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The Legal 500 Country Comparative Guides

Indonesia

LITIGATION

Contributing firm

Sandiva



Allova Herling Mengko

Partner | allova.mengko@sandiva.co

Arthur Wailan Sanger

Partner | arthur.sanger@legal.sandiva.co

Febry Arisandi

Partner | febry.arisandi@legal.sandiva.co

This country-specific Q&A provides an overview of litigation laws and regulations applicable in Indonesia.

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INDONESIA LITIGATION



1. What are the main methods of resolving commercial disputes?

There are two main methods in resolving disputes in Indonesia i.e.: Courts and Alternative Dispute Resolution (ADR). There are 4 types of court in Indonesia, i.e. general courts for civil and criminal cases, state administrative court, religious court, and military court. Specifically, for commercial disputes related to bankruptcy, Intellectual property will be examined by commercial court which is under the general courts as mentioned above. Commercial disputes for sharia finance and banking will be handled by religious court as well. ADR can be chosen by the parties as court alternatives, the methods are arbitration, conciliation, mediation, consultation, and expert judgment.

2. What are the main procedural rules governing commercial litigation?

The rules that govern the civil procedural law are under a code of procedural law. For the regions of Java and Madura, the procedural law is governed by Herzien Indlandsch Reglement (HIR), while the other regions are governed by Rechtreglement voor de Buitengewesten. The procedure of the hearing governed in code of procedural also applies in arbitration, general court (civil case), and religious court. For bankruptcy cases, the procedural law is also regulated under Law Number 37 of 2004 regarding Bankruptcy and Delay of Payment (Bankruptcy Law).

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

In general court there are three level of court: The District Court is the court of first instance. The High Court is the court of appeal. The Supreme Court is the final court of appeal. For bankruptcy and intellectual property cases under the commercial court, the district court decision can only be appealed to the Supreme

Court as the final court of appeal. The Supreme Court's court decision for the final appeal can be reviewed by the Supreme Court thru a judicial review. However the process of the judicial review does not postpone the execution of the Supreme Court final of appeal's decision.

4. How long does it typically take from commencing proceedings to get to trial?

Upon registration, and after the chairman of the District Court appoints a panel of judges to preside over the case, the deputy registrar is required to issue a summons letter to the defendant at least 3 days prior to the first court hearing. In practice, from the registration of a lawsuit to the first hearing may take 2 weeks to 1 month. If any of the parties are domiciled beyond the court authority, it may take more than 1 month until the first hearing, as summons to attend hearing are delivered by the relevant authorize court. The above does not apply for delay of payment and bankruptcy petitions under the Commercial Court. Bankruptcy law requires the Commercial Court to issue a judgment within a limit of time from the registration of the petition, which are as follows: A delay of payment petition submitted by a debtor, the judgment must be issued within 3 days as of the date of the registration of the petition. A delay of payment petition submitted by a creditor, the judgment must be issued within 20 days as of the registration of the petition. A bankruptcy petition, the judgment must be issued within 60 days as of the registration of the petition.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

Court hearings in general court and commercial court is open for public, the exception applies for child/underage hearing, family hearing (e.g. divorce), sexual harassment hearing, some criminal hearing. Documents filed at court is not open to the public. The only publicly accessible

documents are court decisions. However, to obtain a copy of the court decision, will required to file an application to the Court and will be given based on the discretion of the Chairman of the District Court.

6. What, if any, are the relevant limitation periods?

As regulated in Indonesia Civil Code, the right to claim shall pass after 30 years. The time limits calculation shall be decided case by case by the presiding judge. The judges cannot actively, by his powers determine if a claim has passed the time limit.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

Indonesian procedural law does not have pre action conduct requirements. However, the Supreme Court regulates the panel of judges in the first hearing the judges to order the parties to revert the case to a mediation process with an appointed mediator. Failing to order the parties to go thru a mediation process may cause the court decision to be null and void. For the parties to not comply with the mediation proceedings may be deemed as not having good faith.

8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

In brief, the proceedings commence after the plaintiff submits the lawsuit or petition and pay the court fee. The court will issue summons to attend hearing to the parties. The summons to attend hearings will be delivered by the court bailiff.

9. How does the court determine whether it has jurisdiction over a claim?

The court will determine whether it has jurisdiction firstly based on court jurisdiction associated with the nature of the case. For example, sharia finance and banking cannot be filed with the Civil Court, any claims related to sharia falls under the jurisdiction of the Religious Court. Another example if there is an arbitration clause in the disputed agreement, the court will declare to not have jurisdiction of the claim. The other court jurisdiction is related to region of the court. If parties to a claim have

agreed in an agreement to settle any dispute arising in a specific court region, other court region shall not have jurisdiction over the claim.

10. How does the court determine what law will apply to the claims?

Judges has authority to determine what law will apply to the claims. However, panel of judges cannot reject a claim based on the reason that there is no law that applies.

11. In what circumstances, if any, can claims be disposed of without a full trial?

If the parties reach a settlement at any time during the proceeding.

