



Litigation & Dispute Resolution

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Indonesia

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Efficiency of process

In general, the methods used in Indonesia to resolve commercial disputes are: litigation; arbitration; and alternative dispute resolution (“**ADR**”).

Litigating commercial disputes under Indonesia’s procedural law system is invariably expensive, lengthy and generally unpredictable. In Indonesia, judges are not bound by common law precedent. As such, each case before the Indonesian courts is determined on the basis of its particular facts and merits. In principle, Indonesian general courts (*peradilan umum*), comprising district courts and high courts, hear civil lawsuits and criminal claims. Certain courts of specialised jurisdiction (*peradilan khusus*) have been established to address specific areas of law. These include a commercial court, which specifically addresses bankruptcy and intellectual property cases.

Resolving commercial disputes in arbitration or ADR (such as mediation) as alternative dispute settlement is generally governed by Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (“**Arbitration Law**”). The Arbitration Law recognises the principle of competence under which the district courts do not have jurisdiction to try disputes between parties bound by an arbitration agreement. The principle of separability also applies in Indonesia, under which an arbitration agreement does not become null and void if the main contract expires or becomes void. In principle, the parties’ agreement to resort to arbitration or ADR will be required.

Integrity of process

Under the Indonesian judicial power law and the Judges’ Code of Ethics, judges must hear all the parties and comprehend the norms of law and justice applicable in the community. They must also maintain the independence and impartiality of the judiciary, and rule without any intervention from any party outside the judicial power.

Privilege and disclosure

Indonesian procedural law does not recognise disclosure procedures. The disputing parties are not obliged to disclose their evidence or information related to the case in advance of the proceedings. A court session is held in which the parties have an opportunity to submit their evidence and examine that submitted by the opposing parties.

Under the Indonesian Advocates Laws, attorneys must maintain the confidentiality of any information they obtain from their clients in the course of providing their professional services, including any briefs, documents, agreements, written submissions, trade secrets and

correspondence given to or obtained by them, unless stated otherwise or required by law. For example, under the Anti-Corruption Law, all citizens, including professionals who must keep certain information confidential (e.g. lawyers), must waive their attorney-client privilege when giving testimony in a corruption case. Under the Law on the Corruption Eradication Commission (“**KPK**”), the KPK also has the authority to wiretap and record conversations for the purposes of an investigation and prosecution.

Costs

The claimant is required to pay a registration fee when submitting a suit to the District Court. Court costs are decided by the judges in the ruling on the case and are usually borne by the losing party.

Court fees payable by the claimant when registering the lawsuit are set by the chairman of the relevant court. Therefore, the fees may vary significantly from court to court. At present, for a one-on-one case, the fee for filing a civil lawsuit in a district court is likely to be in the range of IDR 1,000,000 to IDR 2,000,000.

Litigation funding

Indonesia does not recognise any security for costs or third parties providing advances for legal fees. However, there are no particular rules on how the claimant obtains financing for the litigation.

Interim relief

Indonesian procedural law does not recognise the concept of interim relief or injunctions or pre-judgment remedies prior to the registration of a claim. Therefore, there is no legal remedy for the claimant before a claim is formally registered with the deputy registrar of the district court. However, Indonesian procedural law has a similar concept to interim relief, such as an attachment order or provisional decision to protect the claimant’s interests (for example, to immediately order a tenant to vacate a property if it is continuing to enjoy the property without paying rent or service charges).

In addition, upon registering a claim, the pre-judgment remedies available to the claimant are: to request an Attachment Order (*penetapan sita jaminan; conservatoir beslag*) over the debtor’s assets or goods; and/or to seek a Provisional Decision (*putusan provisi*) or immediate judgment (*putusan serta merta; uitvoerbaar bij voorraad*).

A worldwide freezing order under a foreign court ruling is not enforceable in Indonesia; new proceedings must be initiated by filing a new suit in Indonesia.

In a recent development, the Indonesian Supreme Court issued a circular letter which provides a provisional measure in intellectual property rights disputes allowing the rights-holder to ask the court to issue a decision preventing all the goods which relate to the intellectual property rights dispute from entering the Indonesian market. The decision is made without requiring any defence from the defendant.

Enforcement of judgments

If the court ruling in the claimant’s favour is final and binding, and the defendant does not voluntarily comply with the ruling, the claimant can enforce the ruling through the original district court by filing an application and paying the court fees for its execution. An Execution Order (*penetapan eksekusi*) will be issued against the defendant’s assets. If an Attachment Order has previously been granted, it is changed to an Execution Order.

