Seeking Justice Overseas:
Lessons from the Montara Case

Iman Prihandono
Lecturer at Faculty of Law, Universitas Airlangga
Email: iprihandono@fh.unair.ac.id

Abstract:

In 2009, a blow-out took place at the Montara oil drilling platform, off the northern coast of Western Australia. The incident spilled thousands of barrels of crude oil in to the sea, and polluting the coast of West Timor, Indonesia. Almost more than six years since the incident, the impacted community has not obtain any remedy. There has been a plan by the Indonesia government to file a lawsuit in Indonesian court against PTTEP, the owner of Montara platform. At the same time, the Australian Lawyers Alliance also has a plan to take separate legal action in Australian court. This situation may lead to a possibility of parallel proceeding. Parallel proceeding occurs when similar case proceed at the same time in two different jurisdictions. Parallel proceeding within the same legal system might not be a problem. The issue may be more complicated when court examination proceed in two countries with different legal systems. This article analyses the need for judicial cooperation between Indonesia and Australia. To signify the need for judicial cooperation, this article analyses the possibility of parallel proceeding in the Montara case, and legal issues that might occur. This article finds that legal burdens exists both in Indonesian court and Australian court in the litigation of Montara case. Furthermore, there is a possibility of parallel proceeding in the future, and there is a possibility to avoid this situation, this is when judicial cooperation between Indonesia and Australia exists. Although entering into a judicial cooperation may not be an easy task, this cooperation is importantly needed. It will not only prevent parallel proceeding to occur, but also reducing the cost and legal burdens for the victims of corporate abuse when seeking redress abroad.

Keywords: parallel proceeding; forum shopping; judicial cooperation.

1. Introduction

In 21st August 2009, there was an uncontrolled release of crude oil from one of the well at the Montara Wellhead Platform located approximately 260 kilometres offshore from the northwest Australian coast. Based on a report made by PTTEP Australasia (Ashmore Cartier) Proprietary Limited (PTTEP AA), the operator of the Montara Platform, approximately 64 tonnes of crude oil were being spilled per day. The oil spill continued until the 3rd of November 2009.[1]

[1] Australian Maritime Safety Authority, Response to the Montara Wellhead Platform Incident Report of the Incident Analysis Team, 2010, accessed at <http://www.amsa.gov.au/forms-and-publications/publications/montara_iat_report.pdf>, p. v.

A report by the Commission of Inquiry noted that 'evidence before the Inquiry indicated that hydrocarbons entered Indonesian and Timor Leste waters to a significant degree'.[2] Based on the maps requested by the Australian Lawyer Alliance under the Freedom of Information Act, it shows that oil spill were seen at just 69 kilometres from Indonesian shores.[3] The oil pollution has severely impacted the livelihood of fishermen and seaweed farmers in the area of West Timor, Nusa Tenggara Timur province. A study has estimated that the economic loss to the fishing and seaweed production in the area amounts to approximately AUD1.5 billion per year since 2009.[4] An NGO in West Timor claims that the negative impact from this sea pollution continues until today, where thousands of fishermen suffered significant losses due to declining of fish catches and seaweed harvests.[5]

Following the incident, there have been a number of measures taken by the Indonesian government. The government established an advocacy team to communicate with the operator of Montara Platform. Likewise, Indonesian government have also discussed with its Australian counterpart to find a way to hold PTT Exploration and Production Public Company (PTTEP), a Thailand based company, liable for the damages caused by the oil spill.[6] The Indonesian government claims that the company must pay USD 2.58 billion in compensation. Unfortunately, the company seems to be reluctant to cooperate, and the Australian government has been passive in this case. For this reason, the Indonesian government threatened to bring this case to the international court of justice.[7]

A class action in Australian court has also been planned by the Australian Lawyer Alliance.[8] Eventually, in August 2016, more than 13.000 Indonesian seaweed farmers filed a class action lawsuit at the Australian Federal Court in Sydney against PTTEP AA, seeking for compensation amounted at more than USD200 million.[9] Since 2015, the Indonesian government has been planning to sue PTTEP in the District Court of Central Jakarta.[10] In December 2016, the Indonesian

---

2 Montara Commission of Inquiry, Report of the Montara Commission of Inquiry, 2010, accessed at <http://www.industry.gov.au/AboutUs/CorporatePublications/ MontaraInquiryResponse/Documents/Montara-Report.pdf> p. 38.

3 Special Broadcasting Service, 'Montara Maps Push Case for More Study', 2014, accessed at < http://www.sbs.com.au/news/article/2014/10/24/montara-maps-push-case-more-study>.

4 George Roberts, Australian Broadcasting Corporation, 'Australian Oil Disaster 'Costing Indonesians Billions'', 2012, accessed at <http://www.abc.net.au/news/2012-07-26/australian-oil-disaster-'costing-indonesians-billions'/4155474>.

5 Djemi Amnifu, The Jakarta Post, '2009 Montara Oil Spill Still Reducing Catches and Inflicting Losses', 2016, accessed at < http://www.thejakartapost.com/news/2016/06/15/2009-montara-oil-spill-still-reducing-catches-and-inflicting-losses.html>.

6 Lilian Budianto, The Jakarta Post, 'RI, Australia to Sue Thai Firm for Montara Oil Spill', 2010, accessed at < http://www.thejakartapost.com/news/2010/07/16/ri-australia-sue-thai-firm-montara-oil-spill.html>.

7 The Jakarta Post, 'Govt may Bring Montara Case to Int'l Court', 2010, accessed at < http://cbe.thejakartapost.com/news/2010/11/26/govt-may-bring-montara-case-int%E2%80%99l-court.html>.

8 Jewel Topsfield, Sydney Morning Herald, 'Class Action Planned over Montara Oil Spill', 2015, accessed at < http://www.smh.com.au/world/class-action-planned-over-montara-oil-spill-20150523-gh80t3.html>.

9 Jewel Topsfield, Sydney Morning Herald, 'Indonesian Seaweed Farmers Launch Class Action over Montara Oil Spill', 2016, accessed at < http://www.smh.com.au/business/world-business/indonesian-seaweed-farmers-launch-class-action-over-montara-oil-spill-20160801-gqitj0>.

10 Jewel Topsfield, Sydney Morning Herald, 'Indonesian Government Poised to Sue Over Montara Oil Spill', 2015, accessed at <http://www.smh.com.au/world/indonesian-government-poised-to-sue-over-montara-oil-spill-20151014-gk8mz4.html>.

government is planning to suspend the operation license and assets of PTTEP.[11] Finally, after almost eight years since the incident took place, the Indonesian government filed a lawsuit seeking Rp27.5 trillion (US$ 2 billion) against both PTTEP, PTTEP AA, and Petroleum Authority of Thailand Public Company Limited (PAT PCL) in Indonesian court.[12] [13]

Following the lawsuit brought by the Indonesian government, a parallel proceeding in the Montara case exists. This article analyses the legal burdens when pursuing this case in Indonesian court, as well as in Australian court. Furthermore, these two separate legal action may trigger a parallel proceeding situation. This article also examine the need for judicial cooperation between Indonesia and Australia to prevent parallel proceeding. To signify the need for judicial cooperation, this article analyses the parallel proceeding in the Montara case, and legal issues that might occur. Part 2 discusses general rules on parallel proceedings, and reasons that this situation may occur in a transnational litigation. Part 3 analyses possibility for Australian court to continue or to dismiss the examination of the Montara case. This is followed with analyses on the opportunity for PTTEP AA to challenge the Indonesian court jurisdiction in Part 4. The next part discusses the possibility to avoid parallel litigation between Indonesia and Australia through judicial cooperation between both countries. Finally, Part 6 draw the conclusion.

