Dispute Resolution
Around the World

Indonesia
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1. Legal System

The Indonesian judicial system comprises the Supreme Court and the Constitutional Court. The 2001 amendments to the Constitution of the Republic of Indonesia grant the Supreme Court and the Constitutional Court powers to organize judiciaries in order to uphold justice and law. The Constitution provides the Constitutional Court with the power among others to review the constitutionality of legislation passed by the Indonesian House of Representatives (Dewan Perwakilan Rakyat); to determine jurisdiction disputes between key state institutions; to decide motions for the dissolution of political parties and to resolve disputed election results.

The judiciary subordinate to or under the oversight of the Supreme Court (Mahkamah Agung) comprises: (i) the general judiciary (peradilan umum), which handles general civil and criminal cases; (ii) the religious judiciary (peradilan agama), which relates to Islamic family laws dealing with inheritance, divorce, etc; (iii) the military judiciary (peradilan militer); and (iv) the state administrative judiciary (peradilan tata usaha negara).

In Indonesia, most disputes appear before the courts of general judiciary, which consist of a Court of First Instance, a Court of Appeal and a Court of Cassation. (“Cassation” is a French legal term which means breaking the force and validity of a judgment; to annul or reverse). Although the Courts of First Instance and Courts of Appeal vary from one judicial system to another, at the cassation level the Supreme Court (Mahkamah Agung) will preside over cases in all judicial systems.

The Courts in the general judiciary comprise the District Courts (Pengadilan Negeri) as Courts of First Instance; the High Courts (Pengadilan Tinggi) as Courts of Appeal, and the Supreme Court (Mahkamah Agung) as the Court of Cassation and civil review.

In addition, within the framework of the court of general judiciary, a number of specialised Courts have been established at certain District
Courts to handle specific types of cases. A Commercial Court which is a specialised court in the commercial field has been established at the District Courts of Central Jakarta, Surabaya, Semarang, Medan, and Makasar to handle bankruptcy, suspension of payments, and intellectual property right cases. A human rights court and an anti-corruption court has also been established at the District Court of Central Jakarta. In addition, a tax court within the framework of the general judiciary has been established in the capital city of Jakarta to handle all tax disputes between tax payers and the government authority in relation to tax collection or (written) decisions on any tax matter issued by the government authority. Most recently, an industrial relations court has been established as a special court within the general judiciary to handle certain industrial relations disputes.

In addition to the above-mentioned Courts, there are a number of tribunals dealing with specific legal issues, such as consumer protection, general election, and broadcasting tribunals.

The Indonesian legal system still carries the pre-independence burden of legal pluralism. Historically, there were three civil procedural laws applicable in Indonesia:

(1) *Het Herziene Indonesische Reglement* ("HIR"), which was applicable to *landraden*, i.e. Courts with jurisdiction over civil cases involving Indonesian natives and/ or Foreign Orientals of non-Chinese origin located on Java and Madura islands; Please note however, that the Courts mentioned above are no longer in existence.

(2) *Reglement Buitengewesten* ("RBg"), which was applicable to *landraden* located outside Java and Madura islands; and

(3) *Reglement op de Burgerlijke Rechtsvordering* ("Rv") which was applicable to *raden van justitie*, i.e. Courts having jurisdiction over civil cases involving European and Foreign Orientals of Chinese origin on Java and *hooggerechtshop*, i.e. the highest Court in Indonesian at that time.
The HIR (for District Courts and High Courts located on Java and Madura islands) and RBg (for District Courts and High Courts located outside Java and Madura) are still applicable for the general judiciary, in addition to numerous national laws governing civil proceedings in Indonesia (such as laws concerning the general principles of the judiciary, the Appellate Court, and the Supreme Court), as well as the Supreme Court’s Circular Letters. Although the Rv (which is more detailed than HIR or RBg) is no longer applicable, it may still be used to provide guidance in situations where the HIR or RBg does not provide sufficient regulation on a certain matter at issue.

Like other civil law countries, Indonesia does not apply the rule of binding precedent (stare decisis).

