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## The Urgency of Codifying Private International Law in Indonesia marcell.siahaan@gmail.com in The Digital Era: A Juridical Empirical Review of Cross-Border Legal Challenges and The Need of Legal Certainty

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### ABSTRACT

**Purpose** This study investigates the urgency of codifying Private International Law (PIL) in Indonesia as a strategic legal response to the rapid expansion of cross-border private legal interactions in the digital era. The research asks: What legal codification model can best address jurisdictional conflicts and legal uncertainties arising from transnational digital activities?

**Methodology** Using a juridical-empirical approach, the study combines doctrinal analysis with comparative legal research. The analysis is supported by theoretical frameworks including social systems theory, responsive law, legal politics, and digital regulatory theory. Comparative evaluation is conducted across six countries: Germany, Japan, the Netherlands, Singapore, the UK, and Australia.

**Findings** The research reveals that Indonesia's current legal system lacks a coherent, codified framework for PIL. Legal uncertainty arises in handling transnational disputes, cross-border data breaches, and enforcement of foreign judgments. By contrast, civil and common law countries have adopted codified or flexible jurisprudential approaches to ensure clarity and adaptability. The study finds that Indonesia urgently needs a hybrid PIL codification model to align with the digital and global legal ecosystem.

**Novelty** This study is among the first to position the codification of PIL as a legal-political and technological imperative, rather than a purely doctrinal concern. Its interdisciplinary framework integrates comparative insights and theories of digital law, offering a contextual roadmap for national legal reform. It proposes an adaptive hybrid codification model responsive to cross-border digital disputes and legal sovereignty concerns.

**Keywords:** Private International Law; Conflict of Laws; Digital Jurisdiction; Legal Codification; Transnational Legal Protection

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# The Urgency of Codifying Private International Law in Indonesia in The Digital Era: A Juridical Empirical Review of Cross-Border Legal Challenges and The Need of Legal Certainty

## I. INTRODUCTION

### *A. Background*

The digital age is fast-moving and dynamic. Its dynamics not only alter how humans communicate, work, and think, but also fundamentally transform how law operates. Amidst the relentless wave of cross-border connectivity, national legal systems are now confronted with situations and phenomena that require them to transcend the traditional boundaries of geography. The proliferation of electronic transactions, cross-server data storage, online business collaborations, and individual interactions across countries through various digital platforms has become an unavoidable daily reality. Yet, behind these conveniences lies a major problem: our legal system is not fully prepared.

Indonesia, despite having sectoral regulations such as the Electronic Information and Transactions Law (UU ITE) and the Personal Data Protection Law (UU PDP), still lacks a comprehensive legal framework to address the complexities of private legal relations that involve foreign elements. The field of Private International Law (PIL), which should serve as the backbone for resolving conflicts of law across jurisdictions, remains scattered across various legal provisions and has yet to be codified. These include, for instance, conflict rules found in Article 16 of the General Provisions (*Algemeene Bepalingen*), various articles within the Indonesian Civil Code, the Marriage Law, the Population Administration Law, and procedural provisions under the Arbitration Law.

This condition results in legal uncertainty in resolving cross-border private legal matters. For example, in the Supreme Court Decision No. 221 K/AG/2003, the court faced confusion in determining the applicable law in an inheritance case between an Indonesian and a foreign national. In the absence of codified guidance, judges tend to resort to analogical reasoning and discretionary approaches that risk producing inconsistent legal outcomes.

Indonesia's legal system also struggles to respond to the realities of a globalized world and manifests in both digital and analog domains. As illustrated in the well-known *Karaha Bodas v. PLN* case, where Indonesia faced significant challenges in enforcing an international arbitration award due to the absence of a standardized procedure and systemic support for the principle of recognition and enforcement of foreign judgments. (Juwana, 2006). Although not strictly digital in nature, this case illustrates how Indonesia's underdeveloped enforcement infrastructure may also hinder the resolution of digital cross-border disputes. The absence of a codified framework compels judges to rely on discretionary interpretations, often leading to inconsistent outcomes and undermining legal predictability.

More recently, the 2023 cyberattack on the Temporary National Data Center (PDNS) marked a critical moment in which strategic data belonging to the state and its citizens were compromised by ransomware operated from foreign servers. The incident exposed not only a data breach but also a serious legal issue: whose law governs foreign servers? Does Indonesia have a sufficiently robust legal basis to sue, seek restitution, or even conduct cross-jurisdictional investigations? This demonstrates that Indonesia's digital legal vulnerability is no longer merely a theoretical concern: it has become a harsh reality.

Therefore, the codification of Private International Law (PIL) has become imperative. According to Bayu Seto Hardjowahono, PIL technically encompasses three fundamental issues: court jurisdiction, applicable law, and recognition and enforcement of foreign judgments. (Hardjowahono, 2021) These pillars are essential in navigating the complexities of private legal relationships involving foreign persons, corporations, and digital entities.

