This second edition of *Commercial Litigation* aims to provide an updated first port of call for clients and lawyers to start to appreciate the issues in each jurisdiction. Each chapter is set out in such a way that readers can make quick comparisons between the litigation terrain in each country.

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COMMERCIAL LITIGATION
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SECOND EDITION

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General Editors: Andrew Horrocks *Andrew Horrocks Law Limited* & Maurice Phelan *Mason Hayes & Curran*

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FOREWORD

Andrew Horrocks | Andrew Horrocks Law Limited
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Four years have now passed since the publication of the first edition of this book. Despite the generally improving economic outlook, the significant increase in commercial litigation remains evident, partly still caused by the previous financial crisis.

The growth of cross-border commerce means that jurisdictional principles have become more important as litigants are increasingly likely to find themselves involved in disputes in jurisdictions unfamiliar to them. They and their usual lawyers may have limited, if any, understanding of how the local legal system works. Sophisticated litigants are also increasingly aware of the benefits of bringing a claim in a jurisdiction more favourable to their cause of action, even if that means litigating in unfamiliar territories. It is therefore now more important than ever for parties and their advisors alike to be able to obtain an overview of the way litigation is conducted around the world.

Since the publication of the first edition, there have been a number of other noticeable trends. One is the increasing level of case management in commercial litigation undertaken by the courts in our own jurisdictions to attempt to avoid delay and reduce costs. The imposition of stricter time limits requires parties and in turn their lawyers to ensure resources are better managed.

The need to find cost-effective routes to the resolution of commercial disputes also remains a key trend. The market for mediation and other alternative dispute resolution services continues to expand, and arbitration remains popular for disputes arising out of cross-border commerce and investment. Insurance products relating to the costs of litigation have been available for some time in our jurisdictions, and here and elsewhere there is also a third party funding market.

The contributors to this second edition are all leading lawyers in their jurisdictions and are ideally placed to provide practical, straightforward commentary on the inner workings of their respective legal systems. Their kind contributions are greatly appreciated by us. We have been particularly pleased as general editors to have been able to gather such a breadth of contributors for this new book, from just about every major jurisdiction in the world. We express our thanks to all those at Sweet & Maxwell who have worked tirelessly to bring together the chapters and have assisted hugely in the editorial process.

As with the previous edition, a work of this nature will not allow for in-depth analysis or provide solutions for every problem encountered by litigants. The book is intended rather to provide a first port of call so that readers can start to appreciate the approach of the courts in each jurisdiction to commercial litigation and better understand both the procedure they adopt and how the dispute will be resolved in practice.

We hope this book will assist all who come to use it, and will be happy to receive suggestions for future editions.

Andrew Horrocks and Maurice Phelan, London and Dublin, September 2015

INDONESIA

Firmansyah, Karen Mills & Margaret Rose | KarimSyah Law Firm

1. COURT STRUCTURE

1.1 How is the court structured? Does a specific court or division hear commercial claims?

The courts in Indonesia are divided according to their jurisdiction over the subject matter:

- General (District) Courts (*Pengadilan Negeri*) perform hearings for both criminal and civil claims. An exception is the commercial courts, which are separate chambers established to hear bankruptcy and intellectual property claims only.
- Religious Courts, which perform hearings specifically for Moslems related to marriage, inheritance issues and Islamic financing transactions.
- Military courts, which perform hearings related to criminal acts involving military personnel.
- Administrative Courts, which performs hearings related to state administrative decree issuance and claims against governmental bodies relating to their duties.
- The Constitutional Court, which decides disputes relating to the authority of state agencies, the dissolution of political parties, election results and judicial review of laws alleged contrary to the constitution.
- The Corruption Court, which performs hearings in cases of corruption causing losses to the state, usually brought by the Corruption Eradication Commission.
- Tax courts, which are separate courts to hear cases by or against the tax office of the Ministry of Finance.
- Manpower courts, which are courts established to hear manpower/employment disputes where the conciliation mechanism has not been successful.

