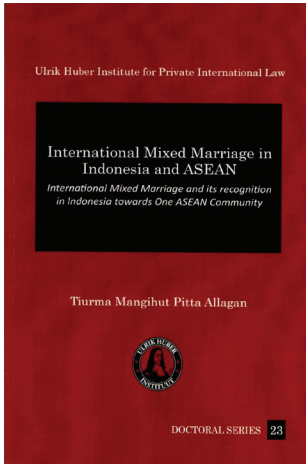


INTERNATIONAL MIXED MARRIAGE IN INDONESIA AND ASEAN

International Mixed Marriage and Its Recognition in Indonesia towards One ASEAN Community, Tiurma Mangihut Pitta Allagan (2019). Groningen: Ulrik Huber Institute, 523 pages, ISBN 978-94-034-2063-9.



This book is focusing the commitment of marriage between two individuals who have two different nationalities or which involves two or even more legal systems results in a contact or connection between different legal systems. This contact or connection arises from a situation whereby the bride and the groom do not have the same nationality, or are not living in the same state, or do not have the nationality of the country in which they live.

As a result of contact between differing legal systems in a marriage between spouses with different nationalities, Private International Law (hereinafter referred to as “PIL”) is of considerable importance. First of all, PIL decides on which law is to be applied as the prevailing law to determine the capacities of husband and wife.

Secondly, PIL determines which law is to be applied to solemnize the marriage or the authorized forum for the marriage, including the marriage registration whenever necessary or as may be required by the applicable laws. Thirdly, PIL deals with the issue of acknowledgment or recognition of a marriage. If a court is requested to dissolve a marriage which was entered into abroad, the first question will naturally regard the validity of the marriage. Such validity will depend on the recognition of such marriage.

This book elaborates PIL as the instrument needed to bridge existing differences in the substantive laws of the ASEAN Member States. PIL contributes to the coordination of the different legal systems and is an important step towards future harmonization and unification of the differing legal systems of the ASEAN Member States. Diversity of the various national laws requires a system of coordination between the ASEAN Member States which is compatible with the culture and tradition of ASEAN.

It sees the prime principles of PIL all national legal systems in the world are equal. PIL therefore respects any existing diversities between the laws of ASEAN Member States and aims to solve any possible conflicts between them. In addition, some opinions state that family law is unsuitable for international unification, as it is based on social and cultural norms and values which are excessively varied and sensitive. The deeply rooted nature of family law within each of the ASEAN Member State serves in itself a primary difficulty for ASEAN to harmonize or unify the same.

Despite growing support for cooperation amongst the ASEAN Member States, the harmonization and/or unification of family law is still not feasible since (i) differences in substantive family law cannot be denied, and (ii) there is no legal basis for such harmonization and/or unification. Such will therefore be a great challenge for ASEAN. However, efforts to undertake such attempt cannot be delayed, whereby one should start and try to make an approach.

Family law is an area that is regulated by the national laws of a country. This book therefore seeks to examine the nature of marriage within the national laws of the ASEAN Member States. Bearing in mind that this research serves as an early stage of the ASEAN framework, it will start with a comparison of marriage law. Since a comparison of all legal aspects of marriage would be too wide-ranging, the author focuses on the topic of marriage formation or marriage establishment only.

This book serves a comparison of the national laws would relate to the establishment of marriage, particularly the substantive requirements and the solemnization of such marriage. The aim of this comparison is to untangle and analyze the differences and similarities in the establishment of marriage as stipulated by the national laws of the ASEAN Member States. As far as differences are concerned, further analysis will touch upon whether such differences could be bridged by PIL. In relation to the similarities, the analysis will focus on the question whether those could serve as a basis for recognition or acknowledgment of a foreign ASEAN marriage. The ultimate aim would be the development of an intra-ASEAN system of international family law as well as the choice of methodology of law underlying the national systems of international family law in the ASEAN Member States.

This book also discuss the Academic Bill of Indonesian PIL, have become major highlights in this regard. In particular the Bill of Indonesian PIL is of importance due to the current discussions relating to the bill in Indonesian literature. Further, this book provide any necessary suggestions and/or recommendations for both the ASEAN framework and Indonesia. The suggestions of author are focusing on Academic Bill of Indonesia PIL. Firstly, Indonesia should provide regulations on mixed marriage in more details and should provide provisions on the recognition of marriages solemnized or held abroad. *Renvoi* in Indonesian PIL, public policy and mandatory rules are also the emergence topics to be regulated. In addition, the author concludes that Indonesia needs more flexibility in determining the applicable law based on the Principle of Nationality, by giving space to the Habitual Residence. It is also important that Indonesia should consider becoming a member of international organizations which discuss PIL-rules and to actively participate in international discussions on the development of PIL conventions. Secondly, in relation to the ASEAN One Community, in particular in respect of the marriage law, some recommendations can be offered to the ASEAN legislators. ASEAN needs to establish a common methodology for determining the applicable law. ASEAN should be transparent to work together in harmonization of PIL rules regarding marriage. A PIL system in ASEAN should display the following features: coherence, logical structure, absence of contradiction, completeness, clarity, and ease of use. The legal instruments of ASEAN should be clear and should provide legal certainty. Furthermore, the ASEAN Way as the decision-making rules need to be sharpened. ASEAN should elaborate its own culture to enrich its PIL and propose a model law, and ASEAN should maintain the principle of "*lex loci celebrationis*".

This book serves as an appropriate medium for foreign readers who want to understand Indonesian PIL and for national readers, it serves as a useful tool to look at the accuracy of terminology in regards to legal translations. However, one should heed that this is not a piece of literature for those who wish to gain the knowledge that brings them forward to specialize in a particular field of Indonesian PIL. This book serves academic discussion which is suitable for PIL scholars, therefore it might not be a cup of tea for a public audience in order to understand Indonesian PIL at the surface level.

Title : International Mixed Marriage in Indonesia and ASEAN, International Mixed Marriage and Its Recognition in Indonesia towards One ASEAN Community

Language : English

Publisher : Ulrik Huber Institute

Author : Tiurma Mangihut Pitta Allagan

Pages : 523 pages

Year : 2019

Reviewer : Lita Arijati, S.H., LL.M.