

The authors are to be commended for providing yet another thought-provoking piece of work which would be of immense help to students and practitioners, including local practitioners, looking to navigate the complex and constantly evolving web of personal property law. As a testament to the utility and importance of the text, this latest edition has been extensively cited by the English Law Commission in its Report on Electronic Trade Documents and its Consultation Paper on Digital Assets, both of which were published earlier this year. Though the third edition of *The Law of Personal Property* was published not long ago, I am already eagerly anticipating the next edition (when the authors decide it is time for a refresh and update), and it will be interesting to see the path that the law will take in the years to come.

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Crime and Punishment in Indonesia BY **TIM LINDSEY** AND **HELEN PAUSACKER**, eds. [Abingdon: Routledge, 2021. xxxvi + 569 pp. Hardcover: £136]

Like Dostoevsky's classic namesake, *Crime and Punishment in Indonesia* explores the sometimes arbitrary demarcation of moral and legal boundaries within an unequal society, together with the interplay between religion and legal positivism. *Crime and Punishment in Indonesia* is edited by two giants in the field of Indonesian Law, Professor Tim Lindsey and Dr Helen Pausacker, Director and Deputy Director, respectively, of the Centre for Indonesian Law, Islam and Society (CILIS) at Melbourne Law School. They have brought together a knowledgeable cast of 17 different authors across 20 different chapters, featuring a mixture of Indonesian and non-Indonesian scholars. Many of the contributors are connected to Melbourne Law School as Associates of CILIS and/or as Lindsey's former PhD students. At the time of the volume's publication, several authors were intimately involved in law reform or legal advocacy projects in Indonesia, such as Ricky Gunawan (Lembaga Bantuan Hukum (LBH) Masyarakat), Rifqi Sjarief Assegaf (Lembaga Kajian dan Advokasi Untuk Independensi Peradilan (LeIP)), Raynov Tumorang Pamintori (Reprieve), and Mas Achmad Santosa (Presidential Task Force to Combat Illegal Fishing). This serves to provide the book a practical flavour which other collections on criminal law, edited by academics, tend to be missing.

The volume is not intended as a handbook to enable the uninitiated reader to 'learn' Indonesian criminal law and procedure from scratch. Nor does it attempt to describe the most common experiences of criminal litigants in Indonesia, which have been well documented elsewhere (*ie* facing mundane charges of drug possession, driving offences and assault, navigating corruption at all levels, a legal culture prioritising consensual deliberation over conflict, and regional differences



in decision-making across the archipelago) (eg Daniel Lev, *Legal Evolution and Political Authority in Indonesia: Selected Essays* (Kluwer Law International, 2000); Melissa Crouch (ed), *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia* (Cambridge University Press, 2019); Simon Butt, *Corruption and Law in Indonesia* (Routledge, 2012); Daniel Fitzpatrick, “Culture, Ideology and Human Rights: The Case of Indonesia’s Code of Criminal Procedure” in Timothy Lindsey (ed), *Indonesia: Law and Society*, 2nd Ed (Sydney: The Federation Press, 2008) 499). *Crime and Punishment in Indonesia* instead considers the historical, political, and moral debates central to modern law reform in the world’s largest Muslim country, which features a pluralistic legal system that combines a Dutch civil law heritage with Islamic Law and *adat* (regional customary law). As Butt and Lindsey aptly summarise in Chapter 1 (at p 38) of *Crime and Punishment in Indonesia*:

Indonesia is a country that has always been famous for its social and cultural diversity ... finding agreement over criminal laws that will directly define sexual freedoms, human rights, or citizen’s rights to oppose or criticise the government, among many other things, is extremely difficult.

These debates have intensified since the fall of Suharto in 1998. The Indonesian legislature (DPR) has long considered passing a new criminal code (RUU KUHP), which aims to decolonise, democratise, consolidate and harmonise the country’s criminal laws (Aliansi Nasional Reformasi KUHP, “Mengurai Mitos Nasionalisme Dalam RKUHP” <<https://reformasikuhp.org/mengurai-mitos-nasionalisme-dalam-rkuhp/>> (14 March 2018)). *Crime and Punishment in Indonesia*’s various subsections, covering reform of the criminal and procedural codes (Ch 2-4), the courts (Ch 5-7), sentencing (Ch 8-11), crime and the environment (Ch 12-14), criminal law and religion (Ch 15-18), and criminal law in Aceh (Ch 19-20), reflect the scope of debate and the directions in policy movement. Several of the authors provide their own policy recommendations aiming to alleviate dysfunction. Even the book’s initial dedication is revealing of its reform-based focus, addressing “the late Munir Said Thalib [1965-2004] and all those lawyers, scholars and activists who work tirelessly for law reform in Indonesia” (at p v).

