bakti.

¹⁶ Soedargo Gautama, 1995, *Hukum Antar Tata Hukum*, Bandung, Alumni, hlm. 30.

¹⁷ Tim Penyusun, 2014, *Naskah Akademik RUU Hukum Perdata Internasional*, Jakarta, BPHN, hlm. 41.

¹⁸ *Ibid*.

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Indonesia needs to have comprehensive international civil law regulations in a separate statute. At this point, Indonesia's national economic interests require legal regulations that provide ease and legal certainty for citizens to carry out legal actions for their citizens.

In addition to observing the existence of the principles of PIL in the AB, aspects of PIL are also reflected in investment policy in Indonesia. One of the characteristics of Law Number 25 of 2007 concerning Investment is its foreign element. Therefore, the legislative policy regulating investment in Indonesia not only regulates domestic investment but also foreign investment.¹⁹ Foreign investment activities involving foreign citizens, foreign business entities, and/or foreign governments investing in the territory of the Republic of Indonesia are inseparable from aspects of international civil law. Foreign capital is capital owned by a foreign country, foreign citizens, foreign business entities, foreign legal entities, and/or Indonesian legal entities whose capital is partially or wholly owned by foreign parties.

Regarding foreign investors, Article 5 of Law Number 25 of 2007 concerning Investment regulates the obligation for foreign investors to be in the form of a limited liability company based on Indonesian law and domiciled within the territory of the Republic of Indonesia, unless otherwise stipulated by law. The Indonesian government has adopted a legal policy that foreign legal subjects investing in Indonesia must fulfill the first requirement related to the form of a legal entity, namely a limited liability company (PT) and the establishment of the PT must be based on Indonesian law, namely Law Number 40 of 2007 concerning Limited Liability Companies. However, this article provides an exception to this article that companies that will invest in Indonesia may not be in the form of a PT and not be based on Indonesian law as long as there are special rules that allow for the non- fulfillment of these requirements. This exception in the rule seems inconsistent because it allows business entities established under foreign law and not in the form of a PT to invest in Indonesia. However, if viewed from the spirit of Law Number 25 of 2007 which prepares the red carpet for For investors, this inconsistency is understandable. However, as a sovereign nation, the Indonesian government should have a clear stance that foreign companies investing in Indonesia must be in the form of a PT and established in Indonesia.

Another aspect that regulates the PIL aspect in the Indonesian Investment Law is the provision of Article 6, which provides legal guarantees that the Indonesian government provides equal treatment to all investors from any country who carry out investment activities in Indonesia in accordance with the provisions of laws and regulations (the principle of most favored nation). The application of the principle of most favored nation does not apply to investors from a country that has received special rights under an agreement with Indonesia.²⁰

The Investment Law also stipulates an urgent matter regarding the Indonesian government's guarantee that it will not nationalize or take over ownership rights of investors, except by law . Even if the Indonesian government does take nationalization or take over ownership rights, it will provide compensation, the amount of which will be determined based on market value. If the two parties cannot reach an agreement on compensation or damages, the settlement will be through arbitration.²¹

The existence of Article 7 of the Investment Law above is crucial for the competitiveness of Indonesian law as an effort to attract foreign investors to Indonesia. This government policy guarantee has two important meanings for investors and the Indonesian government. First, the Indonesian government guarantees that the nationalization policy is a political decision that must obtain political support from parliament through joint approval in the form of a law . Nationalization cannot be taken. Second, the nationalization steps taken by the Indonesian government follow the principles of international law that have been practiced by countries, namely the principle of prompt and adequate. The existence of this principle guarantees that Indonesian investment law has competitiveness for investment security in Indonesia. Compatible investment activities are expected to contribute to economic development which ultimately leads to the creation of public welfare.²²

Not only related to investment interests, the existence of international commercial arbitration is inextricably linked to the resolution of current and future Indonesian business disputes. Various business contracts involving the government and foreign companies in investment agreements, both past and future, will continue to be entered into. These international contracts often utilize international arbitration as a dispute resolution forum. For Indonesia, the existence of international arbitration is inseparable from national economic development. When the New Order regime came to power, which prioritized economic development with foreign investment as its mainstay , the need for arbitration became a legal necessity that could not be ignored. The Indonesian government

¹⁹ Ketentuan Umum UU No 25 tahun 2007 mendefinisikan Penanam modal asing adalah perseorangan warga negara asing, badan usaha asing, dan/atau pemerintah asing yang melakukan penanaman modal di wilayah negara Republik Indonesia

²⁰ Valentina Ekaristi. "Analisis Yuridis Pemberian Hak Istimewa Kepada Penanam Modal Asing Menurut Undang–Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal Ditinjau Dari Prinsip Perlakuan Yang Sama Dalam General Agreement on Trade In Services (GATS)." *Innovative: Journal Of Social Science Research*, Vol. 4, No. 1, 2024, hlm. 3166-3181.

²¹ Ibid.

²² Grandnaldo Yohanes. "Perlindungan Hukum Terhadap Investor Menurut Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal." *Lex Administratum*, Vol. 4, No. 2, 2016, hlm. 92.

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then responded by establishing an arbitration institution through the National Arbitration Board (BANI), while the government's legal policy... enacted Law Number 30 of 1999 concerning arbitration and alternative dispute resolution.²³

Article 65 specifically regulates the recognition and enforcement of foreign arbitration awards. This law provides that the competence for the recognition and enforcement of International Arbitration Awards is the Central Jakarta District Court. Article 66 specifically regulates the requirements for International Arbitration Awards that are recognized and enforceable in the jurisdiction of the Republic of Indonesia, namely: a. International Arbitration Awards are rendered by arbitrators or arbitration panels in a country with which Indonesia is bound by an agreement, either bilaterally or multilaterally, regarding the recognition and enforcement of International Arbitration Awards . b. International Arbitration Awards are limited to awards that according to Indonesian law fall within the scope of trade law . c. International Arbitration Awards can only be enforced in Indonesia, limited to awards that do not conflict with public order. d. International Arbitration Awards can be enforced in Indonesia after obtaining an exequatur from the Chairman of the Central Jakarta District Court; and e. The International Arbitration Award as referred to in letter a which concerns the Republic of Indonesia as one of the parties in the dispute, can only be implemented after obtaining an exequatur from the Supreme Court of the Republic of Indonesia which is then delegated to the Central Jakarta District Court.²⁴

For Indonesia, the existence of arbitration at both the national and foreign levels is inseparable from the influence of globalization where foreign investment entering Indonesia expects a guarantee of business certainty when dealing with the Indonesian government. Legal relations between the Indonesian government formalized through international contracts involving the Indonesian government represented by state-owned enterprises or ministries require legal certainty, so generally foreign investors want international contracts to have a clause regarding a dispute resolution forum through foreign arbitration. In addition to following international trends, the Indonesian government recognized the existence of foreign arbitration by ratifying the international convention on the recognition and enforcement of foreign arbitral awards (convention on recognition and enforcement of foreign arbitral awards 1958) through Presidential Decree Number 34 of 1980. Through Article 60 of Law Number 30 of 1999 concerning arbitration and dispute resolution, the law recognizes the existence of foreign arbitration in Indonesia. From a legal perspective, it cannot be denied that the Indonesian government's commitment to the recognition and enforcement of foreign arbitral awards in Indonesia is undeniable, but from the perspective of the implementation of foreign arbitral awards in Indonesia to date, it remains a problem.²⁵

Private International Law, as part of the law between external legal systems in Indonesia, is part of national law that has grown with other legal regimes. Legal development through the Private International Law (PIL) outside the AB has its own weaknesses in developing the national economy and facing globalization. Therefore, the concept of developing and integrating PIL in the context of economic development and facing globalization is carried out with the concept of parallel development between the codification of PIL in a law and the harmonization of PIL outside the AB. There are two main efforts that can be made in the process of integrating reforms of private international law into the positive legal system in Indonesia, namely:

a. Development of a Foreign Law Determination Mechanism through the Formation of the PIL Bill

As explained above, the PIL norms in Articles 16, 17, and 18 of the AB still pose problems in the development of PIL. Therefore, consideration is needed to create a specific law on PIL. The BPHN's initiative to draft an academic draft of the PIL Bill in 2014 is commendable as an initial step towards establishing an PIL law similar to that of other countries.