Execution is conducted by the chairman of the district court summoning the defendant to be present before the chairman, to be formally notified of its obligation to abide by the court decision. If the defendant does not comply with its obligations thereunder, the judgment will be executed by the sale of the defendant's assets at a public auction held by a special administrative board (*juru lelang*) under the jurisdiction of the Ministry of Finance. A public auction should be preceded by a notice published in a local newspaper. Police assistance may be requested, if necessary, to encourage a recalcitrant defendant to release property to be auctioned.

In January 2019, the Head of the General Judiciary Body of the Indonesian Supreme Court issued Guidelines on the Enforcement of Judgments by the Indonesian district courts. These guidelines explain the enforcement process in detail so that the chairman of an Indonesian district court can commence the enforcement of a ruling properly.

Cross-border litigation

Indonesia is not a party to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, or any similar convention related to the service of foreign process, other than a bilateral agreement with Thailand on cooperation in providing court documents and obtaining evidence in civil and trade cases. This agreement provides an assurance to both countries' nationals that court proceedings in one of the party's countries will be conducted under the same conditions as in the other country, and judicial assistance will be provided in obtaining documents and evidence from the other party.

Service of foreign judicial or court documents in Indonesia is not regulated by any specific Indonesian law or regulation, and the procedure for sending any notification, summons or service of process to a defendant in Indonesia is uncertain and time-consuming.

However, in February 2018, the Indonesian Supreme Court and the Ministry of Foreign Affairs signed a Memorandum of Understanding on rogatory letters (letters of request) ("**MOU**"). The MOU is the renewal of the 2013 memorandum of understanding signed by the Indonesian Supreme Court and the Ministry of Foreign Affairs. The MOU provides the procedure for the Indonesian government to address requests for judicial assistance in gathering information about people, assets, documents and other evidence, obtaining witness' statements and conducting civil process from a foreign court to Indonesia, and for Indonesian courts (through the Indonesian Supreme Court) to ask for the same from courts in other jurisdictions.

International arbitration

In Indonesia, international arbitration falls under the Arbitration Law. The Arbitration Law is not based on the UNCITRAL Model Law. Under the Arbitration Law, any award handed down outside the territory of Indonesia (e.g. in Singapore or London) is classified as an international arbitration award. An international arbitral award includes any award issued by an arbitration institution or *ad hoc* arbitration which under Indonesian law is deemed to be an international arbitration award. Any award other than the above is classified as a domestic arbitration award.

The Arbitration Law does provide the procedure or requirements for enforcing an international arbitration award. Indonesia ratified the New York Convention on 5 August 1981 under Presidential Decree No. 34 of 1981, and the New York Convention has been in force in Indonesia since 5 January 1982 ("**New York Convention**"). Indonesia acceded to the New York Convention on 7 October 1981. Therefore, foreign arbitration awards can be enforced in Indonesia. Other than the New York Convention, Indonesia has not signed any other treaty on the recognition and enforcement of arbitration awards.

The Central Jakarta District Court (“**CJDC**”) is the only court authorised to enforce international arbitration awards. An international arbitration award can be enforced in Indonesia provided that:

- a. the award was rendered by an arbitrator(s) in a country which is bound to the Republic of Indonesia by a bilateral or multilateral treaty on the recognition and enforcement of international arbitration awards;
- b. the award is within the scope of commercial law under Indonesian law;
- c. the award does not conflict with public order; and
- d. a writ of execution of the award has been obtained from the Chairman of the CJDC.

For an international arbitration award to be enforced in Indonesia, it must first be registered with the CJDC by the arbitrator(s) or its proxy. For registration, the following documents must be submitted to the court:

- a. the original or an authentic copy of the award and its official Indonesian translation;
- b. the original or an authentic copy of the arbitration agreement or the underlying agreement on which the award is based, as well as its official Indonesian translation; and
- c. a statement from the diplomatic representative of Indonesia in the country where the award was handed down, stating that the country is bound to Indonesia under a bilateral or multilateral treaty on the recognition and execution of international arbitration awards.

If the above requirements are satisfied, the Registrar of the CJDC will issue a deed on the registration of the international arbitration award. Following registration, if the respondent does not voluntarily comply with the international arbitration award, the procedure for enforcing the international arbitration award in Indonesia is the following:

- a. file a petition for a writ of execution (*exequatur*);
- b. file a petition (*aanmaning*) in the CJDC asking the CJDC to summons the respondent to comply with the international arbitration award; and
- c. file an attachment petition in the CJDC to seize or attach the respondent’s assets in Indonesia, followed by their sale at public auction.

The above procedure is subject to the Indonesian Civil Procedural Law, and the Arbitration Law imposes no specific time limit for enforcing an international arbitration award in Indonesia. Therefore, the whole process often takes a long time, especially if the respondent’s assets are not easy to identify or are located in various different places in Indonesia.