Furthermore, a legal system cannot be constructed solely on a narrow reliance on sectoral norms. Niklas Luhmann reminds us that law is a social system that must possess its own operational mechanisms; it must be capable of reorganizing itself in response to the ever-evolving complexities of society. (Luhmann and Ziegert 2004) The binary code of lawful/unlawful in our legal system is insufficient if it does not open itself up to the transnational realities that blur legal boundaries.

As Lawrence Lessig stated, the digital world has its own invisible law: code is law. Those who write software and digital operating systems now wield more regulatory power than many legislative bodies. (Lessig, 1999) Logically, states that fail to build a solid conflict-of-laws system risk being sidelined by global digital corporations that write their own rules of the game.

In this context, Ahmad M. Ramli emphasized that cyberspace is a double-edged sword: it paves the way for progress, but also serves as an effective tool for cross-jurisdictional crimes and violations. (Ramli, 2015) Consequently, our legal system cannot afford to fall further behind.

This study asserts that the urgency of codifying PIL is not merely a technocratic legislative endeavor, but rather a broader social project to strengthen Indonesia's legal sovereignty from the perspective of the global digital landscape. A codified PIL framework will serve to bridge national and international legal systems, fill regulatory gaps across sectoral legislation, and enhance Indonesia's legal bargaining power when facing global digital actors.

### *B. Problem Formulation*

The first fundamental issue explored in this study concerns the urgency of codifying Private International Law (PIL) in Indonesia as a strategic legal response to the growing intensity of cross-border legal relationships facilitated by digital technologies. As digital platforms increasingly serve as intermediaries for transnational interactions, ranging from e-commerce, cloud services, to personal data transfers, the absence of a codified PIL framework renders Indonesia's legal system ill-equipped to provide legal certainty, resolve jurisdictional conflicts, and ensure equitable legal outcomes in a digitally mediated global environment.

Secondly, this research seeks to analyze the normative conditions and empirical practices surrounding the handling of PIL-related cases in Indonesia. By examining judicial behavior, regulatory gaps, and the consistency of case law, the study aims to highlight the practical challenges and institutional limitations faced by legal actors, including judges, legislators, and legal practitioners when addressing transnational digital disputes. These include issues related to cross-border data breaches, digital identity violations, and the enforcement of foreign decisions, all of which expose the regulatory inertia of the current legal system.

Lastly, this research aims to identify and articulate the legal priorities that should be addressed within a codified PIL regime to enhance legal certainty and protect the rights of legal subjects. These priorities include the establishment of clear rules on jurisdiction, the determination of applicable law, and the mechanisms for recognizing and enforcing foreign judgments. Furthermore, particular attention must be given to digital-specific issues such as cross-border digital transactions, the regulation of cloud-based data processing, and the resolution of jurisdictional conflicts in the context of international cyberspace governance.

### *C. Objectives and Significance of The Study*

#### *1) Objectives of The Study*

This research primarily aims to systematically elaborate on the urgency of codifying Indonesia's Private International Law (PIL) as an essential component of its national legal framework. The

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codification is particularly vital in addressing the increasing complexity of cross-border private legal relationships that are now largely mediated through digital technologies and international online platforms. These developments necessitate a legal system that can respond coherently to jurisdictional overlaps and digital contractual obligations involving foreign elements.

Furthermore, the study seeks to analyze both the normative conditions and empirical practices currently surrounding the implementation of PIL in Indonesia. It pays particular attention to the challenges faced by legal actors such as judges, policymakers, and legal practitioners, in resolving transnational disputes. These include inconsistencies in legal interpretation, the fragmentation of sectoral regulations, and practical difficulties in asserting jurisdiction or enforcing legal protections when digital platforms are involved.

Finally, the research aims to formulate a roadmap for the development of a coherent and future-proof PIL codification. It identifies and prioritizes key legal issues such as jurisdictional determination, applicable law, the recognition and enforcement of foreign judgments, and the protection of private rights within global digital ecosystems. These elements are critical for ensuring legal certainty and safeguarding the interests of Indonesian citizens in a rapidly digitizing legal environment.

### **2) Significance of The Study**

Theoretically, this study is expected to enrich the body of legal scholarship, particularly in the domain of Private International Law (PIL). By offering a solid academic foundation for the urgency of codifying PIL, the research contributes to the discourse on national legal reform that is responsive and attuned to the dynamics of the digital era. It aims to bridge the conceptual gap between traditional legal frameworks and the emerging demands of transnational private legal relations.

Practically, the findings of this research are intended to serve as a valuable reference for policy-making, especially for legislators, legal practitioners, and scholars involved in the development, advocacy, and implementation of a structured and adaptive PIL framework. This includes the formulation of legal mechanisms that address cross-border private relations involving elements of technological advancements such as digital platforms, foreign parties, and transnational data interactions, ensuring that the Indonesian legal system can respond effectively to the realities of global interconnectivity.