The need for PIL as a separate law, apart from the reasons of national legal nationalism to replace the existing PIL norms in AB which are not in accordance with developments in the international world, is also to answer the legal needs of the Indonesian nation which is currently interacting with the international world.

The idea of establishing the PIL needs to be established through a constitutional channel through the drafting process of the bill as stipulated in Law Number 12 of 2011 concerning the formation of legislation. The process of drafting the PIL Bill must begin with planning by including it in the national legislative program (Prolegnas), drafting it with the involvement of initiators from the BPHN, discussion between the DPR and the President, and then approval and promulgation. Concrete steps that can be taken to pass the PIL Bill are to fight for its inclusion in the upcoming 2019-2024 Prolegnas . Proposers must be able to convince the people through their representatives in the DPR about the level of urgency, both from philosophical, sociological, and legal considerations.

b. Synchronization and Consistency of the Implementation of Foreign Law Determination Mechanisms

It has been explained above that there are at least several laws containing elements of PIL, namely Law Number 25 of 2007 concerning planting. capital, Law Number 11 of 2008 concerning Electronic Information and Transactions, and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. However, these three laws lack a legal basis for the establishment

²³ Rohaini, dkk., 2024, Masa Depan Arbitrase Indonesia: Efektivitas dan Kepastian Hukum, Jakarta, Uwais Inspirasi Indonesia, hlm. 31.

²⁴ Ibid.

²⁵ William King & Moody Rizqy Syailendra. "Penyelesaian sengketa investasi asing melalui arbitrase internasional." *Journal of Education Research*, Vol. 4, No. 4, 2023, hlm. 1982-1990.

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of foreign companies in Indonesia, provisions regarding the choice of law and forum, and the implementation of foreign arbitration awards in Indonesia. Therefore, a separate law is needed that regulates various aspects of the establishment of foreign legal entities in Indonesia, the choice of law and forum, and also the recognition of foreign arbitration awards in Indonesia as a statutory regulation that serves as a reference in every aspect of the drafting of PIL in the formation of laws that have economic aspects, especially international trade activities. The existence of a kind of umbrella law that regulates PIL makes it easier for legislators to draft sectoral laws that regulate PIL aspects. At this point, the idea of establishing PIL becomes an urgent legal issue.

There are several principles of international civil law that are considered urgent to be integrated and become technical-procedural provisions, such as those related to the concept of *party autonomy*, where parties in an international dispute should be given the freedom to choose the applicable law (*choice of law*) and the dispute resolution forum. Indonesian courts need to recognize and facilitate this principle in the procedure for examining cases. Then also related to *the most significant relationship approach*, so that judges can determine the law that is most relevant or has a significant relationship to the case, not solely based on the place where the contract was signed (this concept is more flexible than the *lex loci strict* approach). Then there is also the concept of public policy exception which provides guidelines for the application of foreign law as long as it does not clearly conflict with national public order (*ordre public*) (in the context of reformative legal reform, clear and proportionate criteria and procedures for rejection are also needed). The gray area that often gives rise to differences in interpretation and requires procedural norms such as the principle of recognition and enforcement of foreign judgments, where foreign court decisions should be recognized and enforced in Indonesia as long as they meet certain requirements, also still requires concrete and clear procedural procedures for this process. Furthermore, *forum non conveniens*, a principle that allows Indonesian courts to refuse to hear a case if a more appropriate and efficient foreign forum is available, is equally important to implement in a more concrete and technical manner. All of these concepts and approaches are already widely understood principles in the general context of international private law, but in the Indonesian context, these principles have become determinant norms that must be integrated more procedurally within the framework of legal reform between legal systems in Indonesia.

2. Judicial and Administrative Improvements

a. Supreme Court Reform Initiatives

The Supreme Court (MA) has an important and strategic role in encouraging reform and development of international civil law in Indonesia, especially in the context of globalization and increasing legal interaction between countries. Although the Supreme Court's primary function is to exercise judicial power, in practice it often plays a role in legal development through judicial decisions. In cases involving foreign or cross-border elements, the Supreme Court interprets Private International Law (PIL) not explicitly regulated by law.²⁶

The Supreme Court (MA) as the highest court in Indonesia also helps shape legal practice. Private International Law (PIL) is handled through cassation decisions, chamber legal formulations, and judicial administration policies. In practice, the Supreme Court handles cross-border disputes (e.g., international business contracts or mixed marriages) by applying international principles in accordance with national provisions. For example, in the case of *Nine AM Ltd vs. PT BKPL* (an international loan case). In this case, Nine AM Ltd. and BKPL entered into a *Loan Agreement* written only in English, without translation into Indonesian, with the agreed choice of law being Indonesian law. A Fiduciary Guarantee Deed, written in Indonesian, was created to secure the agreement. Since December 2011, BKPL has defaulted and stopped making its debt payments.²⁷

After receiving no response from BKPL, Nine AM Ltd filed a lawsuit demanding repayment of the loan and interest. BKPL responded by filing a lawsuit against Nine AM Ltd, demanding that the court declare *the Loan Agreement* null and void because it was written in English without an Indonesian equivalent or translation, thus violating Law No. 24/2009.²⁸

The West Jakarta District Court granted BKPL's lawsuit and declared *the Loan Agreement* null and void along with the Fiduciary Guarantee Agreement Deed as its *accessory agreement*, and ordered BKPL to return the remaining loan money to Nine AM Ltd. The West Jakarta District Court's consideration was because of the word "obligatory" in Article 31 of Law No. 24/2009 and Presidential Decree No. 63/2019 so that the use of Indonesian in the agreement is imperative. The West Jakarta District Court is of the opinion that by not fulfilling the obligation, the *Loan Agreement* is a prohibited agreement because it was made for a prohibited reason *vide* Article 1335 of the Civil Code *in conjunction with* Article 1337 of the Civil Code. (West Jakarta District Court , Decision Number 451/ Pdt.G /2012/PN Jkt Bar, p. 61)

²⁶ Dinda Rizqatul Himah, "Konvensi Putusan Pengadilan Asing Den Haag 2019: Perspektif Hukum Perdata Internasional Indonesia", *Mimbar Hukum*, Vol. 34, No. 2, 2022, hlm. 618-648.

²⁷ *Ibid.*

²⁸ Ricco Adhi Laksana dan Eko Nugorho, "Studi Kasus Keabsahan Penggunaan Bahasa Asing Dalam Loan Agreement Nine Am Ltd di Indonesia." *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia*. Vol. 2. No. 3. 2024, hlm. 59-72.