There are two levels of appeal. Appeals from decision of the courts mentioned above are submitted to the High Court (*Pengadilan Tinggi*); and further appeals, known as cassation, from decisions of the High Court, may be submitted to the Supreme Court (*Mahkamah Agung*). Regarding the cassation judgment, a losing party still has another final, extraordinary, legal remedy: Judicial Review (*Peninjauan Kembali*, or PK), which is brought before the Supreme Court. PK may be sought where *novum,* or new evidence, is discovered which did not exist or was not known at the time of the previous proceedings, or in case of a serious misinterpretation of law.

2. PRE-ACTION

2.1 Are parties to potential litigation required to conduct themselves in accordance with any rules prior to the start of formal proceedings?

Based on Supreme Court Regulation No 1 of 2008, the panel of judges in a District or Religious Court adjudicating any case other than a criminal one must order the disputing parties to attempt to resolve their dispute through mediation before the court will hear argument in the case. The parties have 40 days for such mediation, which may be extended at their request and by approval of the mediator. If the parties do not agree upon a mediator within two

days, the court will appoint one from its own roster. If the mediation fails, the court may hear the case. If successful, the resulting settlement agreement may, at the request of the parties, be converted to a final and binding deed of resolution (*Acte van Dading*), which will be enforceable like a final and binding court judgment.

2.2 Are there any time limits for bringing a claim? If so, what are they?

Based on Article 1967 of the Indonesian Civil Code, most normal legal claims concerning individual or business claims have a 30 year statute of limitations. There are, however, some shorter limitations provided in some specific laws for specific types of claims:

- Maritime claims, as provided in Articles 741, 742, and 743 of the Indonesian Commercial Code, have limitations of one, two, three or five years, depending upon the nature of the claim.
- Aviation claims: one year for claims relating to domestic flights, as provided in the Air Transport Ordinance (*Luchtvervoer-ordonnantie*, 9 March 1939) S. 1939-100 jo. 101 (mb. 1 May 1939), Article 20(2); and two years for those relating to international flights, as provided in the Warsaw Convention 1929 Article 29(1), ratified by Indonesia in 1933.
- (iii) Claims for unpaid legal services: two years, as provided in Article 1970 of the Indonesian Civil Code.

3. PROCEDURE AND TIMETABLE IN CIVIL COURTS

3.1 How are proceedings commenced?

It must first be understood that Indonesia is a civil law jurisdiction. All the Dutch laws that were in force in 1945, at the time of Indonesia's independence, have remained in effect unless and until new laws were promulgated to replace them. Most of the basic procedural laws have not been replaced and thus remain in effect today.

Civil procedures are based on three of the original Dutch laws: the HIR (*Het Herziene Indonesisch Reglement)*, Rbg (*Reglement Buitengewesten*) and Rv (*Reglement op de Burgerlijke Rechsvordering*).

Based on Article 118 of the HIR, a litigation proceeding is initiated by the submission for registration, by the plaintiff, of a statement of claim (*Gugatan*) to the District Court with jurisdiction over the district of domicile of the defendant. If there is more than one defendant having different domiciles, the plaintiff may submit the claim to the court where one of the defendants is domiciled. If the plaintiff has no information concerning the defendant's domicile, the claim may be submitted to the District Court where the plaintiff is domiciled. Alternatively, the claim may be submitted to the District Court having jurisdiction over immoveable assets of the defendant (defined as land, or seagoing vessels over 20 cubic metres).

Note that if a claim based upon a contract between or among the parties, where the parties have designated in said contract that a certain court will have jurisdiction over any disputes, the claim must be submitted to the court so designated. (This would also apply if the parties have agreed upon arbitration, in which case, based upon Law No 30 of 1999, no court will have jurisdiction to hear the dispute.)

Based on the registered claim, the District Court shall determine the day and time for the examination of the case. To this end, the District Court shall order the court bailiff to summon the parties to appear before the panel of

judges, where the period of time between the summons and the court hearing shall be not less than three days (*Article 122, HIR*).

The information required in a statement of claim includes: the parties' identities (both plaintiff and defendant), the substance of the claim (*posita*), either as a breach of contract or an unlawful act, and the relief requested (*petitum*) as stipulated in Article 8 of the Rv. Normally, these are expanded upon in some detail.

