Kobe University Monograph Series in Social Science Research

Series editor

Takashi Yanagawa, Graduate School of Economics, Kobe University, Kobe, Hyogo, Japan

The Kobe University Monograph Series in Social Science Research is an exciting interdisciplinary collection of monographs, both authored and edited, that encompass scholarly research not only in the economics but also in law, political science, business and management, accounting, international relations, and other sub-disciplines within the social sciences. As a national university with a special strength in the social sciences, Kobe University actively promotes interdisciplinary research. This series is not limited only to research emerging from Kobe University's faculties of social sciences but also welcomes cross-disciplinary research that integrates studies in the arts and sciences. Kobe University, founded in 1902, is the second oldest national higher education institution for commerce in Japan and is now a preeminent institution for social science research and education in the country. Currently, the social sciences section includes four faculties—Law, Economics, Business Administration, and International Cooperation Studies—and the Research Institute for Economics and Business Administration (RIEB). There are some 230-plus researchers who belong to these faculties and conduct joint research through the Center for Social Systems Innovation and the Organization for Advanced and Integrated Research, Kobe University.

This book series comprises academic works by researchers in the social sciences at Kobe University as well as their collaborators at affiliated institutions, Kobe University alumni and their colleagues, and renowned scholars from around the world who have worked with academic staff at Kobe University. Although traditionally the research of Japanese scholars has been publicized mainly in the Japanese language, Kobe University strives to promote publication and dissemination of works in English in order to further contribute to the global academic community.

More information about this series at http://www.springer.com/series/16115

Yuka Kaneko
Editor

Civil Law Reforms in Post-Colonial Asia

Beyond Western Capitalism

Editor
Yuka Kaneko
Graduate School of International
Cooperation Studies
Kobe University
Kobe, Hyogo, Japan

ISSN 2524-504X ISSN 2524-5058 (electronic)
Kobe University Monograph Series in Social Science Research
ISBN 978-981-13-6202-6 ISBN 978-981-13-6203-3 (eBook)
https://doi.org/10.1007/978-981-13-6203-3

Library of Congress Control Number: 2019931525

© Springer Nature Singapore Pte Ltd. 2019
This work is subject to copyright. All rights are reserved by the Publishers, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.
The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.
The publishers, the authors, and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publishers nor the authors or the editors give a warranty, express or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publishers remain neutral with regard to jurisdictional claims in published maps and institutional affiliations.

This Springer imprint is published by the registered company Springer Nature Singapore Pte Ltd.
The registered company address is: 152 Beach Road, #21-01/04 Gateway East, Singapore 189721, Singapore

Contents

Part I Historical Review of Civil Law Changes

1 Civil Law in the French Asian Colonies 3
Beatrice Jaluzot

2 Contract Law in Myanmar: An Outcome of British Colonial Law 21
Yuka Kaneko

3 The Role of the Japanese Civil Code in the Codification in the Kingdom of Siam 53
Shiori Tamura

4 The Pathway of Civil Law Development in Indonesia: Laws on Land 71
Rudy

Part II Outcomes of Contemporary Legal Reform Assistance

5 A Study on the Civil Code Revision: The 2015 Civil Code of Vietnam 85
Hong Hai Nguyen

6 One Aspect of Civil Procedure Reform in Asia: Placing the Focus upon Vietnam 101
Shiro Kawashima

7 Issues of Compulsory Execution in Myanmar: A Comparative Approach from Practical Viewpoints 131
Yoshifumi Akanishi

8 Japan's Civil Code Drafting Support for Socialist Reform Countries: Diversity of Normative Choice 155
Yuka Kaneko

Index 177

Contributors

Yoshifumi Akanishi Kinki University Law School, Higashi Osaka, Japan

Beatrice Jaluzot Lyon Institute of East Asian Studies (CNRS, ENS de Lyon), Sciences-po Lyon, Lyon, France

Yuka Kaneko Graduate School of International Cooperation Studies, Kobe University, Kobe, Japan

Shiro Kawashima Department of Law, Doshisha University, Kyoto, Japan

Hong Hai Nguyen Department of Civil-Economic Laws, SRV Ministry of Justice, Hanoi, Vietnam