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At the appeal and cassation level, the Jakarta High Court and the Supreme Court upheld the West Jakarta District Court's decision and rejected the appeal and cassation requests from Nine AM Ltd. (Jakarta High Court, Decision Number 48/PDT/2014/PT DKI and the Supreme Court of the Republic of Indonesia, Decision Number 601 K/Pdt/2015). In the Cassation Decision, Supreme Court Justice Sudrajad Dimiyati, SH, MH, expressed a dissenting opinion. Supreme Court Justice Sudrajad Dimiyati argued that *the judex facti* wrong, because a lawful *cause is an objective condition of the agreement, which in essence is the content or material of the agreement itself must not be contrary to law, morality, and public order. So a lawful cause is not about the formality or form of an agreement, but rather its material/content. In the dissenting opinion, it also states that the judex facti* did not consider the principle of justice, because Nine AM Ltd. did not profit from the money lent, while BKPL profited from the truck rental services it controlled.²⁹

Another practical aspect of the Supreme Court's reformatory role is evident in the Ford v. Cheng case. In 2008, Ford (a British citizen) married Cheung (a Chinese citizen). Since 2009, they have lived in Bali and held 100% of the shares of PT Alba Indah (an Indonesian legal entity). Their marriage ended in divorce. During the divorce proceedings, the two agreed to divide their joint assets, including the company's assets, as outlined in *the Receivable and Liability Agreement*.³⁰

Then in April 2019, Ford transferred 51% of the shares (worth USD 1,500,000) to Cheung in installments. The share distribution agreement was stated in the GMS Deed written in English, without an Indonesian translation. After the divorce, Ford argued that Cheung had not fulfilled some of the terms of the agreement, so Ford filed a lawsuit against Cheung, demanding that *the Receivable and Liability Agreement* be declared null and void because it did not comply with the provisions of Law No. 24/2009.³¹

Amlapura District Court ruled that the violation of Law No. 24/2009 was not a violation of the objective legal requirements of an agreement based on Article 1320 Number 4 of the Civil Code. As long as the motive for making the contract was not a false motive, was not prohibited by statutory regulations and/or was not based on a motive that was contrary to morality and public order, then the contract that did not meet the requirements of Article 31 of Law No. 24/2009 was still valid (*vide* Article 1336 of the Civil Code). In addition, Law No. 24/2009 does not regulate sanctions for violations of Article 31, so the requirement to file for cancellation of the contract also requires proof that the obligated party can or has been harmed by such a contract (*vide* Article 1341 Paragraph (3) of the Civil Code) (Amlapura District Court, Decision Number 254/ Pdt.G /2019/PN Amp).

In another PIL dynamic within the Supreme Court, namely in the case of PT. Citra Abadi Kota Persada (CAKP) against MDS Investment Holding Ltd. (MDS) and PT ACR Global Investments (ACR), CAKP, an Indonesian company, and MDS, a British Virgin Islands company, signed a share purchase agreement for PT Perdana Gapuraprima. Tbk. (GPRA), a public company incorporated in Indonesia.³²

The agreement was written in English with the choice of law subject to Indonesian law. The agreement was not drawn up in a notarial deed, but was legalized by a notary. Instead of paying the second payment, MDS put forward new demands: requesting a position for its representative in the investment company's management and a relaxation of the second payment. CAKP filed a breach of contract lawsuit against MDS, and the East Jakarta District Court granted the claim, declaring the share purchase agreement valid and binding, and ordered CAKP to pay compensation (East Jakarta District Court, Decision Number 275/ Pdt.G /2018/PN Jkt Tim).

The Jakarta High Court reviewed the decision. Citing the Circular of the Supreme Court (SEMA) of the Republic of Indonesia No. 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guideline for the Implementation of Duties for the Court, the Jakarta High Court declared the Plaintiff's lawsuit unclear or vague and therefore inadmissible (Jakarta High Court, Decision Number 136/PDT/2020/PT DKI). The Formulation of the Results of the Plenary Meeting of the Chamber in question reads "Foreign certificates and documents as evidence must meet the legalization requirements both in the country of origin and in Indonesia, in addition to that they must also be translated by an official translator and sworn in in the Republic of Indonesia", so according to the Jakarta High Court, before filing a lawsuit, the CAKP must first translate the agreement with an official translator who is sworn in.³³

Unlike the decisions in the two cases above, the Jakarta High Court did not determine whether an agreement made without the use of Indonesian is legally void or remains legally binding. The Jakarta High Court simply stated that such an agreement does not qualify as evidence in court unless it has been translated by a sworn translator.

The decisions as mentioned above base their rulings on national legal considerations with several different interpretations, while in these cases there are important parts that also need to be considered, namely the existence of Primary Linking Points. Primary

²⁹ Ibid.

³⁰ Ibid.

³¹ Irene Puteri Alfani Sofia, Chionya Sherly Mahat & Grace Margareth Simarmata. "Dinamika Perjanjian Kontrak Elektronik dalam Bisnis Digital: Analisis Komparatif Dan Implikasi Hukum." *Ekasakti Jurnal Penelitian Dan Pengabdian* 4.1 (2024): 148-156

³² Dani Safangaturrohman, "Peran Penerjemah Resmi Dalam Hukum Perdata Internasional (Studi Kasus Pt. Citra Abadi Kota Persada Melawan Mds Investment Holding Ltd)." *Synergy: Jurnal Ilmiah Multidisiplin*, Vol. 1, No. 03, 2023, hlm. 89-99.

³³ Ibid.

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Linking Points, namely the facts in a case or legal event, which show that the legal event contains foreign elements and therefore, the legal event faced is an International Civil Law event and not merely an internal/domestic legal event.³⁴

These differences in rulings demonstrate the Supreme Court's role in consolidating the application of the Indonesian Civil Code (PIL) in Indonesia through cassation, taking into account the material principles of agreements (e.g., *causa halal*) and national provisions. The Supreme Court also issues jurisprudence in the form of legal formulations and circulars. Through the Civil Chamber Plenary Meeting, the Supreme Court formulates norms that serve as guidelines for the courts. For example, Supreme Court *Circular Letter* No. 7/2012 (Civil Chamber Plenary Formulation) requires that every foreign certificate or document used as evidence meet the legalization requirements in the country of origin and in Indonesia, and be translated by a sworn translator.³⁵

This technical rule is applied by the Jakarta High Court to reject lawsuits if international contract documents have not been legalized or further translated, SEMA MA No. 3 / 2023 regulates that agreements between Indonesian and foreign parties that only exist in a foreign language *are not automatically null and void*, unless there is evidence of bad faith because they do not include an Indonesian translation. This SEMA harmonizes previous Supreme Court decisions and provides legal certainty so that cross-border contracts remain binding unless proven otherwise.³⁶

In addition, the Supreme Court has issued regulations regarding the resolution of international disputes through arbitration, which impact the Indonesian Criminal Code (PIL). For example, Supreme Court Regulation No. 3 of 2023 (effective October 17, 2023) regulates the procedures for enforcing foreign arbitral awards. This regulation supports the enforcement of international arbitral awards in Indonesia following the ratification of the 1958 New York Convention (Presidential Decree 34/1981) and the 1999 Arbitration Law, by mandating certain enforcement requirements. Thus, the Supreme Court bridges international arbitration with the national judicial system.

Overall, the Supreme Court has issued decisions and technical guidelines that integrate the International Criminal Court (PIL) into judicial practice. Supreme Court cassation decisions (e.g., No. 601 K/Pdt/2015) and chamber legal formulations (SEMA 7/2012, SEMA 3/2023) serve as benchmarks for consistent handling of cross-border cases. Supreme Court regulations (e.g., Perma 3/2023) also complement the legal framework for effective international civil litigation.