This article finds that legal burdens exists both in Indonesian court and Australian court in the litigation of Montara case. Furthermore, there is a possibility of parallel proceeding in the future, and there is a possibility to avoid this situation, this is when judicial cooperation between Indonesia and Australia exists. Although entering into a judicial cooperation may not be an easy task, this cooperation is importantly needed. It will not only prevent parallel proceeding to occur, but also reducing the cost and legal burdens for the victims of corporate abuse when seeking redress abroad.

2. Parallel proceedings

There has been no general definition of parallel proceedings, however, a parallel proceeding may occur when parties in dispute bring a similar case before a multiple forums, either simultaneously or successively.[14] Thus, parallel proceeding is a duplicative litigation in multiple jurisdictions which involve similar parties or cause of action.[15] In a globalised world where business activities are crossing the states borders, the possibility of parallel proceedings increase. For instance, a company–established under the law of Country A, operating in Country B, and entered into a joint venture agreement with a business partner originating from Country C–might sue or being sued in any of those three jurisdictions in a similar case at the same time.

Parallel proceedings may occur for a number of motivations. The first reason is the difference in procedural system allows the parties in dispute to do a 'forum-shopping' strategy. Parties in dispute

[11] Djemi Amnifu, The Jakarta Post, 'Govt to suspend firm at center of Montara spill', 2016, accessed at < http://www.thejakartapost.com/news/2016/12/05/govt-suspend-firm-center-montara-spill.html>.

[12] Djemi Amnifu, The Jakarta Post, 'Lawsuit against Thai firm to protect environment', 2017, accessed at < http://www.thejakartapost.com/news/2017/05/08/lawsuit-against-thai-firm-protect-environment.html>.

[13] Case Registration No. 241/PDT.G/2017/PN.JKT.PST.

[14] Jamie Shookman, 'Too Many Forums for Investment Disputes? ICSID Illustrations of Parallel Proceedings and Analysis (2010) 27(4) *Journal of International Arbitration* 361-378, p. 362.

[15] Louise Ellen Teitz, 'Both Sides of the Coin: A Decade of Parallel Proceedings and Enforcement of Foreign Judgments in Transnational Litigation' (2004) 10(1) *Roger Williams University Law Review* 1-71, p. 8.

tend to select a jurisdiction that will bring the best outcome for their interest. A particular jurisdiction may offer a more extensive procedure of evidence and witness examination than the other. Likewise, a possibility to obtain large damage awards will make it preferable for the plaintiff to bring their case in this jurisdiction.[16] Finally, familiarity with the substantive law which govern the dispute is also a main reason why a party is more likely to choose its own national court.[17]

Teitz emphasises that there are three possible response to a parallel proceedings by the parties in dispute. These are: (1) to stay or to dismiss the domestic proceeding; (2) to stop the other parties from proceeding in foreign forum (or known as the 'anti suit injunction'); and (3) to allow both courts to proceed simultaneously, and waiting which court will first handed down its judgement (or known as the 'race to judgment').[18]

In relation with the *Montara* case, parallel proceedings is possible to took place when any of the following three situations occur. First, the Indonesian government submits a legal suit in Indonesian court against PTTEP (the parent company) and PTTEP AA (the Australian based subsidiary company), both are the owner and operator of the Montara platform. Second, an environmental organisation files a legal standing suit (organisation suit) on behalf of the environment (and public interest) in Indonesian court against both PTTEP and PTTEP AA. Thirdly, a class action suit in Indonesia court against PTTEP and PTTEP AA, filed by a group of fishermen and seaweed farmers from East Nusa Tenggara who did not join the class action suit in Australian court.

A legal suit in Indonesian court is taken because the government and the companies have been failed to reach amicable settlement. Unfortunately, the government move by threatening to seize the assets of the company's subsidiaries in Indonesia seems to be ineffective to gain serious attention from PTTEP. Under the Indonesian environmental law, the government has the right to bring a case–seeking for compensation and environmental restoration–against company that caused environmental damages.[19] Indeed, there is an incentives for the Indonesian government to use this strategy. This lawsuit may act as the backup strategy, especially if the Australian class action suit ended with an unsuccessful result.

An environmental NGO has the right to bring a case against a company for causing environmental degradation.[20] However, an NGO can only seek for environmental reparation, and not for financial compensation.[21] Considering this drawback, it is not preferable to employ this organisation lawsuit, because it will limit the possibility for coastal communities to obtain compensation.

The last possible parallel proceedings is the class action lawsuit filed by fishermen and seaweed farmers other than those joining the Australian class action suit. A class action suit by a grup community that suffer similar damages is possible under the Indonesian environmental law.[22] For

---

16 Louise Ellen Teitz, above n 15, p. 10.
17 Richard H. Kreindler, *Arbitral Forum Shopping* in Bernardo M. Cremades and Julian D. M. Lew (eds), Parallel State and Arbitral Procedures in International Arbitration (ICC Publishing, 2005), p. 176.
18 Louise Ellen Teitz, above n 15, at p. 10.
19 Art. 90(1) the Law No. 32 of 2009 on Environmental Protection and Management (the 'EPM Law').
20 Art. 92(1) the EPM Law.
21 Art. 92(2) the EPM Law.
22 Art. 91(1) the EPM Law.

a number of reasons, there may be a group of fishermen and seaweed farmers that have not joined the other 13.000 farmers in the Australian class action. It was estimated that there are 7.000 traditional fishermen, and more than 10.000 coastal communities relying their lives on the Timor Sea and seaweed farming for a living.[23] Based on these figures, nearly 4.000 fishermen may potentially bring a class action suit in Indonesian court.

However, orginising 4.000 persons to file a class action suit would not be an easy task. This effort may even be more difficult because most of the coastal communities lives in remote islands along the Timor Sea. It needs years of preparation, and must pass a number of formal and procedural requirements. Therefore, although this class action suit remain possible, it is less likely to be materialised in a short period of time.

To this end, considering all of the above factors, parallel litigations in *Montara* case occurs when the Indonesian government filed a legal suit in Indonesian court against PTTEP and PTTEP AA. The next two parts below analyses the situation that should be considered by the parties in the *Montara* case in both the Australian and Indonesian courts after parallel proceeding exists.

3. The Australian court proceeding

Represented by Maurice Blacburn law office, the Indonesian fishermen and seaweed farmers filed a class action lawsuit against PTTEP AA. This law suit is funded by the Harbour Litigation Funding Limited, one of the world's largest litigation funders. The plaintiff seek compensation for the loss of income they suffered since the day the oil spill contaminated their seaweed farming field.[24]

In response to this lawsuit, PTTEP AA (the 'defendant') believes that this action is misguided as the oil spill has never reached Indonesian shore.[25] Having in mind that PTTEP AA is a company established under the law of Australia, there is no other option for the defendant but to appear before the Federal Court in Sydney. The defendant has two opportunities when appearing before the court: (1) to challenge the court jurisdiction; (2) to defend itself on substantive matters of the case.[26] Challenging the court jurisdiction is optional for the defendant. However, defending its interest on the substantive issues of the dispute is a must, unless the defendant is ready to accept whatever decision of the court.

