

Tim Lindsey (ed), *Indonesia: Law and Society* (The Federation Press, 2nd edition, 2008, ISBN 9781862876927, hardcover; 9781862876606, paperback, AU\$99, 752 pages)

REVIEWED BY NADIRSYAH HOSEN\*

Indonesia, with a population of over 216 million, has sought to play a constructive role in Asian-Pacific affairs generally. Given its size and importance, including its strategic location, Indonesia is critical to the stability of Southeast Asia. There is no doubt that the bilateral relationship between Indonesia and Australia is very important to both countries. However, according to one senior adviser to former Indonesian President Abdurrahman Wahid (and quoted by Kevin Rudd in *The Age* on 9 November 2002) ‘what we see today is a bit like watching the emotional trials and tribulations of Elizabeth Taylor — at any one time full of romance, engagement, marriage, recrimination, separation — together with the ever-present threat of divorce’.

One of the difficulties which both countries face is that Indonesia and Australia have different political and legal systems. Most Indonesians and Australians do not know much about their neighbour’s political and legal systems — and this leads to the ‘Elizabeth Taylor’ kind of relationship.

The case of Schapelle Corby is illustrative. Corby is currently serving a twenty year sentence for the importation of 4.1 kg (9 lb) of cannabis into Bali. She maintains that the drugs were planted in her bag and that she did not know about them. Her trial and conviction was a major focus of attention for the Australian media. During Corby’s trial, one barrister in Queensland suggested that Corby’s lawyer should have brought the case to the Indonesian Constitutional Court. It is clear that the barrister knew nothing about Indonesian courts.

Another wrong assumption is that because Indonesia does not have juries, its trial process is inherently unfair. The fact is that the absence of juries is a feature of the European-derived civil law tradition, the legal tradition followed by most countries in the world today. Indonesia inherited this tradition from Napoleonic France via the Dutch, who colonised Indonesia for more than three hundred years.

Tim Lindsey, in his capacity as Director of the Asian Law Centre at the University of Melbourne, through his second edition of *Indonesia: Law and Society*, plays a significant role in clarifying the confusion regarding the Indonesian legal system. In Australia, he is well known and highly respected for his knowledge of Indonesian law. The first edition was well received by scholars worldwide, although by the time of its publication the first edition had become outdated because of the speed of Indonesian political developments during the *Reformasi* era, 1998–1999, during which momentous events were unfolding.

---

\* Lecturer, Faculty of Law, University of Wollongong.

The transition which took place immediately after the resignation of Suharto began with the assumption that law reform is an inherently *political* process, for instance, one which is explicitly rooted in the give-and-take of mundane conflicts over the distribution of power. Apart from the economic crisis, it was politics which opened the window for the law reform movement to develop. Law reform is not only political, but also a struggle between the status quo and change for the better.

This second edition covers many new developments in Indonesia: hundreds of new statutes and regulations have been enacted and dozens of major new institutions have been established, which include human rights courts, anti-corruption courts, a judicial commission, a constitutional court, an anti-monopoly commission and local and national ombudsman commissions. As a result, there are 25 new chapters to Tim Lindsey's book. It includes work by leading scholars from not only Australia, but also a wide range of other countries. It is designed as reading for both the non-specialist and the expert in international and comparative law.

Lindsey's article on constitutional reform in Indonesia is illustrative. He considers that constitutional reform has transformed Indonesia from what was effectively a dictatorship into a working electoral democracy. He provides some examples: the introduction of direct presidential elections, the abolition of appointed members of the legislature (ending the long-standing practice of reserving seats for the military), and a massive shift of power from the presidency to the legislature. He is of the view that the constitutional amendments constituted a radical rethink of the entire Indonesian state system and have resulted in a new, complex and still largely-untested model.

Gary Bell, of the National University of Singapore, examines the Indonesian doctrine available on the law of novation in order to point out some of the difficulties that arise in a civil law jurisdiction when the doctrine is not fully developed and dynamic. He highlights that it is important for International Financial Institutions (IFIs) such as the International Monetary Fund (IMF) and other foreign aid agencies often involved in financing law reform to fully understand the importance of doctrine in a civil law jurisdiction (as opposed to a common law jurisdiction).

Ross Clarke examines recent cases of the Bali Bombing, the East Timor Trials and the Aceh Human Rights Court and evaluates the problems of retrospectivity, impunity and constitutionalism. Simon Butt of the University of Sydney offers three articles in the book. One of them is on intellectual property in Indonesia, where he discovers that one of the roots of the problems can be traced back to the issue of the legal transplant of Western law to Indonesia.

Despite generally covering a number of new developments, some articles in this second edition do not include any new developments. Abdullah Saeed's article on Islamic banking, for instance, does not engage in the new progress of economic *shari'a* in Indonesia. Veronica Taylor's article is based on her research in 2003 — so there is a five-year gap in the information between the data and the 2008 publication date of this second edition.

The publication of this edited book is not aimed at another kind of 'Elizabeth Taylor' relationship between Indonesia and Australia. It is a complex and sensitive relationship borne of the differences in history, demographics, political, legal and cultural background. This book is useful as a bridge for academics, government officials and students of both countries. It is considered to be the most authoritative modern text in the English language on Indonesian law and society today.