In addition to practical aspects, institutionally, efforts to reform and develop international civil law are also being implemented as part of the Supreme Court's efforts to improve the quality of justice in Indonesia in handling international civil cases or inter-jurisdictional law. This includes, for example, the issuance of electronic trial regulations integrated with the Supreme Court's server system (first initiated through Supreme Court Regulation 1/2023), which expedites the process and reduces costs for both domestic and international parties. Applications for recognition of foreign awards and enforcement of arbitration can also be submitted without physical presence. Furthermore, the Supreme Court also issued Supreme Court Regulation Number 3 of 2023, which plays a role in strengthening the framework for the enforcement of international arbitration awards in district courts. This policy covers the procedures for appointing arbitrators by the court if a party fails to appear, the procedures for requests for execution and annulment of foreign arbitration awards, and the electronic filing of files.

b. Capacity Building for Judges and Legal Officials

Not only from a practical judicial perspective, but in response to the dynamics and efforts to establish harmonious and efficient enforcement of international civil law, the Supreme Court is actively building internal capacity and global networks to support the International Civil Court. Judge training and education are key aspects. In September 2024, the Supreme Court of the Republic of Indonesia, in collaboration with the Supreme Court of Singapore, held a *Masterclass Program* in Bogor for approximately 60 commercial judges from across the Asia Pacific region. This training addressed cross-border dispute resolution (e.g., international arbitration, cross-border bankruptcy, recognition of foreign judgments) using a comparative approach. Such initiatives enhance Indonesian judges' understanding of international civil law and global best practices.³⁷

The Supreme Court also actively participates in international legal forums. In August 2023, the Chief Justice of the Republic of Indonesia met with the Secretary-General of the Hague Conference (HCCH), Christophe Bernasconi. The meeting discussed Indonesia's interest in HCCH Conventions, such as *the Service Convention* (1965) and *the Taking of Evidence Convention* (1970). *Chief Justice Syarifuddin* also emphasized the need for cross-border legal harmonization in the era of globalization, and emphasized Indonesia's serious consideration of adopting these conventions and strengthening its involvement in the HCCH forum. At the regional level, Indonesia (via the Supreme Court) is active in the Council of ASEAN Chief Justices (CACJ). At the 11th CACJ meeting (Cebu, 2023), it was agreed to hold *the 3rd ASEAN Family Judges Forum*, which will also focus on the 1980/1996 Hague

³⁴ Yohana Dwi Putri, Oktafiani Zentrato & Ema Septaria. "Peran Titik-Titik Pertalian Dalam Menentukan Hukum Yang Berlaku Pada Sengketa Perdata Internasional." *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, Vol. 5, No. 1, 2025, hlm. 566-575.

³⁵ Ibid.

³⁶ Ibid.

³⁷ M Pelawi, KF. Dantes & I Gusti Ayu Apsari Hadi, " Pendekatan Hukum Perdata Internasional: Mengoptimalkan Choice of Law dalam Resolusi Sengketa, *Jurnal Locus Delicti* Vol. 4, No. 2, 2023, hlm. 95-109.

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Convention on international child abduction, planned for May 2025 in Singapore. This demonstrates the Supreme Court's support for the mainstreaming of international legal instruments (HCCH) in ASEAN.³⁸

In terms of supporting the ratification of international conventions, the Supreme Court has demonstrated initiative. For example, the Chairman of the Civil Chamber of the Supreme Court once urged the government to accelerate the development of Indonesia's International Convention on the Rights of Persons (PIL), noting that Indonesia had adopted the Apostille (2021) and was now planning to join the HCCH. In mid-2023, the Chairman even sent a letter to the government urging it to prioritize the PIL instrument, believing that "*the political will is strong enough to allow several conventions to be ratified immediately.*" This statement indicates that the Supreme Court actively supports the ratification of the HCCH conventions (e.g., the Service Convention, the Evidence Convention, and even the Choice of Court and Judgments Convention proposed by the HCCH).³⁹

The Supreme Court also builds institutional cooperation with foreign institutions. For example, in June 2025, the Supreme Court invited a delegation from the Hoge Raad (the Dutch Supreme Court) on a series of working visits. Discussions involved the resolution of international commercial disputes—including an introduction to *the Netherlands Commercial Court*—and the exchange of other case handling practices. This activity is part of an effort to strengthen institutional cooperation between the Supreme Court of the Republic of Indonesia and the Supreme Court of the Netherlands in addressing global challenges, particularly disputes arising from the application of law between the two legal systems.⁴⁰ Previously, in 2024, the Supreme Court Registrar also signed a memorandum of understanding and a cooperation agreement with the Indonesian Ministry of Foreign Affairs regarding cross-border legal technical assistance (rogatory and court letters). This collaboration is important because it fills the gap in national regulations regarding the sending of summonses/notifications between countries in civil cases.

Overall, the Supreme Court not only applies the International Civil Code (ICC) in its court decisions but also institutionally promotes its development. The Supreme Court conducts specialized training, is active in international forums (HCCH, ASEAN, and bilateral cooperation), supports the government's ratification of cross-border instruments, and collaborates with external institutions (foreign courts, the Ministry of Foreign Affairs) in handling cross-border cases. These steps demonstrate the Supreme Court as a key driver of reform and development of private international law in Indonesia.⁴¹

In general, there are a number of initiatives that can be carried out periodically or periodically to improve the capacity of judges and judicial officials in handling PIL cases, including the PIL special Education and training program at the Supreme Court Training Center which provides knowledge and basic principles of PIL in handling inter-legal dispute cases, then the method of determining foreign law (*foreign law ascertainment*), including regulatory and doctrinal research techniques in other countries, as well as case studies of Supreme Court decisions and foreign courts. Judges and court officials can also be actively involved in an in-house workshop for high judges and clerks with resource persons from PIL practitioners (academics, arbitrators, international legal consultants) and trial simulations of PIL cases with cross-border treaty cases. Furthermore, certification of international competency by building third-party cooperation through institutions such as the *ague Academy of International Law* or the *International Association of Judicial Officers*.

Beyond face-to-face (offline) training and education, improving the quality of knowledge and skills of law enforcement can also be achieved through the development of easily accessible teaching materials and digital references. For example, interactive online modules on the Private International Law (PIL) and foreign legal determinations can be provided in the form of videos, quizzes, online discussion forums, or access to foreign regulatory databases (e.g., Brill, Oxford Law). The Supreme Court can also enhance its judicial references by collecting relevant journals and e-books through international journal subscriptions and expanding its e-library with materials relevant to PIL.

From a practical administrative perspective, the Supreme Court can integrate Foreign Law Ascertainment into its Standard Operating Procedures (SOPs) to serve as a standard guideline for identifying foreign legal sources, validating authorities, translating, and legalizing related matters. These SOPs can also provide a contact list for foreign institutions (e.g., court libraries and the Ministry of Justice) for rapid verification. Implementation of these SOPs can also be supported by periodic monitoring and evaluation by the Supreme Court leadership of the implementation of Foreign Law Ascertainment education or training that has been integrated into the judicial curriculum and existing SOPs, whether in the form of written exams, research on Foreign Law Ascertainment, feedback loops to improve training materials or methods, or special awards or incentives for judges who pass PIL certification, as well as for

³⁸ Ibid.

³⁹ Imelda Marinelli, Zefanya Chen & Felicia Amanda, "Analisis Penerapan Hukum Perdata Internasional pada Putusan Pengadilan Negara Indonesia, Belanda dan Jerman", *Jurnal Kewarganegaraan*, Vol. 8 No. 1, 2024, hlm. 566-587.

⁴⁰ Dandapala, "Hoge Raad der Nederlanden dan MA RI Gelar Diskusi, Apa yang dibahas?", diakses melalui <https://dandapala.com/article/detail/hoge-raad-der-nederlanden-dan-ma-ri-gelar-diskusi-apa-yang-dibahas>, pada tanggal 10 Juli 2025.

⁴¹ MA RI, "Ketua MA RI Menerima Kunjungan Kehormatan Sekretaris Jenderal HCCH Dr. Christophe Bernasconi", diakses melalui <https://www.mahkamahagung.go.id/id/berita/5868/ketua-mahkamah-agung-ri-menerima-kunjungan-kehormatan-sekretaris-jenderal-hcch-dr-christophe-bernasconi>, pada tanggal 10 Juli 2025.