The Australian judicial system inherits the British legal tradition which based on the common law legal system. This particular legal system rely on the doctrine of precedent, which requires the lower court to refer to the previous decision of the higher court. The basic tenet of this doctrine is

---

[23] Kompas, 'Indonesia Urged to Pursue Claim on Montara Oil Spill', 2010, <http://health.kompas.com/read/2010/11/16/18522936/indonesia.urged.to.pursue.claim.on.montara.oil.spill>, accessed at 14 August 2016.

[24] Jewel Topsfield, Sydney Morning Herald, 'Indonesian Seaweed Farmers', above n 9.

[25] Jason Scott, Bloomberg, 'PTT Exploration Faces Class Action Lawsuit Over Oil Spill', 2016, accessed at < http://www.bloomberg.com/news/articles/2016-08-03/ptt-exploration-faces-class-action-lawsuit-over-2009-oil-spill>.

[26] Australian Law Reform Commission, 'Legal Risk in International Transactions', (ALRC Report 80, 1996), accessed at <http://www.alrc.gov.au/publications/report-80>, Part. 6 International Litigation.

to maintain consistency, continuity, and predictability of the rule of law.[27] The doctrine of precedent applies to all cases, including the jurisdiction challenge.

A defendant has two opportunities to challenge the Australian court jurisdiction. Firstly, the defendant may request the court to stay the proceeding on the ground that the court is clearly inapropriate (forum non conveniens). Secondly, another means to prevent parallel proceedings is the anti-suit injuction. The defendant may request the Australian court to order the parties in dispute to restrain from pursuing a case with the same cause of action in another jurisdiction.[28]

Assuming that the Indonesian government take the initiative to file a lawsuit against both PTTEP and PTTEP AA in Indonesian court, the proceeding in Australian court may be stayed on the ground of forum non conveniens doctrine. Brand emphasises that the doctrine of forum non conveniens is adopted by courts with the common law traditions. This doctrine examine the appropriateness of the court in hearing a case as opposed with another court that may also have jurisdiction to hear that case.[29] In examining the forum non conveniens challenge, the Australian court has a different approach. It applies the 'clearly in apropriate' test, rather than the 'most appropriate test' which applied by English court.[30]

In the *Voth* case,[31] the High Court of Australia decided that the plaintiff has a stronger right to insist that the court must continue the proceeding. Furthermore, the stay of proceeding may be granted if proceeding in the Australian court would be oppressive and vexatious, and the reason to dismiss a case should be to avoid injustice between parties in a particular case. More importantly, the grant to dismiss a case by the Australian court must be exercise 'with great care' or 'extreme caution'.[32]

The 'clearly inappropriate' test was first proposed by Justice Deane in the *Oceanic Sun* case.[33] In this case, the judge was in the opinion that:

> [a] stay should be granted if the local court is a clearly inappropriate forum, which will be the case if continuation of the proceedings in that court would be oppressive, in the sense of "seriously and unfairly burdensome, prejudicial or damaging", or, vexatious, in the sense of "productive of serious and unjustified trouble and harassment.[34]

---

[27] Michael Kirby, 'Precedent-Report on Australia', Conference Paper, presented at the International Academy of Comparative Law Conference, Utrecth, 17 July 2006, accessed at < http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_17jul06.pdf>, p. 2.

[28] Australian Law Reform Commission, 'Legal Risk in International Transactions', above n 26.

[29] Ronald A. Brand, 'ASIL Insight: The New Hague Convention on Choice of Court Agreements', 2005, The American Society of International Law (ASIL), accessed at <http://www.asil.org/insights/2005/07/insights050726.html>.

[30] Ronald A. Brand and Scott R. Jablonski, *Forum Non Conveniens History, Global Practice, and Future under the Hague Convention on Choice of Court Agreements*, (Oxford University Press, 2007), p. 91.

[31] *Voth v Manildra Flour Mills Pty Ltd* (1990) 171 CLR 538.

[32] *Voth v Manildra Flour Mills Pty Ltd* (1990) HCA [30], p. 554.

[33] *Oceanic Sun Line Special Shipping Co Inc v Fay* (1988) 165 CLR 197.

[34] *Oceanic Sun Line Special Shipping Co Inc v Fay* (1988) 165 CLR 197, p. 247. This approach adopted and applied by the court in the later cases as folows: *Voth v. Manildra Flour Mills Pty Ltd* (1990) HCA [30], p. 556; *Henry v. Henry* (1996) 185 CLR 571, p. 587; and *Regie Nationale des Usines Renault SA v. Zhang* (2002) 210 CLR 491, p. 504.

Based on the above precedents, the Australian court tend to give more weight to the plaintiff's choice of jurisdiction. The clearly inappropriate test has set a higher standard for the defendant to challenge the court jurisdiction.[35] Therefore, it may be difficult for PTTEP AA in the *Montara* case to challenge the Australian court jurisdiction on the ground of forum non conveniens.

However, the Australian court may be the most preferable jurisdiction for PTTEP AA as opposed to the Indonesian court. The Australian court is preferable for PTTEP AA for several reasons. First, PTTEP AA is an Australia based company which established and operating under the law of Australia. Second, the blow out incident took place in Australian water. In consequences, the proceeding should be best governed by Australian law, including the rule on examination of evidences, and the rule on damages. Therefore, it is less likely that PTTEP AA would take the burden to challenge the Australian court jurisdiction on the ground of forum non conveniens.

Another alternative for PTTEP AA to launch jurisdiction challenges is through the anti-suit injuction. An Australian court may grant an anti-suit injunction to prevent a party from pursuing similar case in foreign jurisdiction. Failing to obey the anti-suit injunction decision would result to a contemp of court, and the court may order imprisonment.[36] The court will consider two steps before granting an anti-suit injuction. First, the court will consider to restrain its own jurisdiction from examining the case. Second, the court will consider whether the plaintiff should apply for the stay of proceeding.[37]

However, the anti-suit injunction may not be successful in restraining the Indonesian government from pursuing its case in Indonesian court. This is because the Indonesian government is not a party to the class action suit in the Australian court. Generally speaking, the anti-suit injunction is only enforceable against the parties in dispute.[38] Furthermore, it is very unlikely that the Indonesian court will recognise the Australian court decision to grant anti-suit injunction. Therefore, though the Australian court decides to grant anti-suit injunction, it may not be enforceable to stop the legal proceeding in Indonesian court.

To this end, the class action suit filed by Indonesian seaweed farmers againts PTTEP AA will be more likely to continue in Australian court. This is because pursuing a *forum non conveniens challenge* would not be preferable for the plaintiff, and the anti-suit injunction challenge is not applicable in this case. Indeed, an objection by the defendant company alleging that Mr. Daniel Sanda is not capable of representing thousands of fishermen and seaweed farmers was rejected by the court. The Federal Court of Australia in Sydney decided that the lawsuit may continue to proceed.[39]

---

[35] Jocelyn Kellam and Rene J. Maoledoux, 'Forum Conveniens in Australia', 2009, accessed at < http://www.thefederation.org/documents/6-CLE%20Annual%2009-Kellam.pdf>.

