



# Complex Commercial Litigation

Consulting editors

**Simon Bushell**

*Seladore Legal*

---

Quick reference guide enabling side-by-side comparison of local insights into the litigation market and legal framework; pre-action considerations (including alternative dispute resolution); bringing and defending a claim; procedural steps; funding; costs; appeals; cross-border enforcement; the advantages and disadvantages of litigating in this jurisdiction; and recent trends.

---

Generated 11 November 2022

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2022 Law Business Research

# Table of contents

## **BACKGROUND**

Frequency of use  
Litigation market  
Legal framework

## **BRINGING A CLAIM - INITIAL CONSIDERATIONS**

Key issues to consider  
Establishing jurisdiction  
Preclusion  
Applicability of foreign laws  
Initial steps  
Freezing assets  
Pre-action conduct requirements  
Other interim relief  
Alternative dispute resolution  
Claims against natural persons versus corporations  
Class actions  
Third-party funding  
Contingency fee arrangements

## **THE CLAIM**

Launching claims  
Serving claims on foreign parties  
Key causes of action  
Claim amendments  
Remedies  
Recoverable damages

## **RESPONDING TO THE CLAIM**

Early steps available  
Defence structure  
Changing defence  
Sharing liability  
Avoiding trial

**Case of no defence**

**Claiming security**

## **PROGRESSING THE CASE**

**Typical procedural steps**

**Bringing in additional parties**

**Consolidating proceedings**

**Court decision making**

**Evidence**

**Time frame**

**Gaining an advantage**

**Impact of third-party funding**

**Impact of technology**

**Parallel proceedings**

## **TRIAL**

**Trial conduct**

**Use of juries**

**Confidentiality**

**Media interest**

**Proving claims**

## **POST-TRIAL**

**Costs**

**Appeals**

**Enforceability**

## **OTHER CONSIDERATIONS**

**Interesting features**

**Jurisdictional disadvantages**

**Special considerations**

## **UPDATE AND TRENDS**

**Key developments of the past year**

## Contributors

### Indonesia



**Mahareksha S. Dillon**  
maharekshadillon@ssek.com  
*SSEK Legal Consultants*



**Indrawan Dwi Yuriutomo**  
indrawanyuriutomo@ssek.com  
*SSEK Legal Consultants*



**Joseph Hendrik**  
josephhendrik@ssek.com  
*SSEK Legal Consultants*



**Talitha Amanda Ekadhani**  
TalithaEkadhani@ssek.com  
*SSEK Legal Consultants*

## BACKGROUND

### Frequency of use

How common is commercial litigation as a method of resolving high-value, complex disputes?

While there are several business actors in Indonesia that are known to be litigious, generally, Indonesian companies are non-confrontational in nature, which affects the dispute settlement culture. Disputing parties generally attempt to resolve disputes amicably, usually through negotiations. If that fails to produce a settlement, parties will initiate legal proceedings. For high-value, complex disputes that arise from contracts, the dispute settlement mechanism of choice is typically arbitration as it allows parties to choose arbitrators who are experts in the disputed matter. However, if the dispute arises from an unlawful act without any contract between the disputing parties, legal proceedings are likely to be carried out through the courts.

During the covid-19 pandemic, there was a significant increase in the number of debt-restructuring proceedings – known as PKPU – used by creditors as the legal avenue to seek repayment from debtors. PKPU allows high-value cases to be resolved in an expeditious process whereby debtors must provide a repayment scheme that creditors will vote on. If the debtor fails to obtain the approval of the creditors, they will be declared bankrupt.

*Law stated - 23 September 2022*

### Litigation market

Please describe the culture and 'market' for litigation. Do international parties regularly participate in disputes in the court system in your jurisdiction, or do the disputes typically tend to be regional?

The dispute resolution mechanism initiated will be carried out pursuant to the dispute settlement clause in the agreement between the parties. In the agreement, the parties usually determine the court that has jurisdiction to settle any disputes that may arise between the parties. The parties may not seek dispute resolution through the courts if they have agreed to settle disputes through arbitration in their agreement. The court will reject the dispute if a party insists on bringing the dispute to court.

Disputes brought before Indonesian courts tend to be regional, although international parties may participate in disputes in the court system in Indonesia, as stipulated in article 100 of Reglement op de Rechtsvordering. (This is the regulation on civil procedural matters that applied to Europeans and Far Easterners that came from the Dutch colonial era. While the HIR is the accepted Indonesian Civil Procedural Code, if there are articles in the Rv not provided in the HIR, then the court will refer to the Rv.) However, international parties that participate in litigation in Indonesia may find the process challenging, particularly the registration of the power of attorney to participate in the litigation and the presentation of documents as evidence. This is because foreign documents (ie, documents issued or signed outside of Indonesia) must be notarised and apostilled and a copy of any such document must first be affixed with a stamp duty of 10,000 rupiah for submission. If the document is not in Bahasa Indonesia it must be translated by a sworn translator.

*Law stated - 23 September 2022*

### Legal framework

What is the legal framework governing commercial litigation? Is your jurisdiction subject to civil code or common law? What practical implications does this have?

Indonesia's main legal framework is the civil law system that adopted the Dutch colonial law, while also recognising

customary law and religious law. However, until today, Aceh is the only province in Indonesia that has implemented a religious legal system, referred to as Qanun .

