Part 1

Overview of the Dispute Resolution Mechanism in Indonesia

Chapter I

Dispute Resolution by the Court System

I.1 Overview of the Court System

The court system in Indonesia has some resemblance with the court system in any other countries adopting modern (western) legal system. The resemblance is the direct result of European influence on the existing Indonesian legal system. The influence traces back from the period when the Netherlands colonized Indonesia. Although in those days, the Dutch government had never applied Dutch law to indigenous Indonesians and had made separate court, however soon after Indonesia declared its independence that was not the case.

The newly independent government had adopted the policy of continuing what used to be its colonial laws and institutions. Such kind of policy has been the normal practice for many newly independent States in the world in which it has no luxury of starting from the scratch. For various reasons, newly independent government has to continue whatever the colonial or occupying power had left them. This is one explanation for many countries to have resemblance in their legal system with those of European countries.

I.1.1 Laws Governing the Court System

Article II of the Transitional Provisions of the Constitution provides basis for the policy of continuing Dutch laws and institutions. The provision states that "(A)ll state institutions and laws shall continue to function as long as new ones have not been established or introduced in accordance with the Constitution."[1] This article became the basis for continuing the colonial court system, including its rule of procedures. They have continued to be applicable until amending laws are promulgated.

The first attempt to replace the law governing the court system was made in 1948. At the time, the government issued Regulation Number 19 concerning Judicial Bodies

[1] Article II of Transitional Provision of the Constitution.

within the Republic of Indonesia (*Peraturan tentang Badan-badan Pengadilan dalam Daerah Republik Indonesia*) whereby the court system was structured into three tiers, namely, the District Court (*Pengadilan Negeri*), the High Court (*Pengadilan Tinggi*), and the Supreme Court (*Mahkamah Agung*).[2] Unfortunately, the regulation never takes into effect as the Dutch clamped down on the 'cessations' of the colony.[3]

In 1964, the government introduced an Act governing the court system replacing the Dutch colonial's. The Act is dubbed as the Act on Basic Provisions of Judicial Power (the Act and its amendments will be referred in this study as the "Judicial Power Act").[4]

The Judicial Power Act divides horizontally the court system into four jurisdictions, namely, the General Tribunal (*Peradilan Umum*), Religious Tribunal (*Peradilan Agama*), Military Tribunal (*Peradilan Militer*) and Administrative Tribunal (*Peradilan Tata Usaha Negara*).[5] The Act further divides the four tribunals vertically into three tiers, namely, the court of first instance, the court of appeal and the court of cassation.

In 1969, the government repealed the Judicial Power Act due to its inconsistency with the Constitution.[6] However, the Act was not followed immediately by the amending Act. The 1969 Act states that repeal would only take effect when amending Act has been promulgated. Thus, theoretically the Judicial Power Act of 1964 at the time it was repealed is still effective.

A little less than one year after the government repealed the Judicial Power Act of 1964 by the 1969 Act, an amending Act on the court system was promulgated. The new Judicial Power Act was promulgated in 1970 and dubbed as Act 14 as it bears number

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2 **See**: R. Tresna, Peradilan di Indonesia dari Abad ke Abad (*Indonesian Judiciaries from Century to Century*), (Jakarta: W. Versluys NV, 1957), 82.

3 Although Indonesia proclaimed its independence on August 17, 1945, the Dutch government did not recognize this and treated the proclamation by Soekarno and M. Hatta as cessationist movement which it had the authority to take forceful actions under its internal law. It was not until 1949 did Indonesia gain recognition as a full fledged sovereign state when the Dutch government finally recognized as such.

4 Act Number 19 of 1964, State Gazette No. 107 Year 1964.

5 Judicial Power Act art. 7 (1).

6 The Article which is inconsistent with the Constitution is Article 19 which states that, "For the interest of revolution, dignity of State and Nations or the urgent interest of society, the President may intervene in judicial affairs."

14.[7] The Act amended completely the Judicial Power Act of 1964, although it has maintained some basic principles.

Act 14 of 1970 is currently the law governing the court system in Indonesia. In addition, other Acts have stipulated some provisions of the Act in much detail. The detail provisions on the Supreme Court, for example, are further elaborated under Act 14 of 1985 ("the Supreme Court Act"). The detail provisions on the General Tribunal are provided under Act 2 of 1986 ("the General Tribunal Act").[8]

The Judicial Power Act of 1970 on several occasions has been partly amended.[9] There are two kinds of amendments on the Act, referred to here as the Act which directly amend the articles of the Judicial Power Act of 1970 and the Act which indirectly amend the Judicial Power Act of 1970. The Act which directly amend the Judicial Power Act is amendment that exclusively deals with amending the articles embodied in the Judicial Power Act of 1970. Meanwhile, the indirect amendment is amendment, which does not directly amend the articles of Judicial Power Act of 1970, but it has been affected by the promulgation of other Acts.

The direct amendment was made in 1999, the first of its kind since the Judicial Power Act was promulgated in 1970. [10] One of the purposes of the amendment is to foster judicial independence. The judicial independence was non-existent under the Judicial Power Act of 1970 as the organization, administrative and financial aspects of the four Tribunals of lower and appellate court were under the purview of the executive branch of the government.[11] The executive branch responsible does not rest in one department, but different court jurisdiction rests in different department. The General and Administrative Tribunal is under the purview of the Department of Justice and Human Rights, the Religious Tribunal is under the purview of the Department for Religious Affairs, and the Military Tribunal is under the purview of Department of Defense.

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7 Act 14 Year 1970, State Gazette No. 74 Year 1970.

8 Provision on this matter is provided under article 12 of the Judicial Power Act.

9 The term amendment here is not limited to actually changing the wordings, but also includes interpretation of the law, be it wide or narrow interpretation.

10 Act 35 Year 1999 concerning the Amendment of Act 14 on Judicial Power.

11 Judicial Power Act of 1970 art. 11 (1). The article provides that, "(I)nstitutions carrying out judicial power provided under article 10 (1) are under the purview of each Department."

The amendments of the Judicial Power Act will effectively transfer the authority currently held by the executive branch to the judiciary. At the initial stage, the Department of Justice and Human Rights became the first executive branch with the obligation to transfer the authority on the General and Administrative Tribunal to the Supreme Court. The transfer is currently underway and has to be completed by the year 2004 as provided under the amending Act.[12] As for other court jurisdiction, the transfer from its respective department to the Supreme Court will soon follow, although no time schedule has been fixed.

The indirect amendment of the Judicial Power Act has occurred several times. To name just a few examples, the Judicial Power Act has been amended by the amendment of Bankruptcy Act of 1998, the introduction of the Human Rights Court Act of 2000, and the promulgation of the Nanggroe Aceh Darussalam Act of 2001.[13]

The Bankruptcy Act of 1998 establishes a special chamber within the District Court referred to as the commercial court. The commercial court, thus far, has jurisdiction on bankruptcy matters and most of the intellectual property rights dispute. However, not all District Court has commercial court. Currently there are five commercial courts in operation within the District Court of Central Jakarta, Surabaya, Semarang, Medan and Makassar. Since 1998 the commercial court in the Central Jakarta District Court has received a quite number of cases. While in the other commercial courts the number of cases has been insignificant, and some have yet to receive any case.

The Human Rights Court Act establishes the Ad Hoc Human Rights Tribunal also a special chamber within the District Court dealing with individuals accused of gross human rights violation. Currently such tribunal has only been established in the Central Jakarta District Court.

The Nanggroe Aceh Darussalam Act establishes the Syari'ah Tribunal (*Mahkamah Syari'ah*) which is different from the Religious Court. The Religious Court

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[12] Amendment of Article 11 of Judicial Power Act. This amendment will also have consequence to General Tribunal Act art. 5 par 2 of which stated that the supervision of organization, administration and financial matters shall rest upon the Ministry of Justice.

[13] The Amendment to the Bankruptcy Act was promulgated in 1998 by virtue of Act No. 4 Year 1998; the Human Rights Court Act was promulgated by virtue of Act Number 26 Year 2000, State Gazette Number 208 Year 2000; the Nanggroe Aceh Darussalam Act was promulgated by virtue of Act Number 18 Year 2001, State Gazette Number 114 Year 2001.

has jurisdiction on family (civil) matters, meanwhile the Syari'ah Tribunal will have jurisdiction on cases involving Muslims who are violating the syari'ah law.

It should be noted that at the time this study is conducted, there is a proposal to amend completely the Judicial Power Act of 1970.

