

THREE MOST IMPORTANT FEATURES OF INDONESIAN LEGAL SYSTEM THAT OTHERS SHOULD UNDERSTAND

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I. INDONESIAN LEGAL SYTEM IS BASED ON ROMAN DUTCH LAW, CUSTOMARY LAW, AND ISLAMIC LAW

Indonesian legal system based on Roman-Dutch law, customary law and Islamic law. Given to the fact that Most of the Indonesian archipelago was under Dutch rule for about three and half centuries (1602 – 1945). Prior to the first appearance of Dutch traders and colonists in the late 16th century and early 17th century, indigenous kingdoms prevailed and applied a system of adat (customary) law. Dutch presence and subsequent colonization during the next 350 years until the end of World War II left a legacy of Dutch colonial law. A number of such colonial legislation continue to apply today. Subsequently, after Indonesian declared independence on 17 August 1945, the Indonesian authorities began creating a national legal system based on Indonesian precepts of law and justice.

These three strands of adat law, Dutch colonial law and Islamic law co-exist in modern Indonesia. For example, commercial law is grounded upon the Commercial Code 1847 (Kitab Undang-Undang Hukum Dagang or Wetboek van Koophandel), a relic of the colonial period. However, commercial law is also supplemented by a large number of new laws enacted since independence. They include the Banking Law 1992 (amended in 1998), Company Law 1995, Capital Market Law 1995, Antimonopoly Law 1999 and the Oil & Natural Gas Law 2001. Adat law is less conspicuous. However, some adat principles such as “consensus through decision making” (musyawarah untuk mufakat) appear in modern Indonesian legislation. Islamic laws came up and have greatly influenced Indonesian National Marriage Law (Act No. 1 year 1974), Islamic Court Law (Act No. 7 year 1989), Zakat/ Alms law, Wakaf law, Islamic banking law, and so forth.

Islamic law in Indonesia apply only in civil matters, however in Aceh province, the northernmost province of Indonesia, Islamic law also apply for certain criminal offenses such as adultery, gambling, khalwat (intimate partner gathering without marriage bound), and selling and drinking alcohol. The legal basis of such laws are local regulation (Qanun).

II. INDONESIAN CONSTITUTIONAL STRUCTURE

To understand modern Indonesia’s legal system, some background must be given regarding the Indonesian constitutional structure. Indonesia is a unitary republic established pursuant to the constitution declared at independence, commonly called the 1945 Constitution (Undang Undang Dasar 1945). During the 32-year period when former President Soeharto was in power, the 1945 Constitution was never amended. After his resignation in May 1998, the 1945 Constitution was amended four times - in October 1999, August 2000, November 2001 and August 2002. Among other things, these amendments deal with far-reaching issues such as limitations on the powers and term of office of the President; decentralization of

authority from the central government to provincial and regional governments; and the creation of additional constitutional bodies such as the House of Regional Representatives/ Senate (Dewan Perwakilan Daerah) and the Constitutional Court (Mahkamah Konstitusi). Proposals for future amendments, some of which deal with equally weighty matters, are currently being discussed.

The 1945 Constitution provides for a number of constitutional bodies. Two of the most important are the People's Consultative Assembly (Majelis Permusyawaratan Rakyat or MPR) and the House of People's Representatives (Dewan Perwakilan Rakyat or DPR). The DPR is 500-strong and consists of elected and appointed representatives. Its main function is to make legislation and hold the President and his ministers accountable. The DPR meets during sessions scheduled throughout the year.

The MPR currently has almost 700 members comprising all the DPR members, appointed individuals representing the provinces, and other nominees. Constitutionally, the MPR is the supreme state body. Only the MPR has the power to amend the Constitution. It meets more infrequently, typically on an annual basis (constitutionally, it must meet at least once every five years). It issues policy statements in the form of resolutions (ketetapan) as well as the broad outline of state policy (Garis Besar Haluan Negara or GBHN). The country's overall economic plan is included in the GBHN.

Whereas the MPR previously elected the President and Vice-President, recent constitutional amendments stipulate that the President and Vice-President are to be directly elected by the people. The first direct elections for the presidency and vice-presidency are expected to take place in 2004. Presidential powers have also been circumscribed to some extent by recent constitutional amendments. Also pursuant to these amendments, a person can only be elected as President or Vice-President for a maximum of two consecutive terms of 5 years each. Nevertheless, the Presidency is still a powerful position in that the President is the head of state and head of government as well as the supreme commander of the armed forces.

III. INDONESIAN COURTS SYSTEM

The Indonesian judicial system comprises several types of courts under the oversight of the Supreme Court (Mahkamah Agung). Following the civil law tradition of Dutch, Indonesian courts do not strictly apply the principle of precedent/ jurisprudence which is so familiar among common law jurisdictions.

Most disputes appear before the courts of general jurisdiction, with the court of first instance being the State Court (Pengadilan Negeri). There are about 250 State Courts throughout Indonesia, each with its own territorial jurisdiction. Appeals from the State Court are heard before the High Court (Pengadilan Tinggi), of which there are around 20 throughout Indonesia. The High Court is a district court of appeal. Appeals from the High Court and, in some instances from the State Court, may be made to the Supreme Court located in Jakarta. The Supreme Court can hear a cassation appeal (kasasi) which is a final appeal from lower courts. It can also conduct a case review (peninjauan kembali) if, for example, new evidence is found which justifies a rehearing.

In 1998, the Indonesian authorities established the Commercial Court (Pengadilan Niaga). Initially, the Commercial Court is tasked to handle bankruptcy and insolvency applications. Its jurisdiction can be extended to other commercial

matters. Appeals from the Commercial Court proceed direct to the Supreme Court. There is also a State Administrative Court (Pengadilan Tata Usaha Negara) which hears administrative law cases filed against the government. In the 2001 constitutional amendments, provision was made for the creation of the Constitutional Court (Mahkamah Konstitusi). Among other matters, the Constitutional Court has the jurisdiction to hear cases involving the constitutionality of particular legislation, results of a general election, as well as actions to dismiss a President from office.