Rudy Faculty of Law, University of Lampung, Lampung, Indonesia

Shiori Tamura Faculty of Law, Thammasat University, Bangkok, Thailand

List of Tables

Table 3.1 Book I, Code of 1925: its contents and origin of the provisions 61
Table 3.2 Book II, Code of 1925: its contents and origin of the provisions 63
Table 3.3 Segmentation of the provisions of the German Civil Code (1898) 65
Table 3.4 Overall correspondency structure and rearrangement steps 65
Table 3.5 Final arrangement and origin of the provisions on "Non-performance" 67
Table 4.1 Indonesia legislation enactment by years. 79

Introduction

Purpose: Review of Legal Reforms in Asian Emerging Economies

This book is an attempt to analyze the outcomes of "legal reforms" in Asian late-developing countries, under multiple foreign pressures such as the negotiation for entry to the World Trade Organization (WTO) and the legal technical assistance led by international development agencies such as the World Bank and the Asian Development Bank (ADB) as well as bilateral official development aid including Japan since after the end of the Cold War. While numbers of preceding researches have attempted at the evaluation of the "progress" of legal reforms in response to the prescription given by international donors based on the "Washington Consensus" or the policy orientation in pursuit of economic growth through the promotion of foreign investments, less academic works have been directed to the evaluation of the "outcomes" of such legal reforms. A series of practical arguments were led by the World Bank in the mid-1990s to initiate the legal reforms in emerging economies (Shihata 1991; World Bank 2001, 2003), which was succeeded by the attempts of numerical evaluation of the progress of legal reforms, such as the Governance Indicators (Kaufman 1996–2017), and the Report on the Observance of Codes and Standards (ROSC) by the World Bank and the International Monetary Fund (IMF). Various attempts have also been made by the academics to provide theoretical justifications for such legal reforms toward the "Washington Consensus," including the contingency theory (Pistor and Wellons 1999; Hansmann and Kraakman 2000, etc.), the legal origin theory (La Porta et al. 1996, 2008, etc.), and the legal transplants (Reimann 1998; Pistor et al. 2000, etc.). Although critical arguments were raised by the school of critical legal studies questioning the outcomes of legal reforms led by the international development agencies as another mistake repeating the failure of "Free Law Movement" in the 1960s (Trubek & Gualanter 1974; Trubek 2006; Ginsburg 2009), the leading international agencies only responded by incorporating some additional projects

meant for gender and socio-environmental considerations, without changing the mainstream policy orientation of "Washington Consensus" (Santos 2006).

Perhaps, there should be an alternative for a legal reform that goes beyond the given model of capitalist growth, to search out a harmonious design of law to balance both economic and social policy needs. The goal of such an alternative legal reform would be a redefined "development" toward the human development incorporating redistribution, rather than a utilitarian maximization of total wealth. A role of the donors in legal technical assistance could also be reconsidered reflecting the redefined "development." Efforts have not yet been made sufficiently enough to identify the mode of assistance to better balance the policy needs (Davis & Trebelicock 2008). Although an influential scholarly opinion suggests a laissez-faire approach so as to let each government choose its own way of legal reforms (Tamanaha 1995, 2009), the authors of this volume find it unrealistic that recipient countries of legal assistance can enjoy freedom in choosing their own legal designs, given the increasing pressures of international donors for the transplant of particular models. Asian legal reforms are in a need of an escort runner, instead of demanding donors, in an attempt of searching out better suitable legal designs for each socio-economy.

This book intends to take a stance of such an escort runner in the legal reforms. Targets are the Southeast Asian countries, particularly the late-developing countries, often referred to as the CLMV countries (Cambodia, Laos, Myanmar and Vietnam), who are under perpetual foreign pressures for socialist market economic reforms, the negotiation for WTO entry, and the conditionalities to the structural adjustment loans extended by international development agencies. The ultimate goal of this volume is to induce a hint for alternative legal designs through an attempt of evaluating the outcomes of legal reforms in these target countries.

A particular focus will be upon the basic sphere of private law, centering on the civil code, in the very intersection where the norms of civil, commercial, and consumer laws interact to enable a chance of alternative design of law. For Asian developing countries, where the unification of law system has been a desire since the colonial independence, the greatest meaning has been placed on having a civil code.