In connection with commercial litigation, the civil law system in Indonesia heavily impacts litigation proceedings. Unlike in countries with a common law system, Indonesian judges are not bound by legal precedent. Thus, each case before the Indonesian courts is examined on a case-by-case basis by taking into account its particular facts and merits.

There are three stages of litigation proceedings that can be brought to Indonesian general courts, namely (1) the district court as the court of first instance; (2) the high court as the court of appeal; and (3) the Supreme Court as the cassation court.

Other than the general courts, the Indonesian legal system also recognises specialised courts for certain commercial disputes. These include the (1) commercial court as the court that handles bankruptcies, suspension of debt payment, and intellectual property disputes; and (2) the industrial relations court as the court that handles employment disputes.

*Law stated - 23 September 2022*

## BRINGING A CLAIM - INITIAL CONSIDERATIONS

### Key issues to consider

What key issues should a party consider before bringing a claim?

The first thing a party must consider before bringing a claim is whether the party has agreed to be subject to a certain dispute resolution mechanism. The second is to identify the entity and the location of the defendant.

A civil commercial dispute can only be filed with the court if there is an unlawful act (tort) or a breach of contract. Thus, a party should consider whether such unlawful act (tort) or a breach of contract has taken place before bringing a claim to the court.

While it is not expressly provided under the laws, a plaintiff is expected to send demand letters to the defendant before submitting a claim against to the court unless provided otherwise in the relevant agreement.

*Law stated - 23 September 2022*

### Establishing jurisdiction

How is jurisdiction established?

The jurisdiction of a court is determined based on its relative and absolute competence. In this regard, relative competence is the authority of a court to adjudicate a case in accordance with its jurisdiction. Absolute competence relates to the authority of the court to adjudicate a case according to the object, material or subject matter of the dispute, which will determine the type of court where the dispute must be settled (eg, commercial court or industrial relations court).

In determining the relative competence of a court, a party that will file a lawsuit may consider the following:

- the lawsuit can be submitted to the district court with jurisdiction over the domicile of the defendant;
- if there is more than one defendant, the lawsuit can be submitted to the district court with jurisdiction over the domicile of one of the defendants;
- if there is a principal debtor amongst other debtors, the lawsuit can be submitted to the district court with jurisdiction over the domicile of the principal debtor;
- if the domicile of the defendant is unknown, the lawsuit can be submitted to the district court in the domicile of the plaintiff;

- the lawsuit can be submitted to the district court where the immovable object of the dispute is located;
- the lawsuit can be submitted to the district court agreed by the parties in their agreement; and
- if the government of Indonesia acts as the plaintiff or the defendant, the lawsuit can be submitted to the district court where the relevant government department is located.

*Law stated - 23 September 2022*

## Preclusion

Res judicata: is preclusion applicable, and if so how?

Indonesian law applies the principle of *res judicata pro veritate habetur*, which means that court decisions must be considered true and correct, until a higher court decides otherwise. This principle builds the binding power of court decisions as it obliges the parties to adhere to court decisions.

*Law stated - 23 September 2022*

## Applicability of foreign laws

In what circumstances will the courts apply foreign laws to determine issues being litigated before them?

Indonesian courts adhere to the choice of law determined by the disputing parties in the underlying agreement. However, in practice, it is uncommon for Indonesian courts to apply foreign laws in the trial.

If the parties do not stipulate the choice of law or if the claim is non-contractual in nature, the choice of law for the court proceedings shall apply the following rules:

- the law applied to objects is the law where the object is located;
- the law applied to contracts is the law where the contract was concluded; and
- the law applied to persons is the law of the person's domicile.

*Law stated - 23 September 2022*

## Initial steps

What initial steps should a claimant consider to ensure that any eventual judgment is satisfied?  
Can a defendant take steps to make themselves 'judgment proof'?

Prior to filing a lawsuit, a claimant or plaintiff must ensure that they have all the arguments and strong evidence to support their arguments against the defendant. It is important for the plaintiff to send more than one warning letter to the defendant prior to filing their lawsuit. The defendant's response to the warning letters will determine the arguments presented in the plaintiff's lawsuit (eg, the defendant is not acting in good faith). For a breach of contract lawsuit, a plaintiff must ensure that their lawsuit is in accordance with the dispute settlement resolution provided in the contract (if any).

There are no specific actions that a defendant can take to make themselves 'judgment proof'. A defendant must be able to convince the court through their arguments and provide sufficient evidence that they did not breach any agreement or conduct any unlawful act against the plaintiff.

*Law stated - 23 September 2022*

## Freezing assets

When is it appropriate for a claimant to consider obtaining an order freezing a defendant's assets? What are the preconditions and other considerations?

Freezing a defendant's assets is known as collateral confiscation, as regulated by article 1131 of the Indonesian Civil Code. Collateral confiscation can only be carried out if there is a reasonable suspicion that the defendant is trying to transfer their assets to avoid the claimant's lawsuit, requiring such assets to be confiscated to guarantee the implementation of the court decision by cashing or selling the confiscated assets.

Initially, collateral confiscation shall be carried out against the movable assets of the defendant. However, if such movable assets are not sufficient, the defendant's immovable assets (eg, land and house) shall also be confiscated.