## **II. LITERATURE REVIEW**

### ***A. Conceptual Overview of Private International Law (PIL)***

#### **1) Definition and Scope of PIL**

Private International Law (PIL) is a branch of national law that governs private legal relationships involving foreign elements. These elements may arise from the parties being nationals of different countries, the subject matter of the legal relationship being located abroad, or the legal event itself transcending two or more legal systems. (Juwana, 2006) In this context, PIL is not to be confused with public international law; rather, it constitutes a set of domestic legal rules established by each sovereign state to resolve “foreign elements” in private legal matters.

According to Bayu Seto Hardjowahono, the term “international” in the context of PIL can be misleading, as it does not refer to law governing inter-state relations in the conventional sense. Instead, it refers to a domestic legal mechanism that regulates how a country addresses the presence of foreign elements within private legal events. (Hardjowahono, 2021) Therefore, although the scope of PIL extends across borders, its character remains inherently national.

## 2) The Presence of Foreign Elements and the Importance of a Conflict-of-Laws System

Foreign elements in Private International Law (PIL) may arise in various forms, such as a marriage between an Indonesian citizen and a foreign national, inheritance involving assets passed from a foreigner to an Indonesian heir, cross-border commercial contracts, or digital transactions involving service providers from outside the country. In response to such situations, PIL is constructed upon a conflict-of-laws system, which comprises a set of rules designed to determine which court has jurisdiction to hear the case, which law is applicable to the substance of the dispute (choice of law), and how a foreign judgment can be recognized and enforced within the domestic legal system. This scope of PIL is especially critical as it provides clarity that private legal interactions are no longer confined by geographic boundaries. Instead, such relations increasingly occur within a borderless digital environment, making a functional and coherent conflict-of-laws framework indispensable.

## 3) Theories and State Approaches in Private International Law

In practice, several theoretical frameworks and approaches have influenced the development of Private International Law (PIL) systems in various countries. One of the most well-known classical theories is the *Lex Loci* principle, which holds that the applicable law is the law of the place where the legal event occurred. In contrast, the *Lex Patriae* theory emphasizes that the governing law should be that of the subject's country of origin, focusing primarily on nationality or domicile as the determining factor.

However, as globalization intensifies and technological developments become increasingly complex, these classical theories have faced considerable challenges. A growing number of countries have begun to adopt more contextual approaches, ones that prioritize substantive justice and the closest connection between the dispute and the interests of the parties involved. This evolution aligns closely with the concept of responsive law as articulated by Nonet and Selznick, which argues that the legal system must evolve in step with social dynamics and respond to the realities experienced by its citizens. (Nonet and Selznick, 2001)

More radically, Niklas Luhmann contends that law is not merely a tool of the state or an extension of morality, but rather an autonomous and complex social system. According to his theory, the law must internally process international realities in a systematic and self-regulating manner. (Luhmann and Ziegert, 2004) This perspective challenges traditional views of law and calls for the internal reconfiguration of legal systems to keep pace with the increasingly globalized and digital nature of private legal relations.

### *B. The Development and Urgency of Codifying Private International Law in Indonesia*

#### 1) The Position of PIL within Indonesia's Legal System

To date, Private International Law (PIL) in Indonesia has yet to stand as an independent codified legal regime. Most of its legal provisions remain fragmented in the form of conflict-of-laws norms dispersed across various statutory regulations, including the Indonesian Civil Code (KUHPerdota), sectoral laws such as the Marriage Law, the Arbitration Law, and the Population Administration Law, as well as within Supreme Court jurisprudence. This lack of consolidation results in a PIL structure that is disorganized, unsystematic, and largely inaccessible to both laypersons and legal practitioners.

In contrast, countries like Germany, Japan, and the Netherlands have long integrated their conflict-of-laws provisions into their civil law codifications, and some have even adopted dedicated Private International Law Acts. Unlike Indonesia, which still adopts an "ad hoc" approach in addressing cross-border private matters, these countries have established consistent

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legal mechanisms that minimize ambiguity and legal inconsistency in the enforcement of their laws.

### **2) Codification Initiatives and Challenges**

The idea of codifying PIL in Indonesia has been circulating for some time. In the early 2000s, limited discussions emerged among legal scholars and research institutions such as the National Legal Development Agency (BPHN), alongside faculties of law from several public and private universities. However, no draft bill on PIL has ever formally entered the National Legislative Program (Prolegnas), reflecting a lack of political will to move the agenda forward. This inertia is compounded by the prevailing perception that PIL is a “technical area of law” that is too obscure for public discourse and therefore lacks immediate political urgency. (Hardjowahono, 2021)