Nevertheless, the decision of a higher Court (especially the Supreme Court) in practice has great authority. For the purposes of legal certainty, equality before the law and unity of law, certain prior (higher) Court decisions are considered “fixed decisions” (*jurisprudensi tetap*) and are generally observed by the (lower) Courts. It should be noted, however, that Court decisions, including those classified as “fixed decisions” are often not published.

### 2. Courts

#### The District Court

The District Court serves as a Court of First Instance and has jurisdiction to preside over and decide civil and criminal cases. It has jurisdiction over municipalities or regencies, and sits in their respective capitals.

#### The High Court

The High Court serves as a Court of Appeal and has jurisdiction to preside over and decide civil and criminal cases in the second instance. The High Court has jurisdiction over provinces and sits in their respective capitals.
The Supreme Court

The Supreme Court is the highest judicial institution within the Indonesian judiciary and sits in the Indonesian capital of Jakarta.

The Supreme Court has jurisdiction to preside over and decide, among other things, (i) cassation requests, (ii) disputes over jurisdiction and (iii) civil reviews against a final and binding Court judgment.

Language and the Courts

In the Indonesian legal system, all proceedings are carried on in the Indonesian language. All evidence and documents must therefore be in Indonesian. Documents in a foreign language must be translated into Indonesian by a sworn, registered translator before they can be submitted to the Court.

3. Legal Profession

Parties to a dispute may be represented by their attorneys (advocates). The law does not oblige the parties to appoint attorneys (advocates) to represent them in the proceedings. All attorneys (advocates) must obtain a license before they are allowed to appear before the Courts.

4. Procedure for Claims

Civil proceedings are normally conducted by submission of briefs to the Court. A civil proceeding brought before the Court can be classified into a claim (gugatan), which relate to the submission of a dispute to the Court for its adjudication, and a petition (permohonan), which is a request to the Court to make a declaration.

The common grounds for a civil claim are breach of contract (wanprestasi or ingkar janji; failure in the performance of a contractual obligation) or unlawful act/tort (perbuatan melawan hukum; failure in the performance of a statutory obligation). The most important types of relief that the Court may award in a civil claim fall into three categories: declarative, specific, and compensatory.
Declarative relief involves the Court defining the rights and duties of the parties in a particular legal context. Specific relief consists generally of an order directing conduct. Compensatory relief calls for a judgment that the defendant pay the plaintiff a certain sum of money.

As a general rule, a civil claim must be submitted to the Court where the defendant (or any of the defendants) is domiciled. If the defendant’s domicile or dwelling place is unknown, the claim must be filed with the District Court having jurisdiction over the domicile of the plaintiff (or any of the plaintiffs). If by a written deed or agreement, a domicile has been chosen, the plaintiff may file the claim with the District Court having jurisdiction over the chosen domicile.

**District Court**

Upon registration of the civil claim, the Court will summon the defendant (as well as the plaintiff) to appear before the Court. The summons will be physically delivered to the defendant by the Court bailiff, unless the defendant is domiciled in another country or the domicile or dwelling place of the defendant is unknown. If the defendant’s domicile or dwelling place is unknown or if the defendant cannot be located, the summons can be made through publication in a newspaper. If the defendant is domiciled in another country, generally the summons will be delivered through diplomatic channels, through which the summons will be forwarded to the defendant. To be deemed valid and proper the summons should reach the defendant at least three days before the Court hearing.

If the defendant or his proxy fails to attend (although he has been properly summoned), he will be summoned again by the Court. If the defendant still fails to appear before the Court, a default judgment (putusan verstek or putusan di luar hadir) will be entered against him (usually, upon receiving the third (proper) summons from the Court).

If all the parties appear before the Court, the Court is obliged to urge the parties to settle the dispute amicably. Should the
“mediation/conciliation” effort by the Court fail, the Court will proceed by requesting the plaintiff to read out his claim. After hearing the plaintiff’s claim, the Court will adjourn the hearing to allow the defendant to prepare and submit his response (jawaban).

In his response, the defendant may admit or deny the allegations made by the plaintiff. As a general rule, the defendant may also file a counterclaim against the plaintiff.

Having received the defendant’s response, the Court will give an opportunity to the plaintiff to file its reply or counter plea (replik) to the defendant’s response at the next hearing. After hearing the plaintiff’s reply, the Court will again adjourn the hearing to enable the defendant to prepare and submit his rejoinder (duplik) to the Court.

