Comparative Guide to Commercial Litigation

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Prior to answering the questionaire below, it is necessary to clarify that the legal system in Indonesia is based on the Civil Law, having been adopted from the Dutch law which prevailed prior to Indonesia's independence in 1945.

1. Court structure

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

(Do different courts deal with different types of claim and if so, how is this determined? For example, on the amounts at stake, the complexity of the claim, or the subject matter of the proceedings. Are there different levels of appellate court?)

- Courts in Indonesia are divided according to their jurisdiction over the subject matter, as follows:
  1. General (District) Courts (performs hearings on both criminal and civil claims). An exception is the Commercial Courts, separate chambers established to hear bankruptcy and intellectual property claims only.
  2. Religious Courts (performs hearings specifically for the Moslems related to marriage, inheritance issues, and Islamic financing transanctions).
  3. Military Courts (performs hearings related to criminal acts involving military personnel).
  4. Administrative Court (performs hearings related to state administrative decree issuance and claims against governmental bodies relating to their duties).
  5. Constitutional Court (decides disputes relating to authority of state agencies, dissolution of political parties, election results and judicial review of laws alleged contrary to the constitution.)
  6. Corruption Court (performs hearings in cases of corruption causing losses to the state, usually brought by the Corruption Eradication Commission).
  7. Tax Court (separate courts to hear cases by or against the tax office of the Ministry of Finance); and
  8. Manpower courts (court 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, and further appeal known as *Cassation*, from decisions of the High Court, maybe submitted to

the Supreme Court. Towards cassation judgment, a losing party still has another final, extraordinary, legal remedy, being judicial review ("*Peninjauan Kembali*" or "PK") brought before to 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 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?

(If the court expects the parties to behave in a particular way prior to issuing proceedings, please give a brief indication of how the parties should behave. For example, are they required to discuss the claim and exchange documents? Are they required to try to resolve the dispute without resort to litigation?)

- Based on the Supreme Court Regulation No. 1 year 2008, the panel of judges in a District or Religious Court adjudicating any case other than criminal ones, must order the disputing parties to attempt to resolve their dispute through mediation before the court may hear argument in the case. The parties have 40 days for such mediation, which may be extended at their request and 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 the same as a final and binding court judgement.

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

(Please provide a very short answer indicating what the time limits are for the main types of civil claims.)

- Based on Article 1967 of the Indonesian Civil Code, generally 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. These include the following:
  - (i) 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.
  - (ii) Aviation claims: one year for claims relating to domestic flights, as provided in 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?

(Please indicate briefly the type of documentation that needs to be completed, whether it is necessary to file it at court, and whether it is communicated to the other party. What information needs to be set out in the claim documentations? Please confirm if it is the receipt or issuance of summons/claim by the court or the receipt of the summons/claim by the respondent that constitutes the formal commencement of proceedings)

- It must first be understood that Indonesia is a civil law jurisdiction. All Dutch laws in force in 1945, at the time of Indonesia's independence, remained in effect unless and until new laws were promulgated to replace them. Most of the basic procedural laws were not 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 HIR, a litigation proceeding is initiated by 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 Defendant is domiciled. If 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 meters.)
- Note that if a claim based upon a contract between or among the parties, where the parties have designated in that contract that a certain court will have jurisdiction over any disputes, the claim must be submitted to that designated court. (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 case examination. Therefore, 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 performance shall be no less than 3 days (Article 122 HIR).
- Information required in a Statement of Claim contains: the parties' identities (both Plaintiff and Defendant), 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 Rv. Of course normally these are expanded 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?

(Please indicate how the defendant may respond to a claim (eg, filing a defence, making a counterclaim, joining another party) and the time that a typical dispute would take to come to trial. Please also indicate whether the parties control the procedure and the timetable or whether the court is responsible for setting the timetable to trial. Is it possible to have the court issue judgment on some of the aspects of the dispute in advance of the trial?)