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individuals or work units under the Supreme Court who have demonstrated their ability and contribution in improving the quality of handling Foreign Law Ascertainment cases within the Supreme Court.

c. Institutionalization of Expert Networks and Databases

Normatively, the principle of *ius curia novit* (the court knows the law) in Indonesia does not cover foreign law; foreign law is treated as a fact that must be proven by the parties. Practice in local courts shows a tendency to be *reluctant to apply foreign law* even if it has been agreed to in a contract. This is reflected in the opinion of a Supreme Court representative that many judges lack a grasp of Private International Law (PIL). For example, data shows that although approximately 80% of international contracts (particularly oil and gas and mining) use foreign law, many judges still use the Indonesian Civil Code.⁴² A similar conclusion emerged in *Suhendra's* study, which showed that a lack of PIL education for judges leads to misapplication of the law.⁴³

Internationally, some jurisdictions have established formal mechanisms to assist in determining foreign law. For example, in China, institutions such as the China-ASEAN Legal Research Base (under the SPC) are developing a *database of ASEAN countries' laws* and "proof-of-law services" to assist foreign law enforcement. Similarly, *Benchmark Chambers International & BIMC* have created a network of experts managing hundreds of foreign legal experts from dozens of countries (over 1,700 experts) to provide foreign legal opinions to courts and private parties (bcisz.org). Similar shortcomings in Indonesia have been recognized: cross-border procedural law still adheres to colonial-era rules, severely limiting court authority, and the Supreme Court is urging the government to complete the PIL instruments (e.g., ratification of the Apostille Convention and the HCCH). Indonesian literature underscores the need for PIL codification and human resource capacity (judges, clerks, experts) to enable courts to apply foreign law appropriately.

Indonesian judges generally face *resource and competency constraints*. Many judges, from the first to the Supreme Court, are trained only in the national Civil Code.⁴⁴ A lack of foreign language expertise and access to foreign legal literature also poses a barrier. Consequently, decisions are often inconsistent. A *Hukumonline* report highlights differing views on the interpretation of the choice of law and forum principles. Furthermore, sending evidence abroad is still regulated through diplomatic channels (letters rogatory), which are slow and costly. The requirement to legalize foreign documents (apostille) also burdens the process. Overall, the low level of understanding of the Indonesian Civil Code and inadequate supporting infrastructure often makes the application of foreign law difficult or avoided by the courts.⁴⁵

Given these challenges, formal steps are needed to support judges. First, the establishment of an integrated *network of foreign legal experts*, such as a *committee or directorate under the Supreme Court* or the Ministry of Law and Human Rights that manages foreign experts by country or legal field. This network could provide neutral and accountable expert opinions, as is the practice of the BIMC in China.⁴⁶ Next, a comprehensive *foreign legal database needs to be established*: a collection of foreign legislation, decisions, and literature that can be accessed electronically by judges and lawyers. Such a database could be managed by the National Legal Research Agency (BPHN) or the Supreme Court in collaboration with law universities (not unlike China's ASEAN Legal Research Base).⁴⁷ Third, judicial procedures need to be integrated with electronic infrastructure (e-Court) to support the handling of international cases. For example, e-Court case registration forms could include a field for "applicable law," and the system could connect parties with the network of experts. Recent initiatives, such as the Supreme Court-Ministry of Foreign Affairs Cooperation Agreement for electronic witness/expert examination at Indonesian representative offices, demonstrate a positive direction for modernizing the international litigation process.

The Supreme Court and related institutions have initiated several steps. The 2018 Memorandum of Understanding between the Supreme Court and the Ministry of Foreign Affairs regulates the handling of letters rogatory and assistance in the delivery of documents across borders, as there are no specific national regulations. A new cooperation agreement (2023–2024) adds an e-procedural mechanism for foreign witnesses/experts. President Jokowi has also issued a presidential regulation on the use of foreign languages in contracts (Law No. 24/2009) to support international transactions. Other efforts include the ratification of the Apostille

⁴² *Hukumonline.com*, "Indonesia Butuh Kodifikasi Hukum Perdata Internasional", diakses melalui <http://hukumonline.com/berita/a/indonesia-butuh-kodifikasi-hukum-perdata-internasional-lt505175d29a7> pada tanggal 10 Juli 2025.

⁴³ Monalisa, *Op.cit.*, hlm. 68.

⁴⁴ Z.D. Basuki, Teori-Teori Umum Hukum Perdata Internasional Yang Dapat Mengesampingkan Berlakunya Hukum Asing Dengan Memberlakukan Hukum Nasional Sang Hakim, *Jurnal Hukum dan Pembangunan*, Vol. 26, No. 3, 2016, hlm. 200-202.

⁴⁵ *Ibid.*

⁴⁶ Supreme People's Court of China for discerning Hong Kong, Macau, Taiwan and Foreign Law, "Benchmark Chambers International and Benchmark International Meditation Center", diakses melalui <https://www.bcisiz.org/html/cm/>, pada 10 Juli 2025.

⁴⁷ China International Commercial Court, "Introduction to the Supreme People's Court ASEAN Legal Research Base", diakses melalui <https://cicc.court.gov.cn/html>, pada 10 Juli 2025.

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Convention (2021) and the planned membership of the HCCH.⁴⁸ In academic circles, seminars and journals on Private International Law have begun to be held to increase understanding. While still limited, these steps reflect an initial awareness of the importance of strengthening the Private International Law (PIL) in Indonesia.

Institutionalization of foreign law ascertainment is crucial to support the development of private international law in Indonesia. A *network of foreign legal experts* and a *foreign legal database* are essential to provide expert support to judges, enabling more accurate and consistent application of foreign law. Furthermore, judicial procedures need to be strengthened through technological integration (e-court) to facilitate cross-border communication and evidence transfer. We recommend: (1) Establishing a dedicated unit (e.g., the Directorate of Foreign Law Ascertainment at the Supreme Court) to manage the network of experts and resource law databases; (2) Collaborating with universities and the legal profession to develop a digital library of foreign law; and (3) Harmonizing national regulations (e.g., the Draft Law on Foreign Law Assurance) to accommodate international conventions related to foreign law. With these steps, it is hoped that the Indonesian judicial system will be able to handle private international disputes more effectively and increase global confidence in legal resolution in Indonesia.

3. Anticipated Challenges and Counterstrategies

a. Legal and Bureaucratic Inertia

Studies show that the majority of judges have little understanding of the Indonesian Civil Code (PIL), so they often continue to apply the Civil Code even though they should use foreign law.⁴⁹ The process of proving foreign law has not been regulated in procedural law: For example, the Supreme Court stated that foreign language evidence must be translated by a sworn translator before being used, but there are no standard rules on who and when to translate (judges or parties). Regulations on cross-border process procedures (for example, the rogatory mechanism or foreign summons) are also not clearly regulated in the Civil Code / HIR / Rv, so the procedures still refer to colonial regulations and Supreme Court circulars. Data reveals that the competence of Indonesian Criminal Procedure Code (PIL) judges is very low, and research recommends a comprehensive codification of the PIL to provide legal certainty. The Ministry of Law and Human Rights is also reviewing the ratification of international conventions (e.g., the 1970 Hague Document Services Convention) to fill the gap in PIL regulations.⁵⁰

The competence of judicial human resources in the International Criminal Court (PIL) remains weak. Many judges at both the first instance and the Supreme Court are not trained to handle inter-legal cases. Research conducted during the 2005-2006 period concluded that the competence of PIL judges is very low, and in fact, at the Supreme Court, only two judges understand PIL. This limited knowledge is exacerbated by the lack of support staff with foreign law expertise (court clerks, legal advisors).⁵¹ Furthermore, coordination between supporting institutions (such as the National Legal Aid Agency (BPHN) and the Directorate of Law and Human Rights at the Ministry of Foreign Affairs) has not been specifically integrated on PIL issues. In recognition of this, the latest Supreme Court- Ministry of Foreign Affairs MoU includes *education and training* for judges, court clerks, and bailiffs on international civil procedures. However, PIL training in practice remains sporadic and has not yet become part of the strategic qualifications of judges.