The Arbitration Law is silent on the enforcement of an international arbitration award which has been set aside by a court in the seat of arbitration. Since Indonesia has ratified the New York Convention, under Article V (1) of the convention, the chairman of the CJDC may not issue a writ of execution if the international arbitration award has been set aside, and therefore the award cannot be enforced in Indonesia. However, the claimant can file an appeal in the Supreme Court.

A few international arbitration bodies have a presence in Indonesia, such as the ICC (International Chamber of Commerce) and a chapter of the Chartered Institute of Arbitrators.

Mediation and ADR

The Arbitration Law specifies mediation as one form of ADR. The Arbitration Law recognises consultation, negotiation, mediation and conciliation as the other forms of ADR. If settlement cannot be reached through negotiation, the most common forms of ADR are mediation and

conciliation, for which the parties request the involvement of an impartial third party who will listen to both sides.

In certain areas, ADR is mandatory, and is overseen by specific government agencies. For example, in:

- civil court proceedings (under the Indonesian Civil Procedural Law and Supreme Court regulation regarding mediation, in the first hearing if both parties appear, the judges must urge the parties to try to settle the dispute amicably in mediation, and the judges must adjourn the hearing until the mediation is finalised);
- employment disputes (following the failure of bipartite negotiations, a dispute can be referred to arbitration or ADR under the auspices of the relevant local office of the Ministry of Manpower and Transmigration); and
- consumer disputes (which must be settled in the Consumer Dispute Settlement Bodies/BPSK).

Enforcement of an ADR/mediation settlement generally requires prior registration of the award or settlement agreement with the district court with jurisdiction. Indonesian law acknowledges that a mediation settlement so registered has the same weight as a final and binding court decision.

Indonesia also has an independent mediation centre, i.e. the Indonesian Mediation Centre (*Pusat Mediasi Nasional*), which provides professional/licensed mediators to handle out-of-court mediation or mediation under the supervision of the courts.

Regulatory investigations

The Government of Indonesia has established several bodies to handle disputes related to consumer and business affairs, such as the Consumer Dispute Settlement Body (*Badan Penyelesaian Sengketa Konsumen – “BPSK”*) and Supervisory Commission on Business Competition (*Komisi Pengawas Persaingan Usaha – “KPPU”*). However, there have been no significant changes to any related Indonesian laws.

The BPSK is required to issue its decision on the dispute between a consumer and a business within 21 days of the claim being submitted. Within seven days of the issuance of the BPSK decision, the business is required to comply with the decision. Failure to do so may lead to a full investigation because the BPSK decision is considered sufficient preliminary evidence for the investigation. However, the consumer or business can file an objection to the BPSK decision in the Indonesian courts. In addition, if the business does not file an objection to the BPSK decision, the consumer can submit a request for its enforcement to the Indonesian courts.

The KPPU’s tasks are among others, the following: to evaluate agreements, business activities and the presence or abuse of a dominant position which may lead to a monopoly or unfair business competition; and to provide suggestions regarding government policies. The KPPU is also entitled to handle and rule on complaints related to the above issues and to then issue its decision. A KPPU decision may be challenged by the business through the Indonesian courts. In which case, the panel of judges must issue its ruling on the objection within 30 days of the commencement of the trial. If a business is found to be in violation of the law, the sanctions that may be imposed are administrative measures (e.g. cancellation of the contract, an order to pay compensation) and penalties (these may be either financial, custodial or of some alternative nature, for example, the revocation of a business license, a prohibition against holding directorships for a certain period or the termination of certain activities or actions causing a third party to suffer a loss).



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Lia Alizia is a talented lawyer, litigator and a leading advisor to many top businesses worldwide. She is also one of the country's foremost legal practitioners, having been involved in some of the most high-profile matters over the years. She is a Partner in the Corporate, Commercial and the Litigation and Dispute Resolution departments of M&T. She provides expert advice and oversight in large, complex corporate negotiations, and brings over 18 years of experience in managing the legal aspects of commercial, transactional and corporate governance matters. Lia adheres to strict ethical principles when representing clients before Indonesian courts and arbitration panels. Lia is a Highly Recommended lawyer in Employment by *Chambers and Partners Asia-Pacific* 2017–2019; and was also recently recognised as a Rising Star by *IFLR1000* 2019. She is one of Indonesia's A-list lawyers by the *Asia Business Law Journal's* Top 100 Lawyers in Indonesia in 2018 and 2019 and is a Leading Lawyer for Intellectual Property and Labour and Employment by *Asialaw* 2017–2018.



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