

Indonesian civil procedure essay



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a. Executive Summary

Indonesia is not the signer of the Hague Convention. Indonesian Civil Procedure is based on two ordinances, which were adopted from the Dutch Colonial system, which are *Herziene Inlandsch Reglement (HIR)* and *Rechtsreglement voor de Buitengewesten (RBg.)*. Furthermore, based on the Temporary Law to the Emergency Condition Law No. 1 of 1951 on the probationary considerations province that to those two ordinances remained in force up to the new ordinances in relation to the Civil Procedure Process will be issued in intent of guaranteeing uniformity in the disposal, competence and process of the civil tribunals. However, in relation to the affairs of obtaining the grounds and the topics that are parts of the Civil Case, the *Burgerlijk Wetboek/the Codes of Civil Procedure Book/Kitab Undang-Undang Hukum Perdata*.

I. Service Process I. The First Court Process in District Court

The first tribunal in the civil process in relation to the civil instance should treat is the District Court (*Pengadilan Negeri*). The first procedure should be the complainant registers their claim with the registrar office of a District tribunal through the Head of the Clerk Court. Afterwards, the caput of the District Court will restart the claim in relation to name a individual justice or a panel of Judges to analyze the instance. Generally, a batch of instances are heard and examined by a panel with three Judges. The appointed justice or Judges will sit for hearings, scrutinies, and, eventually, will publish a determination. The tribunal will schedule day of the months of hearings and will cite parties to look before the tribunal. However, if the reference of the

parties is unknown and/or unrecognised. the notice of the tribunal hearing's agenda and besides the content of the biddings should be conducted and announced through the advertizement in a national newspaper.

After the notice of the agenda of hearing have been delivered and good received by the Parties or the representatives and/or the assignees. there will be eight hearing stages in the District Court.

At the first tribunal hearing. if the complainant and defendant attend the hearing session. the justice or the panel of Judgess will inquire both parties whether or non they have attempted to make mediation or a colony outside the Court prior to looking before the tribunal. If the parties agree to make the mediation. the panel of Judgess has the duty to intercede between the parties or order that they resolve this affair through external mediation outside the tribunal.

If the mediation procedure behaviors. the parties will pull up. enter and mark a Settlement and Release Agreement (Akta Perdamaian) . This Colony and Release will hold the same consequence enforceable as a tribunal judgement as stipulated in the finding of fact. If the mediation fails and the difference colony can non be reached. therefore the parties should continue to judicial proceeding and the first tribunal hearing will be scheduled by the justice or by the panel of Judgess.

If a suspect or their lawyer or appointed attorney does non look in the first hearing. the panel of Judgess will schedule another hearing and ask for the suspect to be decently summoned by the Clerk Court. The justice or the panel of Judgess may besides. nevertheless. publish a default judgement in

the absence of the suspect. Furthermore, if the complainant or their lawyer and/or their appointed attorney fails to look on the scheduled hearing, the justice or panel of Judges will declare the case nothing and nothingness. As to be highlighted that, the judicial proceeding procedure in Indonesia for the procedure is more of a 'paper' procedure than an unwritten one.

The first tribunal hearing is proposed to the complainant giving their statements and subjecting their facts of the instance. Furthermore, in this first tribunal hearing, the Plaintiff's demands should be made and submitted in relation to their outlooks to the panel of Judges to be decided.

The complainant has to get down reading their cases in the signifiers of the "Claim and Demand". After hearing the plaintiff's case, the justice or the panel of Judges will give an chance for the suspect to suggest the 2nd tribunal hearing as the rebuttal hearing. Then, the justice or panel of Judges will make up one's mind and schedule the rebuttal hearing with the sufficient clip in relation to giving the suspect fixing the written rebuttal (*kopensi*) .

Afterwards, the 2nd tribunal hearing, the tribunal will inquire the suspect read their written rebuttal. Furthermore, the suspect besides has the option to register a counter suit (*rekonpensi*) against the complainant. This counter suit will do the Defendant as a complainant at the same clip. The justice or panel of Judges has duty to publish two finding of facts at the same clip.

At the 3rd tribunal hearing, the justice or panel of Judges will hear the plaintiff's rebuttal against the statement made by the suspect at the 2nd tribunal hearing. At the 4th tribunal hearing, the panel of Judges will hear

the defendant's statements with regard to the plaintiff's rebuttal as submitted in the 3rd tribunal hearing. The fifth and 6th tribunal hearings are proposed to analyzing grounds and presenting and hearing any informants, including adept informants. The complainant is foremost let to show grounds and their informants, and so, the justice or panel of Judges gives the following opportunity to the suspect to show the grounds, informants or testimony that it would back up of its instance.

The 7th tribunal hearing is for the tribunal to hear both parties give their decisions in the instance. The eighth and last tribunal hearing is when the panel of Judges has to do the determination to the instance and read its finding of fact.

