

# *ACTIO INSIGHT*



BRIEF INTRODUCTION ON TRANSNATIONAL  
LITIGATION: AN INDONESIA PERSPECTIVE





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By Setyawati Fitrianggraeni and Sri Purnama<sup>1</sup>

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## Introduction

Litigation involving individuals, occasions, or transactions connected to multiple countries is referred to as transnational litigation,<sup>2</sup> or also known as international litigation. There are several distinctions between international or transnational litigation, and domestic litigation; with the former, some concerns, such as personal jurisdiction, service of process, evidence from abroad, and execution of judgements, are more likely to be significant. International legal issues are, of course, directly tied to transnational litigation. It involves a wide range of legal issues and requires expertise in private international law, public international law, and the laws of the countries involved.<sup>3</sup>

Transnational litigation may arise when parties involved are of a different nationality. Regarding this matter, transnational litigation is closely related to private international law rather than public international law. This is due to the nature of private international law as the general legal guidelines and precepts governing cross-border civil relationships. In other words, private international law is the law that guides interactions among legal actors governed by various (national) civil laws.<sup>4</sup>

## Challenges that may be faced

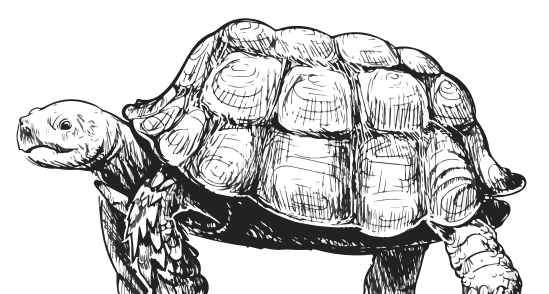
Transnational litigation present unique challenges, most of it relating to the areas of private international procedural law are as follows:<sup>5</sup>

1. Determining a forum's ability to decide matters including foreign elements that might overlap with the legal jurisdiction of another nation.
2. The matter of the forum (choice of court) and legislation (choice of law)<sup>6</sup> that should be used.
3. The effectiveness of a forum's legal judgements that are made in a jurisdiction other than its own. This pertains to private international law's main disputable area which are the issue of recognition and enforcement of foreign judgements.
4. Private international law's ongoing issues with extrajudicial dispute resolution, particularly in the context of international (commercial) arbitration forums.

## Civil Law and Common Law System

Theoretically, anyone can file a lawsuit outside their home jurisdiction, even if the respondent has a different legal status from the claimant. Foreign nationals may launch civil cases in the United States for negligence or mistakes that result in losses.<sup>7</sup> Common law nations allow courts to have civil jurisdiction over foreign nationals and foreign corporations in relation to their extraterritorial activities; this is typically not the case in civil law nations. A more likely reason for the lack of relevant transnational litigation cases in civil law countries is that civil law countries rely far less on litigation and the consequent generation of judicial precedent to develop the law compared to common law countries.<sup>9</sup>

The legal systems, traditions, conventions, and legal methodology of the chosen forum will be used in the proceedings if the parties to the dispute are from nations with different legal systems. This is unavoidable. For instance, if a lawsuit is brought before a court in the United States, which follows the common law system, the court will review the case in accordance with established conflict of law principles. The judge will consider earlier rulings in the circumstances like these.<sup>10</sup> As stated above, the United States adheres to a common law legal system in which judges' decisions are the primary source of law. Therefore, in deciding each case, the judges will refer to the previous judge's decision. Thus, the room for improvisation and building laws is more comprehensive than that of a country which only burdens its court decisions on statutory regulations.