3.2 What are the main steps to trial, once a claim has been formally commenced? What is the usual timetable to trial?

As mentioned in *Section 2.1* above, the first order of business at the first hearing is for the panel of judges to order the parties to attempt to resolve the dispute amicably through mediation. If the mediation is successful, the panel of judges shall issue an enforceable amicable resolution deed (*Acte van dading*). In contrast, if the mediation fails, the claim shall proceed to litigation and the hearings shall continue.

In the first hearing following the failure of mediation, the plaintiff shall present the claim, following which the court will adjourn the hearing, normally for one to two weeks, to allow the defendant to submit its reply (*Jawaban*) to the claim. These are submitted as documentation only, without verbal argument.

In the second hearing, the defendant submits its reply, and may submit a counter-claim (*Gugatan Rekonvensi*) at that time. Before doing so, however, the defendant may submit any jurisdictional or other procedural challenge (*Eksepsi*). This would include defects such as the validity of a party's power of attorney, an error *in personam*, or the matter being *res judicata* (*nebis in idem*), premature or otherwise contrary to law.

If a challenge posed by the defendant is accepted, the court will issue an interlocutory judgment (*Putusan Sela*) declaring the claim unacceptable. The unsuccessful party is then entitled to submit an appeal against such interlocutory judgment to the High Court. If the challenge is rejected by the panel of judges, the defendant must then submit its reply (*Jawaban*) to the claim together with any counter-claim, if any.

Thereafter, in the next hearing, the plaintiff submits its counter-response (*Replik)* to the defendant's reply and its defence to any counter-claim, if any. .

At the next hearing, the defendant will submit a rejoinder (*Duplik*), and its *Replik* to the plaintiff's defence to its counter-claim, if any.

Thereafter, a hearing is held for the parties to produce their documentary evidence. This should be either certified copies or the original documents may be shown to the court, which will then verify a copy. The plaintiff presents its evidence first, followed by the defendant.

After all documentary evidence has been submitted, hearings will be held for the examination of witnesses. These comprise witnesses of fact and/or expert witnesses. The witnesses testify orally, without the presentation of written statements beforehand. The testimony is given under oath.

Following the witness examination, the parties each have the opportunity to submit their concluding memorandum. This is an optional submission.

Thereafter, the panel of judges will determine the date for the pronouncement of the judgment. A final hearing will then be held at which the judgment is read out.

Either party may appeal the judgment to the High Court by submitting a notice of intention to appeal within 14 days of the pronouncement of the judgment. This is followed by the submission of a Memorandum of Appeal. Further appeal (cassation) to the Supreme Court is also available (*see Section 11 below*).

Hearings are normally scheduled to take place at one to two week intervals. As the schedules are often overly delayed, the Supreme Court issued its Regulation No 2 of 2014, requiring cases in the District Courts to be resolved within five months, although the judges may seek an extension with the approval of the chair of the applicable District Court. Appeals in the High Court should be decided within three months.

Aside from the issuance of a deed of settlement in case of successful mediation or an interlocutory judgment dismissing the claim for jurisdictional or procedural defects, once the merits are submitted, all aspects of the claim shall be decided at the same time. This cannot be done piecemeal. Nor is there any mechanism for summary judgment or similar. The only other interlocutory action that may be taken at any stage after the case has commenced would be for security attachment of identifiable assests of the defendant upon request by the plaintiff to protect its interests, as provided in Article 221(1) of the HIR and Article 261(1) of the Rbg.

3.3 Is it possible to expedite the normal timetable to trial? If so, how?

It is not possible to expedite a court proceeding because this falls under the authority of the panel of judges, unless an amicable resolution has been reached during the proceedings.

It is also not possible to obtain a court judgment on some of the aspects of disputes in advance of trial when they concern the merits of the case.