The court's finding of fact, nevertheless, does not instantly take consequence and go enforceable. The finding of fact is effectual after 14 years since the day of the month of the finding of fact was read, if there is no entreaty submitted. If one of the parties submits an entreaty to this finding of fact, the finding of fact will not take consequence and be unenforceable.

I. 2The Appeal Court to the High Court

For making the entreaty from the District Court are heard before the High Court (Pengadilan Tinggi) . The High Court, which located in each of the Provinces in Indonesia, and besides called as a District Court of Appeal.

The High Court will analyze and reexamine the instance through all paper stuffs submitted by the parties at the District Court at least 14 (14) yearss after the proclamation day of the month of that finding of fact

The parties will non be needed to make physically hearing as required in the first stage in the District Court. The High Court's finding of fact will take consequence and go enforceable in 14 yearss if no cassation/appeals to the Supreme Court. which located in Jakarta. as the highest tribunal in Indonesia. is submitted. There are no limitations and the mechanism. except for clip bounds. with regard to disputing a finding of fact of the High Court to the Supreme Court.

I. 3The Highest Entreaty to the Supreme Court/Cassation

The Supreme Court has duty to reexamine and analyze a cassation entreaty (kasasi) . which the entreaty to the Supreme Court is a concluding entreaty from lower tribunals. However. it can besides carry on a instance reappraisal (Peninjauan kembali) in the conditions that new groundss should be found. which justifies a re-hearing. The Supreme Court renders determinations referring differences of competence amongst the types of tribunal in the first and last cases. The Supreme Court can overturn a finding of fact of a lower tribunal on any of three evidences: the tribunal in inquiry lacked legal power or acted beyond its legal power ; the tribunal applied the jurisprudence falsely or violated prevalent jurisprudence ; and. the lower tribunal neglected to fulfill certain demands imposed by jurisprudence.

The Supreme Court will reexamine the same stuffs presented at the District Court. which has been submitted to the High Court ; the Supreme Court will

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non acknowledge new grounds and besides inquire for another tribunal hearings. The procedure at the Supreme Court is the similar with the High Court.

By and large, the Cassation is possible merely if no other ordinary agencies of obtaining justice is available. If there is a possibility of conveying the instance for entreaty to the tribunal of 2nd case (High Court) so the cassation will non win.

Cassation will be successful if the determinations do non follow with the formal demands as set forth in the ordinance. referring to nullification. It is besides possible when the lower tribunals in rendering their determination exceed their legal power. Finally, cassation is possible if the ordinances and regulations of jurisprudence have been improperly applied to the instance or, if there regulations are violated by the Court, or if the Court apply the incorrect regulations to the instance.

II. Taking Evidence Abroad

There are five types of grounds recognized and set forth in the 4th chapter of the Rules of Civil Procedure Book as follows: * documentary grounds which consists of ordinary papers, notarial works and in private executed understandings ; * verbal testimony of informants under oath in unfastened tribunal ; * omissions ;

* confessions ; and * written witness statement sworn in the presence of a notary public. In add-on to the five signifiers of grounds, the undermentioned grounds is besides recognized in pattern: " Judicial Notice" :

The tribunal has discretion with its own cognition of relevant facts and fortunes. what is known in some legal powers as "judicial notice."

Furthermore, the Judicial notice without enquiry is taken where facts are many parts of the common cognition that they do not necessitate to be proved at all. Judicial notice is proposed to help the party, which would otherwise bear the load of cogent evidence in relation to a fact in issue. Furthermore, the Indonesian's judicial system, the Judges themselves are allowed to give inquiries of informants and bespeak other relevant grounds.

In relation to the Electronic Documents, pursuant to the Electronic Information and Transactions Law of 2008 that was issued in 2008, the tribunals are now allowed to accept electronic information and/or electronic papers and correspondence as valid legal grounds. However, this sort of legal grounds excludes those papers that are required by jurisprudence to be in written signifier with legalized by the public notary, or in a notarial title signifier or required to be made by land title functionaries. Furthermore, Indonesia does not hold pre-trial find processes like in the Common Law system, nevertheless, the Indonesian Civil Procedural Law does provide the wide rule that "a individual who claims to hold a right, or refers to a fact to confirm his right, or to believe person else's right, must grounds the being of that right or that fact."

II. Default & A ; Summary Judgment Options

By and large, in a pattern, a default judgement is allowed to be issued, if the suspect or his appointed lawyer fails to look after three back-to-back hearings in the District Court stage, and have been decently served.

Furthermore, the suspect may register an expostulation to the default judgement. All legal procedure is served by officers of the tribunal itself and not by private procedure waiters. Drumhead judgement is not recognized under the Indonesian civil procedural jurisprudence.