[36] Andrew Dickinson, Mary Keyes, Thomas John (Eds), *Australian Private International Law for the 21st Century Facing Outwards*, (Hart Publishing, 2014), p. 248.

[37] *CSR Ltd v. Cigna Insurance Australia Ltd* (1997) 189 CLR 345, p. 402.

[38] Australian Law Reform Commission, 'Legal Risk in International Transactions', above n 26.

[39] Djemi Amnifu, The Jakarta Post, 'Oz court resumes Montara lawsuit', accessed at <http://www.thejakartapost.com/news/2017/01/27/oz-court-resumes-montara-lawsuit.html>.

Perhaps, the most difficult challenge for Indonesian plaintiff in the Montara case is to prove and provide evidence which support their allegation that the crude oil had reached the shore of Rote Islands and the coast of West Timor. The Indonesian Ministry of Environment and Forestry declared that it has found similarities on carbon fingerprint between oil substances found in Montara drilling facility and those of found in the coast of West Timor.[40] Likewise, an Inquiry Report on the Montara case also found that the oil substance was observed within 94 Km of Roti island.[41] On the other hand, PTTEP AA confidently argues that there has been no oil substance entered into Indonesian water.[42]

4. The Indonesian court proceeding

As mentioned above, the government of Indonesia has brought the *Montara* case to an Indonesian court. There are at least four advantages for the Indonesian government to bring this case to its own court jurisdiction. First, the lawsuit will force PTTEP AA, PTTEP, and to appear before the Indonesian court. Second, familiarity with the substantive law and the court formal procedures. Second, the Indonesian court bias againts the foreign defendant. Third, the Indonesian court proceeding would serve as a back up plan, particularly when the Australian class action suit ended in an unfavourable result for the traditional fishermen and seaweed farmers.

However, there is a possible way for PTTEP AA to challenge the Indonesian court jurisdiction, and to prevent parallel proceedings. In contrast with Australian legal system, the Indonesian legal system follows the civil law legal system. It derived from the French and German models of law introduced by the Dutch in the colonial era.[43] Therefore, the *forum non conveniens* and the *anti-suit injunction* challenges do not apply in Indonesian court. The courts in civil law legal systems apply different doctrine to prevent parallel proceedings, this doctrine is the '*lis alibi pendens*'.[44]

Perhaps the best way to find the definition of *lis alibi pendens* is by looking at the international legal instruments adopted and practiced by a substantial number of countries. The *lis alibi pendens* doctrine has been adopted by the European continental countries under the European Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matter, or known as the Brussel Convention.[45] This doctrine may be found in Article 27 of the Brussel Convention. This article provides that where a proceeding involves the same cause of action and between the same parties brought in the courts of different Member States, the court first seised must be given the

---

[40] Aji Nurmansyah, Ekonomi Akurat, 'Kasus Pencemaran Montara Temui Titik Terang', 24 May 2017, accessed at < http://ekonomi.akurat.co/id-37352-read-kasus-pencemaran-montara-temui-titik-terang>.

[41] David Borthwick AO PSM, 'Report of the Montara Commission of Inquiry', June 2010, accessed at < https://industry.gov.au/resource/UpstreamPetroleum/MontaraInquiryResponse/Documents/Montara-Report.pdf>, p. 302.

[42] PTTEP AUSTRALASIA, 'Submission to the Joint Select Committee on Northern Australia's Inquiry into Opportunities for Expanding the Aquaculture Industry in Northern Australia', 8 July 2015, accessed at < file:///C:/Users/Owner/Downloads/Sub033%20PTTEP%20Australasia.pdf>, on file with the author.

[43] Tim Lindsey (Ed), *Indonesia: Law and Society*, (Federation Press, Sydney, 1999).

[44] Christer Söderlund, 'Lis Pendens, Res Judicata and the Issue of Parallel Judicial Proceedings' (2005) 22(4) *Journal of International Arbitration* 301-322, p. 301.

[45] 1968 Brussel Convention on Jurisdiction and Enforcement of Judgment in Civil and Commercial Matters, 1998 O.J. (C 27) 1. Replaced by The Council Regulation (EC) 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 2001 O.J. (L 12), entered into force on March 1, 2002.

priority to establish its jurisdiction. If the court first seised has decided to establish its jurisdiction, other courts must decline jurisdiction. In a simple word, the *lis alibi pendens* means a strict rule of 'first come-first serve' process.[46]

As a country with civil law traditions, the Indonesian court applies jurisdiction challenge based on the *lis alibi pendens* ground. However, this doctrine has slightly changed into different legal terminology, but with similar meaning. Under the Indonesian law on civil procedure, parties in disputes may submit to the court an '*exceptio litis pendentis*'. As emphasises by Harahap, a plaintiff may submit to the court a number of procedural exceptions before the court can proceed to examine the substantive matter of the dispute. One of these exceptions is the '*exceptio preemptoria*', an exception by the plaintiff which argue that a court should declare the case as inadmissable because the case is unable to be brought to this particular court.[47]

There are a number of exceptions which fall under the category of *exceptio preemptoria*, these are: (1) *exceptio temporis*; (2) *exceptio doli mali*; (3) *exceptio metus*; (4) *exceptio non adimpleti contractus*; and (5) *exceptio litis pendentis*. Harahap explaines *exeptio litis pendentis* means that the case brought by the plaintiff is similar with the case being examined by another the court. This exception is also known as the sub-judice exception, which means the case is still hanging (*aanhangig*) or the proceeding of this case remain ongoing (under judicial consideration) in another court. The reason for the judges to take *exceptio litis pendentis* challenge into a serious consideration is to prevent a conflicting judgements to a similar case.[48]

It is not clear whether the Indonesian court should consider an *exceptio litis pendentis* challenge in a case which remain under consideration by a foreign court. Due to the very limited access to judgments of Indonesian court, it is difficult to find precedents on this particular issue. However, considering that conflicting judgments may occur, an ongoing case in foreign jurisdiction may possibly fall under the *exceptio litis pendentis* challenge.

Nevertheless, using the *exceptio litis pendentis* challenge in Indonesian court would be a problematic option for PTTEP AA. To submit a court jurisdiction challenge, the defendant must appear before the court. Unfortunately, appearing before an Indonesian court may pose a risk for PTTEP AA. The Indonesian law on civil procedures does not provide an option for foreign defendant to appear before the court, merely for the purpose of challenging the court jurisdiction. Once a challenge to court jurisdiction is decided, and the court has established its jurisdiction, the defendant must continue to participate in the proceeding on the substantive matter of the case.

The above situation would not be preferable for PTTEP AA, avoiding the Indonesian court can be the best strategy for PTTEP AA. The Indonesia court would be an unfavourable battle ground for foreign defendant, particularly for PTTEP AA. The decision to avoid Indonesian court may be the best option, particularly because all of the victims are Indonesian nationals, and this case has

---

[46] Julia Eisengraeber, 'Lis Alibi Pendens Under the Brussels I Regulation How to Minimise 'Torpedo Litigation' and other Unwanted Effects of the 'First-Come, First-Served' Rule', Centre for European Legal Studies, Exeter Papers in European Law No. 16, accessed at <http://www.law.ex.ac.uk/cels/documents/papepr_llm_03_04_dissertation_Eisengraeber_001.pdf>, p. 5.