Collateral confiscation can be requested orally or in writing. In practice, the claimant will usually include the request for collateral confiscation in the lawsuit. If there is a request for collateral confiscation in the lawsuit, the panel of judges will examine the request in parallel with the examination of the case. If the request for collateral confiscation by the claimant is granted, the panel of judges or the Chief of the Court will issue a Decree of Collateral Confiscation. Subsequently, the collateral confiscation will be executed by the clerk or bailiff. If later the lawsuit of the claimant is granted, the panel of judges will render a decision to declare that the collateral confiscation is valid and valuable. However, if the lawsuit is rejected or declared unacceptable, the panel of judges will order the collateral confiscation to be removed.

*Law stated - 23 September 2022*

## Pre-action conduct requirements

Are there requirements for pre-action conduct and what are the consequences of non-compliance?

Before the plaintiff submits its claim to the relevant district court, the plaintiff will normally serve the defendant up to three warning letters, essentially alleging breach of contract followed by a request for compensation. This requirement does not apply if the contract specifies the conditions, circumstances or actions that automatically amount to a breach of contract.

*Law stated - 23 September 2022*

## Other interim relief

What other forms of interim relief can be sought?

Interim relief can be sought by the plaintiff to prevent further losses. The request for interim relief must be submitted at the same time as the registration of a claim with a court, in which the plaintiff may request the panel of judges to grant attachment orders or provisional or immediate judgment. Such a request can only be granted by the panel of judges if it is proven that the defendant will transfer its assets to other parties to avoid claims.

*Law stated - 23 September 2022*

## Alternative dispute resolution

Does the court require or expect parties to engage in ADR at the pre-action stage or later in the case? What are the consequences of failing to engage in ADR at these stages?

Before the court starts the litigation trial, the court will order the disputing parties to carry out mediation. The parties may choose the court's internal mediator or a certified external mediator. The mediation process will be free of charge if the parties choose to use the court's internal mediator and hold the mediation in one of the court rooms. Unlike court trials, the mediation process is basically closed to the public, unless the parties state otherwise.

If the disputing parties can achieve an amicable settlement through mediation, the parties will then enter into a settlement agreement that can be endorsed by the panel of judges. This settlement agreement shall be treated in the same manner as a final and binding court decision. If the disputing parties fail to achieve an amicable settlement through mediation, the panel of judges will then start the trial to hear and adjudicate the case.

If one of or all the parties fails to attend the mediation two times in a row, the mediator is obliged to declare that mediation has failed and the panel of judges will then start the trial.

*Law stated - 23 September 2022*

### **Claims against natural persons versus corporations**

Are there different considerations for claims against natural persons as opposed to corporations?

There is no distinction between natural persons and corporations in claims.

*Law stated - 23 September 2022*

### **Class actions**

Are any of the considerations different for class actions, multiparty or group litigations?

Class action lawsuits are regulated under a 2002 Supreme Court Regulation. The definition of 'class action' is a procedure to file a lawsuit whereby one or more individuals representing a group file a lawsuit for the interest of themselves or to represent a group that has a large number of people with similar facts or a legal basis between the group representative and the group members.

The considerations of the panel of judges for class action lawsuits will not be different from the considerations for lawsuits filed by individuals or legal entities, or both.

*Law stated - 23 September 2022*

### **Third-party funding**

What restrictions are there on third parties funding the costs of the litigation or agreeing to pay adverse costs?

To date, there is no specific regulation on third-party funding in Indonesia. There is also no publicly available jurisprudence of the Indonesian courts relating to the use of third-party funding. There are also no associations or companies in Indonesia recorded as having a formal presence in the business of providing third-party funding for litigation.

*Law stated - 23 September 2022*

## Contingency fee arrangements

Can lawyers act on a contingency fee basis? What options are available? What issues should be considered before entering into an arrangement of this nature?

The law does not prohibit any type of fee arrangement. Thus, it is possible for lawyers to act on a contingency fee basis.

The arrangement of lawyer fees shall be determined by the lawyer and the client. Generally, the lawyer will set an hourly fee or fixed fee for the client. However, a fixed fee is usually preferred by clients as it allows them to anticipate the cost that will be incurred for the proceedings.

In applying a contingency fee, it is crucial to stipulate the terms of engagement between the lawyers and the clients in the engagement letter to protect the interests of both parties. Lawyers should ensure that the fee shall be paid if the lawsuit is successful or concludes in favour of the client. On the other side, the client should ensure that the lawyer will not charge any legal fees to the client if the result of the trial is unfavourable to the client.

*Law stated - 23 September 2022*

## THE CLAIM

### Launching claims

How are claims launched? How are the written pleadings structured, and how long do they tend to be? What documents need to be appended to the pleading?

Pursuant to article 118 of the HIR, and article 10 of Rv, which is the civil procedural code for islands outside of Java, claims are launched when the plaintiff submits a statement of claim for registration at the relevant district court. If the plaintiff is represented by counsel, they should also submit a legalised power of attorney. There are no requirements for the structure or length of written pleadings. However, for the panel of judges to rule in favour of the plaintiff, the statement of claims must be able to explain the plaintiff's position and provide sufficient evidence.