It is understandable that the lawmakers of market reformist economies have chosen to have the integrated code system that can be a basis of hierarchic application of basic principles to all spheres of legal reforms. Judges can apply the upper principles of the code to the single-row models brought by the donors in the commercial field, to maintain the unified norm beyond the conflicting border of civil and commercial spheres. Japan's legal technical assistance to the CLMV countries has been known for the focus on the drafting of civil code and civil procedure code, as in the cases of Vietnam Civil Code in 1995, 2005, and 2015, the 2008 Civil Code of Cambodia that came into force in 2011, the draft Civil Code of Laos which is on a debate at the parliament as of 2017, and the civil procedure code reform in Myanmar. Often, the benefit of supporting such basic codes has been interpreted as an attempt of exporting a legal regime from Japan to other Asian nations (Taylor 2005). However, the positive meaning of supporting the basic codes may be found differently. When influential donors bring in the investor-friendly

models in the sphere of economic laws, a hierarchical order of norms under the basic code can function as the basis of systemic interpretation to balance the conflicting policy considerations in the intersection of norms. This basic code drafting by the Japanese legal assistance has often met with inter-donor conflicts as a natural result of normative intersection between civil and commercial spheres (Kagawa & Kaneko 2007; Hammergren 2014), leaving questions to be rediscovered.

Methodology: Historical and Spatial Perspectives in Comparative Asian Law

As for a methodological standpoint, this book is concerned with the dynamics of legal changes that occurs at the boundaries between different legal systems. "Legal transplant" or legal technical assistance by donor agencies is a typical external pressure that urges for change (Kaneko 2009, 2010a, b, 2011). Donors who introduce the Anglo-American legal model have overwhelming influence, such as the World Bank, Asian Development Bank (ADB), and the USA, but they are not the only participants; donor support based on continental law systems such as Japan, France, and the Netherlands continues to provide thoughtful involvement. Further, there are many instances where legal reform is imposed as a condition in the negotiation of trade agreements such as WTO accession negotiations, bilateral investment treaties (BITs), and free trade agreements (FTAs). Also, foreign laws are routinely designated as the governing law in marketplace economic contracts for trade and investment, and inevitably flow into the country.

On the other hand, the legal system of the recipient country in Asia is complicated by the crisscrossing of the remnants of previous eras, stemming from the inherent laws that have existed as sophisticatedly codified system since before colonization; the laws of the colonial powers that were introduced during the colonial era (French law in Cambodia, Laos and Vietnam; English law in Myanmar; Dutch law in Indonesia, etc.) mostly took over the heart of inherent contract law and property law that existed in the colonies while maintaining only narrow area of civil relation such as marriage and inheritance in the name of "custom" (*adat*); the endeavor of post-independence law to overcome such "pluralism" of narrow civil custom and greedy colonial law; influence of socialist law; and the contemporary legal transplants in the path of industrialization and development, such that one country's current legal system is the overall result of each historical path.

In order to understand the dynamics of these changing laws, this book will combine two methodological perspectives. The first is a historical perspective in which the trends in legal changes will be understood on the time axis. The second is to ascertain the spatial range as to how far the codified law extends across social phenomena.

Historical Axis: Colonial Law and Legal Pluralism

Historical axis is an indispensable viewpoint in understanding the present form of civil law in Asian countries. Many Asian laws today are still struggling to cover the influence of colonial law. In Indonesia from 1848 onward until today, the Netherlands Civil Code of 1838 is basically preserved with certain exceptions, without subsequent development to follow the case law development in the Netherlands nor to follow the new Civil Code of 1992. In Myanmar, "Indian Code" which is the codification of the English case law introduced in British colonial era is still literally applied as "Burma Code" today, in contrast to Singapore and Malaysia where the case laws and legislations continuously catch up with trends in Britain though maintaining the similar basis of law derived from "Indian Code" to Myanmar. Vietnam, Laos and Cambodia where the Indochina Civil Code was applied under French rule, despite the overwhelming influence of the inflowing English-U.S. law, chose to rebuild their civil codes in the midst of the socialist market economy transition, despite the overwhelming influence of the inflowing Anglo-American law in contemporary legal transplants.

