



# 23 INTRODUCTION TO INDONESIAN LAW

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## I. INTRODUCTION

Indonesia is a country that adopts the concept of rule of law. Article 1 Paragraph 3 of the Constitution states that “The State of Indonesia shall be a state based on the rule of law”. This article reflects that the operation of state institutions, public enterprises, and private enterprises are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated (Doss, 2020). Indonesia is also a unitary Republic in which the sovereignty of the state is in the hands of the people and exercised by the People’s Consultative Assembly. Indonesian law is considered as a member of the Civil Law or Continental legal system, as opposed to the Common Law system or Anglo Saxon legal system. Such legal system was derived from Dutch law. Hence, several Dutch Law continue to apply in the Indonesian legal system until present day. However, the Indonesian legal system is in fact more complex than merely adopting the existing Dutch law. This is because in addition to Dutch law that still exists within the Indonesian legal system, Indonesia also applies *Adat* law (Customary law) and *Syaria* Law (Islamic law).

## II. HISTORY

This part explains the history of the Indonesian legal system which has been developed by a complex interflow of different laws, namely the Dutch law, Customary

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law and Islamic law. They intertwine with each other and apply concurrently. Before the introduction of modern law by the Dutch colonialism, Indonesian people adopted laws that came from customs and religious beliefs such as Hindu, Buddhist and Islam.

### A. DUTCH COLONIALISM

Before the arrival of Europeans, the Indonesian archipelago was ruled by several kingdoms. Sriwijaya and Majapahit were among the biggest ones. The first European to land in the archipelago was the Portuguese in 1512. The first Dutch expedition to Indonesia took place in 1595 with the aim of accessing spices. Having recognized the potential of trade in Indonesia, the Dutch government established a company named *Vereenigde Oost-Indische Compagnie* (VOC) or the United East India Company in 1602. The VOC was a company which held a trading monopoly granted by the Dutch government (Thoolen, 1987, p. 3). The Company went bankrupt in the 1800s and its assets were nationalized by the Dutch government.

During that period, Indonesia was named as the Netherland East Indies. The population was governed by Customary law which is also known as *Adat* law. Customary law consists of rules derived from customs practiced by traditional communities. A practice by a traditional community can turn into Customary law if it is considered as a crucial and necessary rule among the community. Slowly, the practice turns into law that is created and implemented in an autonomous way: unwritten, un-codified and governs many aspects of conduct within certain traditional community. To put it in one sentence, *Adat* law is a set of local and traditional legal rules based on the community region (Priambodo, 2018, p. 150).

The term *Adat* law usually includes all Customary law of the non-European population in Indonesia as opposed from the codified Dutch law (Thoolen, 1987, p. 32). Cornelis van Vollenhoven, a scholar from Leiden, classified *Adat* Law into 23 subdivisions based on a combination of region and ethnicity. Vollenhoven was known for his argument in promoting Customary law. He argued that “*the colonial administration must devote serious attention to understanding traditional law and preserving its integrity.*” The Dutch parliament adopted Vollenhoven’s view. As a result, there exists a new understanding of *Adat* law supported by various new researches. *Adat* law institutions and educational trainings were provided for those who were interested in understanding the dynamics of *Adat* law (Lev, 1985, p. 64-65). According to Lev, Customary law is isolated from the rest of the colonial policy.

In addition to Customary law, the Indonesian population was also governed by Islamic law. Due to our location between China in the East, the Subcontinent, and the Middle East on the West, the Indonesian archipelago

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becomes a major route for Muslim traders who traveled to Southeast Asia. Muslim traders traveled through Indonesia since the 13<sup>th</sup> or 14<sup>th</sup> centuries. There was an Islamic kingdom in the Island of Sumatera as well as some Islamic legal institutions (Cammack & Feener, 2011, p. 14). This explains how Islamic law plays an important role in the Indonesian legal system.

During the Dutch colonial period, Indigenous Indonesian was allowed to apply Islamic law. Consequently, the Dutch established the Islamic Court in Java and Madura (Melayu, 2012, p. 58). The first law in respect to application of Islamic law as the 1882 Royal Decree which established the Islamic Court in the islands of Java and Madura. The Islamic Court adjudicated family and inheritance laws. However, the Dutch tried to limit the jurisdiction of the Islamic Court by situating it under the jurisdiction of general Court.

The concept of Islamic law differs from Customary law because the sources of law are coming directly from God. In some region where the majority of the population is Moslem, there is an interflow between Islamic and Customary laws. For example, Minangkabau, Gorontalo and Bolaang Mongondow adopted a principle known as '*Adat bersendi syara*', which means Adat or Custom is supported by Islamic law.

During the colonial time, the authority suited the dichotomy between European and Indonesian legal system to their own needs. The people in the colony was divided into racial groups consist of Europeans, Foreign Orientals (Chinese, Middle Eastern, Indian) and Indigenous Indonesians. In early seventeenth century, Dutch law was introduced in Indonesia for the European population. The applicable law for Indigenous Indonesians were Customary law and Islamic law. In 1848, the Dutch laws namely the Civil Code and the Commercial Code were formally introduced (Thoolen, 1987, p. 33). In 1855, a significant part of the Commercial Code was applied to Foreign Orientals, and in 1917, they were merged into the Dutch Civil Code except for affairs on civil registration and marital ceremonies.