- As mentioned (in point 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 succesfull, the panel of judges shall issue an enforceable Amicable Resolution Deed (*Acte van dading*). On the contrary, if the mediation fails, the Claim shall proceed to litigation and 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 1 – 2 weeks, to allow the Defendant to submit its Reply (*Jawaban*) to the Claim. These are submitted in 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 at this time submit any jurisdictional or other procedural Challenge (*Eksepsi*) This would include defects such as validity of a party's power of attorney, error *in personam*, 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 Judgement to the High Court. If the Challenge is rejected by the panel of judges, the Defendant then must submit its Reply towards the Claim.
- Thereafter, in the next hearing, the Plaintiff submits its Counter Response (*Replik)* to the Defendant's Reply (*Replik*) and its defense to any counterclaim (*Duplik*) towards the *Replik*.
- At the next hearing, the Defendant will submit its Rejoinder (*Duplik).*
- Thereafter a hearing is held for production of the parties of their documentary evidence. This should be originals or copies verified by the court. The Plaintiff presents its evidence first followed by the Defendant.
- After all documentary evidence has been submitted, hearings will be held for examination of witnesses. These comprise of witnesses of fact and/or expert witnesses. Witnesses testify orally without presentation of written statements beforehand. The testimony is given under oath.
- Following the witness examination, the parties each have the opportunity to submit its concluding memorandum. This is an optional submission.
- Thereafter the panel of judges will determine the date for the pronouncement of judgment. A final hearing will then be held at which the judgment is read out.

Either party may appeal the judgement to the High Court by submitting a Notice of Intention to Appeal within 14 days of the pronouncement of the judgement. This is followed by submission of a Memorandum of Appeal.

Further appeal (*cassation)* to the Supreme Court is also available. (See section 11 on Appeals, below).

Hearings are normally scheduled one to two weeks apart. As the schedules were often overly delayed, the Supreme Court issued its No. 2 year 2014 requiring cases in the District Court to be resolved within 5 months, although the judges may seek an extension with approval of the Chair of the applicable District Court. Appeals in the High Court should be decided within 3 months.

Aside from issuance of a Deed of Settlement, in case of successful mediation, or Interlocutory Judgement dismissing a claim for jurisdictional or procedural defects, once the merits are submitted, the entire aspect of the claim shall be decided and judged jointly 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 is commenced would be for provisional attachment of identifyable assests of the Defendant upon request by the Plaintiff to protect its interests, as provided in Article 221 (1) HIR and 261 (1) Rbg).

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

(Please indicate whether it is possible to circumvent the normal timetable and obtain a court decision faster than would otherwise be available. In what circumstances is it possible to expedite matters? Is it possible to have the court issue judgment on some of the aspects of the dispute in advance of the trial)

- It is not possible to expedite a court proceeding for it is the panel of judges authority, 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 it is concerning the merits of the case.
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4. Documentary evidence

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

(Do parties have to disclose all documents relevant to their case? Do they only have to disclose documents which are easily accessible, or do they need to carry out a reasonable search? When and how does such disclosure take place? Are there any sanctions for the destruction of relevant evidence? If parties are not required to exchange relevant documents, how do parties obtain relevant documentary evidence prior to trial? Can documents be obtained from third parties? If so, under what circumstances?)

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 Indonesian Civil Code, the party who files/submits a claim is obliged to present evidence upon the 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?

(For example, are there rules concerning the amount of electronic documentation which must/can be produced? How are parties supposed to search for such 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?

(This query relates mainly to legal professional privilege. Please briefly explain in what circumstances parties are able to withhold disclosure of documents on the basis of privilege. Will the rules on privilege apply to advice given by lawyers that work in-house?)

- It is entirely up to each party to determine what documents it wishes to provide to the court.
- Note also that according to Article 19 of Law No. 18 year 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/given to the lawyer. This privilege can be overridden by certain specific legislation, such as for cases arising under the Anti Corruption Law (Article 36 of Law No. 31 year 1999), the Corruption Eradication Commision Law (Law No. 30 year 2002), and the Anti Money Laundering Law (Law No. 8 year 2010).

5. Witness evidence

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

(Do witnesses give written evidence, i.e. by way of deposition or witness statement? What issues will the witness statement/deposition evidence cover? What restrictions exist concerning the type of evidence a witness may give?)

- 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 on what he or she has seen, heard or otherwise or 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?

(Do they give written or oral evidence? If they give oral evidence, are they likely to be cross examined? Are there any sanctions if a witness lies in their evidence?)

- Based on Article 1866 of the Indonesian Civil Code and Article 164 HIR, a witness's testimony is classified as a part of the evidence.
- Presenting a witness testimony through teleconference is not recognized 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 videoconference*.)
- With the consent of the panel of judges, witnesses, both of fact and experts, are examined first by counsel for the party who has presented them and thereafter may be cross-examined by counsel for the other party. The judges themselves may question witnesses at any time during this process.
- In case 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 7 years.

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

(Who can force a witness to attend? How is the witness forced to attend?)

- 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 neccesary 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, for the most part witnesses are 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?

(In what circumstances are experts allowed to give evidence? Are experts appointed by the court or the parties? Is it normal for each party to have an expert or do the parties to instruct a joint 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?