I.1.2 Court Structure

The court structure in Indonesia is complex.[14] It is not as easy as one would imagine after reading the first two paragraphs of Article 10 of the Judicial Power Act. The paragraphs read as follows,

(1) The power of the judiciary shall rest on the Court within the jurisdiction of (a) General Court; (b) Military Court; (c) Religious Court; and (d) Administrative Court.
(2) The Supreme Court is the highest State Judicial Tribunal.

Based on the reading of first paragraph one would think that the Court is divided into four chambers. While reading on the second paragraph, the hierarchy of the court is based on a two-tier system as the High Court is not mentioned. Unfortunately, such is not the case.

To understand the court structure, it is important to distinguish between jurisdiction issue, which this study will refer to as 'Tribunal,' and the hierarchy of the court.

i) Jurisdiction of the Courts

The jurisdiction of courts is divided into four tribunals, namely, the General Tribunal, Religious Tribunal, Military Tribunal and Administrative Tribunal.. These tribunals have their own jurisdictions, which is referred in Indonesian as the '*Peradilan*'. To ascertain the jurisdiction of each tribunal, as general rule, one has to run several tests. The first test is to ascertain whether the dispute is a private dispute. If the dispute were a private one, the next test would be whether the dispute is family law matters between Muslims. The second test is whether the dispute is a public initiated dispute. If that is the case, it has to be ascertained whether the accused is civilian or an active member of the

[14] For further reading on the history of Indonesian court, **see**: Koerniatmanto Soetoprawiro, Pemerintahan & Peradilan di Indonesia: Asal Usul dan Perkembangannya (The Government and Judiciary in Indonesia: The History and Its Development), (Bandung: Citra Aditya Bakti, 1994).

armed forces. The third test will be to ascertain whether the case in question is a public defendant dispute.

Based on the tests, the jurisdiction of the courts can then be decided. Private dispute, except for cases on family law matters between Muslims, falls under the jurisdiction of the General Tribunal (*Peradilan Umum*). The family law matters between Muslims will fall under the Religious Tribunal (*Peradilan Agama*). The distinction in this sense is based on two criteria. First is the nature of the case and second the religion of the disputed parties.

Public initiated dispute, unless committed by member of the armed forces, falls under the jurisdiction of General Court (*Peradilan Umum*). Those who are members of the armed forces will be tried in the Military Tribunal (*Peradilan Militer*) even though the offence is not military in nature. Here the distinction is not on the ground of what offence is committed, rather on the ground of whether or not the culprit belongs to the military.

Amid public criticism of providing military personnel with special status, the Amendment of the Judicial Power Act has amended this rule. As it stands now, the General Tribunal has jurisdiction over military personnel committing offense under the criminal code, unless otherwise decided by the Chief of the Supreme Court.[15]

Last, but not least, any public defendant dispute will fall under the jurisdiction of Administrative Tribunal (*Peradilan Tata Usaha Negara*).

There are two points should be noted when discussing court's jurisdiction. The first point is the categories of dispute the General Tribunal have. From the perspective of General Tribunal it has the jurisdiction to hear both private dispute (civil cases), except for Muslims family law matters, and public initiated dispute (criminal cases), except for criminal offence under the military criminal code.[16]

The second point to be noted is, when determining which court has jurisdiction to a case in question is not as clear-cut as provided under the law. There have been many instances where conflict of jurisdictions between tribunals had occurred. The conflict of jurisdiction has been further worsen by the fact that defendant lawyer's usually made

[15] Act 35 Year 1999 art. 22.

[16] General Tribunal Act art. 50 provides that the District Court shall have the authority to examine, decide and handle criminal and civil case at the first instance.

argument that certain court has no jurisdiction and the case should be tried in other court's jurisdiction. In addition, a party who fails pursuing at one tribunal will attempt to seek remedy from other tribunal.

In the event there is conflicting jurisdiction between courts, the Supreme Court under the Supreme Court Act has the final say which court has the jurisdiction on a case in question.[17] Of course, it will require time before the Supreme Court finally decides on the issue.

ii) Hierarchy of the Courts

The next issue is with respect to the hierarchy of the courts. Similar to any other country, hierarchy relates to the issue of which court has the higher authority.

Under the Judicial Power Act, the court hierarchy consists of three tiers. The lowest hierarchy is the lower court, which is referred in Indonesian as '*Pengadilan*'.[18] The court of first instance is established based on Presidential Decree.[19]

The next hierarchy is the court of appeal, which is referred to as '*Pengadilan Tinggi*.' The appellate court is established in each province by an Act.[20]

The apex of Indonesian courts is the Supreme Court which is referred to as '*Mahkamah Agung*.'[21] The Supreme Courts is established with an Act. Constitutionally the Supreme Court is at the same level as the President and the House of Representative (DPR). The Supreme Court as court of last instance is vested under the Supreme Court Act with three broad powers.[22] First is the power to examine and decide cassation application.[23] Second is the power to examine and decide conflicting jurisdiction between tribunals.[24] The third is the power to re-open or re-examine a case that has enforceable

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17 Supreme Court Act art 56.

18 Jurisdiction and hierarchy is being distinguished by the Judicial Power Act. Reference to jurisdiction in Indonesian is referred to as '*Pe***ra***dilan*' (with "ra" in the middle) and hierarchy is referred to as '*Pe***nga***dilan*.' (with "ng" in the middle).

19 *Id.* art. 7 provides that the establishment of District Court is based on a Presidential Decree.

20 *Id.* art. 9 provides that the establishment of High Court is based on an Act.

21 Judicial Power Act art. 10 (2); Supreme Court Act art. 2.

22 The Supreme Court is also vested with other powers, such as the judicial review, supervision of courts, supervision of the judges.

23 Supreme Court Act art 28 (1) a.

24 *Id.* art 28 (1) b.

verdict, referred to as *Peninjauan Kembali* or request civil in other jurisdiction (hereinafter referred to as "PK").[25]

iii) Jurisdiction and Hierarchy Combined

The hierarchy of the court if combined with the jurisdiction of the court will show that each tribunal will have different lower and high court, but they all will have the same Supreme Court.

In the General Tribunal, the courts consist of three tiers. The lowest is the District Court which is referred to as '*Pengadilan Negeri*'. *Pengadilan Negeri* has the power to examine, decide and handle criminal and civil cases at the first instance.[26] The appellate court is the High Court which is referred to as '*Pengadilan Tinggi*'. *Pengadilan Tinggi* has two powers, namely, to examine criminal and civil cases at the appellate level and to decide conflicting jurisdiction between the courts of first instance under its jurisdiction.[27] The court of last instance is the Supreme Court.[28]

In the Religious Tribunal, the courts consist of three tiers. The lower court is the Religious Lower Court referred to as '*Pengadilan Agama.*' The appellate court is the Religious High Court referred to as '*Pengadilan Tinggi Agama*.' The court of last instance is the Supreme Court.

In the Military Tribunal, the courts consist of three tiers. The lower court is the Military Lower Court referred to as '*Pengadilan Militer*.' The appellate court is the Military High Court referred to as '*Pengadilan Tinggi Militer*.' The court of last instance is the Supreme Court.

Lastly, in the Administrative Tribunal, the courts also consist of three tiers. The lower court is the Administrative Lower Court referred to as '*Pengadilan Tata Usaha Negara*.' The appellate court is the Administrative High Court referred to as '*Pengadilan Tinggi Tata Usaha Negara*.' The court of last instance is the Supreme Court.