[47] M. Yahya Harahap, *Hukum Acara Perdata tentang Gugatan Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, (Sinar Grafika, Jakarta, 2013), p. 458.

[48] M. Yahya Harahap, above n 47, p. 461.

become a national public interest issue. There is a tendency that the Indonesian court may be biased towards PTTEP AA.

Indeed, the most challenging issue for the Indonesian government is to make the defendant companies to appear before the Indonesian court. Fortunately, the Indonesian law on civil procedure provides a way for the judge examining a civil case to proceed in the absence of the defendant. When the defendant has been summoned appropriately, and fail to appear before the court, the court is allowed to deliver a *verstek* (*in absentia*) judgment.[49] However, a number of issues may occur in the enforcement of the judgment. First, the Indonesian court judgment may not be enforceable in foreign jurisdictions. Secondly, even if enforcement of Indonesian court judgment in other countries is secured, perhaps not all country may recognised an *in absentia* judgment.

Alternatively, instead of pursuing the enforcement of Indonesian court judgment in foreign jurisdiction, the government may choose to enforce the judgment againts PTTEP's subsidiaries operating in Indonesia. However, there is a legal barrier when the government decides to use this strategy. This obstacle is the 'separate legal personality' doctrine as adopted by the Indonesian company law.[50] Under this doctrine, the shareholder and the company are two separate entities. Therefore, the conduct of shareholder cannot be associated with the subsidiary company, and *vice versa*. However, there are possibilities that a shareholder may also be hold responsible for the conduct of its subsidiary, but only to a limited conditions. These include: (a) shareholder(s) in bad faith, take advantage of the company solely for their personal interest; or (b) shareholder(s) unlawfully use the company's assets, causing the company to become insolvent.[51]

Indeed, PTTEP has a subsidiary operating in a natural gas exploration area in Indonesia. This subsidiary is the PTTEP Netherlands Holding Cooperatie U.A., a company established under the Dutch law. This subsidiary company holds 11.5% of shares in the Natuna Sea A project. The contribution of this project to the total sales of PTTEP's global operation is only at 1%.[52] Therefore, even if the Indonesian court insist to order a seizure to the asset of PTTEP's subsidiary, the amount is insignificant to cover the damages claim. However, PTTEP Netherlands Holding Cooperatie U.A. is a subsidiary of PTTEP. In order to seize this subsidiary company's asset, the Indonesian government must consider the Dutch company law. This is particularly on the law of 'separate legal personality' matters under the Dutch law. Thus, seizing the asset of a subsidiary company is not an easy task in Indonesia.

Another alternatives for Indonesian government to pursue the enforcement of court judgment is throught the Mutual Legal Assistance (MLA) mechanism. Indeed, the government is planning to employ this strategy, unfortunately it does not specify the country within which the MLA is to be

---

49 Art. 125 HIR and Art. 149 RBg.

50 Law No. 40 of 2007 on Limited Liability Companies.

51 Art. 3, Law No. 40 of 2007 on Limited Liability Companies.

52 PTTEP, SET Notification, 'Clarification on news reporting regarding legal action commenced in Indonesia relating to the Montara Incident', 8 May 2017, accessed at < https://www.pttep.com/en/Investorrelations/Regulatorfilings/Setnotification/Clarificationonnewsreportingregardinglegalactioncommencedinindonesiarelatingtothemontaraincident.aspx>.

applied.[53] Assuming that the MLA will be used to seize PTTEP AA's assets in Australia, the Indonesian government may use the Indonesia-Australia MLA.[54] However, this MLA agreement is only covering legal assistance in criminal matters. Thus, MLA may only be used if there is a criminal court judgment which found the alleged companies have committed crimes under the environmental law.

5. Recognition of foreign court judgment

The above parts finds that defendant may employ a number of procedural challenges to avoid parallel proceedings from occurring. However, all available options to prevent parallel proceedings may not be applicable for the defendants in the *Montara* case. To this end, since the Indonesian government has filed a lawsuit in Indonesian court, parallel proceedings seems to be inevitable. For this reasons, it is also possible that there might be a two conflicting judgments in the *Montara* case.

Regarding this issue, Teitz argues that the inability to enforce court judgments from one country to another country is one of the main factors that drive parallel proceedings.[55] This argument is correct particularly for the *Montara* case. Perhaps, the reason why the victims of oil spill did not launch their case in Indonesia at the first place is because the judgment of the Indonesian court may not be enforced in Australia. On the other side, PTTEP AA will be reluctant to challenge the Australian court jurisdiction, because the Australian court judgment can only be enforced in Australia, and has no effect in Indonesia.

For the above reasons, this article proposes that there should be a cooperation between Indonesia and Australia on the issue of recognition of judgment rendered by courts in both countries. This cooperation is important to prevent not only parallel proceedings to occur, but also to avoid conflicting judgments on the similar case in the future. Unfortunately, recognition of foreign court judgment is a sensitive issue for some countries. Therefore, establishing cooperation between states on this issue may not be an easy task. Nevertheless, preventing conflicting judgments is very important in an international litigation like in the *Montara* case. International litigation should be able to provide predictable outcome to the parties in dispute, and more importantly, it should resolve the dispute in a fair and equitable manner.[56]

This part discusses the possibility of cooperation between states on the issue of recognition of foreign judgements, both at international and bilateral level between Indonesia and Australia.

---

[53] Munib Ansori, Neraca, 'Pemerintah Indonesia Gugat Rp 27,4 Triliun Kasus Montara', accessed at < http://www.neraca.co.id/article/84733/industri-migas-pemerintah-indonesia-gugat-rp-274-triliun-kasus-montara>.

[54] *Treaty between Australia and the Republic of Indonesia on Mutual Legal Assistance in Criminal Matters*, signed on 27 October 1995.

[55] Louise Ellen Teitz, above n 15, p. 14.

[56] Ronald A. Brand, 'Comparative Forum Non Conveniens and the Hague Convention on Jurisdiction and Judgments', (2002) 37 *Texas International Law Journal* 467-498, p. 494.

A. International attempt

Courts in different countries have been employed different standard when requested to enforce foreign judgments. Silberman explains that under the *U.S. Uniform Act*, a court may apply non-enforcement if the foreign court has failed to provide a fair trial, and if that foreign court has no jurisdiction to hear the case.[57] Another difference is the reciprocity requirement which invoked by some countries as a mandatory condition.[58] Furthermore, one of the most controversial issues is the public policy concerns, courts in some countries may refuse to enforce foreign judgment when the enforcement of this judgment is in conflict with public interest.[59]

For instance, some countries may refuse the enforcement of foreign judgments if it includes punitive damages. Brand notes that the German Bundesgerichtshof has once dicided that '[i]t would be against German public policy to enforce the punitive damages portion of a California judgment'.[60] Likewise, Posch emphasizes that under Brussel Convention a court of European Union member states must refuse to recognize foreign judgment if it violate public policy of that member state.[61]

To resolve the different practices between states in dealing with foreign judgments, there has been an attempt at international level. In 1971**,** the Hague Conference on Private International Law completed work on a Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial (the '1971 Hague Convention').[62] The proposed 1971 Hague Convention establishes rules to simplify the recognition of foreign judgment, and create a common standard on the enforcement procedures.[63]

In relation to the recognition and enforcement of foreign judgments, the proposed Hague Convention provides important guidelines for the court in different jurisdiction. The are a number of significant breakthrough to assists courts–regardless of their legal traditions–in determining whether or not a foreign judgment may obtain recognition and enforceable. First, a judgment rendered by a foreign court must be recognised and enforced, subject to a condition that the judgment is enforceable in the state of origin.[64] Second, the requested court has no rights to re-examine the foreign judgment.[65]

---

[57] Linda J. Silberman, 'The Impact of Jurisdictional Rules and Recognition Practice on International Business Transactions : The U.S. Regim', (2004) 26 *Houston Journal of International Law* 327, p. 354.