In response to this situation, several strategic steps have been initiated, for example, the Draft Law on the Human Rights Protection Act (with 69 articles) is currently being discussed by the House of Representatives (DPR). The National Legal Development Agency (BPHN) and the Ministry of Law and Human Rights are actively supporting the ratification of the Law on the Human Rights Protection Act so that Indonesia has a "portal law" for the Human Rights Protection Act. The government is also encouraging Indonesia to become a member of the Hague Conference on Human Rights Protection (HCCH) to provide access to international technical assistance. Furthermore, the Supreme Court and the Ministry of Foreign Affairs have created a Memorandum of Understanding (MoU) and Technical Guidelines to provide more structure, despite their administrative nature, including regulating the format of letters rogatory, document standards, and related training curricula.⁵²

From a legal bureaucratic perspective, handling cross-border cases involves numerous institutions (courts, the Ministry of Foreign Affairs, the Supreme Court, and even technical ministries) and remains complex. For example, summoning or delivering documents

⁴⁸ Hukumonline, "MA Dorong Pemerintah Kembangkan Instrumen Hukum Perdata Internasional", diakses melalui <https://www.hukumonline.com/berita/a/ma-dorong-pemerintah-kembangkan-instrumen-hukum-perdata-internasional-lt65de509a020de/>, pada 10 Juli 2025.

⁴⁹ Moh. Ali & Bhim Prakoso, "The Freedom of Contract: The Indonesian Court's Decisions on Internasional Bussiness Disputes". Indonesian Journal of Law and Society, Vol. 4, No. 1, Maret 2023, hlm. 94.

⁵⁰ Ibid.

⁵¹ Hukumonline, "Indonesia Butuh Kodifikasi Hukum Perdata Internasional", diakses melalui <https://www.hukumonline.com/berita/a/indonesia-butuh-kodifikasi-hukum-perdata-internasional-lt505175d29a703/?page=all>, pada tanggal 10 Juli 2025.

⁵² Antara, "Kemenkumham Harap Indonesia segera bergabung menjadi Anggota HCCH", diakses melalui <https://www.antaraneWS.com/berita/4074606/kemenkumham-harap-indonesia-segera-bergabung-menjadi-anggota-hcch>, pada tanggal 10 Juli 2025.

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to foreign parties must be done through Letters Rogatory or a request for international civil assistance, but the HIR/ Rv does not clearly regulate this. As a result, courts must follow the old procedure (Rv 1847) with a Supreme Court circular and a Memorandum of Understanding (MoU) between the Supreme Court and the Ministry of Foreign Affairs . Until 2018, the Supreme Court implemented a new procedure: documents are submitted to the Supreme Court's PO Box, fees are deposited into the Supreme Court's account, and the Ministry of Foreign Affairs only processes the rest. While helpful, this procedure is still time-consuming (e.g., document translation and a minimum delivery time of less than four months) and is dependent on postal availability and legalization (prior to joining the Apostille Convention). Furthermore, authorities often overlap because the Ministry of Foreign Affairs and the Supreme Court both have applications and roles in *monitoring rogatory matters* . For example, both institutions have their own systems (the Ministry of Foreign Affairs' ROM and the Supreme Court's Decision Directory) which are not yet integrated, so the process is not optimal.⁵³

Technically, access to foreign legal sources remains difficult. There is no unified official database for foreign law; judges generally have to search for foreign statutory texts or jurisprudence manually or through private networks. Furthermore, each country has a different language: judicial documents (judgments, contracts) must be translated into Indonesian. If a foreign law is chosen as the applicable law, the legal evidence must first be translated by a sworn translator . Supporting technological infrastructure (e.g., digital libraries, e-rogatory platforms) is not yet evenly distributed across all judicial institutions; only the Supreme Court and central institutions have begun to utilize online systems.⁵⁴

Overall, the challenges of the Indonesian Human Rights Court (PIL) in Indonesia include a lack of positive law (normative), complex inter-institutional procedures (bureaucratic), limited resources and coordination (institutional), and access and technology (technical) constraints. Resolving these issues requires synergy between regulatory reforms (enactment of the PIL Law, recognition of international instruments), procedural improvements (Memorandum of Understanding (MoU), integrated applications), institutional capacity building (training of judges/court clerks, special foreign information units), and the continuous use of technology and data (online platforms, foreign law databases).

b. Risks of Normative Ambiguity and Fragmentation

The development of Private International Law (PIL) in Indonesia continues to face normative ambiguity and fragmentation due to the lack of a comprehensive national legal framework. Existing regulations rely on Articles 16–18 of the General Rules of Courts (AB), a legacy of the Dutch colonial era, which are very general in nature. Consequently, there are disparities in interpretation among courts regarding choice of law, jurisdiction, recognition of foreign judgments, and the application of the principle of public order. The limited integration of international treaties into the national legal system also exacerbates uncertainty, both in cross-border contract practice and in the resolution of international civil disputes.

This situation poses several risks: legal uncertainty, declining investor confidence, difficulties in regional and global harmonization, and the potential for legal abuse through forum shopping. To address these issues, Indonesia needs to undertake legislative reform, strengthen the role of the Supreme Court through technical guidelines, and improve coordination between institutions such as the Supreme Court, the Ministry of Foreign Affairs, and the Ministry of Law and Human Rights to ensure that national law is more aligned with modern PIL principles..

4. Future Outlook: Integration with Regional Legal Cooperation

a. Opportunities for ASEAN-China Legal Harmonization

The increasingly close economic ties between China and ASEAN countries (through the RCEP, the Belt and Road Initiative, and the KAJT 3.0) are driving the need for legal harmonization in cross-border commercial disputes. Total China–ASEAN trade continues to surge (for example, reaching nearly US\$798 billion in the first 10 months of 2024, up 7.2%), and mutual investment reaches hundreds of billions of US dollars.⁵⁵ In this context, differences in legal provisions and processes for determining foreign law can create legal uncertainty and hinder dispute resolution. Therefore, harmonization of private international law between ASEAN and China—particularly mechanisms for evidence and determination of foreign law—is a necessity for the investment and economic sectors of countries.

In private international law, events with foreign elements must be subject to applicable foreign law (*lex causae*). The process of *ascertaining foreign law* , or determining the content of foreign law, is the court's attempt to understand and apply the provisions of that foreign law. In theory, Asian legal systems are characterized by differing approaches. In many *civil law countries* (except Thailand), foreign law is considered *lex fori* , and the principle of *ius curia novit curiae* (judges are presumed to know the law, including foreign law) applies. This means that judges *should* apply relevant foreign law, even if the parties do not present it. In contrast, *common law systems* (e.g., Singapore, Malaysia, and the Philippines) treat foreign law as a matter of fact that must be

⁵³ Ali & Prakoso, Op.Cit, hlm. 94.

⁵⁴ Ibid.

⁵⁵ CGTN, “China-ASEAN economic and trade cooperation accelerates”, diakses melalui <https://www.ciie.org/zbh/en/news/exhibition/news/20241125/46989>, pada 10 Juli 2025.