*Law stated - 23 September 2022*

### Serving claims on foreign parties

How are claims served on foreign parties?

Claims against foreign parties are recognised in article 100 of the Rv, which stipulates that foreign citizens, including those not domiciled in Indonesia, may be sued in an Indonesian civil court. However, the stipulation does not further regulate which court may have jurisdiction over disputes between an Indonesian party and a foreign party. The regulations are also silent on the procedure for claims against foreign parties. Thus, foreign parties may receive the same treatment as Indonesians in terms of claims.

*Law stated - 23 September 2022*

### Key causes of action

What are the key causes of action that typically arise in commercial litigation?

Civil commercial disputes can only be filed in court if there is an unlawful act (tort) or a breach of contract. Therefore, the grounds of civil commercial lawsuits are all related to an unlawful act or a breach of contract or default.

Default as explained in article 1238 of the Indonesian Civil Code is a condition in which the debtor is declared negligent by a warrant, or by a similar deed, or based on the engagement itself (ie, if this engagement results in the debtor being deemed negligent by the passage of the specified time). A party will be declared as committing a default if the party:

- did not do what was promised;
- did what was promised but not as exactly as promised;
- did what was promised but was too late; and/or
- did something that according to the agreement could not be done.

An unlawful act is defined by article 1365 of the Indonesian Civil Code as every act that violates the law and brings harm or loss to others. Further, the regulation obliges the person causing the harm/loss to compensate the suffering party. An action will be categorised as an unlawful act if it fulfils the following elements:

- the existence of an action;
- the act is against the law;
- there is an error on the part of the perpetrator;
- there is a loss for the victim; and
- there is a causal relationship between the act and the loss.

*Law stated - 23 September 2022*

## Claim amendments

### Under what circumstances can amendments to claims be made?

Amendments to claims are permitted if such amendments are filed before the defendant submits a response to the claim. If the defendant has submitted the response to the claim, the amendment to the claim can only be made with the consent of the defendant.

The claimant can only amend its claim if:

- the amendment will not result in a change in the subject matter of the case; and
- there is no amendment in the prayer for relief (posita).

*Law stated - 23 September 2022*

## Remedies

### What remedies are available to a claimant in your jurisdiction?

The remedies for breach of contract claims are compensation for losses, interests, and costs. This includes loss of profits or loss of opportunities, as long as they can be calculated and proven to the panel of judges. In relation to remedies for unlawful acts (tort), the compensation is for material and nonmaterial losses.

*Law stated - 23 September 2022*

## Recoverable damages

**What damages are recoverable? Are there any particular rules on damages that might make this jurisdiction more favourable than others?**

Unlike in common law systems, punitive damages are not applicable in Indonesia since damages are rather compensatory in nature. Damages are divided into material or immaterial damages, or both. Material damages are losses that are actually suffered by a party. Immaterial damages are losses on benefits or gains that could have been received in the future. As regulated in articles 1243 and 1365 of the Indonesian Civil Code, damages may result from a default or unlawful act.

According to article 1246 of the Indonesian Civil Code, in the event of default, a party may seek compensation for the following:

- expenses (ie, expenses or costs that have been incurred by the suffering party);
- losses (ie, loss due to damage or loss of goods or property belonging to one party caused by the negligence of the other party); or
- interest (ie, the profit that should be obtained or expected by one party).

Unlike a default, there is no specific regulation on types of compensation in the event of an unlawful act. However, article 1371 paragraph (2) of the Indonesian Civil Code provides implied guidelines for compensation in the event of unlawful act (ie, compensation for unlawful acts must be assessed according to the position and ability of both parties), as well as the factual circumstances. Rosa Agustina, an Indonesian civil law scholar, views that damages due to unlawful acts are only loss, while damages in the event of default may arise from costs, losses and interest, as explained above.

*Law stated - 23 September 2022*

## **RESPONDING TO THE CLAIM**

### **Early steps available**

**What steps are open to a defendant in the early part of a case?**

A defendant may file their defence against the claimant's claim. Other than the defence against the merits of the case, a defendant may also file exceptions to argue the formalities of the claim, such as:

- Absolute competence. This exception is brought to challenge the jurisdiction of the court according to the subject matter of the case. For instance, if the defendant views that the case should be examined by the Industrial Relations Court rather than the Commercial Court.
- Relative competence. Similar to absolute competence, this exception is brought to challenge the jurisdiction of the court. However, relative competence is more to do with the territorial aspect of a court. For instance, if the defendant views that the case should be examined by the Central Jakarta District Court rather than the South Jakarta District Court.
- Formal requirements of a claim. This exception is brought to challenge the formalities of a claim.

*Law stated - 23 September 2022*

## Defence structure

How are defences structured, and must they be served within any time limits? What documents need to be appended to the defence?

After the hearing for the reading of the plaintiff's statement of claims, the defendant will have one to two weeks to prepare and submit its statement of defence to the plaintiff's claims. The defendant may also submit a counterclaim. The defendant may raise a jurisdictional or procedural challenge at this stage, and if it is accepted the court will render an interlocutory judgment declining the plaintiff's claims for further examination.

