Chapter 27

Commercial law enforcement in Indonesia: The Manulife case

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The Manulife Indonesia saga involved a long-running dispute between a Canadian multinational corporation and its former Indonesian joint venture partner. The dispute arose after the Canadian parent decided to buy out its insolvent partner, via an Indonesian bankruptcy court, following the 1997 Financial Crisis. This chapter looks behind the curtain in examining the story of Manulife Indonesia, reaching back to the mid-1980s, from three perspectives: those of foreign private investors; those of local ethnic Chinese business community; and those of governments and international financial institutions (IFIs). It then examines this behaviour in light of both economic explanations and various theoretical views of the success or failure of legal development or, in other words, the rule of law plus broader social change theories (modernisation, dependency and world-system).

Manulife is a particularly rich case study because it enables us to see formal and informal enforcement mechanisms coexisting at both government/IFI and private party levels. Its ultimate lesson is that globalisation theories, literature and rule of law programs would profit by a more sophisticated understanding on the detailed level of actual events, offering theoretical insight into the interplay of parties and processes undergoing globalisation. It also offers a more differentiated view of Southeast Asian ethnic Chinese business communities as a modern locus of informal enforcement as assumed under New Institutional Economics.

Manulife as window on the rule of law in practice

The travails of PT Asuransi Jiwa Manulife (Manulife Indonesia), the Indonesian life insurance subsidiary of Canadian multinational Manulife Financial Corporation (Manulife), are well known in the international business community. Manulife's problems within the Indonesian legal system most recently drew active protests from the Canadian government after a solvent Manulife Indonesia was (temporarily) placed in bankruptcy. Less well recognised is the fact that the Manulife Indonesia case looks distinctly different to three different groups: Canadian and other foreign investors generally, versus the governments involved, versus the major Indonesian

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other hand, modernisation and rationality contemplate a process over time so that they otherwise would have little trouble incorporating change over time outside the economic framework.

In looking at the rule of law versus legalisation, there are at least two discrepancies. Observed retorsion is basically inconsistent with ideas of broad legalisation, so its employment in the Manulife case calls into question (at least in some Indonesian eyes) whether legalisation has a basis beyond (foreign) national interests. At the very least, advocacy of legalisation is not as predominant as is sometimes argued, because developed states supporting the rule of law may do things conflicting with it and rule of law ideas in disputes involving private parties. The other is a tendency to confuse rule of law measures with conditionality. To a certain extent, this confounds substantive economic law work with what IFIs would view as good governance in the current setting. On this basis hangs formal versus informal enforcement in metamorphosis.

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