The post-1998 English-language literature on Indonesian criminal justice has typically adopted a narrower ambit in terms of subject matter (focusing on eg customary criminal laws: Roelof Haveman, *The Legality of Adat Criminal Law in Modern Indonesia* (Ciputat, Indonesia: Tatanusa, 2001); drugs and capital punishment: Tim Lindsey and Pip Nicholson, *Drugs Law and Legal Practice in Southeast Asia: Indonesia, Singapore and Vietnam* (Hart Publishing, 2016); comparative law: Romli Atmasasmita, *A Reconstruction of the Principle of “No Punishment Without Guilt”* (PT Gramedia Pustaka Utama, 2020); or international relations: Michael McKenzie, *Common Enemies: Crime, Policy, and Politics in Australia-Indonesia Relations* (Oxford University Press, 2018)). By contrast, the equivalent Indonesian language literature usually adopts a commentary-based approach, with doctrinal contributions on general principles, KUHP, KUHAP (the Criminal Procedure Code) and the various specialist criminal laws characteristically penned by practising advocates or law professors. Prominent examples are Andi Hamzah, *Hukum Pidana*



Indonesia (Jakarta: Sinar Grafika, 2017); Didik Endro Purwoleksono, *Hukum Pidana* (Airlangga University Press, 2016); Rahmanuddin Tomalili, *Hukum Pidana* (Yogyakarta: Deepublish, 2019) and Mahrus Ali, *Dasar-Dasar Hukum Pidana* (Jakarta: Sinar Grafika, 2015).

In this context, the 20 chapters in Lindsey and Pausacker's edited collection together provide a welcome comprehensive and critical analysis of the most controversial and pressing criminal justice debates in Indonesia in the *Reformasi* (post-Suharto) period. In some ways, the volume serves as a penal policy-centred follow-up to Tim Lindsey and Simon Butt's *Indonesian Law* (Oxford University Press, 2018), which has quickly become the leading English language guide to the Indonesian legal system. Professor Simon Butt, Director of the Centre for Asian and Pacific Law at The University of Sydney Law School, is also one of the major contributors to *Crime and Punishment in Indonesia* (Ch 2, 3 and 20).

As mentioned, the 20 chapters are arranged into six sections, covering the most prominent debates in Indonesian criminal justice, replete with case examples. The chapters discuss a range of legislation (most prominently the Criminal Code, Criminal Procedure Code, Extradition Law, the various Laws on Judicial Powers, Corruption Eradication Law, Pornography Law, and Aceh's *Qanun Jinayat* (Islamic Criminal Code)), a range of court venues and the relationship between their rulings (eg the Supreme Court, Constitutional Court, and lower courts), regional differences (particularly in Aceh), distinct modes of criminal liability (eg individual, corporate, command responsibility) and different stages in the case process, from extradition (Ch 7), police investigations (Ch 3), to the pre-trial stage (Ch 5), sentencing (Ch 8-11) and appeals (Ch 6). Many of the chapters also contain detailed empirical analysis of criminal justice trends, often sampling from the case law available on the Supreme Court's website, and also bolstered by interviews with judges, prosecutors, defence lawyers, civil servants and prisoners.

In a large and disorganised polity, it takes robust empirical research such as this to understand how the Indonesian criminal justice might work, or not work, in practice. The four most noteworthy post-Suharto trends that cut across different chapters are: the increasingly punitive criminal laws and punishments in Indonesia, law enforcement agencies targeting lower-level as opposed to higher-level perpetrators ('*tajam ke bawah, tumpul ke atas*' at p 357), regional fragmentation, and the closer integration of Islamic Criminal Law doctrine into Indonesian practice, whether explicitly through law-making, or else through the internalisation of religious conservatism by decision-makers. Each of these issues serve as a microcosm of wider Indonesian politics, best encapsulated by developments in the province of Aceh, which adopted an Islamic Criminal Code in 2014 and is thus deserving of its own section in the volume.

Furthermore, it is often the case in Indonesia or elsewhere that particular newsworthy scandals become the genesis of more comprehensive law reform. The most notorious criminal cases (and the media reporting surrounding them) continue to shape public debate in predominantly civil law jurisdictions like Indonesia, even if the associated court judgments do not create binding precedent. Some of the well-known cases that are given extensive coverage in the volume involve the following defendants:



- Setya Novanto, a legislator and speaker of the DPR who miraculously avoided corruption convictions on several occasions, including by exploiting pre-trial hearings, before eventually being sentenced to 15 years' imprisonment in 2017 (Ch 5).
- Nigerian Humphrey Ejike Jefferson and Indonesian Meri Utami, who were both sentenced to death for drug trafficking and were listed to be executed in July 2016. Jefferson's execution proceeded, allegedly unlawfully, whereas Utami's was cancelled at the last minute (Ch 11).
- PT Dongwoo Environmental Indonesia, PT Kallista Alam, PT Indominco Mandiri and PT Baruna Segara Mandiri, all companies accused of significant environmental crimes. The courts imposed fines either on their directors or on the companies themselves (Ch 12).
- Basuki 'Ahok' Tjahaja Purnama, then Governor of Jakarta, who was convicted of blasphemy in the North Jakarta District Court and sentenced to two years' imprisonment. This was a case that attracted press attention from across the world (Ch 15).
- Nazril Irham, a pop musician from the band Peterpan, who was depicted in home-made videos engaging in sexual activity with two Indonesian celebrities. Irham and Peterpan's musical editor, Reza Rinaldi, was imprisoned under the 2008 Pornography Law as a result (Ch 17).
- Islamist activists Rizieq Shihab and Firza Husein, whose rumoured 2008 Pornography Law charges, for a prolonged exchange of sexually explicit text messages and photos, were eventually dropped (Ch 17).

There are a couple of shortcomings of the volume that I must also mention. The first is the relative lack of international comparative context throughout most of the book's chapters, with the authors tending to see Indonesian law as its own *sui generis* system which has evolved in parallel with domestic political changes. This approach risks parochial conclusions based on a relatively small sample of cases or legislative provisions. Ultimately, it may also confine the volume's potential readership to Indonesianists, to the exclusion of criminal justice scholars more broadly. However, it then begs the question: what is the proper jurisdiction or geographical region that Indonesia's criminal justice system should be compared to, if any? The Netherlands, given the origins of Indonesia's first national Criminal Code? The Middle East, where many jurisdictions are wrestling with the same questions about the incorporation of Islamic Criminal Law doctrine into the state's positive laws (as noted by Hosen in Ch 18)? The other Association of Southeast Asian Nations (ASEAN) bloc nations, with their closer economic and legal integration since the 2008 Charter? Or perhaps other pluralistic legal regimes in the Asia-Pacific region incorporating customary law into a predominantly civil law or common law framework, such as Malaysia, Papua New Guinea, the Philippines, and Vanuatu?

The second drawback is the volume's unfortunate timing. Compiled just before the Covid-19 pandemic struck, many of the constituent chapters anticipated the DPR soon passing a brand-new criminal code (eg Ch 1, 4, 10 and 16), continuing to debate a new criminal procedural code (eg Ch 3, 5 and 6), and were drafted on this basis. Although at the time of writing this review in August 2022, the RUU KUHP is back on the DPR's legislative agenda (Leo Galuh, "RUU KUHP: Masih Adakah



Ruang untuk Publik Berpartisipasi?" <<https://www.dw.com/id/masih-bisakah-publik-berpartisipasi-dalam-legalisasi-ruu-kuhp/a-62447004>> (13 July 2022)), both protests against the bill and the pandemic have served to stall the legislative process by several years. It is likely that the revised code, when it is finally passed, will not closely resemble its previous drafts, which informed several of the volume's chapters.

Covid-19 and its aftershocks have also brought changes to Indonesian criminal justice that academic authors are only just beginning to document, such as longer case backlogs, virtual court hearings, offences related to social distancing, prisoner releases due to overcrowding, and even new ways of demonstrating prisoner rehabilitation while engaged in social distancing (Artisto Evandy A. Barlian & Permata Harista, "Virtual Court as Alternative On the Future Criminal Justice System in Indonesia" (2020) Proceedings of the International Conference on Environmental and Technology of Law, Business and Education on Post Covid-19 1; Lina Dwi Istiquomah, "Exiting the Prisoners Policy in Indonesia and Some Countries due to COVID-19 Disclosure" (2020) 5(2) Indonesian Journal of Criminal Law Studies 101; Karminn Yangot, Mareike Wiederhold & Christine Weber, "Impacts of the COVID-19 Pandemic on Criminal Justice Systems and Gender-based Violence in Southeast Asia" (2021) Regional Academy of the United Nations; Maradona Maradona, Kadek Anda Gangga Putri & Katherine Abidea Salim, "Criminal Law Response to the Covid-19 Pandemic in ASEAN "A Study on the Effectiveness and the Limit of Criminal Law" (2021) 1(1) International Teleconference on Technology and Policy in Supporting Implementation of COVID-19 Response and Recovery Plan in Southeast Asia)). None of these issues are considered in the volume.

Nevertheless, these are relatively minor shortcomings with the collection's ambit that could easily be remedied in a future edition or by a wider perusal of the most recent literature. Read *Crime and Punishment in Indonesia* for unrivalled English language insights into the cases and debates that have shaped Indonesian criminal law and criminal justice since the beginning of the *Reformasi* period, and to understand Indonesian legal culture more generally. This book will help readers make sense of the socio-political context behind present and future law reforms affecting citizens' liberties in the world's fourth most populous country.

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