(Do experts give written evidence, i.e. by way of deposition or witness statement? What issues will the experts' evidence cover? What restrictions exist concerning the type of evidence an expert may give?)

- No.

- As stated in 5.2, 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?

(Do they give written or oral evidence? If they give oral evidence, are they likely to be cross examined?)

- Experts give their evidence orally in the hearing, and may be cross-examined by the judges or by opposing counsel.
- See answer 5.2 and 6.2

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

(Is it necessary for an expert witness to be impartial, and if so, if an expert is paid by one of the parties, are there any rules to ensure that he/she provides an independent opinion that is not influenced by the needs to the client?)

- There are no rules concerning fees paid for the experts' testimony. Of course, in practice the expert is paid by the party whom present the expert in court. Nonetheless it is expected that an expert will act impartially and independently. Their role is to assist the court, not to be advocates for the party presenting them.
- The panel of judges is not, however, bound by the testimony presented by an expert witness.

7. Ending a claim/ADR

7.1 Please state the main ways in which a claim may be brought to an end before trial.

(Can a claimant choose to abandon their claim and if so, what consequences are they likely to face? Is it possible for a claim to be struck out on the basis that it lacks merit?)

- A claim may be revoked by the Plaintiff without consent of the Defedant only as long as the Defendant has not yet submitted its Reply or Counter Claim.
- Article 271 and 272 Rv regulates following matters in revocation :
  1. The party entitled to revoke a claim is the Plaintiff itself or its proxy based on a Power of Attorney;
  2. A revocation towards a claim which is not yet examined by the court is the Plaintiff's absolute right, which the revocation shall be conducted based on a written request without prior consent from the Defendant;
  3. A revocation towards a claim during a court examination, is required to obtain a prior consent / approval from 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 towards the claim shall continue.

- Legal consequences arising from the revocation are as follows: the revocation shall terminate the claim, the parties are considered 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), and fees are borne by the Plaintiff.

7.2 What alternative dispute resolution (ADR) procedures are available?

(E.g negotiation, mediation, expert determination, judicial appraisal or other relevant ADR procedures. Are the ADR options available throughout the life of the claim?)

- Based on Article 1 paragraph 10 of Law No. 30 year 1999 regarding Arbitration and Alternative Dispute Resolution, ADR is a mechanism applied to resolve disputes or opinion difference through procedures agreed by the parties, i.e. consultation, negotiation, mediation, conciliation, and expert assessment.
- Based on the Supreme Court Regulation No. 1 year 2008, prior to entering a litigation procedure, the panel of judges in the District Court are obligated to order the disputing parties to attempt an amicable resolution, through court annexed mediation, otherwise the judgment shall be null and void. See item 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 to hear 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?

(Must parties engage with ADR? Can the court impose sanctions for a failure to use ADR and in what circumstances will it do so?)

- See items 3.2 and 7.2, above. Besides the obligation as 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, but at least 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 Briefly describe the main stages of a civil trial and indicate how long a significant commercial litigation trial would last.

(Please briefly describe the main steps and provide a very rough estimate of timing, plus an indication of what factors would affect the timescale, such as how many witnesses are giving evidence.)

- See answer 3.2.

- Hearings are held a week or two apart. A separate hearing for each of: order to mediate; if that fails, submission by Plaintiff of its case; submission by Defendant of its case; hearing on *eksepsi* (jurisdictional challenges), if applicable; submission of Defendant of its case; each subsequent submission by each party; presentation of documentaty evidence; testimony of witnesses; conclusions (optional); judgement. The amount of time needed for witness testimony varies, of course, 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 year 2004, a civil court hearing is opened to public. The purpose of this principle is so that the public can be assured that the court proceedings is impartial, fair, and is in accordance with the applicable law.
- Theoretically, information regarding a civil proceeding is open to the public, however, in practice, documents related to the proceedings will only be made available to, or with written consent 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?

(Eg, injunctions, orders for documents to be provided, orders for security to be provided. Can urgent remedies, such as injunctions, be obtained without notice to the other party?)

- There are no legal remedies that are 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, a Plaintiffmay request a security attachment of specific identified assets of the Defendant (*Sita Jaminan / Conservatoir Beslag*) (see also item 3.2).
- An Interlocutory Judgment is also known in the Civil Procedural Law. An Interlocutory Judgment is a judgment which is issued prior to the final judgment in order to facilitate the proceedings, such as a Provisional Judgment (a judgment related to the disputing parties' request for the court 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?