At a further session, the parties may present various documents as evidence to substantiate their arguments. The Court will accept copies of documents provided that they conform with the original in specific sessions before the Court.

The parties may also call witnesses and experts to support their arguments.

After presenting all documentary evidence and hearing all witnesses and experts, the parties will usually submit their conclusions (kesimpulan) to the Court before it delivers its judgment. Even though this is an optional pleading, the tendency is to close the pleadings after the parties submit their respective conclusions.

Upon receiving the conclusion made by each of the parties, the Court will then set a hearing date for the judgment (normally two weeks after the last hearing). The whole process at the District Court may take six months to one year to complete.

5. Remedies

Civil proceedings to obtain a final and binding decision in Indonesia may take years to complete, during which time the defendant may
dissipate its assets. The plaintiff may obtain a favourable final and binding judgment, but if insufficient assets of the defendant remain, the judgment may not be enforced effectively.

It is therefore in the best interests of the plaintiff to attach the debtor’s assets, where appropriate. This motion may be submitted together with the claim, or before judgment. No legal remedies (such as injunctions) are available to the plaintiff before the claim is submitted.

6. Appeals

High Court

An appeal can be lodged against a District Court’s decision at the High Court. If the parties accept the District Court’s judgment or no appeal is lodged within the specified time limit, the District Court judgment becomes final, binding and enforceable.

The appellant lodges an appeal by signing a deed of appeal (akta banding) at the District Court which rendered the decision. The appellant may also submit a statement of appeal (memori banding), which sets out the reasons for the appeal. The respondent to the appeal may file a counter statement (kontra memori banding).

A High Court rarely convenes a Court hearing in order to render its decision on an appeal. It will usually review the case based on the written submissions made by the parties. A High Court may take six months to one year to reach a decision.

Supreme Court

The parties may file for cassation at the Supreme Court against the judgment of the High Court. If no cassation is lodged, or the parties accept the High Court’s decision, the decision of the High Court becomes final, binding and enforceable.

The appellant must submit a cassation statement (memori kasasi), which is a document containing the grounds for appeal, within
The respondent may submit a counter statement (kontra memori kasasi) within fourteen days after it receives the cassation statement.

The Supreme Court currently has an insufficient number of judges in relation to the number of cases registered, causing significant delays of up to three to four years in obtaining a Supreme Court decision.

A restrictive and special legal remedy against the Supreme Court’s decision on cassation is a civil review (request civil or peninjauan kembali). The Supreme Court’s decision is nevertheless final, binding and enforceable.

**Bankruptcy**

Bankruptcy proceedings are initiated by submitting a bankruptcy petition to the Commercial Court. A bankruptcy petition must be filed by a lawyer (having a license to practice) with a Commercial Court having jurisdiction over the debtor’s legal domicile. The bankruptcy petition can be filed by:

(i) the debtor itself,

(ii) any of its creditors;

(iii) the central bank (Bank Indonesia) or the Indonesian Capital Market Supervisory Agency (Badan Pengawas Pasar Modal or Bapepam) if the debtor is a bank or a security company respectively; or

(iv) the public prosecutor if the bankruptcy petition involves public interest.

According to Article 1.1 of the Indonesian Bankruptcy Law, a debtor that has two or more creditors and has failed to pay at least one debt which is already due and payable may be declared bankrupt by a decision of the Commercial Court. In order to comply with this provision, it is imperative for the petitioning creditor to prove to the
Court that there are one or more other existing creditors of the debtor. The Commercial Court will set a date for a hearing after the petitioner has met the requirements for submitting a petition, and the proceedings can commence.

The possible outcome of these proceedings is that the Commercial Court may decide to declare the debtor bankrupt or to reject the bankruptcy petition. Both of these decisions are subject to appeal or cassation (kasasi) to the Supreme Court.

