

Noteworthy Case a Green Light for Recognition and Enforcement of Foreign Judgements in Indonesia

TILP - Issue 2, June 2024

In cross-border commercial transactions, it's common for Indonesian entities and foreign investors or counterparts to enter agreements stating that any disputes will be resolved through a foreign court. In theory, in the event of a default, the dispute will be resolved abroad and the losing party will abide by the court's judgment. However, in practice, numerous cases arise where losing Indonesian parties refuse to comply voluntarily with foreign judgments and resort to evasive actions and behavior to avoid paying up.

This raises an important question:

Is it feasible to recognize and enforce foreign court judgments against Indonesian parties in Indonesia to ensure the fulfillment of their legal obligations?

Unlike Indonesia's more comprehensive regulatory framework for the enforcement of international arbitration awards, the regulations for enforcing foreign court judgments are notably sparse. The relevant guidelines are limited to Article 436 of the RV (*Reglement of de Rechtsvordering* – an Indonesian civil procedural regulation inherited from the Dutch colonial era) and the legal opinions of some Indonesian jurists. From these sources, the following details emerge:

- A foreign judgment cannot be enforced in Indonesia directly (on the basis of the principle

of territorial sovereignty).

- To enforce a foreign judgment, a new lawsuit must be filed in an Indonesian court.
- The foreign judgment can be presented as written evidence to support the new lawsuit in Indonesia.

Despite increasing international attention to the recognition and enforcement of foreign judgments, Indonesia lacks explicit legislative provisions that fully elaborate on implementing the aforementioned points. This is especially evident in the unclear of procedures for initiating a new lawsuit (re-litigation) in an Indonesian court, except in cases involving shipping. Moreover, Indonesia has neither ratified the Hague Convention of 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters nor entered into bilateral treaties with other states on this matter. Considering this context, we need to determine the most appropriate legal approach in practice to find a solution.

In a recent case, we successfully represented a foreign company in enforcing a foreign judgment against an Indonesian individual who had evaded paying a debt of approximately US\$70 million. Our legal approach involved filing a new lawsuit based on the grounds of an illegal act and avoiding replicating the dispute over the content of the agreement.

While we are still awaiting the appeal process in the Supreme Court before it becomes final and binding, the initial judgment from the lower court ruled in our favor. This decision was upheld by the high court, which ordered the Indonesian individual to pay the debt in an amount similar to that under the foreign judgment.

Compared to the only precedent found on the Supreme Court's website under ruling No. 2681/K/PDT/2010, a different legal approach was used by a claimant seeking to enforce a foreign court judgment in Indonesia. In this instance, the claimant asked the Indonesian court to examine and adjudicate the case under foreign law, which governed the contract, and to issue a ruling identical to that of the foreign court. However, in contrast to our case, the lower court, high court and Supreme Court all deemed the lawsuit inadmissible.

In conclusion, as we await further progress in the drafting of the Bill (*Rancangan Undang-Undang*) on Private International Law in Indonesia, which is included into the National Legislation Program and signals a positive step toward addressing the recognition and enforcement of foreign judgments, our groundbreaking case is a green light that such issues can be resolved in practice. However, considering the precedent of the inadmissible case in 2010, it is clear that a comprehensive assessment of each case is still necessary, as the circumstance of individual cases may vary significantly.

Click the "download file" button to read the PDF version.

If you have any questions, please contact:

1. [Rahayu Ningsih Hoed](mailto:rahayu.hoed@makarim.com), Partner - rahayu.hoed@makarim.com
2. Hendrik Alfian Pasaribu, Senior Associate - hendrik.pasaribu@makarim.com

File created by Makarim & Partners LLP on 11/11/2024 at 10:00 AM. All rights reserved. This document is confidential and intended for the use of the recipient only. If you have received this document in error, please notify the sender immediately. Makarim & Partners LLP, 8th Floor, PT Tower, Jl. Sudirman No. 1, Jakarta 10110, Indonesia. T: +62 (0)21 2511 1111. E: info@makarim.com