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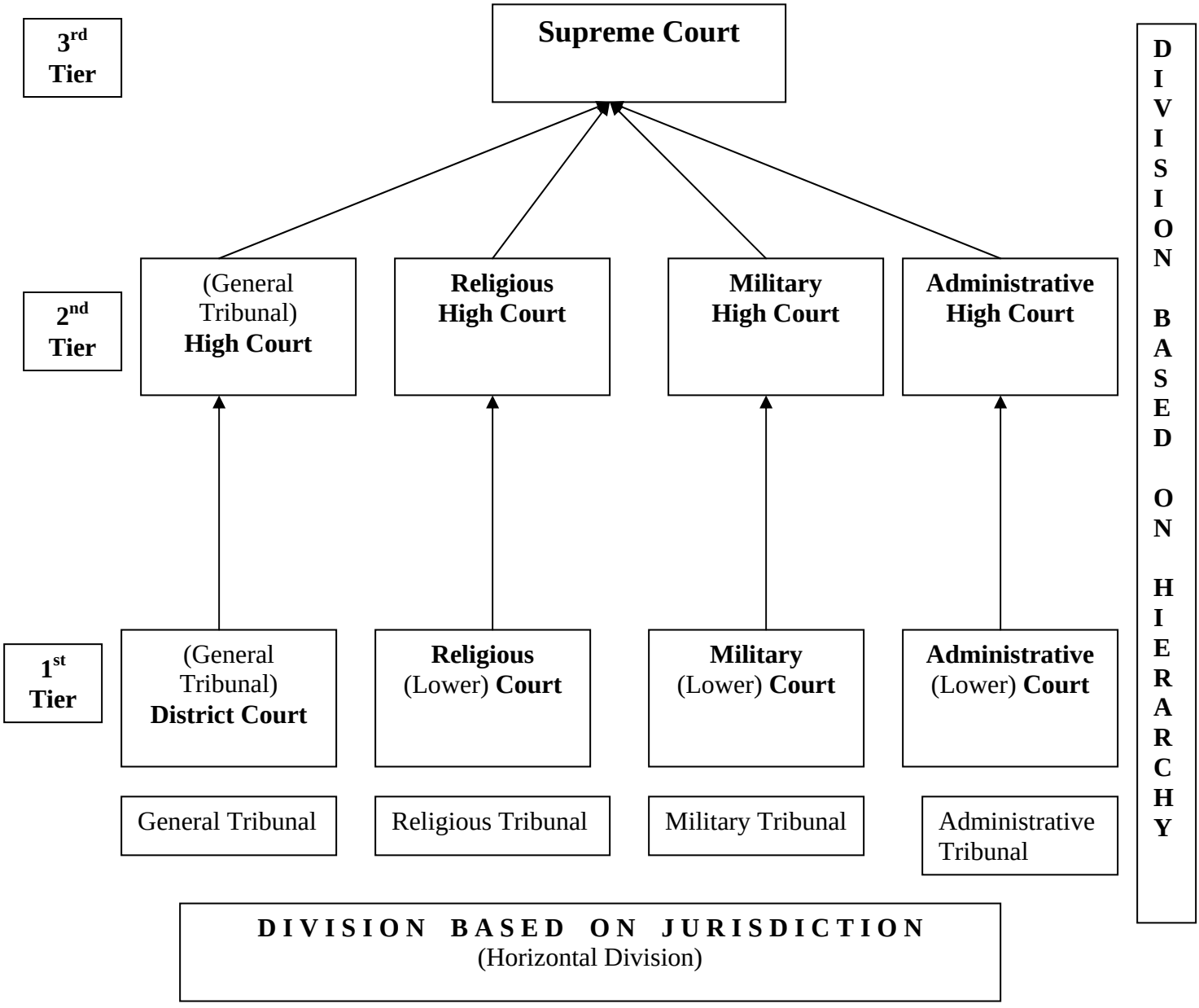
25 *Id*. art 28 (1) c, art. 67 until 76; Judicial Power Act art. 34.

26 General Tribunal Act art. 50.

27 *Id*. Art 51 (1) and (2).

28 Under General Tribunal Act art. 3 (1) it is stated that the Judicial Power in the General Tribunal will be exercised by (a) the District Court, and (b) the High Court. Furthermore, under Article 3 par 2 it is stated that the apex of General Tribunal is the Supreme Court as the highest court.

The following is the illustration of court structure based on the jurisdiction and hierarchy.



I.1.3 Flow of Civil Litigation

This sub-section will depict in a condensed manner the flow of civil litigation process in Courts of General Tribunal.[29] It should be noted from the start that the depiction is an oversimplification of the process. The actual process is more complicated and there are many deviations from what the law stated from one court to another. The intention of providing this sub-section is for the reader to understand the overall process by leaving the nuts and bolts.

Indonesia to date has yet had its own rule of civil procedures. The rule of civil procedures currently used at courts is laws inherited from the Dutch colonial. There are three Dutch civil procedure laws being used, although not wholly of the articles. First is the Revised Indonesian Rule of Procedures or the *Reglemen Indonesia yang Diperbarui* (RIB) or in Dutch, *Het Herziene Indonesisch Reglement* (HIR).[30] Second is the Rule of Procedures for the Overseas (outside Java) or the *Regelemen Daerah Seberang* (RDS) or in Dutch *Rechtsreglement voor De Buitengewesten* (RBg).[31] The third is *Reglement op de Rechtsvor-dering* (Rv).[32] These three rule of procedures become the basis for civil litigation process in court.

There are two forms of civil litigation. First, is the civil litigation in the form of claim, and second is in the form of petition.

Claim is a lawsuit between, at least, two parties in adverse or contentious manner. A claim is initiated by a plaintiff against a defendant.

Petition, on the other hand, is a request from petitioner to the court to exercise its power, such as person's birth or death. However, there are petition processes whereby the court may hear objection from the respondent connected with the case. In a bankruptcy case, if creditor makes the request for the court to declare debtor bankrupt, the court will

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29 For this purpose the study used the following 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).

30 State Gazette 44 Year 1941.

31 State Gazette 227 Year 1927.

32 State Gazette 52 Year 1847 and State Gazette 63 Year 1849.

hear the argument from the debtor as respondent. In such case, it can be argued that the petition process is also adversarial.

A typical civil case begins when plaintiff registers its claim to the registrar of certain District Court. Subsequently, the head of the District Court will decide whether to form a single or panel of judges. Most cases are heard by panel of judges. The head of District Court then will appoint the judge or judges who will sit for hearing, examination and, finally, issue decision. In addition, the court will then schedule the date of the first hearing and will summon the defendant to appear before the court on such date. The court will request the bailiff to give the summon letter in person or, if the address is unknown, advertise such summon in the newspaper.

There are eight hearings in the court proceedings after registration until the judge or panel of judges renders its verdict.

At the first court hearing, if the plaintiff and defendant attend the session, the panel of judges will ask both parties whether they have employed negotiation or conciliation prior appearing before the court. If the parties have not employed the amicable settlement, the panel of judges have the obligation to mediate or conciliate the two contending parties.[33] At this point of time the court session will be temporarily discontinued for parties to reach amicable settlement.

If the effort is successful, the parties will draw an amicable agreement (*Akta Perdamaian*).[34] The amicable agreement will have the same effect as court judgment, in the sense that it can be enforceable. If amicable settlement failed, the first court hearing will proceed.

In the event the defendant or its attorney does not appear, the panel of judges will schedule another day and ask the defendant to be properly summoned. The panel of judges, however, may issue default judgment in the absence of the defendant. In the event the plaintiff or its attorney fails to appear on the scheduled day, the judge or panel of judges will declare the lawsuit as null and void.

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[33] Article 130 HIR and 154 RBg.

[34] An amicable agreement, however, can be challenged by third party even though it has been in the form of enforceable verdict. **See**: Victor M. Situmorang, Perdamaian dan Perwasitan dalam Hukum Acara Perdata (Amicable Settlement and Arbitration under the Law of Civil Procedure), (Jakarta; Rineka Cipta, 1993) 51.

The first court hearing starts with the plaintiff stating its case, the argument, the legal basis and statement of what the court should decide. The plaintiff does so by reading the written lawsuit. Reading lawsuit is common in litigation process in Indonesia as the process is more of 'paper' process rather than oral. After hearing the plaintiff's lawsuit, the panel of judges will give opportunity for the defendant to rebut in which the hearing enters to its second court session. However, it is rare for the defendant to rebut on the same day. The judge or panel of judges will postpone the rebuttal session so to give the defendant time to prepare the written rebuttal. The judge or panel of judges will schedule the time for the defendant to rebut.

The second court hearing, the court will hear the defendant read its written rebuttal, referred to as *konpensi*. At this point of time the defendant while stating its rebuttal has the option to file a fresh lawsuit related to the case against the plaintiff referred to as *rekonpensi*. This is when the process becomes complicated, since the defendant becomes the plaintiff at the same time. The judge or panel of judges in this kind of process will have to issue two verdicts but at the same time, hearing the court.

The third court hearing will hear the plaintiff's rebuttal against the argument made by the defendant on the last court hearing. At the fourth court hearing, the panel of judges will hear the defendant argument based on the plaintiff's rebuttal. The fifth and sixth court session are dedicated to examining evidence, including presenting and hearing the witnesses and, if any, expert witnesses. The plaintiff will be given the first opportunity to present evidence. The subsequent session is given to the defendant.