It is not that these Asian jurisdictions have never attempted a graduation from the colonial influence. Rather, they have straggled hard for the establishment of sui generis law, and yet the task involved unimaginable difficulties. The goals of the post-independence lawmaking were not only to overcome the capitalist exploitation structure engraved in the colonial law, but also to reintegrate the pluralistic normative order formed by the colonial reign. The "unity within diversity" of the current law is, however, not an easy task to be reached (Benda-Beckmann 2006). Particularly in the Asian emerging economies that have long been in civil war under the Cold War structure, the integration of the legal norm is only a movement of a few decades. The normative axis in the integration has been swaying with the fluctuation of "development" definition. We cannot grasp the breadth and depth of the problems of present Asian law unless we start with putting ourselves in such historical flow of legal changes.

Spatial Axis: Interaction in the Boundary of Norms

The spatial range that the law covers is an essential aspect in discussing the significance of donor involvement in the drafting of codes. To what extent do formal laws cover socioeconomic events? Within the internal structure of formal laws, to what extent do the general principles of the civil code apply, and from what point do the contract freedom prevails? What is the point that mandatory provisions of the commercial law, consumer protection law, and labor law start to intervene, and what is the demarcation between them? Is it the role of the court to elaborate such a demarcation by a flexible interpretation of general principles? Furthermore, where does the realm of customary law begin? In such an intersection of formal and customary laws, how can we reconcile the individualist value of modern civil codes with the collective modes of legal capacity (such as the "household" and the "community") and the collective property rights of such intermediate groups (such as common rights, water usage rights, and fishery rights of village communities).

Moreover, how can we differentiate the treatments of civil customary laws and customary commercial laws or *lex mercatoria* that embodies an ultimate capitalist liberalism of contract autonomy? It is sometimes hard to decide which form of customary norm is more consistent with the individualist ideology of modern codes, when in the dimension of commercial activities individuals are buried within the corporate personality as the labor force, while civil customary law allows individuals to actively cooperate in pursuit of postmodern values such as equity and ecology through their connection with common properties, contrary to the prejudice commonly held that civil customary law suppresses individual freedom by pre-modern value.

In the social reality of the Asian emerging countries that are struggling to catch up economically, customary civil law and customary commercial law often directly conflict and an aspect occurs where the codified formal law cannot provide clear rules for resolution. For example, regarding disputes over land, one of the main themes dealt with in each chapter of this book, property rights that have survived in the rural customs of each country are not recognized by the authoritative registration systems that are introduced by codified formal law, or even if recognized, they are easily lost to the freedom of commercial contract, making much of the bona fide purchaser with considerations, administrative decisions favoring such contractual freedom to encourage land transferability, and the judicial decisions lacking the independence to reverse administrative decisions. As another example, contract law amendments for the consideration of consumer protection are often stacked in these economies, while the gradual formation of judicial case law through the interpretation of general principles such as the good faith is unrealistic, particularly in countries with socialist legal tradition such as Vietnam and Laos where the judiciary's authority to interpret the law is constitutionally restricted, while in Myanmar and Cambodia the judges have insufficient interpretive ability.

A complicacy is added by the contemporary context of "regional integration" that crosses national borders; countries that inherited different legal systems from Britain, France, and the Netherlands during the colonial era are now struggling to form unified law across the differences in their systemic bases. The difficulty that the former colonial powers suffered in the formation of unified laws in the modern European Union is also reflected in the geopolitical confrontation of the legal systems in the former colonies in Asia and Africa. The attempt of regional integration at the level of the ASEAN Economic Community (AEC) will face the similar difficulties, having wide varieties of countries in terms of the paths from the independence from the colonial law. For example, there are countries like Myanmar, which was among the countries that inherited the British Indian Code (such as the Contract Act of 1872 and the Sale of Goods Act of 1930) but has not subsequently adopted any modern amendments to the British law (such as the development in consumer protection law) and maintains the frozen colonial law. The AEC is an inherently difficult project as a coalition of countries that have different degrees of influence from the colonial laws.

Two Axes Combined: Multiple Spheres of Law

When we combine two axes of historical and spatial perspectives, we may better recognize and describe the complicacy of the conflicts between legal norms inevitably occurring in multiple spheres of legal regime: in the phase where pre-colonial inherent law encountered colonial law, the phase of post-independent lawmaking in sought of *sui generis* law to overcome the colonial law, and the phase of contemporary "legal transplant" in which global models introduced by the international donors seek to wash away the *sui generis* law that has been built up.

