Chapter 7 Conclusion

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In conclusion we can say that in Indonesia at present we should speak of the law on Contracts, rather than of Contract Law properly so called. Because as a basis we have our so-called principles of Contract Law, which are contained in the Civil Code.

Next we have a special part in our Civil Code regulating Specific Contracts (*Bijzondere Overeenkomsten*). Other contracts, such as contracts relating to land and investment contracts which become practised after the 1967 Foreign Investment Law have also been regulated in the Basic Agrarian Law No. 5 of 1960 and governmental regulations, Presidential Decrees, etc.) by specific acts of Public Law and Bilateral and Multilateral Treaties. Not to mention numerous kinds of contracts concluded in or related to the Capital Market.

Furthermore we also have a huge number of specific government contracts, which are regulated by Public Laws, whilst presumably Government Contracts, International Contracts, Standard Contracts and contracts of E-commerce will have to be regulated by a different parliamentary acts too.

In relation to the new policy of decentralization the new regional laws and regulations of each autonomous region will also apply, and will have to be considered by businessmen and investors, next to the "old" rules of Conflict of Laws (*Hukum Antar Adat, Hukum Antar Daerah* and *Hukum Antar Wewenang*), which will be given new life in the next years to come.

All this in an atmosphere of globalization without neglecting the universally recognized principles of Contract Law which are embodied in the UNIDROIT Principles of International Commercial Contract Law, as discussed in this book in Chapter 4.

From the discussion above in this book, the reader may have seen how complicated the problems of legal reforms are in Indonesia, because :

Firstly, the majority of Indonesians still live in their traditional, tribal environment, unaware of the pressures and demands of international business in an age of globalization, causing Indonesians to live in 20 centuries all at the same time.

Secondly, while the principles of (old) Dutch-Indies Contract Law has been recently introduced to the group of Indonesian businessmen, other (esp. American) principles of Contract and Company Law has at the same time been adopted in many Investment Contracts through specific clauses, such as clauses for arbitration by an American arbitration board, or other provisions, which are strange to Indonesian Contract Law, but not always illegal, even if it has never been regulated.

What is more, all this has been made possible on the basis of the principle of freedom of contracts.

Thirdly, while Indonesia still adheres to the pre-war legal theories, the Netherlands has already adopted its law to the needs of the 21st century by promulgating a New Civil Code, which also contains provisions which formerly formed part of Dutch Commercial Law, apart from new post World War II norms and principles which have been introduced in the Dutch Civil Code.

Fourthly, in the meantime, international conventions and model laws have come into existence, making it possible for Indonesian legislative drafters to study them and use them as a model for our Civil Code, but is scattered over a large number of other laws and regulations, including our Commercial Code and a number of public laws and regulations.

Fifthly, therefore before we can really embark on drafting a comprehensive Law of Contract in Indonesia, we will first have to study all those separate laws and

regulations, and compare their principles with those of the International Conventions and Model Laws.

Sixly, the conclusion we reach now is that a new law of Contract Law can at best consist of a list of general principles of Contract Law to be observed, which is in accordance with international practice and theory, but which does not violate the Indonesian idea of fairness, good faith and justice.

Seventhly, if so, the Indonesian Contract Law will maintain its feature of an "Open System", which allows for special regulations for specific contracts, provided the general principles of the law of Contract are still upheld. This in fact results in an Indonesian Law of Contracts rather than a Law of Contract.

Finally, the "system" envisaged by the writer of the future Contract law in Indonesia might consists of the following :

1. Principles of the Law of Obligations, including of the Law on Contracts as contained in the Civil Code and perhaps somewhat modified in the future;

2. Specific contracts, such as the contracts of sale, leasing, barter and other such "traditional" contracts which are now regulated in the Civil Code;

3. International Commercial Contracts in General. Adopting most principles of the UNIDROIT (and/or other) Principles of International Commercial Contracts;

4. Specific (public) laws on investment contracts, licensing, franchise, anti-monopoly and fair competition, etc.

5. A law on Standard Contracts;

6. A law on Government Contracts, and

7. A law on E-Commerce.

On top of that, however, one should also advise the Constitution, the International Conventions and Bilateral Agreements, the regulations issued by the Investment Board Presidential Decrees and various Governmental Regulations, Regional Regulations an the various rules of Conflict of Laws including International Private Law rules, Interregional, Inter Adat and Inter Competence Law. Not to forget the local Adat Law(s) which every local and foreign businessmen ought to respect in the picture, in order not to experience the most unpleasant disturbances we have experienced in the past three years.

All this makes the Indonesian Law on Contracts, a piece of transnational law, in the true sense of the word.