The seventh court hearing is for the court to hear both parties to give each of their conclusions of the case. The eight and last court hearing is when the panel of judges read its verdict.

In a regular court hearing, one will not expect to receive court verdict, at the earliest, seven to eight months after a lawsuit is submitted. This is irrespective of circular letter from the Supreme Court requesting court to issue verdict not more than 6 months. [35] The long process is usually due to postponement in each of the court hearing for various reasons, such as the judge is taken ill, the defendant or plaintiff asks more time to prepare

[35] Circular Letter of the Supreme Court Number 6 Year 1992.

the written pleadings. However, the delay has in many occasions been used as outright strategy from lawyers in an attempt to slowdown the proceedings.

The court verdict once issued will not immediately take effect and become enforceable. The verdict will take effect only after the lapse of 14 days provided no appeal is submitted. If parties submit appeal, which is often the case, the verdict does not take effect and is unenforceable.

An appeal to the High Court will take another 6 to 8 months. The High Court will review the case on the basis of materials submitted by parties at the District Court. In this regard, the High Court procedure is more of lawyer's game. The parties in dispute will not be physically involved. The High Court's verdict will take effect and become enforceable within 14 days if no cassation to the Supreme Court is submitted. Again, parties, in particular the losing party, will most certainly submit cassation. Currently, there are no strict restrictions, except time expiration, to challenge a verdict of the High Court's verdict to the Supreme Court.[36] In addition, there is no mechanism to examine the admissibility of cassation based on sound legal grounds.

The Supreme Court can overrule a verdict of its lesser court based on three grounds. The first ground is whether the court that had examined a particular case in question lacks jurisdiction or had acted beyond its jurisdiction.[37] Second, whether the court had applied the law incorrectly or violated the prevailing law.[38] Lastly, whether the lesser court had neglected in satisfying requirements imposed by certain law to which such law provides that failing to do so will have the consequences of nullification of the verdict.[39]

A review of a case at the Supreme Court will be based on materials presented at the District Court. In this process, the Supreme Court will not admit new evidence. The process at the Supreme Court is the same as in the High Court to which parties in dispute will not be physically involved.

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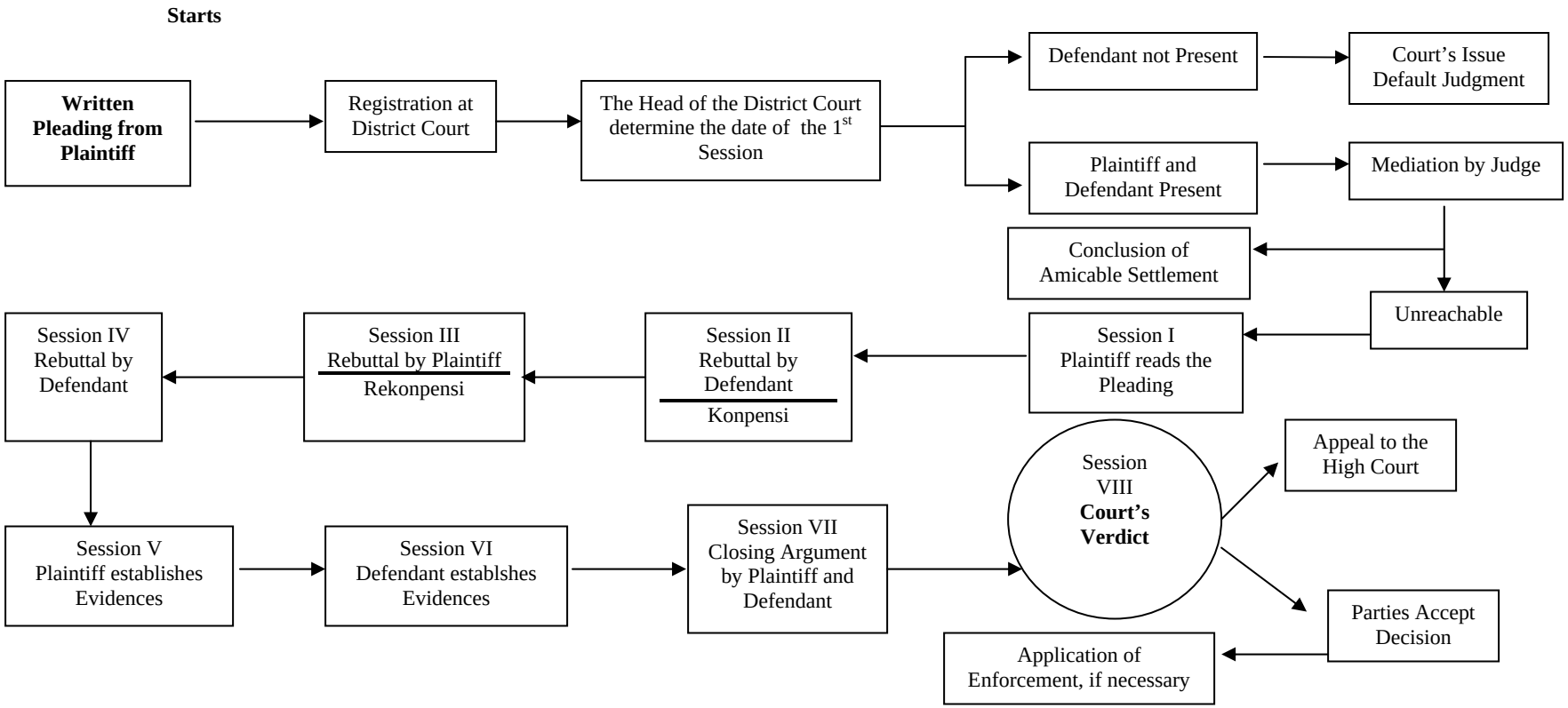
[36] Recently there is a suggestion being discussed to impose rigorous requirement for cassation so to avoid backlog cases at the Supreme Court.

[37] Supreme Court Act art. 30 (a).

[38] Supreme Court Act art. 30 (b).

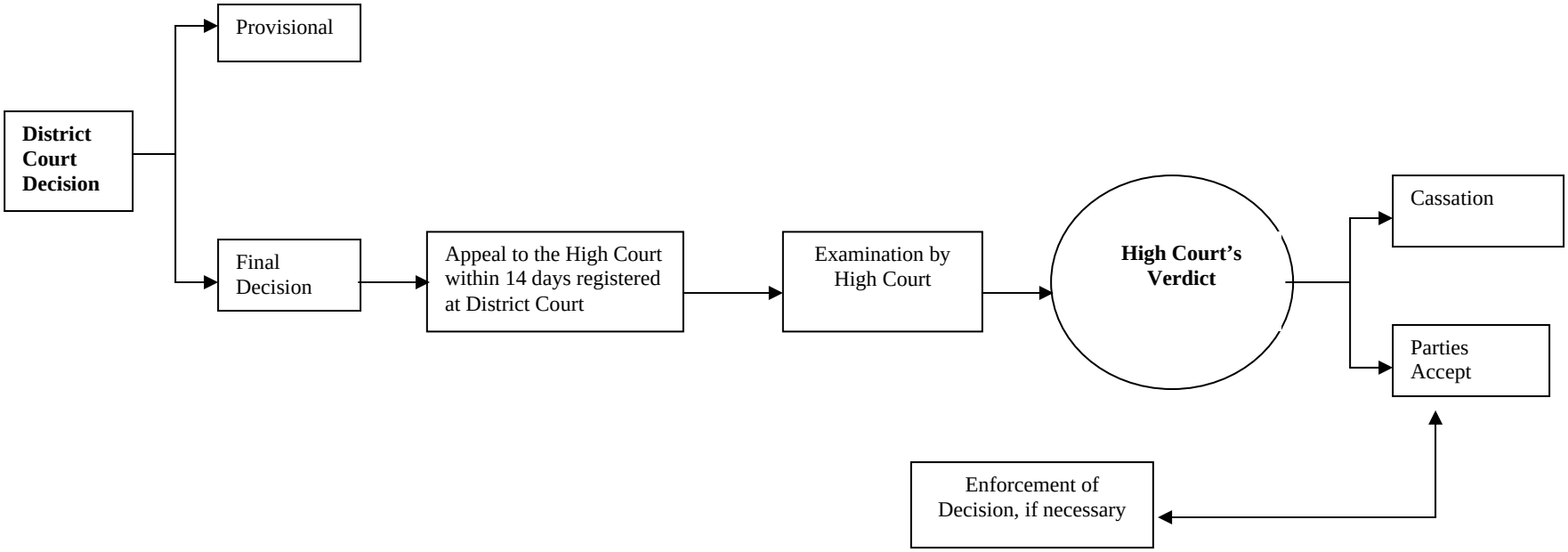
[39] Supreme Court Act art. 30 (c).