4. DOCUMENTARY EVIDENCE

4.1 Are the parties obliged to search for, retain or exchange documentary evidence prior to trial?

The underlying philosophy of civil law cases is that the party that makes an allegation has the burden to present evidence to prove it. Based on Article 1865 of the Indonesian Civil Code, the party who files/submits a claim is obliged to present evidence to establish that claim. The parties may disclose the documents they deem appropriate in order to support their statements and arguments in court. There is no mechanism for obligatory document disclosure or "discovery", as is known in the common law practice.

4.2 Are there any special rules concerning the exchange of electronic documents?

Electronic or paper documents may be exchanged or submitted at the option of the party in control of such documents.

4.3 Can any documents be withheld from the other side or from the court?

It is entirely up to each party to determine what documents it wishes to provide to the court.

Note that, according to Article 19 of Law No 18 of 2003 regarding Advocates, all advocates/lawyers shall maintain the confidentiality of their clients, including any documents, agreements, written submissions, trade secrets and correspondence obtained by or given to the lawyer. This privilege can be overridden by certain specific legislation, such as for cases arising under Article 36 of the Anti-Corruption Law (Law No 31 of{ 1999), the Corruption Eradication Commission Law (Law No 30 of 2002) or the Anti-Money Laundering Law (Law No 8 of 2010).

5. WITNESS EVIDENCE

5.1 Do parties exchange witness evidence prior to trial? If so, how and at what stage in the proceedings?

Witness evidence is provided by oral testimony. No written statements are exchanged in advance.

As in most systems, a witness of fact may testify only as to what he or she has seen, heard or otherwise experienced, while an expert witness will testify as to his or her expertise.

5.2 Do witnesses give evidence at trial? If so, how? Is it possible for the court to hear oral testimony from expert or ordinary witnesses via teleconferencing, or any other remote live connection system?

Based on Article 1866 of the Indonesian Civil Code and Article 164 of the HIR, a witness's testimony is classified as a part of the evidence.

Presenting witness testimony through teleconference is not recognised in Indonesia's court procedure. The witness must appear in the court. (There has been only one known exception to this, where Indonesia's third President was out of the country when his testimony was required in a criminal case, and the court allowed it to be taken by video-conference.)

With the consent of the panel of judges, witnesses, both of fact and experts, are first examined by counsel for the party who has presented them, then may be cross-examined by counsel for the other party. The judges themselves may question witnesses at any time during this process.

If the panel of judges does not agree with the testimony presented by a fact or expert witness, the judges may disregard the testimony.

Based on Article 242 of the Criminal Procedure Code, whosoever provides false testimony may be sentenced to prison for a maximum period of seven years.

5.3 Can a witness be forced to attend court for the purposes of giving evidence?

Theoretically, a witness may be forced to attend a hearing in the court if such witness has been called and has ignored the court summons, and if the witness's testimony is considered necessary by the panel of judges in order to make a judgment. This enforcement is ordered by the court with the police officials' assistance. However, in practice, witnesses are for the most part presented by the parties themselves, and are very rarely ordered to appear through force, except in some criminal cases.

6. EXPERT EVIDENCE

6.1 Are parties permitted to use experts in the proceedings to give opinion evidence? If so, who appoints the expert?

Each of the parties is permitted to appoint an expert to support its case and argument in court. An expert may also be appointed by the court if needed. Joint appointment of the same expert is extremely rare, but there is nothing to prevent it.

6.2 Do parties exchange expert evidence prior to trial? If so, how and at what stage in the proceedings?

No

As stated in *Section 5.2* above, expert witnesses present their testimony orally. The expert witness shall testify based on his or her own knowledge and expertise.

6.3 Do experts give evidence at trial? If so, how?

Experts give their evidence orally in the hearing, and may be cross-examined by the judges or by the opposing counsel.

See *Sections 5.2 and 6.2* above.

6.4 How are experts paid and are there any rules to ensure that expert evidence is impartial?

There are no rules concerning fees paid for the experts' testimony. In practice, however, the expert is paid by the party who presents the expert in court. Nonetheless, the expert is expected to act impartially and independently: the expert's role is to assist the court, not to be an advocate for the party presenting the expert.

The panel of judges is not, however, bound by the testimony presented by an expert witness.