The colonial powers mainly adopted "pluralism" in Asian colonies, whereas the "assimilation" policy was adopted in African colonies. In the pluralist approach, the colonial legal system was only applied to colonists and their contractual counterparts, while the inherent local laws were maintained to the social relations between local people. This "pluralism" brought about the binary separation of civil and commercial legal spheres. If the inherent law that existed prior to colonization was a unitary system which did not differentiate civil and commercial laws for the securitization of the basis of livelihoods of people, in the colonial era the spatial limit of the application of such inherent law was narrowed to the scope of civil law in narrow sense such as family law and inheritance law, while a capitalist commercial law system was introduced to broadly cover the regular areas of contract mechanisms of law and property law; as a result of this binary system, the inherent unitary legal system for contract and property laws was negated or expressed merely as "custom" not amounting to the law.

Of course there is the irreplaceable intellectual assets of the pioneers who researched civil customary law in the colonial era from the viewpoint of legal sociology or anthropology, such as Van Vollenhoven who garnered respect for the customary law (Adatrechtbundels) of the Dutch East Indies, Izutaro Suehiro who is known for his "Kankou Chousa" (survey of customary laws) of Japan's colonies, the English translation of the law code "Manugye Dhammathat" by D. L. Richardson in British Burma, and the codification of customary law in the Annam Code and Tonkin Code by A. Bonhomme in French Indochina. Yet while their work was academically diligent, it isolated the narrow civil customary law from the core of the inherent system of contract and property laws, and in the sense they permitted the promotion of the exploitative commercial law of nineteenth-century capitalism to establish the "colonial law."

The colonial reign aggressively constructed a legal system that aimed at the profit maximization in the context of the nineteenth-century capitalism, while having legal designs far from the law of the country of origin. The land title registration system, for example, that featured an absolute constructive effect for the promotion of transactions in Asian colonies has never been introduced back in suzerain countries up to the twenty-first centuries.

The greatest factor that prescribed the legislation of Asian countries after the colonial independence could be the impact of development assistance initiated under the Cold War structure. Modernization theory based on development economics urged the lawmaking as the instrument of the economic growth.

Dual-economy model was criticized, making the conflict between the agriculture protective policy orientation and the economic development route through foreign capital invitation overwhelming. As the result, the path of post-colonial lawmaking for *sui generis* law in each country strays. Under the land law, the law reform aiming at the facilitation of transfer of farmland and agricultural population to commercial and industrial sectors undermined the philosophy of farmland reform after independence. Under the transaction law, foreign law was selected by contract autonomy of the applicable law, resulting in virtually the same private and commercial dualism as the colonial era.

The binary structure of colonial law still defines the legal systems of the Asian emerging economies today. While the *sui generis* law of each country has progressed toward an establishment of integrated legal system, the intervention of Western donors is once again reviving the binary structure of colonial law, as if fighting again a geopolitical battle between different legal families (Davis and Trebelicock ibid.). While the first boom in legal technical assistance occurred in the post-colonial independence period, led by the "Free Law Movement" of the USA underneath the Cold War structure, the second boom was revived in the 1990s after the collapse of the Soviet Union, applying legal designs modeling after colonial law in the sense that its targets are largely concentrated on the sphere of commercial law, restoring the dualistic separation of civil and commercial spheres.

The Japanese ODA took a unique position in this historical phenomenon of legal technical assistance, began in the mid-1990s, maintained its attitude centering on the drafting and implementation of civil laws through its 20-year history. Perhaps, the nature of the contribution of civil-oriented legal assistance should be better evaluated in the context of overcoming the binary structure of civil and commercial legal spheres in Asian economies, historically doomed by colonial law, and revitalized by the contemporary donor assistance in pursuit of economic growth via investment promotion.

The battle of legal norms has been fought throughout the history. A work of spatial mapping of such historical changes of law may be required, by combining two axes of historical and spatial perspectives, to understand the significance of legal reforms of Asian economies, in the forefront of the struggle for a new legal system that can lead us beyond the vestiges of 19th century Western capitalism.