Flow of Civil Litigation

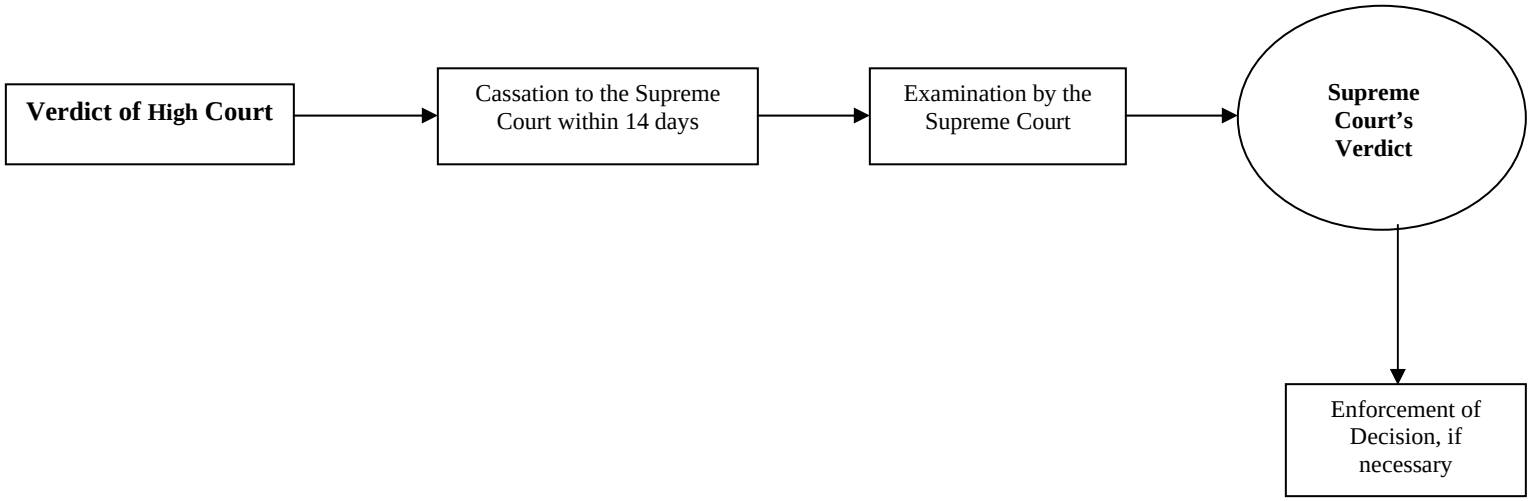


APPEAL

1. APPEAL TO THE HIGH COURT



2. CASSATION TO THE SUPREME COURT



The duration for the Supreme Court to review a case submitted for cassation can take much longer than District or High Court. This is because there are too many pending cases at the Supreme Court.

A case will not necessarily end once the Supreme Court renders its verdict. The next challenge is to enforce the verdict. There had been occurrence whereby enforcement is delayed because the Chief Justice of the Supreme Court requested the enforcing court to do so. The difficulty of enforcement can also derive from the indecisiveness of the judge enforcing the judgment, especially when other legal actions are being pursued on the executed assets. Other source of difficulty stems from the fact that some persons or legal entities facing execution are just too powerful and above the law that they can just ignore execution. In addition, bribes from the losing party have been suggested as another source of difficulty in enforcement.

A case that has enforcement effect can be requested for PK by one of the parties in dispute provided such party furnishes new evidence that has bearing in reverting the decision. Although PK is an extraordinary legal recourse, almost all of the losing party will attempt to do so. It should be noted that PK, under the law, does not impede enforcement of a judgment. Nonetheless, in practice, submission of PK may delay enforcement.

All in all settling private dispute through court mechanism can be very exhaustive and painstaking experience.

I.2 Perception of the Parties on the Court System

In this section, 'perception of the parties' will be divided into two categories. The first category is the perception of Indonesians and the second category is the perception of foreigners conducting business in Indonesia (hereinafter referred to as the "Expatriates").

I.2.1 Perception of the Indonesians

Although in the last 3 to 5 years the number of cases brought to court in big cities have steadily increased, however it has not changed much the attitude of the general public in Indonesia toward the court as a place to settle dispute.

Indonesian society, like most Asian societies, is not familiar and accustom to the concept of law, legal procedure and court system. It can be argued that the Indonesian society belongs to a non law-minded society as opposed to most Western societies who are law-minded society. Law as conceived by the Western societies is not the same as Asian societies. In addition, the modern legal system does not have its root on the Asian societies. These societies tend to maintain harmony to which dispute will be settled not by determining who is right or who is wrong. Instead, the contending parties in solving the dispute will base themselves on common understanding, or the parties in dispute just follow what their community leader has to say. Therefore, dispute settlement employing the law and court system is foreign to the non-law minded society.

Unfortunately, in recent times the 'Asian way' of settling dispute has been plaguing with many deficiencies. The reasons, among others, are abuse by the person looked up as leader, the shift in the mind set of younger generation, the distrust toward traditional system as opposed to modern one. Indonesian society is by no means an exception. The society at this stage is in the transition period of shifting from non law-minded society toward law-minded society. The society is torn between the past and the future, the non law-minded and law minded, the traditional system and the modern system, even the Asian value and Western value. Indonesian society is in ambiguity. As such, it has to be noted that it is difficult to make generalization of the perception of Indonesians toward law and the court system.

Therefore, this study will sub-divide the Indonesian society into two categories, namely the lower-middle class and the middle-upper class. Most population in Indonesia belongs to the lower-middle class who live in villages with some basic education, but often none at all. In contrast the middle-upper class mostly live in the cities and enjoy sufficient education, at least, high school level.

The study argues that most Indonesians dislike and, if possible, avert settlement through court. For them court settlement is not the first option for settling dispute, rather it is the last alternative if other means is not available or have failed. For this purpose, the present section will analyze the reasons behind such reluctance on the two classes.

i) Perception of the Lower-Middle Class

Indonesia is a huge country with many remote areas unreachable by transportation and, sometimes, mass media. It has many provinces and regencies where economic, social and education gaps between them existed. Against this backdrop, the lower-middle class does not have good exposure or awareness of the formal legal system. People who belong to this class conceive law more of a sanction above other meanings of law. For this reason, they felt that they have to keep away from the law.

In their understanding when they relate to law, they will think of the government. Law is nothing but an act of government. As such, they never think that law could settle their dispute. If they have dispute, they will settle it amongst themselves or refer it to community and religious leaders.[40] This has been the tradition when they settle dispute for many years. They feel there is no reason to find other possibilities of settling dispute. It is not surprising if in a remote area a District Court only handles 20 to 30 cases per year and mostly public initiated dispute (criminal case).

The low awareness of the court system and legal procedure has been another reason for the lower-middle class in exploring formal legal remedies for their dispute. To start with, they have lack of knowledge of what to do under the law if dispute arises. If they know that court is an alternative, they will assume that their dispute is unworthy of court resolution. According to them, the court is a place where the haves settle their dispute.

The lowe-middle class people are deterred by many physical attributions of the court. First of all, the judges are wearing robes and formal attire. Secondly, there is formal procedure to be followed. Third, the presence of police officer and prosecutor wearing uniform can be easily seen, as the District Court handles civil and criminal cases. Lastly, even the court's buildings look scary, as there is a place for restraining person accused of criminal offence waiting for his/her case to be heard.

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[40] According to Ohorella and Salle, "(I)f dispute arises among villagers, the disputes are rarely brought to court for settlement. The parties in dispute will be much happier and prefer most to settle their dispute in forums available within the village community and settle the dispute amicably." H.M.G. Ohorella and H. Aminuddin Salle, "Penyelesaian Sengketa Melalui Arbitrase pada Masyarakat di Pedesaan di Sulawesi Selatan (Dispute Settlement through arbitration in Village Community in South Sulawesi)," **in**: Agnes M. Toar et. al., Arbitrase di Indonesia (Arbitration in Indonesia), (Jakarta: Ghalia Indonesia, 1995), 106.

Furthermore, the people of lower-middle class will be reluctant to enter courthouse with plain clothes and wearing sandals. Indeed the court is unfriendly to them and they would not dare to settle their dispute by this mechanism.