7. ENDING A CLAIM/ALTERNATIVE DISPUTE RESOLUTION (ADR)

7.1 What are the main ways in which a claim may be brought to an end before trial?

A claim may be revoked by the plaintiff without the consent of the defendant only as long as the defendant has not yet submitted a reply or counter-claim.

Articles 271 and 272 of the Rv regulate following matters in revocation:

- The party entitled to revoke a claim is the plaintiff or its proxy based on a power of attorney.
- A revocation towards a claim which has not yet been examined by the court is the plaintiff's absolute right; said revocation shall be conducted based on a written request without prior consent from the defendant.
- A revocation towards a claim during or after court examination requires the prior consent or approval of the defendant.

If approved, the panel of judges shall issue a court order to unlist the claim from the court register. If the revocation is rejected by the defendant, the examination of the claim shall continue.

The legal consequences arising from the revocation are:

- The revocation shall terminate the claim.
- The parties are deemed to return to the original state before the claim (thus such revocation is without prejudice to the party's right to bring the action again).
- The fees are borne by the plaintiff.

7.2 What ADR procedures are available?

Based on Article 1, paragraph 10 of Law No 30 of 1999 regarding Arbitration and Alternative Dispute Resolution, ADR is a mechanism applied to resolve disputes or differences of opinion through procedures agreed upon by the parties, that is, consultation, negotiation, mediation, conciliation or expert assessment.

Based on Supreme Court Regulation No 1 of 2008, prior to hearing a litigation procedure, the panel of judges in the District Court is obligated to order the disputing parties to attempt amicable resolution, through court-annexed mediation, otherwise the judgment shall be null and void. See *Section 3.2* above.

A requirement to seek ADR before applying to the court may be agreed upon by the parties in their underlying contract, in which case the court should not commence hearing the case until this has been satisfied.

ADR is also required to be performed by certain government agencies prior to a court proceeding, as per specific regulations.

7.3 Can the court compel the parties to use ADR?

See *Sections 3.2 and 7.2* above. Besides the obligation stated above, ADR is also applied to parties who agree to apply such procedure to resolve a dispute arising between them.

There is no mechanism by which a court may impose sanctions where ADR is unsuccessful or where one party does not cooperate in its application. Where ADR has failed, the court may take jurisdiction over the dispute. However, the court-mandated mediation process must be kept confidential by the parties and the mediator, who may be a different judge from the same court.

8. TRIAL

8.1 What are the main stages of a civil trial? How long would a significant commercial litigation trial last?

See *Section 3.2* above.

Hearings are held a week or two apart. Separate hearings are held for each of:

- Order to mediate.

- If that fails, submission by the plaintiff of its case.
- Submission by the defendant of its case.
- Hearing on *eksepsi* (jurisdictional challenges), if applicable.
- Submission of the defendant of its case.
- Each subsequent submission by each party.
- Presentation of documentary evidence.
- Testimony of witnesses.
- Conclusions (optional).
- Judgment.

The amount of time needed for witness testimony naturally varies, and will affect the duration of the case. Hearings may also be postponed where a party does not appear or, in some cases, where the judges are not available. Thus it is not possible to estimate with any accuracy how long the entire process will take.

8.2 Are civil court hearings held in public? Are court documents available to the public?

Based on Article 19 of Law No 4 of 2004, a civil court hearing is open to the public. The purpose of this principle is so that the public can be assured that the court proceedings is impartial and fair, and in accordance with the applicable law.

Theoretically, information regarding a civil proceeding is also open to the public; however, in practice, documents related to the proceedings will only be made available to, or with written authority of, the parties concerned.

9. REMEDIES

9.1 What are the main remedies available prior to trial? In what circumstances can such remedies be obtained?

There are no legal remedies available to the plaintiff prior to the submission of the claim under the civil procedural laws: HIR, Rbg and Rv. Once the case has commenced, however, the plaintiff may request a security attachment of specific identified assets of the defendant (*Sita Jaminan/Conservatoir Beslag*) (*see also Section 3.2 above*).