12. What, if any, are the main types of interim remedies available?

Indonesian procedural law does not recognize the concept of interim remedies or injunction prior to the registration of a claim. There is no legal remedy for a claimant before a claim is formally registered with the court. Upon registering a claim, the pre-judgment remedies which are available; (i) An Attachment order; (ii) Provisional decision, is usually an order from the court to the defendant to do or not to do something, similar to an injunction.

13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

The defendant must submit its Response (Jawaban) to the Plaintiff's Claim. The plaintiff then may file its counter plea (replik). The filing of the Replik triggers the defendant file a rejoinder or response to the replik (duplik). When these written submissions have been duly filed at the court, another session is scheduled to examine written exhibits submitted by both parties. After examination of exhibits, a hearing shall be scheduled for the purpose of accepting final written submissions from each party, the conclusion. The usual timetable is the hearing is held once a week. In bankruptcy and delay of payment cases in commercial court, due to the limitation of time, the Plaintiff would not be asked to submit a counter plea and thus the defendant would not need to file a rejoinder.

14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

There are no rules for disclosure of documents in Indonesia. However, in the Civil Court and Commercial Court, the parties have the right to examine counterpart evidence named inzage. Inzage is conducted in Clerk office with the consent of the counterpart and the approval from the judges.

15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

In the commercial litigation proceedings, a witness gives his information orally under oath before the judges and the parties. The deposition or in Indonesia known as witness statement or affidavit is required in arbitration process.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

An expert can be requested to testify by the judges or the parties. The expert must provide the testimony under oath before the court.

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

An interim decision can be appealed together with the final decision of the claim to the High Court.

18. What are the rules governing enforcement of foreign judgments?

Indonesian Court does not recognize foreign court judgement. Parties is required to file a new claim before the relevant district court in Indonesia. The judgment of the foreign court will be given such evidentiary weight as an Indonesian court deems appropriate. The procedure will effectively amount to a retrial and the Indonesian court will not be bound by the findings of the foreign

court.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?

Based on the Supreme Court jurisprudence, a party cannot ask its counterpart to pay the litigation costs, as the claim was the initiative of the plaintiff and therefore all costs must be paid by the plaintiff. However, and in most cases, the court may instruct the losing party to pay the court costs.

20. What, if any, are the collective redress (e.g. class action) mechanisms?

The Supreme Court Regulation No. 1 of 2002 regulates that the class action lawsuit can be submitted if: The number of the group member is too many, therefore it will be ineffective to submit the claim individually in one lawsuit. There are substantial similarities in fact, event, and legal basis. And the similarities for the type of the claim between the group member as well. The group representatives are honest and sincere in defending the legal interest of the group member. The judges could advise the group representatives to change their lawyer if the lawyer act contrary to the obligation in defending and protecting the legal interests of the group member.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

A third party can join an ongoing proceeding by filling an application of intervention to the presiding panel of judges. The intervention by the third party must show the interest of the third. The panel of judges will then decide whether to accept the intervention.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

There are no rules prohibiting or regulates for third parties to fund litigation. In practice, litigation funding is not known institutionally but merely known made by

individuals.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?

The impact of Pandemic COVID-19 on litigation is the implementation of court proceedings. The court proceedings which was usually conducted an examination before the panel of judges, to prevent the spread of the virus, Judge adopted remote examinations, especially for criminal case where the defendant was detained during the Covid- 19 Pandemic or examination of witnesses, experts, and defendants. Hence there is no delay in the procedure.

24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

International arbitration awards can be recognized in Indonesia which differs to International court judgment. As regulated under Law Number 30 of 1999, International Arbitration Awards will only be recognized and may only be enforced within the jurisdiction of the Republic of Indonesia if they fulfill certain requirements. However, many foreign arbitration awards still face challenges in its enforcement in Indonesia based on the requirements under the Law.

25. What, in your opinion, is the most likely growth area for disputes for the next

five years?

Indonesia is now growing rapidly in economic sector; therefore, the demand of commercial transaction will be higher than before. Rapidly growing commercial transaction will impact the number of disputes in our jurisdiction especially commercial disputes such bankruptcy and delay of payment. The commercial court is one of the alternatives to settle commercial cases with shorter time than conventional one. We assume that in the next five years the settlement thru commercial court will increase in significant amount.

26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

The Supreme Court of Indonesia has launched the electronic court (E-Court) system which change the trial proceedings system. The E-Court makes the court proceedings is more effective and efficient. For now, E-Court system applies for District Court, Religious Court, Military Court and State Administrative Court. We believe that in next 5 years the E-Court process will have a good impact for lawyers and clients. It will be time and cost efficient for lawyers, and thus will benefit clients as well.

27. What, if any, will be the long -term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

The long term impact of the COVID-19 pandemic on commercial litigation is the use of an electronic trial (E-Court) by the disputing parties so that the trial process becomes more effective and according to a predetermined time.

Contributors

Allova Herling Mengko
Partner

allova.mengko@sandiva.co



Arthur Wailan Sanger
Partner

arthur.sanger@legal.sandiva.co



Febry Arisandi
Partner

febry.arisandi@legal.sandiva.co