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## *Forum Non-Coveniens*

Another legal doctrine that should be noted is the *Forum non Coveniens* or (FNC). FNC is a legal doctrine in private international law that allows a court to dismiss a case that has been filed before it, even if the court has jurisdiction over the parties and the subject matter of the case. This dismissal is based on the court’s determination that another forum would be more convenient and appropriate for the case.<sup>11</sup>

Foreign claimants who initiate cases against the statute in foreign courts often encounter these barriers. There are numerous such instances of noteworthy transitory tort cases in the US. The litigation surrounding the Union Carbide gas plant accident in Bhopal, India, is arguably the most well-known.<sup>12</sup> According to the complaint, the parent corporation was responsible for the negligence-related tort. The lawsuit contended that Union Carbide had a strong obligation to guarantee that its dangerous plant did not injure anyone while it was operating.<sup>13</sup> The case was rejected for FNC on the grounds that India was a more appropriate venue to hear the matter; hence the substance of the tort claims was never tested in New York.

Of course, there are benefits that the claimant can experience in addition to these challenges associated with bringing legal action in a foreign court. For instance, if a foreign claimant brings a tort claim in a U.S. court and requests that the respondent pay damages, the compensation payment procedures naturally follow U.S. laws, including punitive damages provisions. Punitive damages may be compensated at a higher rate than the actual material loss.<sup>14</sup> Therefore, the legal framework chosen by the nation's courts will undoubtedly have an impact on how transnational litigation issues are resolved.

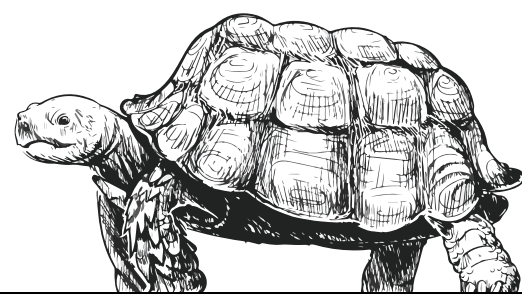
## Jurisdiction Of Indonesia

There have been several lawsuits brought in Indonesia by foreigners against Indonesian residents. One of them involved Rabbit Town's copyright infringement case, which hurt the foreign artist Chris Burden.<sup>15</sup> This case is included as a transnational case because it involves parties and objects of dispute from different countries. A case was filed before the Central Jakarta Commercial Court by Chris Burden’s wife. During the trial, the Indonesian lawyer was appointed as the claimant's attorney so that the Indonesian lawyer was sufficiently present and did not need to be attended to by the claimant.

One of the challenges in the Rabbit Town case was determining which country’s laws should apply to the dispute. The choice of law analysis involves assessing which legal system has the most significant relationship to the dispute and applying that country’s laws. In this case, the court had to consider factors such as the nationality of the parties, the place of creation of the original work, and the place of creation of the allegedly infringing work.

This decision confirms that transnational litigation can be carried out in Indonesia and that the courts in Indonesia are qualified and able to accommodate cross-border disputes. In addition, although many cases of transnational litigation involve the public or concern human rights, this case also proves that two individuals of different nationalities can also be involved in a jurisdiction's trial.

There is no jurisdictional cap for legal issues in Indonesian law. People, or subjects in law, are Subekti's definition of legal subjects, whereas legal entities, such as bodies or associations, also have rights and can take legal action just like a human being.<sup>16</sup> In international law, Mochtar Kusumaatmadja explained that the subject of international law is anything that, according to the law, can have rights and obligations and has the authority to enter into legal relations or act according to the provisions of applicable international law.<sup>17</sup> In general, international law is defined as a set of rules and regulations that bind and regulate relations between States and other legal subjects in the life of the international community.<sup>18</sup> Therefore, courts in Indonesia in resolving transnational cases will determine the provisions of international law.







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Additionally, Indonesian courts have the authority to decide issues involving electronic transactions for which a dispute resolution forum has yet to be chosen.<sup>19</sup> If the parties fail to agree on a forum, the authority of the forum will be determined by a specific rule (where expreseed), or rules of international private law. This principle is known as the principle of where the defendant lives (the basis of presence) and effectiveness which emphasises where the defendant's property is located (the principle of effectiveness).<sup>20</sup> As a result, the principles of international private law might be applied when Indonesian courts settle issues involving transnational litigation.