Structure of This Book

Part I: Historical Review of Civil Law Changes

In the following chapters of this book, the authors will delve into the meaning of legal changes led by the drafting of basic codes in civil sphere through a combination of two axes of historical perspective dating back to colonial law and a spatial retrospective on the confrontation of civil and commercial norms.

The first part of this book will explore the historical path stemming back to the Asian colonial law demonstrating the nature of capitalist legislation that emphasized the promotion of economic transactions, threatening the local laws of daily living. The attempt of post-independence law got to the wall, as we are pursuing the time axis incorporated into the global model again centering on promotion of commercial transactions brought by the contemporary donor assistance.

Beatrice Jaluzot (Chap. 1) analyzes the history of the formation of civil law regime in the French Indochinese colonies, where the "pluralism" was applied. It was an experimental process in which the French Civil Code was applied to French citizens, while the local law was considered to be applicable to the local people. The author contends that the colonial law was something formed independently by the colonies, rather than a simple transplantation from the home, and had started its own change through the interface with local laws at the colonial courts. Especially in Vietnam under the strong influence of Chinese law in the public law sphere because of the Chinese-oriented strong syntactic law (Saaron Code) that did not reflect the local civil norms according to her view, French colonists embarked on the civil customary law codification (1932 Tonkin Civil Code, 1936 Annam Civil Code). Jalzot argues a case law of legal interpretation appeared in the colonial court, suggesting that there was the possibility that the colonial civil law would have made its own development without Japan occupation. On this point, the readers may be reminded that the Japanese academic contribution on Vietnamese law studies pointed out that the Saaron Code contained some aspects different from either Chinese law or the French Civil Code, such as an equal couple property and the customary common properties, and suggested the restoration of the Vietnamese inherent norms which were denied by French colonists (Makino 1994; Takeda 2003). Here is an issue of historical exploration that has not been fully tried yet over the role of colonial law: whether it was negative to the intrinsic law or a developmental amendment to it.

Yuka Kaneko's article (Chap. 2) raises a similar question of the impact of colonial law in the context of British colonies. In the British colony, the "Indian Code," which is generally regarded as the codification of the English case law, was introduced, but its essence was quite different from the English origin, leaving rooms for reexamination. Indian 1872 Contract Act applied a mere facade of "consideration" and lacked thwart, the judgment enforcement by a third party known as the British case law of privity doctrine. By denying the doctrine, it embodied the promotion policy of commercial transactions as envisaged by the New York Civil Code of fashion at the time.

Though Myanmar has maintained the status quo of colonial law, it will not suffice in this era of change in global contract law in realizing the contractual justice. The path of contract law reform will not be a mere process of catching up, but rather be a repositioning of the pre-colonial Burmese norms to guide the contract interpretation in the local context of justice.

Meanwhile, in Thailand, which had escaped colonization, a codification movement took place by the hands of local drafters. Shiori Tamura (Chap. 3)

provides a thorough review of the drafting process of the Book I and II in 1925 of the Civil and Commercial Code of Kingdom of Siam, going into the influence of German law mediated by Japan's legal development support at the time and brings in a historical perspective overlapping with the way of legal development assistance by contemporary donors. It was not a case of "legal transplant" with international support from a donor country in contemporary sense, but rather an independent "reception" of foreign model laws, which was rather comparable to the case of the Japanese civil code. While the Siamese drafters are said to pursue "reception" of the German Civil Code, the Japanese Code was for them a guideline and navigator toward this goal. This feature could be recognized especially in the provisions on the remedies for non-performance of obligation, whose construction could be quite controversial due to the essential heterogeneity between the German and Japanese concepts, making us reconsider the policy reason behind.

The goal of law-making after the colonial independence was to overcome the exploitative nature of colonial law. Its implication was also a return to the agrarian and sustainable intrinsic law order that existed before colonization. Rudy article (Chap. 4) summarizes the historical path of the land law reform in Indonesia in its attempt to overcome the colonial law. Indonesia's 1960 Basic Agrarian Law was established in abolition of the property provisions under the Netherlands Civil Code adopted in Indonesia since 1848. While introducing the new concept of land right *Hak Milik* emphasizing the difference from the Western concept of ownership, the goal of the 1960 Basic Agrarian Law was similar to that of the 1952 Agricultural Land Act of Japan, in the principle of restriction on farmland to the cultivators. At the same time, the binary order of registered formal rights and unregistered customary rights created by colonial law was also a search for unification.

