

# Indonesia: Issues with Litigation and International Arbitration

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# Foreign Court Judgements

- Indonesia recognizes neither a federal court system nor a state court system. Indonesia is not a party to any international convention concerning the recognition and enforcement of foreign court judgments.
- If a party seeks enforcement of an obligation from its counterparty pursuant to a foreign court judgment in Indonesia, the case must be filed as a new claim before the Indonesian District Court having jurisdiction.



# Courts in Indonesia

- Pursuant to Law No. 48 of 2009 regarding Judicial Authority (“**Judicial Authority Law**”), Indonesian Judicial System comprises several types of court under the supervision of the Supreme Court :
  1. Civil Court;
  2. Religious Court;
  3. Administrative Court;
  4. Military Court; and
  5. Tax Court
- There is a separate Constitutional Court
- Furthermore, Indonesia also has a national arbitral institution, the Indonesian National Arbitration Body (*Badan Arbitrase Nasional Indonesia* or “BANI”).

# Civil Courts

- The following is the stage of proceedings applicable to civil lawsuits brought to Indonesian courts:
  1. District Court
  2. Appeal to High Court
  3. Appeal to Supreme Court
    - Cassation
    - Judicial Review: The party may submit for Judicial Review, if:
      - (i) the losing party finds substantial evidence which was not presented during the proceedings;
      - (ii) the judgment was based on a fraud;
      - (iii) the judgment granted something that was not claimed;
      - (iv) a part of the claim has not been adjudicated;
      - (v) judgment conflicts with other decisions issued by the same court; and
      - (vi) there was manifest error or oversight in the judge's ruling.
  4. Execution or Enforcement of Judgment
  5. Pre-Judgment Remedies
    - Indonesian procedural law does not recognize the concept of pre-judgment remedies and injunction prior to the adjudication of a claim

# Issues with Civil Proceedings

- **Lack of Predictability**  
Both judges and legal practitioners have a wide variety of views on basic principles of law in Indonesia.
- **Unclear Jurisdiction**  
There are potential challenges to be brought with respect to relative and absolute competence of courts.
- **Lack of Transparency**  
The full dynamics of judicial proceedings are not always apparent.
- **Emphasis on Written Pleadings**  
The written pleadings, containing the claims and arguments of the party submitting the pleadings, are the main basis of examination by the Court.
- **Weak Evidentiary Standards**  
In practice, the evidentiary standard applied by Indonesian courts is not clearly defined or consistent.

# Insolvency Proceedings



Pursuant to Law No. 37 of 2004 regarding Bankruptcy and Suspension of Payment (“Bankruptcy Law”), the types of insolvency proceedings are as follows:

- Suspension of Debt Payment Obligations (“PKPU”)  
The suspension of debt payment obligations gives the debtor the opportunity to prepare, negotiate and submit a composition plan to its creditors for their approval.
- Bankruptcy  
General attachment of all assets will be managed and liquidated by a Curator under the supervision of a Supervisory Judge.

The proceedings may occur when a debtor has two or more creditors and has failed to pay at least one debt that is already due and payable. The debt must also be capable of simple authentication.

# Benefits of Insolvency Proceedings

- Easy to Commence
- Fast Process  
The maximum period for PKPU proceeding to complete is 270 days, resulting in a liquidation bankruptcy should the creditor's meeting refuse to grant the extended suspension of payment.
- Limited Grounds for Appeal of a PKPU Settlement Agreement
  - Assets of Debtor are far too low to satisfy terms of Composition Plan.
  - Implementation of Composition Plan is insufficiently certain.
  - Composition Plan achieved through fraud or conspiracy.
  - Fees of Administrators and Experts not paid or secured.
- Specially Trained Judges

# Issues with Insolvency Proceedings

- Appointment of Administrator/Curator
- Professional Standards
- Unclear Evidentiary Standards and Procedures
- Inconsistency
- Perceived Bias in favour of Debtor



# International Arbitration

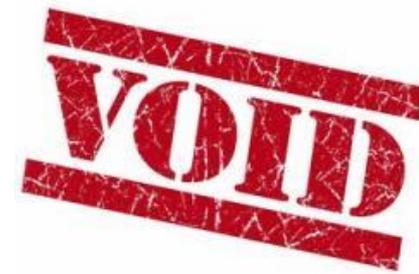
- Law No. 30 of 1999 regarding Arbitration and Alternative Dispute Settlement permits the recognition and enforcement of an International Arbitral Award in Indonesia.
- Indonesia has ratified the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards through Presidential Decree No. 34/1981 and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States through Law No. 5 of 1968.
- Law No. 30/1999 further defines that:

“The District Court of Central Jakarta shall be the court vested with the authority to handle matters of the recognition and enforcement of International Arbitration Awards.”

# Recognition

- Recognition of an international arbitral award is required before enforcement.
- In response to an application to recognize a foreign arbitral award, the Court shall accept to grant an exequatur recognizing the award the award for enforcement in accordance with Indonesian enforcement procedures, unless:
  1. The award is rendered in a state which is not bound by a bilateral or multilateral convention or treaty on the recognition and enforcement of foreign arbitral awards, by which Indonesia is bound;
  2. The legal relationship on which the award was based cannot be considered as commercial under Indonesian law, or
  3. The recognition or enforcement of the award would be contrary to public policy.