An interlocutory judgment is also known in the civil procedure. An interlocutory judgment is a judgment which is issued prior to the final judgment in order to facilitate the proceedings, for example a provisional judgment (a judgment related to the disputing parties' request for the court to order a party to perform a preliminary action concerning the interest of either party prior to the final judgment).

9.2 What final remedies are available at trial?

The final remedies available under the civil procedural laws are in the form of a declaration judgment, a constitutive judgment and a punitive judgment. However, damages can only be granted based on what the parties request in

their claim. Panels of judges are prohibited from granting damages exceeding the party's request (*ultra petita*). Final remedies in a breach of contract are in the form of damages, interest and costs. Final remedies in an unlawful act (tort) are in the form of damages for material and non--material losses, such as damages due to defamation. Damages are financial. Specific performance or injunctive relief is very rare in the Indonesian courts and, where ordered, is difficult to enforce or execute. Thus, alternative relief in the form of damages/compensation for failure to comply with such orders is normally provided, as payment of financial damages can be enforced by execution against assets of the losing party.

10. ENFORCEMENT

10.1 How is an award of damages enforced if a party fails to make payment voluntarily?

Final and binding judgments are enforced by the examining District Court. The winning party submits a request to the District Court to enforce the judgment. If such request is granted, the District Court will issue an order for enforcement. Following the process, based on Article 196 of the HIR, the winning party shall submit a request for the District Court to issue an order of *Aanmaning*, whereby the losing party is ordered to comply with the judgment within eight days. If the losing party does not comply with the obligations as stated in the judgment, the court may issue an attachment order (*Executorial Beslag*) against the losing party's identifiable assets and these may be sold at a public auction. Police assistance may be required to encourage the losing party to release the assets (property) that are subject to the attachment. Enforcement towards an asset in the form of a bank account comprises account blocking followed by account encashment, but the bank and account number must be advised to the court in order for such attachment to be possible.

11. APPEALS

11.1 Is it possible for a defeated party to appeal a decision after the close of trial? In what circumstances will a party be allowed to appeal?

The party defeated at the District Court level may submit an appeal to the High Court, by filing a notice of intention to appeal within 14 days following the District Court's pronouncement of judgment. If one of the parties was not present on the day of the pronouncement of judgment, the period of time to submit an appeal is 14 days following the receipt of the judgment notification (*relaas*) by either party. The applicant may also submit a Memorandum of Appeal (*Memori Banding*); however, there is no obligation for the applicant to submit such document, nor is a time limit specified. The High Court shall issue its ruling with or without the applicant's presence. If a Memorandum of Appeal has been submitted by the applicant, the appellee may submit a Counter-Memorandum of Appeal (*Kontra Memori Banding*); however, there is no obligation to do so.

The party defeated at the High Court level may submit a further appeal (cassation) request to the Supreme Court, through the District Court which issued the first judgment, within 14 days following the parties receiving the High Court judgment notification. Within 14 days of the cassation submission, a Memorandum of Cassation (*Memori Kasasi*) shall also be submitted to the court; such submission is mandatory for the cassation to be heard. The cassation appellee may also submit a Counter-Memorandum of Cassation (*Kontra Memori Kasasi*) within 14 days following the receipt of the Memorandum of Cassation by the cassation applicant.

In some cases, a further appeal, known as a Judicial Review (*Peninjauan Kembali*, or PK), may be filed to the Supreme Court in cases where new evidence is discovered or there is a manifest error of law.

11.2 What is the basic procedure for an appeal?

See *Section 11.1*.

The High Court (*judex factie*) is a second level court which is authorised to examine a judgment issued by the District Court. The examination is based only upon submitted documents, unless the court specifically requires a hearing to be performed.

The Supreme Court (*judex juris*) does not review or examine the facts; rather, it decides based only on matters of law, including whether the previous judgments from the High Court applied the law properly. Cases before the Supreme Court are held based on documents only, with no oral hearings.

12. COSTS/FUNDING

12.1 How are legal fees ordinarily charged to a client? On an hourly rate?

Legal fees are charged either on an hourly basis or as a lump sum, based on the mutual agreement between the lawyer and the client.