III. Enforcement of Foreign Judgments

In relation to implementing a foreign judgement in Indonesia, the general rule referred to in Indonesian jurisprudence is the territorial rule. However, as a general regulation, foreign judgements are not enforceable in Indonesia. The foreign judgements from the foreign tribunals cannot be executed by any Indonesian's tribunals as a judgement. Every bit good as delivered in a state does not hold the needed force of jurisprudence in some other legal power.

However, although foreign judgements are not by and large enforceable in Indonesia, if Indonesia has a bilateral or many-sided pact with the relevant state publishing the arbitrational award, it is possible for a foreign judgement to be enforced.

III. 1. The Enforcement of International Arbitration Judgments

Indonesian tribunals have historically prohibited to implement international arbitration judgements without first corroborating that judgement or award through the Indonesian judicial system. However, Indonesia has already ratified Convention on the Recognition and Enforcement of Foreign Arbitral Award (New York Convention 1958) through the commissariats of Presidential Decree No. 34 of 1981. However, Article 5 of this convention

stipulates that the enforcement of an international arbitration judgement can be refused if it breaches public policy or would be damaging to public order.

The Indonesian and foreign mass media seized on this refusal to publish the Writ of Execution as grounds that Indonesia was non merely loath but would non implement foreign arbitrational awards.

B. Department of State Summary

Disclaimer: THE INFORMATION IN THIS CIRCULAR RELATING TO THE LEGAL REQUIREMENTS OF SPECIFIC FOREIGN COUNTRIES IS PROVIDED FOR GENERAL INFORMATION ONLY AND MAY NOT BE TOTALLY ACCURATE IN A PARTICULAR CASE. QUESTIONS INVOLVING INTERPRETATION OF SPECIFIC FOREIGN LAWS SHOULD BE ADDRESSED TO FOREIGN COUNSEL. Provision:

This circular seeks merely to supply information ; it is non an sentiment on any facet of U. S. . foreign. or international jurisprudence. The U. S.

Department of State does non mean by the contents of this circular to take a place on any facet of any pending judicial proceeding.

OBTAINING Evidence

Voluntary Deposition:

Depositions of willing informants may be conducted in Indonesia without the interjection of Indonesian governments irrespective of the nationality of the informant. provided the testimony is voluntary and no irresistible impulse is used. The informants may decline to take an curse or chorus from replying any or all inquiries. Oral depositions or depositions on written inquiries may be taken by U. S. consular officers or by private lawyers from the U. S. or

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Indonesia. Voluntary depositions may take topographic point on U. S. consular premises or at other locations such as offices or hotels. and are taken either on notice or pursuant to a committee. See our general circular on Obtaining Evidence Abroad for inside informations.

Arrangement FOR U. S. CONSULAR ASSISTANCE:

If the services of a U. S. consular officer are required to administrate an curse to the informant. translator and amanuensis. such agreements must be made in progress with the U. S. Embassy straight. Reach the U. S. Embassy in Indonesia to schedule a deposition of willing informants straight on U. S. consular premises. to set up the engagement of a consular officer to administrate oaths off-site. or to obtain information about tribunal newsmans. amanuensiss or translators. Our general circular. Obtaining Evidence Abroad. include a checklist of the specific information enquirers should include in petitions to the U. S. Embassy.

Arrangement FOR U. S. CONSULAR ASSISTANCE IN DEPOSITIONS:

The Office of American Citizen Services information circular entitled Obtaining Evidence Abroad includes bit-by-bit instructions for what information you should facsimile to U. S. consular officers at the American Embassy in Indonesia to set up for voluntary depositions.

Engagement BY LOCAL. State OR U. S. GOVERNMENT OFFICIALS: Local. State or U. S. Government functionaries must hold formal U. S. Embassy and Host Country clearance before going to a foreign state to carry on informal interviews related to judicial aid affairs or depositions. If engagement of such

functionaries is envisioned. they should reach the East Asia and Pacific Division of the Office of American Citizens Services which will convey the petition for host state clearance to the U. S. Embassy in Jakarta for transmission to the Foreign Ministry of Indonesia. Police clearance does not represent formal host state clearance.

Compulsion of Evidence

Indonesia is not a party to the Hague Convention on Obtaining Evidence Abroad. Compulsion of grounds is obtained pursuant to a missive rogatory. A missive rogatory is a petition from a tribunal in the U. S. addressed "to the Appropriate Judicial Authority" of the foreign state. See our general information circular. "Preparation of Letters Rogatory" for inside information about the procedure. There are no Torahs or ordinances specifically associating to the usage of Indonesian tribunals for the pickings of depositions requested by foreign tribunals. nor is at that place clear case in point to which one can mention in finding how to near the Indonesian tribunals on this affair.

