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Advancing Indonesia's private international law framework through the Draft Bill on Private International Law

The Draft Bill on Private International Law will provide a comprehensive framework for private international law, addressing legal developments and prevailing practices.

Background

The Indonesian government and the House of Representatives are in the process of deliberating the Draft Bill on Private International Law (*Rancangan Undang-Undang Hukum Perdata Internasional* (RUU HPI)). Once enacted, it will serve as an important legal basis governing transactions and/or actions involving foreign subjects or property with a connection to Indonesia. Currently, the applicable legal grounds governing the private international law in Indonesia remains based on Dutch-derived legal instruments from the colonial era as well as international customs relating to private international law. With the enactment of this draft bill, Indonesia will have an additional positive law to govern transnational actions and/or transactions involving foreign parties.

Key areas covered under RUU HPI include the personal status of foreign subjects, choice of law for private law matters involving foreign elements, and recognition of foreign judgments. RUU HPI has been included in the list of Priority National Legislation Programs (*Program Legislasi Nasional Prioritas* (*Prolegnas Prioritas*)).

RUU HPI is intended to enhance legal certainty, accommodate global technological developments, and foster a business-enabling environment. The enactment of a specific law governing private international law is expected to address issues arising from international transactions, increased mobility, and the expansion of global trade.

Overview

This Client Alert provides key aspects of private international law as set out in RUU HPI, including, among others, personal status, family law, the law of the place where property is located or registered, and recognition of parties' freedom of choice of law.

Key provisions

- **Personal status**

As a general principle (often referred to as the “nationality principle”), an individual’s personal status is determined in accordance with their citizenship. However, if an individual’s personal status cannot be determined on this basis, it may instead be determined based on the law of their habitual residence. RUU HPI provides that Indonesian law applies to foreign nationals who have habitually resided in Indonesia for at least five consecutive years or 10 non-consecutive years. Indonesian law may also be applied by an Indonesian court to a foreign national involved in an ongoing dispute in Indonesia or filing a request, provided that the individual resides in Indonesia and/or has the closest and most substantial connection to Indonesia. These provisions are often relevant for individuals who have resided in Indonesia on a long-term basis or, in certain cases, for children of parents of different nationalities.

- **Family law**

RUU HPI includes provisions relating to marriages involving foreign nationals (mixed marriages) and the associated marital property. In relation to marital property, RUU HPI provides that the legal consequences arising from mixed marriages are determined based on the law of the couple’s domicile. RUU HPI also sets out specific provisions on prenuptial agreements. Parties to a mixed marriage may enter into a prenuptial agreement, provided that the agreement satisfies applicable substantive and formal requirements. Where the parties include a choice of law in a prenuptial agreement, such choice must be based on the closest and most substantial connection to the marriage. In this regard, the preparation of prenuptial agreements for couples of different nationalities requires careful consideration of these requirements to ensure their validity before the court.

- **Property and proprietary rights**

In relation to property, Article 37 of RUU HPI essentially provides that the law of the place where the property is situated determines the status and classification of the property. It further provides that the law of the place where the property is situated determines the rights, obligations, and documentation relating to such property, including whether such rights are classified as personal rights or proprietary rights. As such, assets located outside Indonesia (e.g., land and buildings) are subject to the laws of the jurisdiction in which they are located.

RUU HPI further accommodates new provisions on registered property. Under Article 38(1) of RUU HPI, the law of the jurisdiction in which the property is registered determines its status and classification, as well as the rights, obligations, and documents relating to such property. This includes whether such rights are characterized as personal or proprietary in nature. Accordingly, assets registered in a foreign jurisdiction (e.g., intellectual property) are governed by the law of the place of registration.

- **Choice of law**

RUU HPI sets out that a contract may be governed by the law expressly chosen and agreed upon by the parties. Such choice of law is permissible, provided that the applicable substantive and formal requirements are satisfied. The substantive requirements are determined by the law applicable to the personal status of the parties, while the formal requirements are governed by the law of the place where the contract is concluded. In addition, RUU HPI allows parties to make a choice of law for specific parts of a contract, thereby permitting a split of choice of law arrangement.

This approach reflects a concept long recognized in Indonesia under the principle of freedom of contract as embodied in the Indonesian Civil Code. However, RUU HPI further clarifies that the parties' choice of law must not contravene mandatory rules, morality, or public policy applicable in the forum. In the absence of a choice of law, a contract and its legal consequences are governed by the law having the closest and most substantial connection to the contract.

- **International jurisdiction of Indonesian courts**

RUU HPI provides that Indonesian courts may assume international jurisdiction over private international law disputes where there is a sufficient connection to Indonesia. Relevant connecting factors include the defendant's domicile, the location of the defendant's branch office, the place of contractual performance, the subject matter of the dispute, the place where the tort occurred, and whether the disputing parties have the closest and most substantial connection with Indonesia.

Notwithstanding the foregoing, Indonesian courts may decline to exercise such jurisdiction based on certain considerations, including: (i) where the parties have validly designated a chosen forum; (ii) where an alternative dispute resolution mechanism is available; (iii) where a foreign court has the closest and most substantial connection to the dispute; (iv) where proceedings are pending before a foreign court; (v) where the same subject matter involving the same parties has been finally adjudicated by a foreign court; or (vi) where the subject matter of the dispute is contrary to the laws and regulations of Indonesia. These provisions enhance legal certainty for Indonesian courts in handling private international law disputes, provided that the applicable requirements are satisfied.

Key takeaways

- The enactment of RUU HPI is expected to enhance legal certainty in private international law and provide clear guidance for judges and courts in Indonesia when adjudicating private international law disputes. It establishes criteria to determine whether a person or property is subject to Indonesian or foreign law. RUU HPI also recognizes mixed marriages and regulates the resulting marital property, while also providing a legal basis for prenuptial agreements. It further allows parties to choose the governing law in contracts involving foreign elements and affirms the jurisdiction of Indonesian courts over such disputes.
- While further updates and changes to the draft remain possible, RUU HPI is anticipated to be enacted in the near future. Its enactment will mark a significant development in Indonesia's legal framework as it introduces a positive law on private international law matters, an area that historically relied on international custom and jurisprudence. Once in force, the law is expected to have an impact on the conduct of international business in Indonesia, including by enhancing legal certainty and fostering a more conducive business environment.

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