# Nullification



- In the case that any of the conditions set forth below are not met, the Courts may refuse to recognize the International Arbitration Award:
  1. Executed by an arbitral panel located in a country which is party to a convention with Indonesia for the enforcement;
  2. Falls under the scope of commercial law;
  3. The arbitral award is not contrary to public order;
  4. Has obtained an *exequatur* from the Central Jakarta District Court or the Supreme Court if the award concerns the Republic of Indonesia as one of the disputing parties.
- The Supreme Court has issued Circular Letter No. 04 of 2016 concerning applications for nullification. The Circular Letter provides that there is no appeal from a decision of a District Court rejecting an application to annul an international arbitral award. However, appeal to the Supreme Court is available if the application for nullification is granted, in which case the Supreme Court decision shall be final and binding, and there can be no further judicial review.

# Enforcement

- Enforcement occurs after an award is recognized by issuance of exequatur.
- Pursuant to Article 64 of Arbitration Law, enforcement of an international arbitral award follows the procedure applicable to civil cases in general.
- Based on the exequatur, in enforcing an award, the District Court with jurisdiction over the losing party's domicile may:
  - Summons the losing party to appear before the court.
  - Issue a warning to the losing party to comply with the award within a maximum period of eight days.
  - If the losing party fails to comply with the award within the eight-day period, the winning party may request the District Court to issue an order for the sale of the losing party's assets to satisfy the award (executorial attachment).

# Procedure to Challenge an Awards

There is no requirement that a losing party be notified of an application to recognize an international arbitral award.

As a result, an application to nullify an award is typically made only at the enforcement stage.

# Case Study 1 – PT Ayunda Prima Mitra, PT First Media, Tbk., and PT Direct Vision vs. Astro Group

Supreme Court Decision No. 26 PK/Pdt.Sus-Arbit/2016

- This case concerns the recognition and enforcement of several foreign arbitral awards produced by the Singapore International Arbitration Center (SIAC) in a dispute between Astro Group Companies and PT Ayunda Prima Mitra, PT First Media, Tbk., and PT Direct Vision (the “Respondents”) filed to the Central Jakarta District Court by Astro Group Companies in in 2010.
- Challenge: The Respondents challenged the enforcement on several grounds, particularly on violation of public order.
- Decision: The District Court rejected the petition of the Astro Group Companies on the ground of violation of public order, citing certain clauses of the arbitral award depriving a party of the right to bring claims to the Indonesian courts as an illegal cause. This decision was upheld by the Supreme Court in cassation and judicial review phase.

## Case Study 2 – PT. Fega Indotama vs. LVMH Fragrances & Cosmetics (Singapore) Pte. Ltd.

Supreme Court Decision No. 705 B/Pdt.Sus-Arbt/2015

- This case concerns a petition by PT Fega Indotama (“PT FI”) to annul the award produced by the Singapore International Arbitration Center (SIAC) on September 13, 2012 to the Central Jakarta District Court.
- Challenge: PTFI brought the case to Indonesia, seeking annulment of the original contract on the basis that it was invalid, bearing in mind the violation of the law and public policy. The argument was that the arbitration clause was also invalid.
- Decision: The District Court rejected the petition from PT FI on the ground of premature submission, since there had been no Central Jakarta District Court decision issued to recognize and enforce the arbitral award.

## Case Study 3 – Recognized (PT. Indratex Spindo vs. Everseason Enterprises Ltd.)

Supreme Court Decision No. 219 B/Pdt.Sus-Arbt/2016

- This case concerns an annulment petition filed by PT Indratex Spindo (“PT IS”) against an arbitral award issued by the International Cotton Association Limited (“ICA”).
- Challenge: PTIS claimed that the award was produced based on deception regarding the legality of the Claimant’s legal domicile, which should be the British Virgin Islands instead of Hong Kong as claimed during the ICA proceedings. PTIS further claimed that the award was contrary to public order.
- Decision: The District Court rejected the petition to annul the foreign arbitral award from the ICA on the basis that, to annul the award, PTIS must file the petition before the courts of the country where the award was issued.

## Case Study 4 – Recognized (PT. Monas Permata Persada vs. Standard Chartered Bank and PT Jembo Cable Company, Tbk.)

Supreme Court Decision No. 101 PK/Pdt.Sus-Arbit/2017

- This case concerns the enforcement of an arbitral award produced by the Singapore International Arbitration Center (SIAC) on September 23, 2012 in a dispute concerning the performance of ISDA Agreements between the disputing parties, filed by Standard Chartered Bank to the Central Jakarta District Court in 2014.
- Challenge: PT Monas Permata Persada (“PT MPP”) brought an action in the Central Jakarta District Court seeking annulment of the ISDA Agreements on the grounds that they were contrary to public policy.
- Decision: The Supreme Court upheld recognition of the award on the grounds that the challenge was actually for annulment of the award, and there were no grounds for annulment.

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