Part II: Outcomes of Contemporary Legal Reform Assistance

The second part of this book will, from the viewpoint of understanding the range of civil norms in target countries, collect a series of articles contributed by the scholars who have been involved in the code drafting projects in Asian market reform countries.

Hong Hai Nguyen (Chap. 5), the drafter of the 2015 Civil Code in Vietnam, introduces the drafting policy in Vietnam held by the drafting team reflecting the national political goal striving for the economic growth. The civil code has been given the position and role as a legal fundamental basis, or the "constitution of the private law" and therefore its provisions were expected to be general and stable in order to not only meet the present practical requirements but also give proper forecasts to catch the continuous changes of socio-economy, creating a foundation for building and improving the private law system in the future.

Shiro Kawashima's article (Chap. 6) approaches the practical reality of the Civil Procedural Code of Vietnam at the trial site. In the area of this basic procedural law, since the start of this century Southeast Asian country has seen major reforms, including the new civil procedure laws adopted in Vietnam in 2004 and Cambodia

in 2006. In both cases, the new laws were promulgated as a result of the support by foreign countries including Japan. The goal of both projects was the legislation of the "adversary system," which is a basic form in a modern code of civil procedure. However, in the outcomes, the nature of "adversary system" shows remarkable differences between these two civil procedure codes. The enactment process for the codes itself appears to be having an effect upon the realistic utilization and operation of civil procedure in the society, as well as its future development.

Yoshifumi Akanishi (Chap. 7) explores the issues of compulsory execution system in Myanmar, which maintains the British colonial law codified as "Burma Code" in the nineteenth century. While the civil execution law is an area of diversity reflecting the difference of social system and policy orientations, the author contends that still there is technical commonness which should be a target of international convergence for the facilitation of civil execution as the change of the nature of capitalist economy from 19th to 21st centuries. A comparative approach to Japan and Myanmar laws is deepened particularly through a practical viewpoint focusing on the real property execution based on monetary claims.

The last article by Yuka Kaneko (Chap. 8) is the review of contract law reforms in the Asian market reform countries to which Japanese projects of civil code drafting support have been extended since the 1990s. The author questions the destination of normative pluralism of code systems, maintaining the binary structure of civil code as modernist ideal and commercial code as merchandize practice. The integration of civil and economic contracts chosen by the 1995 Russian Civil Code was not always followed by the Asian reforms, as in the case of the Vietnamese Civil Code (1995/2005/2015) which outsources the commercial code, land code, and consumer law as if following the structure of Japanese code system. This pluralist approach may cast a question on the policy outcomes of the drafting support for civil code which is not self-sufficient as a basic law of capitalist market regime, particularly when plentiful individual laws are introduced in the commercial area in response to the foreign models brought by international donors.

Throughout these chapters, this book is a look at the dimensions of the formation of basic civil law and the drafting support thereof in the Asian emerging economies that are facing with the complicacy of policy choices in each historic struggle for the reestablishment of the regime of *sui generis* law. Each attempt of creating a unitary order of normative interpretation, amid the pressure of contemporary legal transplants by international powers, is a promising summary of long-term projects toward a new legal regime beyond greedy capitalist model, that will continue to deserve for keen observation.

This book is a result of the 2014–2016 research grant from the Ministry of Education, Culture, Sports, Science and Technology in the category of basic research program (B) titled "Comparative Law Research regarding the Deepening of Basic Civil Law in the 20 Years of Asian Legal Technical Assistance," led by Yuka Kaneko.

References

Benda-Beckmann, F. (2006). The multiple edges of law: Dealing with legal pluralism in development practice. *World Bank Legal Review*, *2*.

Davis, K. & Trebelicock, M. (2008). The relationship between law and development: Optimists versus skeptics. *American Journal of Comparative Law*, *56*, 895.

Ginsburg, T. (2009). Symposium: The future of law and development. 104 *Northwestern University Law Review 186*, http://www.law.northwestern.edu/lawreview/colloquy/2009/39/

Hammergren, L. (2014). *Justice reform and development*. Routledge.