The plaintiff will then have the opportunity to submit its rejoinder to the defendant's statement of defence and its defence to the plaintiff's counterclaim within one to two weeks, and the defendant will then submit a response to the rejoinder and any rejoinder to the plaintiff's defence to the defendant's counter-claim.

The statement of defence and the response to the rejoinder should not be appended with any documents. The defendant will have an opportunity to present its documentary evidence at a date set by the panel of judges.

*Law stated - 23 September 2022*

## Changing defence

Under what circumstances may a defendant change a defence at a later stage in the proceedings?

The defendant's arguments in the statement of defence and its defence to the plaintiffs' counterclaim should be consistent. The defendant cannot change its defence at a later stage in the proceeding since they will only have two opportunities to submit their written statement of defence.

All parties will have the opportunity to submit a written conclusion (closing statement); however, the conclusion is a summary of all the documents submitted by the defendant during the course of the hearings and it should be consistent.

*Law stated - 23 September 2022*

## Sharing liability

How can a defendant establish the passing on or sharing of liability?

The defendant can establish the passing on or sharing of liability in their counterclaim. However, it is important to note that a defendant can only file a counterclaim against the plaintiff. A defendant cannot file a counterclaim against the other defendants. In one of its decisions, the Supreme Court stated that a counterclaim involving parties who are not the plaintiffs in the original claim is contradictory to laws and thus such a counterclaim cannot be accepted.

*Law stated - 23 September 2022*

## Avoiding trial

How can a defendant avoid trial?

In every dispute, the panel of judges always advises the parties to settle their dispute before the Panel reaches a decision. It is one way for the defendant to avoid a trial.

It is common for a defendant to file an absolute competence exception challenging the court's competence to adjudicate the dispute. While an objection to the district court's absolute competence may be raised by the defendant at any time throughout the proceeding, an objection to the court's relative competence must be submitted by the defendant in the first court hearing together with its response to the plaintiff's claim. If that condition is not fulfilled, the defendant's right to raise an objection to the court's relative competence is forfeited. In the event the defendant files a counterclaim, it will not avoid the trial process and the Panel must then decide on the plaintiff's claims and the defendant's counterclaims.

*Law stated - 23 September 2022*

### **Case of no defence**

**What happens in the case of a no-show or if no defence is offered?**

If a defendant does not appear in the hearing upon being appropriately summoned, then the defendant will be deemed to have waived their right to defend themselves and the panel of judges will render a *verstek* decision. If the defendant does not accept the decision, the defendant may file a challenge (*verzet*) against the court decision.

Defence in the Indonesian legal system is not mandatory since defence is a right granted to defendants. Thus, the hearing shall continue despite the lack of defence by the defendant.

*Law stated - 23 September 2022*

### **Claiming security**

**Can a defendant claim security for costs? If so, what form of security can be provided?**

Currently, Indonesia does not have any regulations pertaining to security for litigation costs.

*Law stated - 23 September 2022*

## **PROGRESSING THE CASE**

### **Typical procedural steps**

**What is the typical sequence of procedural steps in commercial litigation in this country?**

At the first hearing, the panel of judges will advise the parties to settle the dispute amicably by way of a mediation. If mediation fails, the panel of judges will begin to hear and examine the case.

The first order of business in the trial will be the reading of the lawsuit by the plaintiff, followed by the reading of the defence from the defendant at the next trial session (if any). The interval between trial sessions is usually seven to 14 days.

In the next hearing, the claimant will respond to the defendant's defence. If the defendant decides to respond to the claimant's response, the defendant shall submit its reply in the next hearing.

If the defendant includes an exception of absolute competence in its defence, the panel of judges shall render an immediate decision on whether the court has jurisdiction over the dispute. If the court has jurisdiction, the panel of judges will continue to the evidentiary hearing phase of the trial. If the court has no jurisdiction over the dispute, the panel of judges will cease the trial.

In the evidentiary hearing, both the claimant and the defendant will submit their evidence to strengthen their respective arguments.

Following the evidentiary hearing, both the claimant and the defendant will submit their final conclusions on the case being examined. The panel of judges will then assemble to discuss the decision that will be rendered. Subsequently, the panel of judges will read out its decision in the next and final hearing.

*Law stated - 23 September 2022*

### **Bringing in additional parties**

#### **Can additional parties be brought into a case after commencement?**

Additional parties cannot be brought into a case after commencement because that would constitute an amendment to the material aspects of the lawsuit. An amendment to a lawsuit can only be made provided that:

- the amendment will not result in a change in the subject matter of the case; and
- there is no amendment in the prayer for relief (posita).

*Law stated - 23 September 2022*

### **Consolidating proceedings**

#### **Can proceedings be consolidated or split?**

Consolidation of lawsuits is possible if there is a close relationship between the lawsuits. However, according to Supreme Court Decision No. 677.K/Sip/1972 dated 13 December 1972, a case that is subject to a special procedural law cannot be combined with another case that is subject to a general procedural law, even if such cases are closely related. For instance, a lawsuit for default cannot be combined with a case on intellectual property rights due to different applicable procedural laws.

*Law stated - 23 September 2022*

### **Court decision making**

#### **How does a court decide if the claims or allegations are proven? What are the elements required to find in favour, and what is the burden of proof?**

Judges in civil proceedings decide a dispute based on the evidence presented by the disputing parties; they are not empowered to request additional evidence beyond what the parties have formally presented. However, judges may inquire further into the relevance and materiality of each piece of evidence as they believe necessary to reach a decision.