One of the most significant challenges to codification lies in establishing a systemic approach capable of resolving conflict-of-laws issues consistently. Moreover, the highly dynamic nature of cross-border private relations in the digital era has led some legal experts to worry that codification could inadvertently stifle legal flexibility and diminish the adaptive capacity of the system. However, this concern may be countered by drawing upon the theory of responsive law, which argues that codification need not be rigid but can instead be designed in a progressive and inclusive manner that remains attuned to changing social realities. (Nonet and Selznick, 2001)

### **3) The Urgency of Codification in the Digital Age**

Amid the rapid flow of digitalization, the need for a coherent PIL framework has become increasingly urgent. Cross-border transactions via digital platforms such as Amazon, TikTok Shop, and Google Workspace, along with the processing of personal data by multinational corporations, represent new forms of private legal interactions that transcend jurisdictional boundaries. Within this digital landscape, legal ambiguity not only leads to confusion among stakeholders but also weakens the legal position of Indonesian subjects.

A concrete illustration of this legal vulnerability was the 2023 cyberattack on Indonesia’s Temporary National Data Center or Pusat Data Nasional Sementara (PDNS), where strategic state and citizen data were compromised by ransomware operated through foreign servers. This incident underscored the nation’s lack of legal preparedness to deal with cross-border violations involving civil, data security, and extraterritorial jurisdictional components. In response, the codification of PIL could provide a formal legal foundation to address such situations with greater clarity and legal certainty moving forward.

Furthermore, the issue of recognition and enforcement of foreign judgments, as exemplified in the *Karaha Bodas v. PLN* case, demonstrates the need for strong and clear national regulations to avoid Indonesia being perceived as inconsistent in upholding the principle of *pacta sunt servanda* in international private legal relations. (Juwana, 2006)

In the context of global legal harmonization, the codification of PIL would also assist Indonesia in aligning itself with international developments, such as those under the Hague Conference on Private International Law, the UNCITRAL Model Law, and other transnational principles. It would also create greater opportunities for bilateral and multilateral cooperation based on mutual respect for jurisdictional sovereignty among states.

## **III. THEORETICAL FRAMEWORK AND RESEARCH METHODOLOGY**

### *A. Theoretical Framework*

To understand the urgency of codifying Private International Law (PIL) in the context of Indonesia's digital era, this study adopts a multidimensional theoretical approach. The theories employed are not only aimed at analyzing legal dynamics within a national framework, but also at examining how law responds to global transformations, technological advancements, and cross-jurisdictional interactions. These theories are:

#### 1) Social Systems Theory (Niklas Luhmann)

Niklas Luhmann conceptualizes law as an autonomous and complex social system, which cannot merely be seen as a product of the state or moral values. (Luhmann and Ziegert, 2004) Law operates through communication and defines itself based on a binary code of lawful/unlawful. Within the context of PIL, Indonesia's legal system must be able to internally process global pressures, such as transnational disputes and digital legal interactions, through its own mechanisms. When the legal system fails to respond to such complexities, systemic stagnation or dysfunction may occur.

#### 2) Responsive Law Theory (Nonet and Selznick)

According to Nonet and Selznick, a responsive legal system is not rigid in the face of change but actively adapts to evolving social values and the actual needs of society. (Nonet and Selznick, 2001) In the context of PIL, this theory is particularly relevant, as traditional fragmented normative approaches are insufficient to resolve modern transnational private relations. Codification under a responsive legal framework is not intended to restrict flexibility, but rather to ensure substantive justice and regulatory consistency at a global scale.

#### 3) Code as Law Theory (Lawrence Lessig)

Lawrence Lessig asserts that in digital environments, the architecture of software systems has a regulatory force equivalent to written law. His famous phrase "code is law" is not merely metaphorical; it reflects a real regulatory condition in which permissions and constraints within digital systems are governed by the technology's own design. (Lessig, 1999) Thus, a state must construct a legal system that can regulate not only physical behavior, but also the digital structures and codes that shape cross-border private relations.

#### 4) Legal Politics Theory (Sunaryati Hartono)

Sunaryati Hartono defines legal politics as the state's strategy for organizing, structuring, and managing the legal system to meet societal needs and achieve national goals. (Hartono, 1991) Within this framework, the codification of PIL is a strategic component of national legal reform. It serves not merely to fill normative gaps, but also to construct a new pillar of national law capable of interacting constructively with international legal systems within the context of globalization.

### *B. Research Methodology*

This study adopts a juridical-empirical approach, which examines law not only as a normative system but also as a form of social behavior. As emphasized by Soemitro, legal research cannot be separated from an understanding of law as a social phenomenon. The juridical-empirical method thus serves as a means to assess how law functions in practice and in actual social conditions. (Soemitro, 1990) Accordingly, this study analyzes both written legal norms and empirical conditions that reflect how PIL is either applied or overlooked in Indonesia's legal enforcement landscape.

#### 1) Research Approaches

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This study employs a combination of four approaches:

Conceptual Approach, to define the basic concepts, objectives, and scope of PIL and the importance of its codification.