[58] Willibald Posch, 'The Effects of Jurisdictional Rules and Recognition Practice', 26 *Houston Journal of International Law* 363, p. 380.

[59] Linda J. Silberman, above n 57, p. 357.

[60] Ronald A. Brand, 'Punitive Damages Revisited: Taking the Rationale for Non-Recognition of Foreign Judgments too Far', (2005) 24 *Journal of Law and Commerce* 181, p. 191.

[61] Willibald Posch, above n 58, p. 380.

[62] The 1971 Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, Feb. 1, 1971, 1144 U.N.T.S. 249. Accessed at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=78>.

[63] Eric B. Fastiff, 'The Proposed Hague Convention on the Recognition and Enforcement of Civil Commercial Judgments: A Solution to Butch Reynolds's Jurisdiction and Enforcement Problems', (1995) 28(2) *Cornell International Law Journal* 469, p. 477.

[64] Art. 4(1) of the 1971 Hague Convention.

[65] Art. 4(2) of the 1971 Hague Convention.

Third, refusal by the requested court is allowed, but limited only to a number of specific reasons, these are: incompatible with public policy; against the principles of procedural fairness and due process of law; and the judgment is obtained by default.[66] Fourth, to discourage parallel proceedings, an addressed court may refuse recognition and enforcement of foreign judgments if proceedings between the same parties, based on the same facts, and having the same purpose is pending before the court.[67]

Although the 1971 Hague Convention has technically entered into force, it is not in effect. Based on Article 21 of this convention, foreign court judgment will remain unenforceable until a ratifying state enter into a bilateral Supplementary Agreements with another ratifying state, and it is less likely that the five member states of this convention will do this in the near future.[68] Regardless of this short coming, the convention provides a valuable example for states in formulating cooperation agreement on recognition of foreign judgments. States may take a lesson from the 1971 Hague Convention on how to compromise the different standard between courts in dealing with foreign judgments.

B. Indonesia-Australia judicial cooperation

In relation with foreign court judgments, the Australian laws provide that they may be recognised if those judgments satisfy the requirements under the *Foreign Judgments Act* 1991 and the *Foreign Judgments Regulations* 1992. Apart from these requirements, recognition of foreign judgments may also be enforced in accordance with the common law principles.[69] In general, the Australian law follows the international reciprocity principles in recognition of foreign judgments.[70] In fact, there are a number of countries with civil law traditions that have entered under the reciprocity list with Australia, such as: French, Germany, and Italy.[71]

On the other hand, the Indonesian law follows a stricter rule. Foreign court judgment in civil matters may not be enforced in Indonesian territory. Gautama, believes that recognition of foreign judgments may have less effect than the enforcement. Thus, foreign court judgments may be recognised, but may not be enforced. He emphasises that foreign judgment is not equal with the Indonesian court judgments, this is in accordance with the territorial sovereignty principle.[72]

Similarly, Harahap argues that Indonesian court is under no obligation to enforce foreign judgments, unless there is a law that provide otherwise.[73] However, he notes that the Indonesian law on civil procedures allows a foreign judgments to be used as a basis to files a new legal suit in

---

66 Art. 5 of the 1971 Hague Convention.

67 Art. 11(1) of the 1971 Hague Convention.

68 Arthur von Mehren, '*Recognition and Enforcement of Foreign Judgments: A New Approach for the Hague Conference?*', (1994) 57 *Law & Contemporary Problems* 271, p. 275.

69 Attorney-General's Department, 'Recognising and Enforcing Foreign Judgments', accessed at <https://www.ag.gov.au/Internationalrelations/PrivateInternationalLaw/Pages/Recognisingandenforcingforeignjudgments.aspx>.

70 *Foreign Judgments Act 1991* (Aus), Act No. 112 of 1991, Part 2-Reciprocal enforcement of judgments.

71 *Foreign Judgments Regulations 1992* (Aus), Statutory Rules 1992 No. 321 as amended made under the Foreign Judgments Act 1991, Schedule Superior Courts.

72 Sudargo Gautama, Hukum Perdata Internasional Indonesia, Buku ke-Delapan, Jilid III, Bagian 2 (1987, Alumni: Bandung), p. 277-78.

73 M. Yahya Harahap, above n 47.

Indonesian court.[74] This foreign judgment may serve as evidence in the court, in which the judge will take into consideration.

Having the above situations in mind, it seems that there is a possibility for cooperation between Indonesia and Australia on reciprocal recognition and enforcement of judgments. However, recognising and enforcing foreign judgments is very much depending on national interest issue of each states. It involves competing policies and values with in both countries that needs to be taken into serious account. Thus, a government needs incentive to enter into agreement with other governments, particularly when public interests are at stake.[75] Perhaps, the increasing trade and investment activities between regions may serve as the incentives of having a reciprocal recognition and enforcement of judgment in civil matters. As Perez argues that the lack of predictability to obtain remedy in international business activities may undermine the trade gains.[76]

Based on the 2014-2015 data released by the Australian government, Indonesia is among the top list of Australia's bilateral trading partners. The total number of trading in goods and services between the two countries is amounted at AUD14.790 million. This figure puts Indonesia at the 12th place as Australia's most important partners. However, Indonesia's position is at the lower rank as opposed to the other major ASEAN countries, such as Singapore (5th), Thailand (8th), and Malaysia (9th). In all aspects, the trading values between Australia with Singapore or Malaysia has been better than that of with Indonesia.

Nevertheless, it is interesting to compare Indonesia and Thailand position in Australia's trade activities in year 2014-2015. Indonesia is at a better position than Thailand in term of Australia's export market, totaling at AUD6.884 million (Indonesia) and AUD5.986 (Thailand), respectively. Moreover, the last five year trend of export to both countries also shows that Australia's export to Indonesia grows at 4.4%, compare with export to Thailand which experience negative growth at -2.4%. Likewise, although Australia's imports from Thailand is higher than its imports from Indonesia amounting at AUD13,939 and AUD7,906 in 2015, respectively, the growth of Australia's import from Thailand in the last five years is only at 1.3%. This is less than the growth of Australia's import from Indonesia, at 4.3% within the same period. This figures shows that the Australia's trade activities with Indonesia experience a better values, as opposed with Australia's trading of goods and services with Thailand.[77]

Similar with Indonesia, Thailand adopts civil law legal system.[78] Unfortunately, Indonesia is lagging behind Thailand in establishing judicial cooperation with Australia. Since 1998, the Australian government has entered into an agreement with its Thailand counterpart on judicial

---

74 Art. 436(2) *Reglement op de Burgerlijke rechtvordering* (Rv).

75 Antonio F. Perez, 'The International Recognition of Judgments: The Debate Between Private and Public Law Solutions', (2001) 19 *Berkeley Journal of International Law* 44, p. 46.