12.2 Are there any restrictions on lawyers entering into "no win, no fee" agreements with their clients?

There are no restrictions regarding fee arrangements. A client may be represented *pro bono,* or on contingent fee basis in part or as a whole.

Based on Article 21 of Law No 18 of 2003 regarding Advocates, an advocate/lawyer is entitled to receive payments/fees upon services provided. The fee arrangement shall be based on mutual agreement (*Article 21, paragraph 2*).

12.3 Is it permissible for a third party to fund a claim? Are there any restrictions on the use of such funding?

Yes, it is possible, based on an agreement. There are no restrictions on third party funding. However, this is not common and, to the best of our knowledge, there has been no securitisation of third-party funding. It is likely that the latter would not be permitted under Indonesia's banking laws.

12.4 Is it possible to obtain insurance which will cover the costs of bringing the claim?

There is no restriction against such insurance, but so far it is not known.

12.5 Can the court order a losing party to pay a winning party's costs? If so, in what circumstances and to what extent?

Generally, courts will not order a losing party to pay the legal costs of the successful party unless the parties have so agreed in their underlying contract. However, the court will normally order the losing party to cover the court and any other administrative costs.

12.6 Can the court make an order providing security for costs prior to permitting a claim to proceed? If so, what are the circumstances in which such an order is possible?

Not applicable.

13. COLLECTIVE ACTIONS

13.1 Can plaintiffs with similar claims bring a collective action against an alleged wrongdoer?

Similar claims may be brought by plaintiffs through a class action if the number of members of the group is so great that it would be ineffective and inefficient for the claims to be lodged individually or jointly in one claim. Based on Article 1(a) of Supreme Court Regulation No 1 of 2002, a class action is defined as follows:

"Class Action is a procedure for the submission of petitions, in which one or more persons who represent(s) a group submit(s) a petition for himself or themselves and concurrently represent(s) a great number of people with the same fact or legal basis among the representative of the group and the members of the group."

Class actions commonly arise from issues related to consumer protection or environmental damage, as regulated by Law No 8 of 1999 (Consumer Protection Law) and Law No 23 of 1997 (Environment Management Law). Such class actions would normally be brought by a group of affected persons or by a non-government organisation.

Supreme Court Regulation No 1 of 2002 regulates issues related to a class action. In order for a class action to be presented in court, the action must meet the main principles, which are numerosity and commonality. The numerosity principle indicates that a claim represents the interests of a group of people. The commonality principle indicates the principle of equality concerning the fact or the legal ground and the lawsuit/claim, marked with the same interest, same grievance and same purpose.

13.2 Is the procedure for bringing a collective action different to the procedure for a normal claim?

The procedure is basically similar to bringing a civil claim to court. However, in a class action it is expected that only one counsel will appear to represent the class. Although there is no such restriction for witnesses, the court will often impose a limit on the number of witnesses it is willing to hear.

14. OTHER SPECIAL FEATURES

14.1 Are there any other special features of the commercial litigation regime that litigants should be aware of?

There are no other particular features of Indonesian litigation that are extraordinary in terms of a civil law jurisdiction. Prior decisions of other courts, or even the same court, do not form part of the law, as precedents. However, the concept of *res judicata* (or *nebis in idem*) applies where the same matter has been adjudicated between the same parties. Concepts such as *error in personam* and similar also apply. Aside from the Constitutional Court and the Administrative Court, courts will not dismiss a case for procedural errors on their own initiative, but will consider

applications for this if submitted by a party. As mentioned in *Section 3.2* above, there is no mechanism for summary judgment; thus a case must be heard in its entirety before judgment will be rendered. Likewise, it must always be remembered that there is no discovery mechanism, so each party has the burden to prove itsr own case with its own evidence.

14.2 Are there any forthcoming changes to commercial litigation practice in your jurisdiction or any proposals for reform?

At the time of writing, Indonesia, in concert with Australia, is in the process of reviewing Supreme Court Regulation No 1 of 2008 on Mandatory Court-Annexed Mediation.

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