Statutory Approach, to trace PIL norms scattered across the Indonesian Civil Code (KUHPerdara), the Arbitration Law, the Marriage Law, and other relevant legislation.

Comparative Approach, to examine codification practices in civil law countries such as Germany, Japan, and the Netherlands, and in common law jurisdictions such as the United Kingdom, Singapore, and Australia.

Theoretical Approach, to apply legal theories as analytical tools for exploring the issue of codification.

### **2) Types and Sources of Data**

Primary Data: National legislation, Supreme Court jurisprudence, and international conventions such as the 1958 New York Convention.

Secondary Data: Legal theory books (Luhmann, Lessig, Nonet, Hartono, Juwana, Hardjowahono), SINTA-accredited journal articles, and other relevant academic reports.

Tertiary Data: Legal dictionaries, international law encyclopedias, and literature on digital law.

### **3) Data Collection and Analysis Techniques**

Data collection was conducted through document studies and academic literature review, including verified digital publications. The data were analyzed using a normative-reflective qualitative method. This involved organizing findings thematically, interpreting the relationship between legal theory and practice, and formulating conclusions grounded in both normative consistency and insights derived from empirical experience.

## **IV. ANALYSIS AND DISCUSSION**

### *A. Overview of Current Legal Issues Without the Codification of PIL*

The absence of a codified Private International Law (PIL) framework in Indonesia is not merely a normative gap: it reflects a broader structural imbalance in addressing the growing complexity of cross-border civil relations. In practice, private legal relationships involving foreign elements, whether between individuals or corporations, often face legal uncertainty due to Indonesia's lack of a comprehensive and integrated conflict-of-laws system. The state continues to rely on fragmented norms scattered across legislation, discretionary judicial practices, and inconsistent jurisprudence. In addressing such legal dilemmas in the digital sphere, a coherent PIL framework should offer the following clarity:

#### **1) Legal Vacuum and Inconsistency in Jurisprudence**

To date, Indonesia does not possess a single, coherent legal instrument that consolidates the core principles of PIL, such as jurisdiction, choice of law, and the recognition and enforcement of foreign judgments. Instead, relevant provisions are dispersed across the Indonesian Civil Code (KUHPerdara), the Marriage Law, the Population Administration Law, and the Arbitration Law, none of which offer a systematic or autonomous structure.



As a result, discretionary practices have become common, wherein judges and legal officials apply personal interpretations or analogical reasoning to cases lacking explicit regulatory guidance. In PIL contexts, this frequently occurs in cross-border disputes where the applicable law is unclear. While discretionary decisions may be procedurally valid, they often produce inconsistent rulings and generate substantial regulatory ambiguity for the parties involved.

A notable example of such discretionary interpretation can be seen in Supreme Court Decision No. 221 K/AG/2003, where the court faced difficulty determining the applicable inheritance law in a mixed-nationality marriage. In the absence of structured conflict-of-laws rules, the court relied heavily on subjective judicial interpretation, resulting in a case-specific and unpredictable outcome.

## 2) Inability to Address Transnational Digital Legal Issues

The lack of a codified PIL system becomes particularly problematic in the digital context. The 2023 cyberattack on Indonesia's Temporary National Data Center (PDNS) revealed the nation's legal vulnerability in responding to transnational private cybercrimes. Sensitive citizen data was compromised through infrastructures managed by foreign actors. Yet, Indonesian law provides no clear framework to address on how jurisdiction should be determined in digital contexts, which law governs violations involving misuse of private data and what mechanisms are available for pursuing transnational legal claims against foreign perpetrators or digital platforms operating across jurisdictions. These gaps demonstrate that without a codified PIL, Indonesia's legal responses remain reactive and lack the necessary legitimacy and systemic coherence to enforce cross-border legal protections effectively.

## 3) Barriers to the Enforcement of International Arbitration Awards

The *Karaha Bodas v. PLN* case further illustrates Indonesia's struggle to enforce international arbitration decisions due to the absence of robust normative support for the principles of recognition and enforcement. Despite Indonesia's ratification of the 1958 New York Convention, which obliges member states to uphold foreign arbitral awards, its national enforcement mechanisms remain weak and uncoordinated. (Juwana, 2006) Without a codified PIL framework, Indonesia's application of these international standards becomes incomplete, forcing the country to depend on sectoral legal constructs that are fundamentally ill-suited to handle cross-border legal conflicts.

## 4) Indonesia's Lag Behind International Standards

While civil law countries such as Germany and Japan have long integrated PIL into a unified conflict-of-laws system, and common law jurisdictions like Singapore, the United Kingdom, and Australia have adopted progressive jurisprudential and sectoral legislative approaches, Indonesia still relies heavily on remnants of colonial Dutch legal traditions.

From Niklas Luhmann's perspective, law must be understood as a self-regulating social system capable of internally processing social complexity. (Luhmann and Ziegert, 2004) Without a codified PIL system, Indonesia lacks the reflective capacity to respond adequately to the multifaceted challenges brought about by globalized private legal interactions.