(Eg, damages, injunctions, declarations, rectification of a contract, specific performance – requiring a party to perform their obligations.)

- Final remedies available under the Civil Procedural Law are in the form of a declaration judgment, constitutive judgment, and a punitive judgment. However, damages can only be granted based on what the parties request in their Claim. Panel of judges are prohibited from granting damages exceeding the parties 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-immaterial losses, such as losses due to defamation. Damages are financial. Specific performance or injunctive relief is very rare in the Indonesian courts and where ordered it 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 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?

(Will this depend on whether the judgment is for money or not? Please only indicate the methods that are most commonly used.)

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 HIR the winning party shall submit a request for the District Court to issue an order of *Aanmaning* where 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) which are subject to the attachment. Enforcement towards an asset in form of a bank account is account blocking followed by the 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?

(Where is the appeal made and on what grounds can an appeal be launched?)

- The defeated party 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. In case of 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 judgment notification (*Relaas*) is received by either parties. 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

there a time limit determined. The High Court shall issue their ruling with or without the Applicant's presence. If a Memorandum of Appeal is 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 defeated party 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 receive 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, which 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 Judicial Review (*Peninjauan Kembali)* 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?

(Will the appeal be a repeat of the trial, with the appellate court hearing the evidence again, or will it only look at a certain element of the case? Will the appellate court be able to see witnesses and experts and consider documents?)

- See answer 11.1
- The High Court (*judex factie*) is a second level court which is authorized 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, it only decides based on the matters of law, including the issues whether the previous judgments from the High Court and the District Court applied the law properly. Cases before the Supreme Court are held 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 lump sum, based on a mutual agreement between the lawyer and client.

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

(Please indicate whether contingency fee agreements (i.e., arrangements where the client pays a proportion of their damages to the lawyer if its claim is successful but pays no fee if the claim is unsuccessful) are permitted and whether conditional fee agreements (i.e., arrangements where the client pays standard fees plus a percentage uplift on those fees if the claim is successful but pays no fee or lower fees if the claim is

unsuccessful) are permitted? If permitted, can these arrangements be entered into in any circumstance, or only in relation to certain claims?)

- There are no restrictions regarding fee arrangements. A client may be represented *pro bono,* or on contingent fee basis in part or all.
- Based on Article 21 of Law No. 18 year 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 as yet, but this is not common and, to the knowledge of the writers, 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?

(Either by way of insurance which is obtained before any claim is contemplated, or by way of insurance which is obtained after the claim is contemplated?)

- 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?

(Will the losing party have to pay the winning party's costs? If so, will the losing party be obliged to pay all of those costs or only a limited proportion (eg, what is reasonable)? What information is provided to the other side about costs?)

- 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.
- The court normally will order the losing party to cover the court and any other administrative costs, however.

12.6 Can the court make an order providing security for costs prior to permitting a claim to proceed? If so, please briefly outline 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?

(Are there any limits on the sorts of claims that can be brought on behalf of a large group of claimants? How is the class of claimants defined? Are claimants obliged to

opt into the claim in order to be included, or are they automatically included unless they opt out?)

- Similar claims may be brought by Plaintiffs through a Class Action in case of the number of the members of the group is so great that it will be ineffective and inefficient if the claim is lodged individually or jointly in one claim. Based on Article 1(a) of The Supreme Court Regulation No. 1 year 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 and Environment, as regulated in Law No. 8 year 1999 (Consumer Protection Law) and Law No. 23 year 1997 (Environment Management). Such class actions would normally be brought by a group of affected persons or by a Non-Government Organisaiton (NGO).
- Supreme Court Regulation No. 1 year 2002 regulates issues related to a Class Action. In order for a class action to be presented in court the action shall meet the main principles, which are Numerousity Principle and Commonality Principle. Numerousity principle indicates that a Claim is representing a group of people's interest. While 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 the same purpose.

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

(If so, please indicate briefly how the procedure is different.)

- 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 often will impose limits 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 precedent. However, the concept of *res judicata* (or *nebis in idem*) does apply where the same matter has been adjudicated between the same parties. Concepts such as *error in personam* and others 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 earlier, there is no mechanism for Summary Judgement and thus a case must be heard in its entirety before judgement will be rendered. Likewise, it must always be remembered that there is no discovery mechanism and each party has the burden to prove its 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 the Supreme Court Regulation No. 1 year 2008 on Mandatory Court-Annexed Mediation.

Please provide the author contact details for the book. In addition, these will be used for distribution purposes upon publication unless otherwise specified.

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