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proven by the parties with expert witnesses. If the parties fail to provide evidence, the judge is not obliged to apply it and often assumes equivalence with national law. This common law approach can be expensive and slow due to the need for expert evidence, while *civil law systems* are ideally more efficient but difficult in practice due to limited access to sources. Thus, a *hybrid approach is often found*: in some Asian *civil law countries* (such as Cambodia, Vietnam, and China), courts consider foreign law as both "law and fact," encouraging cooperation between judges and legal counsel to uncover it. When foreign law is difficult to access, both systems tend to fall back on *lex fori (using forum law) or other fall-back solutions* such as common law principles and *closest connection*.⁵⁶

Empirical research shows that ASEAN courts have not optimally applied foreign law. In Indonesia, for example, judges often fail to apply the principle of *ius curia novit* and still apply national law even when conflict of laws rules refer to foreign law. This is driven by limited facilities: limited quick access to foreign legal sources, language barriers, and a lack of experts. As a result, foreign elements are sometimes ignored, and *lex fori* remains in place. A similar situation occurs in other Asian.⁵⁷ *civil law countries*. Okoli noted that countries such as Vietnam, Cambodia, and China experience practical difficulties and ultimately adopt a hybrid approach to determining foreign law.⁵⁸ In contrast, in many ASEAN *common law countries* (Singapore, Malaysia), judges are not obligated to seek foreign law; unless proven by the parties, judges can presume its contents are consistent with domestic law. This common law method of proving foreign law is effective in commercial disputes (if the parties can afford experts), but can complicate cross-border consumer or family disputes due to the cost and time burden.⁵⁹

ASEAN–China cooperation has promised various initiatives that can strengthen legal harmonization and *ascertainment mechanisms*. At the higher judicial level, regular forums such as the China–ASEAN Justice Forum and the China–ASEAN Legal Cooperation Forum (established in 2019 by Southwest University of Political Science and Law & China-ASEAN Legal Research Center) foster dialogue between the courts and academics of both sides. For example, the 2023 Forum in Chongqing discussed important topics such as *rule of law development* (including regulatory updates for RCEP/CAFTA), legal cooperation experiences, protection of the Lancang–Mekong project, and, in particular, the development of a legal services platform and legal training mechanism within the initiative. The forum is expected to enhance judicial exchanges, reduce legal conflicts, and promote a stable and transparent legal framework along the Maritime Silk Road Corridor.⁶⁰ The Indonesian House of Representatives actively participated, and the Chief Justice of the Republic of Indonesia stated that the main focus of cooperation is legal training and judicial modernization to address international disputes.

At the ASEAN level, the Conference of ASEAN Chief Justices (CACJ) serves as a regular coordination forum for ASEAN Chief Justices. For example, the Jakarta Declaration agreed at the 2021 CACJ affirmed cooperation in judicial education and training, minimum standards for cross-border dispute resolution, and expanded ASEAN+ cooperation (involving China, Japan, and Korea) in legal knowledge development, court technology, capacity building, and best practice sharing. A similar agenda was also outlined in the 2022 China–ASEAN judicial forum, where the focus will be on more intensive communication, harmonization of rules for handling trade/investment disputes in accordance with RCEP, increased judicial assistance, and accelerated consensus on investment dispute resolution.⁶¹

Legal database synergy also presents an opportunity. Institutions such as *the Supreme People's Court ASEAN Legal Research Base* (established in 2014 by the SPC and SWUPL) are developing an online platform for all ASEAN and *Belt & Road countries' laws*, allowing access to legal data and consultation. This aligns with Chinese academics' efforts to establish an ASEAN–China legal research center that compiles regulations and provides translation services (e.g., the publication of *the China–ASEAN Law Review* and research books on Belt & Road countries). Going forward, similar collaborative frameworks could be expanded, for example, through a *joint ASEAN–China legal reference database or technological translation* to facilitate the determination of foreign laws.⁶² Regional protocols are also an important area of study. For example, the aforementioned forums have generated proposals for multilateral legal agreements: the 2025 Forum in Nanning plans to formalize a multilateral agreement to strengthen cross-regional legal collaboration and launch an online litigation-mediation platform. Furthermore, the HCCH approach has been inspiring: the HCCH Asia Pacific Regional Office actively organizes webinars and workshops (such as the 2022 webinar on the 2005 Choice of Court Convention and the 2019 Recognition of Judgments) to equip ASEAN judges with international conventions related to cross-

⁵⁶ Chukmuwa Okoli dalam Kazuaki Nishioka, 2023, *Treatment of Foreign Law in Asia*, Oxford, Hart Publishing, hlm. 327.

⁵⁷ Afifah Kusumadara, "Pemakaian Hukum Asing dalam Hukum Perdata Internasional: Kewajiban dan Pelaksanaannya di Pengadilan Indonesia", *Jurnal Arena Hukum*, Vol. 13, No. 3. Desember 2022, hlm. 443-470.

⁵⁸ Okoli, *Op.cit*, hlm. 327.

⁵⁹ *Ibid*.

⁶⁰ China Justice Observer, "SPC Releases Typical Cases on Foreign Law Ascertainment", diakses melalui <https://www.chinajusticeobserver.com/a/spc-releases-typical-cases-on-foreign-law-ascertainment>, pada 10 Juli 2025.

⁶¹ The Supreme People's Court of The People's Republic of China, "Tao Kaiyuan calls for more high-quality judicial services to support implementation of RCEP", diakses melalui <https://english.court.gov.cn/2022-07/22>, pada tanggal 10 Juli 2025.

⁶² *Ibid*.

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border commerce. The HCCH also encourages secondment (exchange) of legal personnel, such as cooperation with Hong Kong in the legal personnel exchange program in The Hague. These initiatives can be utilized by ASEAN and China to align perceptions, utilize *best practices*, and even develop complementary,⁶³ model instruments (such as the ASEAN-China protocol on judicial assistance or foreign legal evidence).

Strengthening the harmonization of private international law in the ASEAN–China commercial sector is crucial to ensure legal certainty and efficient cross-border dispute resolution.⁶⁴ Several efforts can be made to support the realization of harmonization of private international law between ASEAN and China. First, legislative reform of the ASEAN Private International Law (PIL), where ASEAN countries, particularly Indonesia with its PIL Bill, should immediately codify clear rules for determining foreign law (such as implementing *ius curia* and efficient evidentiary procedures). A promptly passed PIL law would eliminate the courts' excuse to ignore foreign law. Second, strengthening judicial and institutional cooperation, which is an effort. It is necessary to encourage the CACJ and the China–ASEAN Legal Forum to implement a joint agreement (for example, in the form of a declaration) on minimum standards for cross-border disputes and judge training. Indonesia and China could sign a special MoU on the exchange of foreign legal information between their respective Supreme Courts. Joint training (*regional workshops*, e-learning courses) on foreign law determination and ASEAN–China decisions could be held regularly and periodically, in line with the ongoing ASEAN court digitalization initiative. Third, the development of shared resources and platforms. To achieve this stage, ASEAN and China could launch a program that fully supports an integrated legal database. Further development of the *China–ASEAN Legal Research Base* could be extended to the *ASEAN platform* (perhaps with data contributions from each country). The application of technology (AI and automatic translation) could also be expanded, in line with the forum's 2025 theme. Fourth, harmonization of judicial supervision and assistance procedures, in this case ASEAN–China could consider developing a regional protocol (similar to the HCCH Convention) to facilitate document processing, evidence collection, and interpretation of foreign law.