Further supported by the theory of responsive law as proposed by Nonet and Selznick, a legal system that fails to respond to modern transnational and digital social demands becomes stagnant and outdated. (Nonet and Selznick, 2001) In this regard, the absence of PIL codification not only reflects Indonesia's passive stance toward legal modernization, but also exposes the country to the erosion of its legal sovereignty by foreign entities operating beyond its jurisdiction.

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Indonesia's reliance on colonial legal residues stands in contrast with contemporary global legal practices. Codifying PIL thus becomes not merely a legal necessity but a declaration of legal maturity in the era of digital globalism."

### *B. The Urgency of Codifying Private International Law in the Digital Era*

The rapid development of information technology has given rise to new spaces of social and economic interaction that no longer adhere to territorial boundaries. Cross-border online transactions, the processing of personal data by global digital entities, and the execution of electronic contracts through transnational platforms have now become integral to modern private legal life. However, Indonesia's legal system is not yet adequately prepared to address this reality, primarily due to the absence of a codified Private International Law (PIL) framework capable of providing legal certainty, protection, and legitimacy for transjurisdictional digital civil relations.

#### 1) Cross-Border Digital Transactions and the Absence of Conflict Rules

Electronic contracts have become commonplace in today's digital commerce. When Indonesian citizens purchase cloud services from Amazon, advertise on Meta, or utilize digital services from foreign providers, they are often bound by contracts governed by foreign jurisdictions. Yet, Indonesia lacks a national conflict-of-laws system that can adequately clarify which law applies when a contractual dispute arises, which court has jurisdiction over the dispute and how the validity of a choice-of-law clause is assessed in Indonesian courts. In the absence of PIL codification, legal actors from consumers to courts are forced to operate in a legal "grey zone." This inevitably erodes legal certainty and weakens Indonesia's bargaining power in international dispute resolution forums.

#### 2) Data Jurisdiction and Digital Sovereignty

One of the most complex implications of the digital era involves data jurisdiction. When Indonesian citizens' personal data is stored or processed on foreign servers, by cloud providers such as Google or TikTok, for instance, it raises immediate questions about which law governs data protection, deletion, and recovery. To address these concerns, a codified PIL is required to provide a national legal foundation that first, determines the applicable law for digital civil objects including data, second, establishes the basis for claims regarding digital rights violations in cross-border contexts, and third, enables national courts to exercise sovereign jurisdiction over private disputes with transnational digital dimensions.

The 2023 breach of Indonesia's Temporary National Data Center (PDNS) serves as a critical lesson. The lack of conflict-of-laws instruments left the state with no clear legal framework to hold foreign actors accountable, even when both public and private interests were simultaneously implicated.

#### 3) Public Policy and Mandatory Protective Rules

A modern PIL system must include two key principles essential to protecting citizens in cross-border transactions:

**Public policy exception:** The right of the state to reject the application of foreign law if it contradicts fundamental national values such as social justice, data privacy, morality, or human rights.

**Mandatory protective rules:** Specific national laws that must be enforced regardless of the parties' chosen law, especially in matters concerning consumer protection, child welfare, or labor rights.

Without codification, these principles are not explicitly recognized in Indonesia's current legal system. Consequently, digital contracts containing foreign choice-of-law clauses may override national protections. This places Indonesian digital consumers at a disadvantage, particularly in engagements with foreign platforms that unilaterally determine contractual terms. A codified PIL would provide judges with a formal legal foundation to reject harmful applications of foreign law and reinforce the applicability of national protective rules within the context of global commerce.

#### 4) The Need for Responsiveness to Emerging Social Spaces

According to Luhmann's theory of law as a social system, the digital sphere constitutes a new external environment that compels legal systems to evolve internally. A legal system that fails to adapt will be unable to process the social realities that constantly shift. Similarly, from the perspective of responsive law (Nonet & Selznick), the state is obligated to construct a legal order that does not merely reflect authority but actively protects the rights of legal subjects embedded in global ecosystems. The codification of PIL thus becomes a form of legal responsibility, a commitment by the state to realign its legal structures with the complexities of digital modernization.

#### *C. International Comparative Study: Codification Practices of PIL in Civil Law and Common Law Countries*

In developing its own framework for Private International Law (PIL), Indonesia can draw valuable lessons from countries that have long established comprehensive conflict-of-laws systems. This comparative study is structured around the two dominant global legal traditions: civil law jurisdictions (Germany, Japan, the Netherlands), which emphasize codification, and common law jurisdictions (Singapore, the United Kingdom, Australia), which rely heavily on precedent and progressive judicial interpretation.