Hansmann, H. & Kraakman, R. (2000). The end of history for corporate law. Yale Law School Working Paper No. 235; Harvard Law School Discussion Paper No. 280.

Honduce, E. (1994). Protection of weak parties in contract law. *Civil and Commercial Law Journal*, *109*(4–5), 661–691.

Kagawa, K. & Kaneko, Y. (2007). *Hou Seibi Shien-Ron – Seido Kochiku no Kokusai Kyoryoku Nyumon* (Legal techical assistance theory—Introduction to international cooperation in system development) Minerva Shobo.

Kaneko, Y. (2009). An Asian perspective on law and development. 104 *Northwestern University Law Review 186*, http://www.law.northwestern.edu/lawreview/colloquy/2009/39/

Kaneko, Y. (2010a). A procedural approach to judicial reform in Asia: Implications from Japanese involvement in Vietnam. *Columbia Journal of Asian Law*, *23*(2), 315–358.

Kaneko, Y. (2010b). An alternative way of harmonizing ownership with customary rights: Japanese approach to Cambodian land reform. *Journal of International Cooperation Studies, Kobe University*, *18*(2), 1–21.

Kaneko, Y. (2011). Accompanying legal transformation: Japanese involvement in legal and judicial reform. In J. A. S. Cordero (Ed.), *Legal culture and legal transplants, Vols. I & II, International Academy of Comparative Law, 2012*.

Kaufmann, D., Kraay, A. & Mastruzzi, M. (1996–2017). Governance matters IV: Governance indicators. World Bank Policy Research Working Paper 3630.

La Porta, R., Lopez-De-Silanes, F. & Shleifer, A. (2008). The economic consequences of legal origins. NBER Working Papers No. 13608.

La Porta, R., Lopez-De-Silanes, F., Shleifer, A. & Vishny, R. W. (1996). Law and finance. NBER Working Papers No. 5661.

Makino, T. (1994). Annan no Reicho Keiritsu ni Arawareta Kazoku Seido. (Family System that Emerged from Annam's Lê Dynasty Criminal Law). *Shina Kazoku Kenkyu*, Seikatsusha.

Pistor, K., Raiser, M. & Gelfer, S. (2000). Law and finance in transition economies. 8 *Economics of Transition* 325.

Pistor, K. & Wellons, P. (1999). *The role of law and legal institutions in Asian economic development 1960–1995*, New York: Oxford University Press.

Reimann, M. (1998). Stepping out of the European shadow: Why comparative law in the United States must develop its own agenda. 46 *American Journal of Comparative Law*, 637.

Santos, A. (2006). The world bank's uses of the 'rule of law' promise in economic development. In D. Trubek & A. Santos (Eds.), *The New Law and Development: A Critical Appraisal*.

Shihata, I. (1991). World bank and 'governance' issues in borrowing members. *World Bank in a Changing World*, *53*.

Takeda, Y. (2003). Hou to Shokuminchi Shugi – Betonamu ni okeru Furansu Kindai Houdounyu o Meguru Ichikosatsu" (Law and Colonialism—A Consideration of the Introduction of Modern French Law to Vietnam). *Keiai University International Research*, *12*, 1–22.

Tamanaha, B. (1995). The lessons of law and development studies. *American Journal of International Law*, *89*, 470.

Tamanaha, B. (2009). Distinguishing law & development from legal development. 104 *Northwestern University Law Review 186*, http://www.law.northwestern.edu/lawreview/colloquy/2009/39/

Taylor, V. (2005). New markets, new commodity: Japanese legal technical assistance. *Wisconsin International Law Journal*, *23*(2), 251–281.
Trubek, D. (2006). The rule of law in development assistance: Past, present and future. In D. Trubek & A. Santos (Eds.), *The new law and development: A critical appraisal*.
Trubek, D. & Gualanter, M. (1974). Scholars in self-estrangement: Some reflection on the crisis in law and development studies in the United States. *Wisconsin Law Review*, 162–1102.
World Bank. (2001). *Initiatives in legal and judicial reform*. World Bank.
World Bank. (2003). *Initiatives in legal and judicial reform*. World Bank.