Pursuant to article 1865 of the Indonesian Civil Code, the burden of proof in addressing damages in general lies on the person making the allegation, in this case, the plaintiff. Therefore, to obtain a favourable judgement, the plaintiff must present strong evidence to the panel of judges to support its statement of claims.

*Law stated - 23 September 2022*

#### **How does a court decide what judgments, remedies and orders it will issue?**

After the parties have submitted their conclusion, the panel of judges will determine a date to render its final judgment. The panel of judges will decide based on the evidence presented by the disputing parties.

## Evidence

### How is witness, documentary and expert evidence dealt with?

Witnesses and experts who appear before the court will testify under oath in accordance with their respective religion. Each party, including the panel of judges, will have the opportunity to question the witnesses. The claimant and the defendant may ask questions to support their respective arguments. Documents submitted as evidence must first be affixed with a stamp duty of 10,000 rupiah. If the documents are not in the Indonesian language, they must be translated by a sworn translator before being submitted to the court.

There is no distinction between oral and documentary evidence as the value of evidence and witnesses depends on the considerations of the panel of judges examining the case.

Law stated - 23 September 2022

### How does the court deal with large volumes of commercial or technical evidence?

The panel of judges must review all evidence submitted by the parties. Every dispute at the district court will have a designated court registrar who will record all evidence submitted by the parties. If there are large volumes of evidence, including the number of witnesses presented by the parties, the panel of judges will provide several hearing dates so the parties may submit and present all of their evidence.

Law stated - 23 September 2022

### Can a witness in your jurisdiction be compelled to give evidence in or to a foreign court? And can a court in your jurisdiction compel a foreign witness to give evidence?

Indonesian law is silent regarding Indonesian witnesses in foreign courts.

Foreign witnesses are allowed to testify before Indonesian courts. However, a party presenting a foreign witness is obliged to provide an official sworn translator to translate the witness' statement to the court.

Law stated - 23 September 2022

### How is witness and documentary evidence tested up to and during trial? Is cross-examination permitted?

A party may voluntarily present witnesses and documentary evidence to support their argument.

Witnesses who appear before the court will testify under oath in accordance with their respective religion. Each party, including the panel of judges, will have the opportunity to question the witnesses. The claimant or the defendant may ask questions to support their arguments. Thus, cross-examination is permitted.

Documents submitted as evidence must first be affixed with a stamp duty of 10,000 rupiah. If the documents are not made in the Indonesian language, they must be translated by a sworn translator beforehand.

Law stated - 23 September 2022

## Time frame

How long do the proceedings typically last, and in what circumstances can they be expedited?

The general civil claim procedure entails three stages: examination of facts at the court of first instance (District Court), review of the examination of facts at the appeals court (High Court), and final review of law at the cassation court (Supreme Court). Following a Supreme Court decision, parties can still pursue extraordinary remedies, including filing for a judicial review at the Supreme Court for limited reasons such as the existence of new evidence ( *novum* ).

The timeline for the District Court to complete its examination of a case may vary depending on, *inter alia* , the complexity of the case, the number of parties involved, and potential delaying tactics employed by a counterparty – especially a foreign one – throughout the proceedings. On paper, the Supreme Court has issued Supreme Court Circular Letter No. 2 of 2014 regarding Completion of Cases in the Court of First Instance and Court of Appeal at four Judicial Institutions, which sought to set an expected deadline for district courts to issue a decision within five months of the claim being filed. However, in practice, most cases involving technical and expert evidence as well as foreign parties may take up to one year or more to close.

If a foreign party is one of the defendants or co-defendants, the time required for the court just to serve a summons to such party is at least four months, and a party must at least be summoned twice before the court can decide whether to continue the proceeding in the absence of the relevant party. There are some panels of judges that will summon the parties three times before proceeding with the court hearings.

The timeline for the High Court and the Supreme Court to complete their examination on appeal and cassation, respectively, also varies depending on the case backlog. It is reasonable to expect it to take up to one year for the High Court to issue a decision and another one year for the Supreme Court.

There are no formal procedures for parties to request the District Court, High Court and Supreme Court to expedite the process.

*Law stated - 23 September 2022*

## Gaining an advantage

What other steps can a party take during proceedings to achieve tactical advantage in a case?

The only step a party can take to achieve a tactical advantage is for the defendant to challenge the authority of a court in adjudicating a dispute that is not in accordance with its jurisdiction. If the challenge is accepted, the court will render an interlocutory judgment declining the plaintiff's claims for further examination.

*Law stated - 23 September 2022*

## Impact of third-party funding

If third parties are able to fund the costs of the litigation and pay adverse costs, what impact can this have on the case?

To date, there is no specific regulation on third-party funding in Indonesia.

*Law stated - 23 September 2022*

## Impact of technology

What impact is technology having on complex commercial litigation in your jurisdiction?

Under Law No. 11 of 2008 regarding Electronic Information and Transactions, as amended by Law No. 19 of 2016 regarding the same, the courts are now expressly entitled to accept electronic information and/or electronic documents and correspondence as valid legal evidence. However, this excludes documents that are required by law to be in a written form, or in a notarial deed form, or required to be drawn up by land deed officials.