## Conclusion

Transnational litigation refers to legal disputes that involve individuals, organizations, or transactions that cross international borders. With the increasing globalization of the economy and the rise of digital communication technologies, transnational litigation has become more common and complex than ever before. It involves a wide range of legal issues and requires expertise in private international law, public international law, and the laws of the countries involved.

Transnational litigation presents unique challenges, including determining the appropriate jurisdiction, choice of law, and recognition and enforcement of foreign judgments. These challenges require a deep understanding of legal systems and traditions in different countries, as well as the ability to navigate complex legal frameworks in international tribunals and courts.

As a field of study, transnational litigation and law is multidisciplinary, involving not only legal knowledge but also an understanding of politics, economics, and cultural differences. It is a fascinating and constantly evolving area of law, and those who specialise in it must be equipped to handle the complex issues and challenges that arise in the international arena.

1. Setyawati Fitrianggraeni is Managing Partner at Anggraeni and Partners, Indonesia, Assistant Professor at the Faculty of Law University of Indonesia, and PhD Candidate at the World Maritime University, Malmo, Sweden and Sri Purnama is a Junior Legal Research Analyst from Research Group-Arbitration & Alternative Dispute Resolution and Tort Law at Anggraeni and Partners. Writers thanks Dr. Hary Elias for his time to provide feedback to the article.

2. Linda Silberman, “Transnational Litigation: Is There A “Field”? A Tribute to Hal Maier”, *Vanderbilt Journal of Transnational Law*, 39, 5, (2006), pp. 1429.

3. Dimas Hutomo, “Dasar Keluarga Korban Menggugat Produsen Pesawat”, accessed through <https://www.hukumonline.com/klinik/a/dasar-keluarga-korban-ke-celakaan-bisa-menggugat-produsen-pesawat-lt5bf681e59f734> dated 21st January 2023.

4. Mochtar Kusumaatmadja and Etty R. Agoes, *Pengantar Hukum Internasional*, (Bandung: PT Alumni, 2003), pp. 1-2.

5. Bayu Seto Hardjowahono, *Dasar-Dasar Hukum Perdata Internasional*, 1st ed., (Bandung: Citra Aditya Bakti, 2013), pp. 170.

6. Sarah Joseph, *Corporations and Transnational Human Rights Litigation*, (Oxford: Hart Publishing, 2004), pp. 54. Samuel P. Baumgartner, “Is Transnational Litigation Different?”, *University of Pennsylvania - Journal of International Law*, 25, (2004), pp. 1379. In transnational litigation, one of the key issues that needs to be resolved is the question of which law will apply to the dispute, or also known as the “choice of law”. Domestic law governs transnational litigation in the majority of cases. From this perspective, country-states may shape the law of transnational litigation as they see fit, even whilst their efforts are supplanted by an extended mélange of laws and standards of international law and are increasingly governed by the rulings of supranational tribunals.

7. Dimas Hutomo, Loc. Cit.

8. B Stephens, “Translating Filartiga: A Comparative and International Law Analysis of Domestic Remedies for International Human Rights Violations”, *Yale Journal of International Law*, 27, (2002), pp. 24. According to the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, European civil law States typically only have jurisdiction over tort claims when the alleged tortfeasor is domiciled in the State or when the alleged tortfeasor commits the crime there. Common law states, on the other hand, have the authority to exercise jurisdiction over foreign individuals for their activities abroad

9. H Ward, “Legal Issues in Corporate Citizenship”, *Swedish Partnership for Global Responsibility*, (February 2003), accessed through [https://www.iied.org/docs/cred/legalissues\\_corporate.pdf](https://www.iied.org/docs/cred/legalissues_corporate.pdf) dated 22nd January 2023. This is as a cornerstone of Thai Department of Labour Protection and Social Welfare's new initiative's aimed to address the lack of labour issues enforcement and to promote voluntary labour standards compliance.