With these steps, ASEAN and China can enhance common legal understanding and provide a practical mechanism for judges to accurately apply foreign law. Ultimately, harmonizing *foreign law ascertainment procedures* will strengthen legal certainty in regional trade and investment, support the goal of ASEAN–China integration, and provide concrete recommendations for each party's policies and judicial institutions.

b. Toward Mutual Legal Assistance Mechanisms

Choice of law is closely related to proving foreign law. If the parties to a contract choose a particular country's law, an Indonesian judge is obliged to apply that law. However, according to the Indonesian Constitutional Court (PIL) theory, foreign law is treated as a fact that must be proven. This means that the party claiming foreign law applies must prove the contents of the foreign country's regulations or jurisprudence. If, during the proving process, information about foreign law is difficult to obtain (for example, the latest law is not yet available or documents are difficult to translate), the decision may favor the party who did not choose foreign law (the judge may reject the unproven foreign law argument).⁶⁵

This is where Mutual Legal Assistance (MLA) plays a crucial role. With this mechanism, a court can request a foreign authority to issue a certificate regarding a legal provision or decision. For example, if a contract refers to the law of a European country, the Supreme Court can request that country's embassy or court to provide a copy of the relevant regulatory article. With MLA, this process can be automated and standardized—eliminating the need for renegotiations in each case. The initiative to draft a *draft law on Private International Law (PIL)* in Indonesia also takes this into account. The Indonesian government is currently drafting the PIL Bill (2025 National Legislation Program) while also pursuing membership in the HCCH Conference and ratification of the Foreign Service Convention, as part of international law reform. Through the IPL Bill, the rules on proving foreign law and civil cooperation can be codified, so that the IPL is no longer merely an international memorandum but becomes part of positive law.⁶⁶ This is expected to facilitate the proving of foreign law in accordance with the agreed choice of law, without bureaucratic hurdles. The implementation of the civil MLA in Indonesia faces structural and practical obstacles. First, the lack of a legal framework, the absence of a specific law or clear rules on the recognition of foreign judgments, creates uncertainty. Article 436 of the Rv explicitly prohibits the execution of foreign court judgments in Indonesia, unless regulated by a specific.⁶⁷ law or agreement. Thus, a party prevailing in a foreign court generally must file a new lawsuit domestically to enforce the judgment, which is time-consuming and costly. Furthermore, the need for document translation, varying formal requirements, and long waiting periods slow down the process. Each destination country has its own technical regulations (e.g., translation attachments, number of copies, submission

⁶³ Permanent Bureau of HCCH, 2023, Report on the activities of the Regional Offices for Asia and the Pacific (ROAP) and for Latin America and the Caribbean (ROLAC), Hague Conference on Private International Law (HCCH), Hague, hlm. 15.

⁶⁴ Kusumadara, *Op.cit.*, hlm. 443-444.

⁶⁵ Badan Pembinaan Hukum Nasional (BPHN), “Siaran Pers BPHN: RUU Hukum Perdata Internasional akan Perkuat Indonesia dalam Persaingan Global”, diakses melalui <https://bphn.go.id/siaran-pers/siaran-pers-bphn-ruu-hukum-perdata-internasional-akan-perkuat-indonesia-dalam-persaingan-global>, pada tanggal 10 Juli 2025.

⁶⁶ Naskah Akademik Rancangan Undang-Undang Hukum Perdata Internasional 2020.

⁶⁷ *Ibid.*

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deadlines). Next, there are issues of jurisdiction and differences in substantive law. The absence of modern conflict of laws guidelines often creates confusion about which court has jurisdiction to resolve cross-border disputes. For example, cross-border commercial contract disputes may require specific choice of law provisions that are not yet fully resolved in Indonesia.

Overall, the MLA in the context of private international law can expedite the process of proving foreign law by providing a formal shortcut for collecting foreign legal data.

More broadly, the MLA initiative is part of the reform of Indonesia's legal system to make it more globally responsive. The implementation of e-litigation and international electronic mail (*erogatori*), the acquisition of technology (API for legal data exchange), and the proposed PIL Bill demonstrate this adaptation effort. International support (e.g., Russia's support for accession to the HCCH Convention) and the ASEAN meeting on MLA reinforce that developing this mechanism is a national necessity. Thus, the civil MLA could be a key instrument in building faster, more transparent, and more harmonized transnational access to justice in line with the demands of international trade.⁶⁸

In the legal field, Indonesia is targeting the ratification of a new legal framework. The draft Law on Private International Law (PIL) is currently being discussed and has been included in the priority National Legislation Program (*Prolegnas*). This law will eventually encompass conflict of laws, jurisdiction, and MLA under one comprehensive umbrella. Furthermore, Indonesia is actively preparing to join international organizations: Russia's support for Indonesia's membership in the Hague Conference (HCCH) and ratification of the Convention on Service Abroad will open broader access to Hague instruments. Later, accession to the HCCH Convention (Submission of Documents, Taking of Evidence, Choice of Forum) could accelerate and standardize civil MLA procedures in Indonesia.⁶⁹

The integration of these efforts—the modern IP Law, digital technology, and a network of international treaties—is expected to increase the effectiveness of the implementation of the MLA in Indonesia's foreign law enforcement mechanisms. These steps will also support legal certainty for legal entities conducting cross-border transactions and enhance Indonesia's credibility in international judicial cooperation.

C. CONCLUSION

Law ascertainment is an urgent need to address the increasing complexity of cross-border civil cases in Indonesia. Unfortunately, to date, there is no national legal framework that comprehensively regulates the mechanisms and standards for proving foreign law in court. As a result, practice relies heavily on judicial discretion, the non-standardized opinions of foreign legal experts, and informal procedures that are prone to inconsistent decisions. The absence of a central authority specifically handling requests for foreign law, coupled with the lack of official digital access to foreign legal documents, has undermined the effectiveness of Indonesia's civil international justice system. In many cases, judges ultimately choose to apply Indonesian law (*lex fori*) even though the parties have agreed to the law of another country (*lex causae*), due to limited evidence and complicated and inefficient foreign law evidentiary procedures.

In addition to legal and institutional aspects, strengthening the capacity of judges, court clerks, and judicial officials to understand and apply the principles of the Indonesian Criminal Procedure Code (PIL) is crucial. Continuous training, judicial technical guidelines, and the establishment of a network of official foreign legal experts are expected to improve the accuracy and legitimacy of foreign legal evidence in Indonesian courts. By building a modern, standardized, and internationally connected foreign legal evidence system, Indonesia can strengthen its legal standing on the global stage, provide legal certainty for international business actors, and ensure that its judicial system is able to respond to transnational legal challenges fairly and efficiently.

The increasingly close economic relationship between ASEAN and China demands strengthening the legal system for handling cross-border civil disputes, particularly in the area of foreign law ascertainment. The differing approaches between civil law and common law systems in Asia have presented challenges in consistently and efficiently applying foreign law, including in Indonesia. Indonesian courts, for example, often fail to apply foreign law agreed upon by the parties due to limited access to information, language barriers, and the absence of formal mechanisms supporting the establishment of foreign law.

To address this, there is an urgent need for legal and institutional reform through the establishment of the International Private Law Act (IPP Law), strengthening the role of Mutual Legal Assistance (MLA) in civil cases, and developing an integrated digital platform and foreign legal database. The MLA is considered a crucial instrument for accelerating and standardizing the process of officially collecting foreign legal information, including in international trade contract disputes that rely on the choice of law principle.

⁶⁸ Kantor Wilayah Kemenkum NTT, "Rusia Dukung Indonesia menjadi anggota Hague Conference on Private International Law (HCCH)", diakses melalui <https://ntt.kemenkum.go.id/berita-utama/rusia-dukung-indonesia-menjadi-anggota-hague-conference-on-private-international-law-hcch>, pada tanggal 10 Juli 2025.

⁶⁹ *Ibid.*

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The document also underscores the role of regional cooperation, such as the ASEAN–China forum, the CACJ, and the HCCH, which can be leveraged to build a harmonious cross-border judicial mechanism. Through joint training, legal data exchange, regional protocols, and digital technology integration, the ASEAN region and China are expected to establish minimum standards for inclusive and efficient cross-border dispute resolution.

Overall, this document recognizes the urgent need for Indonesia to undertake comprehensive reform of private international law, strengthen institutional capacity to handle foreign law, and expand international cooperation to create a modern, responsive judicial system capable of addressing the challenges of legal globalization. Harmonizing procedures for ascertaining foreign law will strengthen legal certainty, encourage cross-border investment, and enhance Indonesia's position within regional and global legal frameworks.

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