In addition, since early 2019, all civil lawsuits must be filed through the Indonesian electronic court (E-Court) system. With the E-Court system, disputing parties will only need to present in front of the panel of judges during the reading of the claims by the plaintiff and the evidentiary hearing (ie, submission of evidence and examination of witnesses).

*Law stated - 23 September 2022*

## Parallel proceedings

How are parallel proceedings dealt with? What steps can a party take to gain a tactical advantage in these circumstances, and may a party bring private prosecutions?

In Indonesia, if during an examination of a criminal court proceeding a matter or legal relationship must be decided between the parties in the matter, the criminal court proceeding may be deferred to allow for a decision to be reached by the civil courts.

However, if the criminal case is still being investigated by the police, theoretically, a civil court proceeding would not adversely affect the investigation or the police report. Nonetheless, we understand that in practice the police may delay the investigation of a reported crime if they know that the matter also involves a civil law dispute, but this is at the discretion of the police. Since it is at the discretion of the police and the panel of judges to accept or dismiss a parallel proceeding, there is no clear tactical advantage that can be reached by the parties.

*Law stated - 23 September 2022*

## TRIAL

### Trial conduct

How is the trial conducted for common types of commercial litigation? How long does the trial typically last?

For commercial litigation (civil case) proceedings, there is a Supreme Court Circular Letter that instructs the District Court to finish the examination of a dispute within five months from the date the lawsuit is received. There are no sanctions if a lawsuit takes longer than this period. However, if a lawsuit is entering its fifth month, the District Court must explain to the Supreme Court why the lawsuit is taking longer than five months. There are exceptions to this instruction, one of which is if the dispute is complicated.

The Circular Letter does not take into account the time required to serve foreign defendants, the required 30 to 60-day mediation period and the period required for the court to hear the petition for absolute competence, each of which occurs before the start of the hearings on the merits of the lawsuit. An examination of the merits will only occur if the Exception on Absolute Competence filed by the defendant is dismissed. If the panel of judges accepts the Exception on Absolute Competence the lawsuit will be dismissed.

## Use of juries

Are jury trials the norm, and can they be denied?

There are no jury trials in Indonesia.

Law stated - 23 September 2022

## Confidentiality

How is confidentiality treated? Can all evidence be publicly accessed? How can sensitive commercial information be protected? Is public access granted to the courts?

Evidence cannot be accessed publicly since it is only submitted to the panel of judges. The opposing party may only see the evidence submitted by the other party under the supervision of the panel of judges, and this can only be done during the hearing. The public shall not have access to the evidence submitted to the panel of judges.

However, since civil commercial hearings are open to the public, submitted evidence and other information disclosed during the hearing (including sensitive commercial information) can be accessed by the public. Court decisions can also be accessed by the public through the official website of the Supreme Court.

Law stated - 23 September 2022

## Media interest

How is media interest dealt with? Is the media ever ordered not to report on certain information?

In Indonesia, civil commercial hearings are open to the public. Thus, journalists may monitor hearings in person. However, the panel of judges has the authority to regulate the course of the hearing and can also regulate the behaviour of journalists in the courtroom such as making recordings of the hearing.

In practice, journalists are free to report certain information provided that it is in accordance with the code of professional ethics applicable to journalists.

Law stated - 23 September 2022

## Proving claims

How are monetary claims valued and proved?

There are only two bases for filing a claim under Indonesian law, which are: (1) claims on the basis of default or violation of an agreement; and (2) claims on the basis of unlawful act or tort. Should the panel of judges grant the claim filed by the plaintiff, they have full authority to determine the final amount of compensation that the defendant must pay to the plaintiff for the plaintiff's losses. The assessment of damages by the panel of judges will take place at the same time as the trial of the merits. Therefore, it is vital for the plaintiff to substantiate its compensation demand in the lawsuit with supporting evidence and calculations.

Law stated - 23 September 2022

## POST-TRIAL

### Costs

How does the court deal with costs? What is the typical structure and length of judgments in complex commercial cases, and are they publicly accessible?

As a matter of procedure, a plaintiff is required to bear the initial costs for the registration of a lawsuit with the district court. The amount is around US\$100 to US\$200, but can be higher depending on the circumstance (eg, if the court must summon a multitude of parties). If the claimant's lawsuit succeeds, the court will instruct the defendant as the losing party to compensate the claimant for such costs in addition to any damages granted. The cost will be stayed until there is a final and binding decision in case of an appeal and cassation.

Other than the cost of proceedings above, there are no other costs that are expressly recoverable by the parties. It is possible to claim, for example, legal costs incurred due to the engagement of lawyers and/or other experts by classifying these costs as a claim for damages (in the case of the respondent, by way of a counterclaim). However, in our experience, this is not likely to succeed

For complex commercial cases, especially with numerous parties, the judgment can be lengthy since it will provide, inter alia: (1) the arguments provided by the parties during the course of the hearings, (2) the evidence, (3) the statements of the witness and expert witness, etc. Court decisions are publicly available and will be uploaded to the Supreme Court's website.

*Law stated - 23 September 2022*

### Appeals

When can judgments be appealed? How many stages of appeal are there and how long do appeals tend to last?