76 Antonio F. Perez, above n 75, p. 44.

77 Department of Foreign Affairs and Trade, 'Australia's Trade in Goods and Services 2014-15', (2015), accessed at <http://dfat.gov.au/about-us/publications/trade-investment/australias-trade-in-goods-and-services/Pages/australias-trade-in-goods-and-services-2014-15.aspx>.

78 Ngamet Triamanuruck, Sansanee Phongpala, and Sirikanang Chaiyasuta, 'Overview of Legal Systems in the Asia Pacific Region: Thailand', in Overview of Legal Systems in the Asia Pacific Region (Cornell University, 2004), Paper 4, accessed at <http://scholarship.law.cornell.edu/lps_lpsapr/4>.

cooperation in commercial matters.[79] Although this agreement does not include cooperation on the recognition and enforcement of court judgments between the two countries, it remains important for one significant reason. The Australia-Thailand agreement provides mechanism in serving judicial documents and obtaining evidence in civil and commercial matters between both jurisdictions.[80] This cooperation enables plaintiff in a contracting party to request judicial documents and evidences which are available under the jurisdiction of another contracting party.

The possibility to obtain evidences in another jurisdiction is crucial in a case which involves cross-border elements. This is particularly relevant with transborder case like the *Montara* case. First, the plaintiffs in *Montara* case may consider to file their case in Indonesian court rather than litigating in Australian court. This is because the plaintiffs have access to all necessary documents and evidences which are available in Australia. This situation will also help the plaintiffs to reduce the litigation costs. Likewise, the Indonesian plaintiffs may avoid legal burdens when litigating in an unfamiliar legal system with different court procedures.

Second, the availability of evidences may force the foreign corporate defendant to appear before the Indonesian court. Since the plaintiffs have acces to the foreign evidences, the corporate defendant must assure that these evidences will not be used againts its interest. So far, one of the most crucial burdens for the Indonesian government to launch legal proceeding againts PTTEP AA is because there has been no instrument to force the foreign defendant to appear before the Indonesian court. Thus, judicial cooperation between Indonesia and Australia provide incentive for foreign defendant to appear before the court.

Third, judicial cooperation may to a certain extent prevent parallel proceedings. If the evidences have been examined by the Indonesian court, it would be againts the doctrine of comity if the Australian court examine similar evidences. The doctrine of comity requires a court to reciprocally respect the examination of evidence by a foreign court. Moreover, examination of a similar evidence by two different courts in different legal systems may lead to a contradicting judgment.

Based on the three reasons above, it is suffice to say that judicial cooperation in commercial matters between Indonesia and Australia is urgently required. An analyses through the *Montara* case shows that this cooperation will make it easier for plaintiff in both countries in seeking redress. More importantly, this judicial cooperation on the exchange of evidences may prevent parallel proceeding.

6. Conclusion

There is a legal solution to prevent parties in dispute to launch parallel proceeding strategy. One of the solutions is to enter into a bilateral agreement on the recognition and enforcement of foreign court judgment. However, entering into such an agreement is not an easy task for all countries. There are a number of factors that mus be taken into serious considerations. Countries with similar

[79] Agreement on Judicial Assistance in Civil and Commercial Matters and Co-operation in Arbitration between Australia and the Kingdom of Thailand (Canberra, 2 October 1997), entered into force 29 July 1998, Australian Treaty Series 1998 No. 18.

[80] Art. 1, Agreement on Judicial Assistance in Civil and Commercial Matters and Co-operation in Arbitration between Australia and the Kingdom of Thailand (Canberra, 2 October 1997).

legal traditions will have a higher possibility to conclude this agreement. Though countries from different legal systems may reciprocally agree to recognise and enforce foreign judgments, they usually consider some conditions, such as: the rule of law, and court integrity of the country in concern.

Another reason that may drive countries to enter into foreign judgments cooperation is the value of bilateral trade and investment activities. As predictability to obtain remedy is important in international business and investment, the lack of ability to enforce court judgment will reduce the benefit of trade and investment. However, apparently the trade and investment values is not the only determining factor. For instance, despite the fact that Indonesia has a better trade relation with Australia, Indonesia has been lagging behind Thailand to enter into judicial cooperation with Australia. For this reason, considering the benefit of having judicial cooperation agreement with Australia, this article suggest that it is time for Indonesia to begin the preparation for negotiation process with Australia.

Bibliography

Books:

Andrew Dickinson, Mary Keyes, Thomas John (Eds), *Australian Private International Law for the 21st Century Facing Outwards*, (Hart Publishing, 2014).

Richard H. Kreindler, *Arbitral Forum Shopping* in Bernardo M. Cremades and Julian D. M. Lew (eds), Parallel State and Arbitral Procedures in International Arbitration (ICC Publishing, 2005).

Ronald A. Brand and Scott R. Jablonski, *Forum Non Conveniens History, Global Practice, and Future under the Hague Convention on Choice of Court Agreements*, (Oxford University Press, 2007).

Sudargo Gautama, Hukum Perdata Internasional Indonesia, Buku ke-Delapan, Jilid III, Bagian 2 (1987, Alumni: Bandung).

Tim Lindsey (Ed), *Indonesia: Law and Society*, (Federation Press, Sydney, 1999).

Yahya Harahap, *Hukum Acara Perdata tentang Gugatan Persidangan, Penyitaan, Pembuktian dan Putusan Pengadilan*, (Sinar Grafika, Jakarta, 2013).

Conference/Research Papers:

Jocelyn Kellam and Rene J. Maoledoux, 'Forum Conveniens in Australia', 2009, accessed at < http://www.thefederation.org/documents/6-CLE%20Annual%2009-Kellam.pdf>.

Julia Eisengraeber, 'Lis Alibi Pendens Under the Brussels I Regulation How to Minimise 'Torpedo Litigation' and other Unwanted Effects of the 'First-Come, First-Served' Rule', Centre for European Legal Studies, Exeter Papers in European Law No. 16, accessed at <http://www.law.ex.ac.uk/cels/documents/papepr_llm_03_04_dissertation_Eisengraeber_001.pdf>.

Michael Kirby, 'Precedent-Report on Australia', Conference Paper, presented at the International Academy of Comparative Law Conference, Utrecth, 17 July 2006, accessed at < http://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_17jul06.pdf>.

Ngamet Triamanuruck, Sansanee Phongpala, and Sirikanang Chaiyasuta, 'Overview of Legal Systems in the Asia Pacific Region: Thailand', in Overview of Legal Systems in the Asia Pacific Region (Cornell University, 2004), Paper 4, accessed at <http://scholarship.law.cornell.edu/lps_lpsapr/4>.

Ronald A. Brand, 'ASIL Insight: The New Hague Convention on Choice of Court Agreements', The American Society of International Law (ASIL, 2005), accessed at <http://www.asil.org/insights/2005/07/insights050726.html>.

Journals:

Antonio F. Perez, 'The International Recognition of Judgments: The Debate Between Private and Public Law Solutions', (2001) 19 *Berkeley Journal of International Law* 44.