##### 1) Civil Law Countries

**a. Germany: Systematic and Adaptive Codification;** Germany possesses one of the world's most robust codification traditions. Its PIL is regulated under the *Einführungsgesetz zum Bürgerlichen Gesetzbuche* (EGBGB), which provides a comprehensive and structured national framework for conflict-of-laws. The system incorporates principles such as *lex loci contractus*, closest connection, and public policy exception (*ordre public*), allowing the exclusion of foreign law that contradicts domestic values. German codification is also continuously updated to remain relevant to developments in digital law and global e-commerce.

**b. Japan: Synthesis of Codification and Modernization;** Japan's PIL is governed by the Act on General Rules for Application of Laws (2006), which replaced its outdated 19th-century framework. The Japanese approach emphasizes party autonomy, proper law, and jurisdiction based on the closest substantive connection between the parties. This legal framework has proven effective in accommodating the demands of international contracts and online cross-border transactions.

**c. The Netherlands: Historical Reform and Progressive Innovation;** The Netherlands has revised its Civil Code (*Burgerlijk Wetboek Nieuw*) to include Book 10, which specifically addresses PIL. This codification covers choice of law, recognition of foreign judgments, succession law, family law, and international contracts. The Dutch system adopts principles such as universal application, non-discrimination, and the explicit recognition of mandatory protective rules, reflecting a progressive stance on legal globalization.

##### 2) Common Law Countries

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d. **Singapore: A Hybrid System Responsive to the Digital World;** Singapore applies a hybrid model that blends jurisprudence with sectoral legislation, including the Personal Data Protection Act (PDPA) and the Electronic Transactions Act (ETA). Courts in Singapore apply principles such as forum non conveniens, proper law of the contract, and closest and most real connection to determine applicable law in cross-border private relations. This flexible, case-oriented approach demonstrates a progressive jurisprudential style, where judges actively adjust legal principles to meet the needs of a digital society.

e. **United Kingdom: Evolution of Precedents and Strategic Legislation;** The UK's PIL is primarily shaped through judicial precedent, recently reinforced by the Private International Law (Implementation of Agreements) Act 2020, enacted post-Brexit. A landmark decision in *Google Inc. v. Vidal-Hall* reflects a progressive shift, as the court recognized moral damages for personal data breaches even in the absence of economic harm, marking a breakthrough in cross-border digital rights protection.

f. **Australia: Flexibility through Systemic Convergence;** Australia does not have a single codified PIL instrument. Instead, it applies a convergent approach combining common law principles, judicial decisions, and sector-specific legislation. Key principles in Australia include renvoi, forum non conveniens, and recognition of foreign judgments, all applied functionally with an equity-oriented rationale. This model allows Australia to adapt its conflict-of-laws system without sacrificing doctrinal coherence.

### **3) Lessons for Indonesia**

From this comparative analysis, several key insights emerge and explain that Civil Law countries prioritize legal certainty and systematic clarity through periodically updated codified instruments, while Common Law countries emphasize adaptive legal development through precedent and responsive judicial reasoning.

Indonesia, with its civil law legacy inherited from the Dutch system, but now facing increasingly complex digital legal challenges, should consider adopting a hybrid model of PIL codification. This model would combine the structured clarity of codification with the pragmatic flexibility of jurisprudential interpretation to safeguard justice, protection, and legal sovereignty in the context of cross-border digital relations.

### ***D. The Direction of National Legal Policy in the Codification of Private International Law***

The codification of Private International Law (PIL) in Indonesia should not be regarded merely as a technocratic exercise aimed at compiling legal norms. Rather, it must be understood as part of a broader national legal-political project: the construction of a sovereign, adaptive, and context-sensitive legal system capable of responding to the challenges of globalization and digitalization. In this context, legal politics is not limited to the creation of legal products, it also entails the determination of direction, objectives, and the state's commitment in shaping a legal order that is responsive to contemporary developments. To elaborate this position, four analytical perspectives are presented:

#### **1) Legal Politics and the Strategic Role of Codification**

According to Prof. Sunaryati Hartono, legal politics refers to the fundamental policy choices that guide the development of national law, including decisions regarding the system, structure, and legal methods to be adopted. (Hartono, 1991) Within the context of PIL, the absence of codification suggests that Indonesia has yet to articulate a clear legal-political stance on cross-border private legal relations. Issues such as jurisdictional disputes, data misuse by foreign

platforms, and the enforcement of foreign judgments require systemic, not merely sectoral, responses.

From this first perspective, the codification of PIL must be recognized as a strategic item on the national legislative agenda, not simply an academic or technical discussion. It should be prioritized as part of the broader legal reform process in the digital and global era.

## 2) Codification as a Response to Global Legal Asymmetry

Cross-border legal relations are far from neutral. In reality, global legal subjects are not on equal footing. Multinational digital corporations possess their own legal infrastructures, cross-border legal teams, and the ability to unilaterally draft contractual terms. In contrast, Indonesian citizens are often reduced to “users” who lack the legal protection necessary to defend their rights in the global digital space.