It often happens in practice that, pending the Commercial Court’s decision on a bankruptcy petition, a debtor submits a petition for suspension of payment as a “strategic defensive response” to a creditor’s bankruptcy petition. In that case the Commercial Court is by law obliged first to review the suspension of payment petition and then to grant a provisional suspension of payment of up to forty-five days. This provisional suspension of payment can be converted to an extended suspension of payment for up to 270 days, or a bankruptcy declaration, should the creditors’ meeting refuse to grant the extended suspension of payment. The purpose of the suspension of payment is to provide the debtor with time to prepare a settlement plan, and to discuss this with its creditors. A settlement plan which has been approved by a qualified number of creditors’ votes and which has been ratified by the Commercial Court will bind all “unsecured creditors”.

7. Enforcement of Judgments

Generally, only a final and binding Court judgment is enforceable. A District Court decision cannot be enforced if an appeal against it is lodged at the High Court. Similarly, a High Court decision cannot be enforced if an appeal against it is lodged at the Supreme Court.

The unsuccessful party is expected to voluntarily satisfy or comply with a final and binding judgment. If it refuses to do so, the successful party may request the District Court to enforce the judgment.
The Court may issue an order for the losing party to voluntarily satisfy the judgment within a certain number of days. If the party continues to refuse, the District Court will on request issue an order to seize its assets and subsequently to auction them in public. Although the Court bailiffs generally carry out the enforcement, police assistance may be invoked to require the losing party to release the assets.

8. Recognition and Enforcement of Foreign Court Judgments

As a general rule, foreign court judgments are not enforceable in Indonesia. Indonesia is not a party to any international convention for recognition and enforcement of foreign court judgments. Accordingly, if a party sought satisfaction of an obligation from the losing party under a foreign court judgment in Indonesia, the case must be filed anew as an entirely fresh case with the relevant Indonesian District Court. Although not directly enforceable as such, the foreign court judgment is not totally worthless. It could serve as _prima facie_ evidence in the new case filed in Indonesia. The Indonesian judge is free to evaluate, on a case-by-case basis, whether and how far the foreign judgment will be accepted.

9. Arbitration Law

Terms and provisions governing arbitration are provided in Law No. 30/1999 on Arbitration and Alternative Disputes Resolution (the “Arbitration Law”). This law replaces the former arbitration provisions contained in Articles 615 to 651 of Rv, Article 377 of HIR and Article 705 of Rbg. The Arbitration Law did not take the UNCITRAL Model Law on International Commercial Arbitration into account, and therefore Indonesia cannot be qualified as a Model Law Country. The Arbitration Law governs both international and domestic arbitration. The Arbitration Law also governs the means by which national (or domestic) and international (or foreign) arbitral awards may be recognised and enforced in Indonesia.
10. Role of Courts in Arbitration

The existence of a valid arbitration agreement precludes the right of the parties to submit the dispute to the District Court. Furthermore, the District Court before which an action is brought in a matter which is the subject of an arbitration agreement is obliged to reject the action as inadmissible, except for certain matters as stipulated in the Indonesian Arbitration Law (such as the appointment of an arbitrator in the event the parties fail to reach an agreement on the appointment or where there is no agreement concerning the appointment of the arbitrator). The Court’s assistance may also be requested if the arbitrator grants a provisional award or interim relief in arbitration (even though there is no express provision allowing the Court’s interference in relation to interim measures in an arbitration proceeding).

The Indonesian Court maintains a supportive role, for among other things, enforcing the arbitral award in the event the losing party does not voluntarily comply with the award. The enforcement procedure for domestic awards allows the competent District Court to issue an order of enforcement (writ of execution) directly if the losing party does not, after being duly summoned and so requested by the Court, satisfy the award. In the context of a foreign arbitral award, the Court may issue an exequatur to give the award the standing of *res judicata*.

11. Institutional and Ad Hoc Arbitration

The Indonesian Arbitration Law recognises two arbitration mechanisms:

(a) Ad hoc arbitration: arbitration which is established by the parties themselves in order to have a dispute decided. The parties to an ad hoc arbitration adopt their own rules of procedure, which may be adapted to fit the dispute between them.

(b) *Institutional arbitration*: arbitration which is administered (and supervised) by an arbitration institution in accordance
with its own procedural rules of arbitration. Arbitration is by an arbitration institution in accordance with its own procedural rules. Unless stipulated otherwise by the parties in the arbitration agreement, the dispute must be resolved in accordance with the procedures and rules of that chosen arbitration institution.