In addition, those who belong to this class have prejudged that settling dispute through court would require a lot of money. Moreover, they do not know how to initiate legal process in court or who to approach. For them, access to justice is minimal or even unreachable.

Culture has partly played a role for the lower-middle class in avoiding court settlement. They usually believe that dispute resolution through court may have the consequence of damaging relationship with the contending party whom they know from childhood and interact with on a day-to-day basis. The court mechanism is just not suitable with the people's belief that harmony and peaceful relationship should be maintained. They even have concern that the court process may cause greater problems, instead of solving problem. They are afraid that their family may be socially affected. Moreover, they may have to face isolation by surrounding neighbor who disapproves court settlement. This is as result of many middle-lower class people who are unable to distinguish between civil and criminal cases. They will assume that those who go to court are criminals. In addition, the parties in dispute are also fear of losing face when they lost the case.

In view of the above, the lower-middle class will avoid going to the court at all costs. However, those who seek to resolve their problem through the court, it is more because they have no other choice. Their problem has to be submitted to court for remedy.

ii) Perception of the Middle-Upper Class

Perception of the middle-upper class toward court dispute settlement is strikingly different from the lower middle class. This is due to legal awareness among people in the cities is much higher compared to those who live in remote area. In addition, the familiarity towards law, thanks to the mass media, has been improving in the last 10 years or so. Hence, they have become accustomed to the concept of law and the court system. They can easily distinguish between criminal and civil matters. They are not deterred to

come to the courthouse. They also have good understanding of where to go if they want to settle dispute through court. In some instances, they will solicit lawyers, although there are occasions where lawyers approach them. The people who belong to the middle-upper class do not have any problem with access to justice.

Culture also played an important role. As the middle-upper class becomes more and more individualistic, they have no hesitation to settle their dispute through court. They are not worried if court settlement may jeopardize relationship with their contending party. In addition, they are less concern of how the society views them by going to court. There are several reasons to this. To start with, people in the cities do not care much of what others are doing or minding other people's business. Second, since people can distinguish between civil and criminal cases, those who settle their dispute in court will not be considered as criminals.

The private dispute settled though court is limited. Most cases are in the area of breach of contract and tort. The plaintiff often only seeks compensation for material injury. They will not seek compensation for immaterial injury that may be sustained.

Nevertheless, the middle-upper class, whenever possible, will avoid court settlement. They see court settlement as a last resort, not a first priority to be pursued. The reason behind this is their knowledge that settling through court system is not the best and efficient alternative. Even a retired judgewhen faced to settle his/her dispute would not go to court if he/she could avoid it. They know that court settlement involves tangled regulatory and legal environment. It also involves time so one needs to be very patient. In addition, court settlement would require a huge amount of money for legal fees and, most of the times, bribes and other irregular payment. Lastly, they also have doubt whether court can render a fair decision due to lack of credible justice system.

Lawyers play an important role when the middle-upper class is faced with the decision of going to court for settling dispute. The middle-upper class will listen to their lawyers' advice and let either their egos die down or the opposite.

Lawyers who are pragmatic and have full knowledge of the difficulty in settling dispute through the court system tend to discourage their client of going to court if unnecessary. However, lawyers who are hungry of clients and litigation works may

advice otherwise. This kind of lawyers, recently, has put negative image to the profession in the society.

In sum, the middle-upper class, although have reasons different from that of the lower-middle class, also avoids court settlement.

I.2.2 Perception of the Expatriates

Indonesia has long been considered as a place for investment by foreign investors. Recently, however, due to safety issue, legal uncertainty, increasing labor cost, high cost economy and many other reasons, foreign investments have been declining.

In discussing the perception of Indonesians toward court system as a means to settle dispute, the perception of the expatriates cannot be left out. Although they are not Indonesian national, their presence in Indonesia forms another perception that cannot be categorized under the perception of Indonesians.

The perception of expatriates toward Indonesian court is similar to those of Indonesians, although under different set of reasons. The expatriates will try to avoid resorting Indonesian court for settling their dispute; instead, they will resort to local or foreign arbitration or even foreign court that is much more credible according to them.[41]

There are many reasons why expatriates are not comfortable in choosing Indonesian court as a means to settle their dispute. To begin with, businesses do not prefer court settlement. Many, if not all, international contracts, agreements and the like concluded between foreign and local investors have chosen arbitration as forum for settling dispute. The choice is made irrespective of the local investor's having stronger bargaining position.

The Second reason, local counsels have been advising their foreign clients for not settling their dispute in an Indonesian court. In many instances, they have been discouraging their client to do so. Third, investors have great doubt on the ability of Indonesian judges when faced with complex transactions under an English contract. Fourth, investors often question whether the court can act impartially when nationalism

[41] It should be noted, however, that Indonesian court under article 436 Rv will not recognize foreign court judgment. Dispute settlement through court outside Indonesia can only be pursued if enforcement is not sought in Indonesia. This is not the case with respect to settlement through foreign arbitration. Indonesian court in principle will recognize foreign arbitral awards as Indonesia is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

comes to fore. Fifth, investors have been, or made, aware that the court system is not compliant with western or international standards.[42] Lastly, the judiciary is not credible as corruption is pervasive. Hence, foreign investors see the court system in Indonesia is not an alternative of recourse.[43] They will not consider it as an alternative, even for a last resort.

However, investors shying away from choosing Indonesian court do not necessarily mean that they can get away from appearing in Indonesia court. Some have experienced appearing before the Indonesian court. They have been compelled to appear before the court based on lawsuits not related to the content of the contract. For example, foreign investors have to appear before the court in a case of annulment of contract.[44] Other example is a case concerning foreign arbitration award seek to be annulled by Indonesian court. The investors have also to appear before the court if Non-Governmental Organization (hereinafter referred to as "NGO") accused them of polluting the environment or producing defective products.

From their experience of going through the Indonesian court, they have many complaints. Some say the process is time consuming, full of corruption, and the procedure is difficult to follow. Others complain about the partiality of the judge when faced with local issues and interest. In addition, the court's verdict does not deliberate the dispute in thorough and comprehensive manner.

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[42] One advice for those foreigners investing in Indonesia for the first time describes as follows, "The Indonesian court system has been said to be patrimonial in nature. Whether or not that is true, it seems to be the perceived condition by international investors. Patrimonial judicial authority is where the judicial office and its attendant powers are appropriated by the office-holder. In such a situation, judicial authority is exercised on the basis of specific and personal relationships between the individuals involved, not necessarily on the basis of law or fact." **See**: http://www.expat.or.id/business/twostepsforward.html access on 23 Janury 2003

[43] Hikmahanto Juwana, "A Survey on the Influence of International Economic Policy on Indonesian Laws: Implementation and Problems," **in**: Koesnadi Hardjasoemantri and Naoyuki Sakumoto (eds.), Current Development of Laws in Indonesia, (Tokyo: Institute of Developing Economies-Japan External Trade Organization, 1999), 217.

[44] To take an example PT. Paiton Energy, an Indonesian company owned mostly by foreign investor, had to appear before the Central Jakarta District Court to face a legal suit initiated by PT. Perusahaan Listrik Negara ('PLN'), a state owned enterprise, even though the two had agreed for dispute to be settled in arbitration. The lawsuit was filed to annul the power purchase agreement the two parties had entered. **See**: Registrar of the Central Jakarta District Court Number 517/PDT.G/1999/PN.JKT.PST. However, the court did not issue its final verdict as PLN withdrew its legal suit.

I.3 Problems Surrounding the Court System

This section will consider problems that have been surrounding the court system for many years. The problems pointed out, however, will be limited to those having connections with court as mechanism for dispute resolution.

There are many problems plaguing the court system in Indonesia. Yet, it is misleading to say that problems only arise recently. Problems surrounding the court have developed long before the *reformasi* era.[45] But, prior to the *reformasi* era, most of the problems are kept under the carpet. Under the Soeharto administration, no one dares to discuss openly about negative image of the government, including the judiciary.

In addition, the judiciary was a government branch, which had been secluded from the country's development, as legal development was not seen as priority. Law serves only a symbol without any significant implementation. Power and authority was the order of the day. Hence, most people just disregard if there are problems within the judiciary, as it rarely has been employed. Furthermore, people in those days would just assume that there were no problems within the judiciary. They assume that the judiciary remains unchanged since the Dutch colonial period. At that time judges were very knowledgeable, some became law professors, maintained high integrity, and enjoyed high social status within the society.