Requesting advocate should be cognizant that when letters rogatory are executed by foreign tribunals which compel the visual aspect of a informant to reply written interrogations. the grounds is taken in conformity with the regulations of the foreign tribunal. In most instances an American lawyer will not be permitted to take part in such a proceeding. Occasionally a foreign lawyer may be permitted to go to such a proceeding and even to set forth extra inquiries to the informant. Not all foreign states utilize the services of tribunal newsmans or routinely provide verbatim transcripts. Sometimes the

presiding justice will order his remembrance of the witness" s responses to his secretary. Generally letters rogatory worldwide. including those sent to the United States. take from six months to a twelvemonth to put to death.

Fixing A Letter Rogatory For Use In Indonesia

In add-on to the general counsel in our flyer Preparation of Letters Rogatory. maintain in head that any missive rogatory intended for usage in Indonesia must include the undermentioned:

- * Reciprocity: an offer of mutual aid ;
- * Costss: a statement showing willingness to reimburse the Indonesian judicial governments for costs incurred in executing of the missive rogatory ;
- * Translations: a certified interlingual rendition in Indonesian attached to the English transcript (although non a demand. this will hasten processing in Indonesia) .
- * Authority to Publish the Letter Rogatory: The missive rogatory must include the signature of the justice and the seal of the tribunal. Any biddings attach toing the missive rogatory must include the seal of the tribunal ;
- * Authentication: The missive rogatory and any attendant paperss must be authenticated (besides called legalized) by the Indonesian Embassy. 2020 Massachusetts Ave. . N. W. . Washington. D. C. 20036. tel: 202-775-5200.

Reach the Consular Section of the Indonesian Embassy for inside informations about necessity fees. Our general information circular.

Authentication of Documents for Use Abroad includes bit-by-bit instructions about this procedure. * U. S. Consular Fees: There is a \$ 455. 00 fee for

consular services related to letters rogatory. The U. S. fee and any local (foreign) fees will be deducted from the \$ 500. 00 sedimentation cheque (bank or house check/no personal cheques) collectible to American Embassy Jakarta which should attach to the letters rogatory and screen missive (including the complete mailing reference of the tribunal in the U. S. to which the executed petition should be returned) .

Requests from State or Federal Government Officials

If the service is on behalf of the federal, province or local authorities, there is no fee. If the missive rogatory is being transmitted at the petition of a province or federal functionary no U. S. consular fee will be charged. However, local governments in the foreign state may enforce fees of their ain which must be paid by the province or federal authorization in the United States bespeaking the judicial aid. You will be contacted if a federal appropriation figure and fund codification or remittance a cheque for foreign fees owed by province or local authorities in the U. S. are necessary.

Service of Process

Service of procedure can be effected in Indonesia in a assortment of ways: 1. International registered mail, return reception requested. 2. Personal service by agent can be accomplished by retaining a Indonesian lawyer who will function the paperss and put to death an affidavit of service at the U. S. embassy. There is a \$ 55. 00 fee for the U. S. consular officer” s notarial service. Lists of lawyers are available from the Office of American Citizens Services, see Questions below. 3. Letters Rogatory (See Above) .

Authentication of Documents

Indonesia is non a party to the Hague Legalization Convention Abolishing the Requirement for Legalization of Foreign Public Documents. Documents arising in Indonesia intended for usage in the United States must be authenticated before a U. S. consular officer in Indonesia. There is a \$ 32. 00 fee per papers for this service collectible to American Embassy Jakarta.

Likewise. papers arising in the U. S. intended for usage in Indonesia must be authenticated by the Indonesian Embassy.

-----[1] . For this intent the survey used the undermentioned books on the Law of Civil Procedure: R. Soepomo. Hukum Acara Perdata Pengadilan Negeri (The Law of Civil Procedure in District Court) . (Jakarta: Percetakan Penebar Swadaya. 2002) ; Retnowulan Sutantio and Iskandar Oeripkartawinata. Hukum Acara Perdata dalam Teori dan Praktek (The Law of Civil Procedure in Theory and Practice) .

(Bandung: Alumni. 1986) . Translation by Author ; and besides provided in hypertext transfer protocol: //www. aseanlawassociation.

org/papers/JudicialSystem. pdf. [2] . hypertext transfer protocol: //www. aseanlawassociation. org/papers/JudicialSystem. pdf. Judicial System. last visited: November 1st. 2011 and www. suyud. com. Indonesia Civil Procedure. Last visited: November 2nd. 2011. [3] . Id.

[4] . Id.[5] . hypertext transfer protocol: //d-arch. ide. travel.

jp/idedp/IAL/IAL002100_004. pdf. Last visited: November 2nd. 2011. [6] . Id.

[7] . hypertext transfer protocol: //www. travel. province.

gov/law/judicial/judicial_651. hypertext markup language

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