10. Dimas Hutomo, Op. Cit.

11. Ibid. The Forum non-Conveniens (FNC) is home to some of the most regular brawls. Due to FNC's opposition, it is clear that the respondent contended that another court would have been a better venue (appropriate forum) for the case's trial.

12. P Muchlinski, “The Bhopal Case: Controlling Ultrahazardous Industrial Activity undertaken by Foreign Investors”, *Modern Law Review*, 50, (1987), pp. 545.

13. MJ Rogge, “Towards Transnational Corporate Liability in the Global Economy: Challenging the Doctrine of Forum non Conveniens: in Re: Union Carbide, Alfaro, Sequihua, and Aguinda”, *Texas International Law Journal*, 26, (2001), pp. 299, 302, 323.

14. Dimas Hutomo, Loc. Cit.

15. Central Jakarta Commercial Court Decision Number 31/Pdt.Sus-Hak Cipta/2020/PN.Niaga.Jkt.Pst. The copyright infringement committed by Rabbit Town has attracted international media attention because the object Rabbit Town's Love Light looks too similar to Burden's famed Urban Light (2008) sculpture, which is permanently installed on the grounds of the Los Angeles County Museum of Art and has become one of the most identifiable works of public art in the world. In deciding this transnational case, one of the judges' considerations was to look at the participation of Indonesia and the United States in multi-local agreements, namely the Agreement on Trade-Related Aspects Intellectual Property Rights (TRIPS), the World Copyright Treaty (WCT), and the Berne Convention for the Protection of Literary and Artistic Works 1886. See, further, Maximiliano Duron, “Chris Burden Estate Files Copy Right Infringement Lawsuit Against Indonesian Theme Park”, *ARTNews*, accessed on <https://www.artnews.com/art-news/news/chris-burden-urban-light-lawsuit-indonesia-1202691259/> dated 27th January 2023.

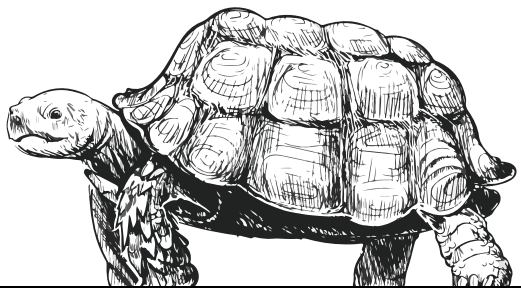
16. Subekti, *Pokok-Pokok Hukum Perdata*, (Jakarta: Intermasa, 2003), pp. 19-21.

17. Mochtar Kusumaatmadja, *Pengantar Hukum Internasional*, (Jakarta: Binacipta, 1997), pp. 1

18. Boer Mauna, *Hukum Internasional, Pengertian, Peranan dan Fungsi dalam Era Dinamika Global*, (Bandung: Alumni, 2005), pp. 1.

19. Article 18 paragraph (5) of Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions. “If parties do not make choice of forum as intended by paragraph (4), the jurisdiction of court, arbitration, or other alternative dispute resolution institution with jurisdiction to handle disputes that may arise from such transactions shall be determined under the Principles of Private International Law.”

20. Elucidation of Article 18 paragraph (5) of Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions. “Where parties do not make choice of forum, jurisdiction of forum under the principles of the Private International Law shall apply. Such principles are known as the principle of the residence of the defendants (the basis of presence) and the principle of effectiveness that emphasise the place of assets of the defendants (principle of effectiveness).”





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**ANGGRAENI** AND *Partners*

**WWW.AP-LAWSOLUTION.COM**  
P: 6221. 7278 7678, 72795001  
H: +62 811 8800 427

**S.F. Anggraeni**  
Managing Partner  
**fitri@ap-lawsolution.net**

**Sri Purnama**  
Junior Legal Research Analyst  
Research Group Transnational Litigation and Tort Law  
**sri.p@ap-lawsolution.net**