The first major problem that has been persistently faced by the judiciary is the fact that it has not reflected the principles embedded in Judicial Power Act. The principles referred to are the principle to uphold the law and justice[46] and the principle that the court process is simple, fast and inexpensive.[47] People feel that the judiciary only upholds the interest of the government, the wealthy and the powerful. It has long been forgotten the business of upholding law and justice for all. People also experience that court settlement is not simple, fast and inexpensive. On the contrary, it is complicated, time-consuming

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[45] Reformation era is an era dubbed after Soeharto was forced to resign from presidency, a position which he held for more than 30 years.

[46] Judicial Power Act art. 1 which provides that the 'Judiciary Power is an independent State power to conduct judiciary to uphold the law and justice based on Pancasila, in order to implement the rule of law of Indonesia

[47] *Id.* art. 4 (2) which provides that 'The tribunal shall be conducted in simple, fast and inexpensive.'

and expensive. People have shunned away from court when it comes to settling their dispute.

The second problem is the slow proceedings of courts until a decision can reach an enforceable verdict. It can take years before an enforceable verdict will be issued.[48] Most of the time the verdict is issued by the court of last instance. Nevertheless, this does not mean the end of it. The difficulty of enforcement and the lurking of PK by party to a dispute have added to the slow proceedings.[49] Even a verdict of a PK can be requested for another PK. To this end, many have wondered when a case is going to an end in Indonesia.

The slow proceedings have also been created by backlog of cases at the Supreme Court. In 1999/2000 there are 13.746 carry over cases and 10.189 new cases being requested for cassation.[50] The carry over cases from the previous years consist of private or civil cases which amounts to 10.810, criminal cases which amounts to 1.296 cases, military criminal cases which amount to 56 cases, land law cases which amount to 795 cases, administrative cases which amount to 691 cases and commercial (bankruptcy) cases which amount to 3 cases.

The new cases consist of private or civil cases amounting to 5.796, criminal cases amounting to 2.742 cases, military criminal cases amounting to 75 cases, land law cases amounting to 965 cases, administrative cases amounting to 685 cases and commercial (bankruptcy) cases amounting to 88 cases.

The cases that have been rendered decisions on that year are as follows; private or civil cases amounting to 8.375, criminal cases amounting to 3.082 cases, military criminal cases amounting to 114 cases, land law cases amounting to 145 cases, administrative cases amounting to 583 cases and commercial (bankruptcy) cases amounting to 23 cases. The cumulative number of cases awarded with judgment is 14.208

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[48] Sudargo Gautama, a law professor who is also practicing lawyer, said that in average a case would take 8 to 9 years before an enforceable judgement is issued. **See**: Sudargo Gautama, Undang-undang Arbitrase Baru 1999, (Bandung: Citra Aditya Bakti, 1999), 3.

[49] From January 1999 until June 2000 there are 1734 civil cases carry over from the previous year and 929 new civil cases that need to be re-opened by the Supreme Court. Depicted from Laporan Kegiatan MARI (Activities Report of the Supreme Court) 1999-2000, p. 117.

[50] Depicted from *Laporan Kegiatan MARI* (Activities Report of the Supreme Court) 1999-2000, p. 117.

out of 23.915 cases. In that year there are 9.706 cases left which become carry over the next year.

The highest number of cassation cases is private or civil dispute. The reason for its high number is that there is no limitation for private cases to be submitted for cassation at the Supreme Court.

The following will illustrate the backlog cases at the Supreme Court for fiscal year 1995-1999.

No.Title	Types of Case											
	Common Civil Cases		Common Criminal Cases		Military Crime Cases		Religious Civil Cases		Administrative Cases		Civil Commercial Cases	
	Cassation	Re-Opened	Cassation	Re-Opened	Cassation	Re-Opened	Cassation	Re-Opened	Appeal	Re-Opened	Appeal	Re-Opened
1. left over	8549	1563	940	125	15	2	672	157	744	99	4	0
2. Decide	6418	1563	2170	46	94	3	674	47	378	38	46	26
3. Accept	16,96%	4,1%	11%	6.09%	5,47%	0	17,3%	7,65%	17,96%	10,52%	17,82%	10%
4. Reject	75,58%	86,59%	51,81%	79,67%	84,40%	100%	64,87%	75%	63,09%	68,36%	22,17%	10%
5. Refused	7,71%	9,31%	36,22%	14,23%	10,12%	0	17,75%	17,33%	18,94%	21,10%	0	0

Types of Case	Cassation %			Re-Opened %		
	Accept	Reject	Refused	Accept	Reject	Refused
1.Civil Cases	16,69	75,58	7,71	4,1	86,59	9,31
2.Criminal Cases	11,96	51,81	36,22	6,09	79,67	14,23
3.Military Crime	5,47	84,40	10,12	0	100	0
4.Religious Civil	17,37	64,87	17,75	7,65	75	17,33
5. Administrative	17,96	63,09	18,94	10,52	68,36	21,10
Summation	69,45	339,75	90,74	28,36	409,62	61,97
5.Division Number	:5	:5	:5	:5	:5	:5
.Index	13,89	67.95	18,148	5,67	81,92	12,39

Source: Henry.P.Panggabean[51]

[51] Henry P. Pangabean, *Fungsi Mahkamah Agung Dalam Praktik Sehari-hari* (Function of the Supreme Court in Daily Practice), revised ed. (Jakarta: Sinar Harapan, 2002), 138-139.

The third problem faced by the court system is the classic issue of corruption. A large number of judges and supporting staff are believed to be tainted with corruption and collusion, better known in Indonesian as *Korupsi, Kolusi dan Nepotisme* or abbreviated as "KKN."[52] Bribery, irregular payments and other collusive practices have influenced on judicial decisions. Court decisions can be bent because of money.[53] Many are of the view that the court system is corrupt. This cannot be blamed solely on the judges. A low salary is sometimes identified as the cause of corruption problem.

The following will illustrate some types of improper behavior of the judges and clerks. It should be noted, however, that the actual number may be greater than the statistic given.[54]

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[52] Trimoelja D. Soerjadi a prominent Indonesian lawyer stated that the corruption in the judiciary goes back as far back as 1950. **See**: Trimoelja D. Soerjadi, "Korupsi di Lembaga Peradilan (Corruption in the Judiciary)" paper presented at Anti Corruption Workshop held by Partnership for Governance Reform on 10-12 October 2000 access at http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/Anticor-3Moel/$File/3moelja.pdf on 21 January 2003.

[53] Goodpaster has the following to say, "It is widely accepted in Indonesia that the judiciary is largely corrupt; that there are many corrupt lawyers willing to pay for decisions; and there is serious corruption among Indonesia's prosecutors and police as well." **See**: Gary Goodpaster, "Reflections on Corruption in Indonesia," **in**: Tim Lindsey and Howard Dick (eds.), Corruption in Asia,(Sydney: The Federation Press, 2002), 96.

[54] This is because the statistic was made from 1990-1997 when the government was unwilling to accept and recognize corruption or other illegal acts done by government officials.

Classification of Improper Behavior of the Judges and Clerks in the year 1990-1997

The Improper Behavior	Number of Judges	Clerks
Imposing illegal charges	4 persons	8 persons
Bribes	8 persons	3 persons
Accepting gifts	2 persons	1 persons
Misuse of power	21 persons	23 persons
Violation of official rules	7 persons	15 persons
Negligence in performing duty	5 persons	24 persons
Immoral action	23 persons	20 persons
Second Marriage without permission	None	2 persons
Pre-marital life	1 person	4 persons

Classification of Actions taken for the Improper Behavior for Judges and Clerks in the year 1990-1997

The Improper Behavior	Number of Judges	Clerks
Written Reprimand	14 persons	18 persons
Written dissatisfaction from the superior	17 persons	24 persons
Delay for increase salary for 1 year period	8 persons	6 persons
Salary decrease	8 persons	7 persons
Delay for promotion for 1 year	7 persons	9 persons
Demotion of rank 1 level lower for 1 year	13 persons	7 persons
Discharge from duty	2 persons	20 persons
Dismissal	None	6 persons
Fired	2 persons	3 persons

Source: Henry.P.Panggabean[55]

[55] Henry P. Pangabean, Fungsi Mahkamah Agung Dalam Praktik Sehari-hari, p. 166

The fourth problem is the loss of public confidence towards the court system. Public has lost its confidence because they cannot expect what is expected from the court: delivering justice.[56] The court was not trusted as a credible institution to render justice. In recent years, this has caused problem to the society. People are taking justice into their own hands. They will confiscate ownership of others by the use of force without resorting to court, and, in criminal offense, the suspect may be burned to death.[57] This has led the belief of many that the court system has dysfunctions.