Arthur von Mehren, '*Recognition and Enforcement of Foreign Judgments: A New Approach for the Hague Conference?*', (1994) 57 *Law & Contemporary Problems* 271.

Christer Söderlund, 'Lis Pendens, Res Judicata and the Issue of Parallel Judicial Proceedings' (2005) 22(4) *Journal of International Arbitration* 301-322.

Eric B. Fastiff, 'The Proposed Hague Convention on the Recognition and Enforcement of Civil Commercial Judgments: A Solution to Butch Reynolds's Jurisdiction and Enforcement Problems', (1995) 28(2) *Cornell International Law Journal* 469.

Jamie Shookman, 'Too Many Forums for Investment Disputes? ICSID Illustrations of Parallel Proceedings and Analysis (2010) 27(4) *Journal of International Arbitration* 361-378.

Linda J. Silberman, 'The Impact of Jurisdictional Rules and Recognition Practice on International Business Transactions : The U.S. Regim', (2004) 26 *Houston Journal of International Law* 327.

Louise Ellen Teitz, 'Both Sides of the Coin: A Decade of Parallel Proceedings and Enforcement of Foreign Judgments in Transnational Litigation' (2004) 10(1) *Roger Williams University Law Review* 1-71.

Ronald A. Brand, 'Comparative Forum Non Conveniens and the Hague Convention on Jurisdiction and Judgments', (2002) 37 *Texas International Law Journal* 467-498.

Ronald A. Brand, 'Punitive Damages Revisited: Taking the Rationale for Non-Recognition of Foreign Judgments too Far', (2005) 24 *Journal of Law and Commerce* 181.

Willibald Posch, 'The Effects of Jurisdictional Rules and Recognition Practice', 26 *Houston Journal of International Law* 363.

Reports:

Attorney-General's Department, 'Recognising and Enforcing Foreign Judgments', accessed at <https://www.ag.gov.au/Internationalrelations/PrivateInternationalLaw/Pages/Recognisingandenforcingforeignjudgmentsaspx>.

Australian Law Reform Commission, 'Legal Risk in International Transactions', (ALRC Report 80, 1996), accessed at <http://www.alrc.gov.au/publications/report-80>, Part. 6 International Litigation.

Australian Maritime Safety Authority, Response to the Montara Wellhead Platform Incident Report of the Incident Analysis Team, 2010, accessed at <http://www.amsa.gov.au/forms-and-publications/publications/montara_iat_report.pdf>.

Department of Foreign Affairs and Trade, 'Australia's Trade in Goods and Services 2014-15', (2015), accessed at <http://dfat.gov.au/about-us/publications/trade-investment/australias-trade-in-goods-and-services/Pages/australias-trade-in-goods-and-services-2014-15.aspx>.

Montara Commission of Inquiry, Report of the Montara Commission of Inquiry, 2010, accessed at <http://www.industry.gov.au/AboutUs/CorporatePublications/MontaraInquiryResponse/Documents/Montara-Report.pdf>.

Online News:

Djemi Amnifu, The Jakarta Post, '2009 Montara Oil Spill Still Reducing Catches and Inflicting Losses', 2016, accessed at < http://www.thejakartapost.com/news/2016/06/15/2009-montara-oil-spill-still-reducing-catches-and-inflicting-losses.html>.

Djemi Amnifu, The Jakarta Post, 'Govt to suspend firm at center of Montara spill', 2016, accessed at < http://www.thejakartapost.com/news/2016/12/05/govt-suspend-firm-center-montara-spill.html>.

George Roberts, Australian Broadcasting Corporation, 'Australian Oil Disaster 'Costing Indonesians Billions'', 2012, accessed at < http://www.abc.net.au/news/2012-07-26/australian-oil-disaster-'costing-indonesians-billions'/4155474>.

Jason Scott, Bloomberg, 'PTT Exploration Faces Class Action Lawsuit Over Oil Spill', 2016, accessed at < http://www.bloomberg.com/news/articles/2016-08-03/ptt-exploration-faces-class-action-lawsuit-over-2009-oil-spill>.

Jewel Topsfield, Sydney Morning Herald, 'Class Action Planned over Montara Oil Spill', 2015, accessed at < http://www.smh.com.au/world/class-action-planned-over-montara-oil-spill-20150523-gh80t3.html>.

Jewel Topsfield, Sydney Morning Herald, 'Indonesian Government Poised to Sue Over Montara Oil Spill', 2015, accessed at < http://www.smh.com.au/world/indonesian-government-poised-to-sue-over-montara-oil-spill-20151014-gk8mz4.html>.

Jewel Topsfield, Sydney Morning Herald, 'Indonesian Seaweed Farmers Launch Class Action over Montara Oil Spill', 2016, accessed at < http://www.smh.com.au/business/world-business/indonesian-seaweed-farmers-launch-class-action-over-montara-oil-spill-20160801-gqitj0>.

Kompas, 'Indonesia Urged to Pursue Claim on Montara Oil Spill', 2010, <http://health.kompas.com/read/2010/11/16/18522936/indonesia.urged.to.pursue.claim.on.montara.oil.spill>, accessed at 14 August 2016.

Lilian Budianto, The Jakarta Post, 'RI, Australia to Sue Thai Firm for Montara Oil Spill', 2010, accessed at < http://www.thejakartapost.com/news/2010/07/16/ri-australia-sue-thai-firm-montara-oil-spill.html>.

Special Broadcasting Service, 'Montara Maps Push Case for More Study', 2014, accessed at < http://www.sbs.com.au/news/article/2014/10/24/montara-maps-push-case-more-study>.

The Jakarta Post, 'Govt may Bring Montara Case to Int'l Court', 2010, accessed at < http://cbe.thejakartapost.com/news/2010/11/26/govt-may-bring-montara-case-int%E2%80%99l-court.html>.

Statutes:

Australia, *Foreign Judgments Act 1991* (Aus), Act No. 112 of 1991, Part 2-Reciprocal enforcement of judgments.

Australia, *Foreign Judgments Regulations 1992* (Aus), Statutory Rules 1992 No. 321 as amended made under the Foreign Judgments Act 1991, Schedule of Superior Courts.

Indonesia, Law No. 32 of 2009 on Environmental Protection and Management.

Indonesia, *Reglement op de Burgerlijke rechtvordering* (Rv).

Cases:

Voth v Manildra Flour Mills Pty Ltd (1990) HCA [30].

Oceanic Sun Line Special Shipping Co Inc v Fay (1988) 165 CLR 197.

Henry v. Henry (1996) 185 CLR 571.

CSR Ltd v. Cigna Insurance Australia Ltd (1997) 189 CLR 345.

Regie Nationale des Usines Renault SA v. Zhang (2002) 210 CLR 491.

Treaties and Conventions:

Agreement on Judicial Assistance in Civil and Commercial Matters and Co-operation in Arbitration between Australia and the Kingdom of Thailand (Canberra, 2 October 1997), entered into force 29 July 1998, Australian Treaty Series 1998 No. 18.

Brussel Convention on Jurisdiction and Enforcement of Judgment in Civil and Commercial Matters 1968, 1998 O.J. (C 27) 1. Replaced by The Council Regulation (EC) 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 2001 O.J. (L 12), entered into force on March 1, 2002.

Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971, Feb. 1, 1971, 1144 U.N.T.S. 249. Accessed at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=78>.