From this second perspective, the codification of PIL is essential as a national legal shield for Indonesian legal subjects. It should involve in asserting mandatory protective rules to safeguard digital consumers, affirming the public policy exception to reject foreign laws that contravene national values and also ensuring Indonesia’s jurisdictional authority in cross-border digital matters. Importantly, these measures should not be viewed as manifestations of fear or hostility toward foreign legal systems, but rather as an expression of Indonesia’s legal-political courage in asserting its sovereignty and rebalancing global legal power dynamics.

## 3) Synchronization with Legal Reform and the Digital Ecosystem

The codification of PIL must be positioned within a cross-sectoral synchronization effort that aligned with: Legal Reform in the digital and personal data sectors (e.g., the PDP Law); Judicial Reform, particularly regarding the recognition and enforcement of foreign judgments; and the National Digital Economy Strategy, including the government's agenda to accelerate digital transformation across sectors.

From this third perspective, the codification of PIL functions as a bridge between private law and global law, linking cross-border individual and corporate relations with national legal sovereignty.

## 4) Realizing a Responsive and Progressive Legal Politics

Codification should not be viewed as an end in itself, but as an instrument for advancing legal politics that is responsive to the evolution of global digital society, act progressively in safeguarding the rights of Indonesian legal subjects in cross-border legal spaces, and affirming that Indonesia’s legal system does not passively submit to foreign laws but interacts with them equitably and assertively.

From this fourth and final perspective, the direction of Indonesia’s national legal policy regarding PIL codification must proceed from the principle that law is not merely a legislative product. It is also a manifestation of the state’s resolve to protect its citizens, wherever and whenever their rights intersect with foreign legal regimes.

# V. CONCLUSION AND RECOMMENDATIONS

## A. Conclusion

Private International Law (PIL) in Indonesia remains fragmented and uncoded, lacking a systematic and consistent legal structure. As such, it has yet to provide strong legal certainty in

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dealing with cross-border private law issues, particularly within the contexts of globalization and digitalization that continue to blur traditional jurisdictional boundaries.

The unstructured nature of Indonesia's PIL has resulted in discretionary practices by judges and law enforcement officials, weakened the bargaining position of Indonesian digital consumers, and hindered the application of the principles of recognition and enforcement of foreign and arbitral awards. These weaknesses are evidenced in cases such as *Karaha Bodas*, the 2023 cyberattack on the Temporary National Data Center or Pusat Data Nasional Sementara (PDNS), and jurisdictional disputes in inheritance cases such as Supreme Court Decision No. 221 K/AG/2003.

Codifying PIL is necessary not only to establish legal order but also to serve as a national legal safeguard in transnational digital spaces and also a normative assertion of Indonesia's legal identity in transnational private law. It is key to enhancing the protection of Indonesian legal subjects in cross-border agreements, data processing activities, and digital transactions.

Comparative studies show that civil law countries such as Germany, Japan, and the Netherlands have developed systematic conflict-of-laws codifications, while common law countries such as Singapore, the United Kingdom, and Australia have demonstrated that progressive jurisprudential approaches can also offer contextual and adaptive legal protection. Indonesia can design a hybrid codification model that integrates the strengths of both systems.

From a legal-political perspective, codifying PIL is a strategic step toward unifying the national legal reform agenda, addressing inequalities in transnational legal relations, and affirming the state's willingness to shape a legal system that is responsive, sovereign, and contextually grounded. In line with Prof. Sunaryati Hartono's vision, law must not remain a closed system, it must remain open to the evolving needs of global society.

In an increasingly interconnected world, Indonesia cannot afford legal passivity. Codification is a step toward asserting agency in shaping the rules that govern its citizens, wherever they may be on paper or in pixels.

### *B. Recommendations*

The Government, the House of Representatives (DPR), and the National Legal Development Agency (BPHN) should prioritize the drafting of a PIL Bill in the National Legislative Program (Prolegnas), and base the codification on universal principles of PIL, national jurisprudence, and adaptive international legal practices relevant to the digital era.

Indonesia's PIL codification should explicitly include core principles such as choice of law, law of jurisdiction, recognition of foreign judgments, and the public policy exception and mandatory protective rules, to protect national interests within transnational private legal relations.

Intersectoral coordination must be strengthened among the Supreme Court, Ministry of Digital Affairs (Kominfo/Kemkomdigi), Ministry of Law and Human Rights (Kemenkumham), and digital industry stakeholders, to ensure that PIL codification aligns with data protection policy, digital contract strengthening, and cross-border consumer protection strategies.

Legal education and academic research in the field of PIL must be systematically enhanced so that future judges, prosecutors, lawyers, and legal drafters possess a comprehensive understanding of conflict-of-laws systems, particularly in addressing digital jurisdiction and cross-border private law challenges.

The codification of PIL should be developed as a progressive and inclusive legal product, one that not only governs the letter of the law but also allows room for interpretive development

through jurisprudence. This ensures a responsive legal system capable of adapting to future legal dynamics.

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