The fifth problem stems from the fact that judges have lack of knowledge on complicated issues and on new laws and regulations. The cause of the problem is the weak human resources recruited as judge at the very early stage of recruitment.[58] Those wanting to be a judge have to pay bribes to be accepted. The judiciary has failed in attracting good graduates from prestigious universities.[59] The tarnished image of the judiciary, in addition to low salary has discouraged bright students to enter the profession. The ultimate result is mediocre human resources lacking in integrity.

The sixth problem is the lack of transparency in court decision. Court decision is hard to obtain. If it is obtained it requires unofficial payment. In addition, there are no comprehensive law reports. This has created the non-transparency of court judgment. Public are unable to scrutinize the decision of a judge, such as whether the legal basis is correct, the argument is convincing, etc. Some have suggested that without any transparency the judges will easily get away with pre-arranged decision.

The seventh problem is the inconsistency of decisions on similar cases. This of course is common to countries that do not follow the precedent principle: a judge is free

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[56] Public outcry has been pervasive toward controversial cases brought to the court, including Suharto trial, Akbar Tanjung the Chairman of Parliament, trial of Indonesian Chinese conglomerates suspected of embazzling State's money.

[57] According to Jakarta Post in 1999, the growing number of people killed and burned by people taking the law into their own hands by the fifth month of 1999 amounted to 65 people. **See**: Jakarta Post, December 24, 1999.

[58] This issue has been acknowledged by public official, such as the Director General for the Protection of Human Rights of the Ministry of Justice and Human Rights when he was quoted as saying, "There is a need to improve the Judge Recruitment System." **See**: Tempo, "Dirjen Perlindungan HAM: Perlu Pembenahan Sistem Rekruitmen Hakim (Director General for the Protection of Human Rights: A Need To Improve Judge Recruitment)," access at http://www.tempo.co.id/news/2002/12/3/1,1,21,id.html on 21 January 2003.

[59] Bedner said, "… the best law students do not choose a judicial career." **See**: Adrian Bedner, Administrative Courts in Indonesia: A Socio-Legal Study, (The Hague: Kluwer Law International, 2001), 197.

of what he/she wants to decide. From the perspective of those who seek justice this has created more legal uncertainty. They have said that court decision cannot be predicted.

I.4 Direction of Judicial System

This section will deal solely with the direction of judicial system that has relations with court as mechanism of dispute resolution.

Policy makers in Indonesia recognize the multi-interconnected problems of the court system. One report said Indonesia's legal system is 'desperate but not hopeless.'[60] To this end, there have been various efforts to deal with the problems. The Supreme Court and other government branches, such as the House of Representative, Ministry of Justice and Human Rights have taken various and sessions efforts to reform the judicial system. NGOs and donor countries have also taken similar steps.

The ultimate aim of the many efforts is to restore public confidence in the court system, including in its dispute resolution function. Here the study will spell out the judicial reform, which has been underway since the *reformasi* era began.

The first reform has been the introduction of non-career justices at the Supreme Court and the District Court special chambers, namely, the commercial court and human rights tribunal. The appointment of non-career justices is an important step as the position of justices have been exclusively and dominated by career justices. The purpose of this effort is to have individuals assuming the position of justices that are credible and untainted by the image of corruption. In addition, the effort is pursued to improve the quality of human resources within the judiciary. For this purpose, many non-career justices are academicians. It is expected that this effort will restore the public's faith in the judicial system.

The second reform is to empower the judiciary as an independent branch of the government by transferring the authority of justices' administration and budget proposal to the Supreme Court. It is expected that the judiciary will be able to enforce the rule of law, free from interference.

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[60] This was said by an Indonesian prominent scholar, Mochtar Kusumaatmadja, when describing the Indonesian legal system**. See**: Firoz Gaffar & Ifdhal Kasih (eds.), Reformasi Hukum di Indonesia: Hasil Studi Perkembangan Hukum – Proyek Bank Dunia (Legal Reform in Indonesia: Diagnostic Assessment of Legal Development in Indonesia – World Bank Project), (Jakarta: Cyberconsult, 1999), 145.

The third judicial reform is the effort to eradicate corruption and collusion at all levels of courts. This is carried out by making courts more transparent and their decision more accessible by the public. The chief justice even issued instruction to prohibit lawyers from coming to the Supreme Court to meet with the justices, especially for discussing their client's case. Chief Justice Bagir Manan disclosed openly to the public the fact that lawyers' maintain 'permanent' staffs of the Supreme Court as 'liaison officer' between the lawyers and the justices.[61] The eradication of corruption and collusion is a significant step to change and correct people's perception that courts only deliver justice on the ground of money and power, but never on law and fairness.

Fourth, the reform has been carried out to make the courts' administration efficient. The Inefficiency of court administration has been one of the causes of slow proceedings for settling disputes. At the Supreme Court as pointed out earlier, there are many backlog cases.

Another effort in resolving the backlog cases has been to ask the courts of first instance to maximize the role of their judges as mediator between the disputed parties. To this end, the Chief Justice of the Supreme Court has issued circular letter to all head of the District and Religious Courts to remind them of court-administered mediation.[62] The circular letter explicitly mentioned that court-administered mediation is being encouraged in order to overcome substantially the backlog cases at the Supreme Court.[63] The Chief Justice has asked judges to put real effort in mediating dispute, and not just treat mediation as a matter of formality. Judges will be given 3 months to mediate the dispute and such time can be extended with the approval from the head of the court. The Judges who are successful in its effort to medicate will be given credit points for their career review.

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61 *Kompas*, 20 December 2002.

62 Circular Letter Number 1 Year 2002 concerning the Empowerment of Court of First Instance to Apply Pacific Settlement (Article 130 HIR/154 RBg) dated 30 January 2002.

63 Sutantio and Oeripkartawinata have other opinion of court-administered mediation. They say, "Amicable decision has good meaning to the society at large and, in particular, those seeking justice. Dispute will once for all settled, fast settlement and inexpensive, apart from that the animosity amongst the disputed parties will be lessened. This is by far is better than if the dispute has to be decided by regular decision, in which case the defendant lost the case and enforcement of decision is carried out in forceful manner." **See**: Retnowulan Sutantio and Iskandar Oeripkartawinata, Hukum Acara Perdata dalam Teori dan Praktek (The Law of Civil Procedure in Theory and Practice), (Bandung: Alumni, 1986), 24.

I.5 Other Avenues for Seeking Resolution outside the Court

As argued earlier, most Indonesians perceive court system as the last, instead of the first, alternative to settle dispute. Indonesians will just not consider court as their first priority when facing dispute.

As people are hesitant to settle their dispute in court, they have found other workable avenues. One of them is what popularly known as ADR. In the next chapter, the study will look closely into the Indonesian ADR mechanism. However, formal ADR, such as arbitration is not common to people.

People have been accustomed to their own avenues. Unfortunately, all of them are extra-judicial. There are many forms of this kind of avenues. Here, the study will only discuss three avenues.

First, people who are tangled with private dispute will look for relatives or close friends working in the military, the government or the judiciary. The purpose is to ask their assistance, often times in its negative meaning. People believe that those who have power will prevail. The higher the position of the acquaintance, the better the possibility of 'justice' being done. Having connection to the right person, thus, plays an important role.

The other form of extra-judicial avenue is by employing military personnel or members of gangster. These people are referred to as 'debt collector'; and debt collecting has become a lucrative illegal business. In many loan transactions when the loan becomes bad debt, the service of mafia-like debt collection has been frequently employed. Respectable banks and financial institutions have not been an exception.

Debtors who cannot pay their debt are forced to settle their debt or face the consequence of being harassed by the debt collector. The form of harassments can be as simple as telephone threat; the debt collector waits day and night in front of the debtors' house; but on occasions actually uses physical force. The demand is of course for the debtors to pay the loan. If they fail to do so, they are frequently asked to surrender their valuables as payment of their debt.

The third means is by causing public nuisance or disturbances to third party not involve in the dispute. This means is employed if it involves a massive scale of people

who is in dispute with certain entity. This means has been frequently used by labors who demanded an increase of salary from their employer. The labors will stage demonstration in expressway or taking on the streets. By doing so, the labors expect to draw attention from the public, government and the media. This will put pressure to the employer. Many see this as a form of threat by the labor to the employer.