Appeals can be submitted to the high court having the same territorial jurisdiction as the district court. The appeal must be submitted within 14 days from the date of the reading of the decision. Otherwise, the decision will be regarded as final and binding and an appeal cannot be filed against a final and binding decision.

The decision of the high court can be further appealed to the Supreme Court, which is referred to as cassation. An application for cassation can be filed within 14 days of the decision being pronounced by the high court.

The decision of the higher court shall prevail over the decision of the lower court. Thus, the decision of the lower court will no longer be applicable if the higher court issues a decision in the case being appealed.

*Law stated - 23 September 2022*

### Enforceability

How enforceable internationally are judgments from the courts in your jurisdiction?

Indonesian law is silent on the enforcement of the judgments of Indonesian courts in another jurisdiction. The enforcement of Indonesian judgments in another jurisdiction shall depend on the regulations of that jurisdiction.

*Law stated - 23 September 2022*

## How do the courts in your jurisdiction support the process of enforcing foreign judgments?

Foreign judgments are not enforceable in Indonesia as Indonesia is not a party to any international convention regarding the enforcement of foreign judgments. Thus, the party should file a new claim to the district court to execute the foreign judgment. The foreign judgment will later be submitted as evidence during the evidentiary hearing. However, the court will not be bound by the foreign judgment.

*Law stated - 23 September 2022*

### OTHER CONSIDERATIONS

#### Interesting features

Are there any particularly interesting features or tactical advantages of litigating in this country not addressed in any of the previous questions?

No.

*Law stated - 23 September 2022*

#### Jurisdictional disadvantages

Are there any particular disadvantages of litigating in your jurisdiction, whether procedural or pragmatic?

Unfortunately, corruption is still an issue in the Indonesian judiciary and affects objectivity and impartiality.

Indonesian Corruption Watch reports that corruption patterns, such as the choice of judges appointed to cases and negotiated verdicts with judges, are prevalent in Indonesia. We believe that corrupt practices occur throughout all levels of the judiciary. At the same time, the Indonesian government has been trying to eliminate corrupt practices in the Indonesian judiciary through various means, such as aid-related judicial reform projects and the prosecution of judges by the Corruption Eradication Commission (KPK).

In addition, as a general comment on the quality of judges in Indonesia, quality obviously varies from person to person, depending on experience, education and intellectual power. Most judges in Indonesia are career judges, meaning that they join the judiciary upon graduation from law school. This means they had no exposure to the practice of law, which, in our view, has a negative impact on their ability to deal with complex commercial transactions. Also, the salary structure and the requirement to be posted in different parts of Indonesia discourage better law graduates from entering the judiciary. The same salary structure is also a major contributing factor to corruption.

*Law stated - 23 September 2022*

#### Special considerations

Are there special considerations to be taken into account when defending a claim in your jurisdiction, that have not been addressed in the previous questions?

No.

*Law stated - 23 September 2022*

## UPDATE AND TRENDS

### Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

One of the most recent notable cases in Indonesia concerns the possibility of filing a cassation in a Suspension of Debt Payment Obligation (PKPU) case. Previously, there was no legal remedy that could be filed against a decision in a PKPU case.

Article 235 of Law No. 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligation (Law 37/2004) regulates that there is no legal remedy, including cassation, that can be sought against the decision in a PKPU case. However, the Constitutional Court, through Constitutional Court's Decision No. 23/PUU-XIX/2021, decided on the petition for a judicial review of article 235 paragraph (1) and article 293 paragraph (1) of Law 37/2004.

In the decision, the panel of judges declared that article 235 paragraph (1) and article 293 paragraph (1) of Law 37/2004 are contrary to the 1945 Constitution and do not have binding legal force and shall not be construed to restrict the possibility cassation by either the debtor or the creditor in a Suspension of Debt Payment Obligation.

As such, now a cassation can be filed against the decision in a Suspension of Debt Payment Obligation provided that it fulfils the following conditions:

- the Suspension of Debt Payment Obligation application is submitted by the creditor; and
- the composition plan submitted by the debtor is rejected by the creditor.

*Law stated - 23 September 2022*

## Jurisdictions

	<b>Australia</b>	Holding Redlich
	<b>Bermuda</b>	MJM Barristers & Attorneys
	<b>Brazil</b>	Arruda Alvim, Aragão, Lins & Sato Advogados
	<b>China</b>	Jincheng Tongda & Neal
	<b>Cyprus</b>	Karamanolis & Karamanolis LLC
	<b>Ghana</b>	Ferociter
	<b>Gibraltar</b>	Signature Litigation
	<b>India</b>	Chadha & Co
	<b>Indonesia</b>	SSEK Legal Consultants
	<b>Lithuania</b>	Triniti Jurex
	<b>Luxembourg</b>	Brucher Thieltgen & Partners
	<b>Mexico</b>	OLIVARES
	<b>Netherlands</b>	Evers Soerjatin NV
	<b>Switzerland</b>	Kellerhals Carrard
	<b>Thailand</b>	Duensing Kippen
	<b>United Arab Emirates</b>	Horizons & Co Law Firm
	<b>United Kingdom - England &amp; Wales</b>	Seladore Legal
	<b>USA</b>	Vinson & Elkins LLP