There are a few arbitration institutions in Indonesia; of these arbitration institutions, *Badan Arbitrase Nasional Indonesian* (BANI; known in English as the Indonesian National Board of Arbitration) is the longest-established and handles the largest number of cases. BANI was established by the Indonesian Chamber of Commerce and Industry in 1977, and deals with disputes in the areas of trade, industry and commerce.

Smaller bodies exist for the purpose of settling claims in specialized areas such as insurance, capital market and employment.

The Indonesian Shari’ah Arbitration Board (*Badan Arbitrase Shariah Indonesia*), initiated by the Indonesian Council of Ulemas (religious scholars), also handles various disputes including commercial and financial disputes.

The Indonesian Capital Markets Arbitration Board (*Badan Arbitrase Pasar Modal Indonesia* or “BAPMI”) was recently established specifically for resolving disputes relating to capital market activities.

12. **Enforcement of Arbitral Awards**

Under Indonesian Arbitration Law, the enforcement procedure for both domestic and foreign arbitral awards begins with registration (*deponer*). In this respect, the arbitral award is required to be registered by the arbitrator or his proxy with the clerk’s office of the relevant District Court before it can be enforced.

Under the Indonesian Arbitration Law, a foreign arbitral award may only be enforced after the Indonesian Court has recognised the award through the issue of exequatur. Unless the Republic of Indonesia is a
party to the arbitrated dispute, the Indonesian Arbitration Law vests in the District Court of Central Jakarta jurisdiction to issue exequatur to enforce foreign arbitral awards in Indonesia. A foreign arbitral award which has received an exequatur is comparable to a Court judgment that has a *res judicata* effect, and therefore the award becomes enforceable. After obtaining an exequatur, a writ of execution may be applied for if the losing party does not voluntarily fulfill its obligations.

In response to an application for enforcement of a foreign arbitral award, the Court is obliged to grant its exequatur in order to enforce the award in accordance with the Indonesian normal procedural law, unless: (i) the award is rendered in a state which is not bound by a bilateral or multilateral convention or treaty on the recognition and enforcement of foreign arbitral awards, by which Indonesia is bound; (ii) the legal relationship on which the award was based cannot be considered as commercial under Indonesian law, or (iii) the recognition or enforcement of the award would be contrary to public policy.

Indonesia is a party to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID or the “Washington Convention”).

### 13. Setting Aside of Arbitral Awards

The Arbitration Law stipulates that an arbitration award is final and binding and cannot be appealed. However, an arbitration award can be set aside on the grounds that:

(a) documents are falsified;

(b) a significant document which may have affected the decision was discovered after the award was rendered; or

(c) the award was rendered by virtue of deceit by the other party.
No other grounds for cancellation or setting aside an award are specified.

14. Alternatives Dispute Resolution (ADR)

The Arbitration Law regulates not only arbitration, but also other ADR methods (i.e., mediation, consultation, negotiation, conciliation, and expert opinion). ADR techniques are still rarely used to resolve disputes in Indonesia. However, increasingly (especially when dealing with large commercial transactions) parties choose and apply various forms of ADR (particularly negotiation and mediation), and there is a trend to provide these mechanisms as a first step in a dispute resolution clause.

15. Electronic Evidence


Essentially, this is the first law that regulates cyber activity in Indonesia. Its introduction represents a significant shift in Indonesian evidence law, both civil and criminal, and directly impacts most aspects of business including contract law, consumer protection law, among others. Before the introduction of this law, using electronic evidence in the form of Electronic Information and/or Electronic Documents is arguable in Indonesian Courts.

Under the IET Law, electronic information and/or electronic documents and their printed form material are confirmed to be valid evidence. Please note however, such provision regarding the use of the electronic information and/or electronic documents as evidence is not applicable, if it is: (i) a letter that must be in the form of written material as regulated in Law (e.g. Employment Agreement); (ii) a letter or document that according to the Law has to be made in notarial deed or other letter or document that must be in the form of letter that drawn up by the Deed Officer (e.g. Land Deed).
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