Two-court division were introduced for Europeans and Indigenous Indonesia. For those who are subjected to the Dutch law, there existed a three-court hierarchy with the Indies Supreme Court on top of the hierarchy. Meanwhile, the population group that were subjected to the Indonesian law also had a three-court hierarchy with *Landraad* being the highest court among the three. Most of the judges in *Landraad* were Dutch nationals. Few Indonesians were appointed as judges after they graduated from schools in Holland and the colony (Lev, 1965, p. 174). As a result of having different applicable laws for different group of population, legal pluralism exists in Indonesia.

The Dutch colonial government introduced major legislation that set the legal system in the Netherlands East Indies. These legislation were in the form of Codes namely the Civil Code, Commercial Code, The Civil and

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Criminal Procedural Code for the island of Java as well as for the island of Madura and the Criminal Code. These codified laws were actually derived or influenced by French laws. This is as a result of French occupation of the Netherland during the Napoleonic wars.

By applying Dutch law, the Indonesian legal system falls under the Roman – Dutch law model. The Indonesian law adopts the Civil law legal system through its sources of law, doctrines, and methods. However, like in many other jurisdictions influenced by the development of the Common law system, case laws or precedents becomes an important source of law in present day. Precedent, or known as judge-made law, is considered as one of the sources of law that has a persuasive bearing. Even though it is still far to claim that Indonesia has tended to adopt a hybrid system, the Indonesian legal system is no longer a pure adoption of the Civil law legal system. As stated by Esin Orucu, there is no state in today's world that purely adopts Civil law or Common law system. Both systems influence each other (Orucu, 2008, p. 2) and Indonesia is no exception to this concept.

### B. INDEPENDENCE

Following Indonesian independence in 1945, the country started to introduce modern law. There was no longer classifications of population groups. Article 27 of the Indonesian Constitution prescribes equality of all citizens before the law. This implies that the differentiation of population group based on social class and ethnicity is no longer applicable. The modern Indonesian law is a combination between the existing Dutch law, Customary law, and Islamic law. Despite many who believes that modern Indonesian law might lean to the advantage of the European and Chinese, the Dutch law is still applicable until present day. The legal basis is the Transitional Provision Article I and II of the Transitional Provision of the 1945 Constitution which states that all legislations and institutions from the colonial period remain valid until they are revoked and replaced.

Customary law is enforced after independence on the basis that it does not conflict with state interests and its existence is still needed (Law No. 5 of 1960, Article 3). The Basic Agrarian Law is based on Customary Land law and Agrarian law that regulates about the use of land, water and air space (Priambodo, 2018, p. 153). Few Indonesian scholars such as Budi Harsono and Suryono Sukanto support the application of Customary law to develop Indonesia's very own legal system. They stated that other fields of law, both related or unrelated to Land law, can also be formulated according to the system of Customary law (Priambodo, 2018, p. 157). Adat law in one hand is regarded as a national symbol of the Indigenous Indonesians, but it was considered to be very outdated to be applied for a modern state. Conse-

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quently, the judicial interpretation towards them began to change. Adat law's application is very limited to traditional communities in rural areas as it is no longer compatible with modern commercial activities.

Article 9 of Law No. 14 of 1970 concerning Judiciary abolished the existence of Adat Court in Indonesia. On the other hand, Islamic law was officially recognized through Article 10 of the same law by the adoption of Religious Court. The position of Religious Court got stronger with the promulgation of Law No. 7 of 1989 concerning the Islamic Court, followed by a couple of amendments.

The implementation of Islamic law is also evident in Law No. 1 of 1974 concerning Marriage. This law strengthen the position of the Religious Court and solidified the standing of the Religious Court in the Indonesian Legal System. The expansion and modernization of Islamic law was evident from the promulgation of the Compilation of Islamic Law in 1991 (Cammack & Feener, 2011, p. 18). The Compilation serves as a non-authoritative but important source of Islamic law. It consists of laws on marriage, inheritance, *wakaf* (religious foundation) and religious donation or *tithe*. The purpose of this compilation is to provide consistency and uniformity in the application of Islamic law by judges in Religious Court. The compilation has not been submitted to the legislature or formally enacted into codified law.

### III. THE BASIC PRINCIPLES OF INDONESIAN LAW

The basic principle of Indonesian law is embodied in Pancasila and the Constitution. Pancasila is the philosophical and fundamental principles of the state. It is the core ideology of the Indonesian government consisting of the belief in God, nationalism, humanitarianism, democracy and social justice. The Constitution of the Republic of Indonesia is the 1945 Constitution which has been amended four times in 1999, 2000, 2001, and 2002. Based on Pancasila and the Constitution, the aimss of the state are to establish an Indonesian government which shall protect all of the Indonesian people, to advance public welfare, to develop intellectuality within the nation, and to contribute towards the establishment of a world order based on freedom, peace and social justice.

In Indonesia, the sources of law have two understandings: material sources and formal sources. Material sources are sources that determine the content of a regulation, while formal sources refer to sources which determine the forms and the formulation of a certain regulation. The material sources refer to the sources from which the content of the law is taken from. This can be social norms, religious norms, legal consciousness and others. The formal sources of law are Statutes (*undang-undang*), customary law, judge-made law, treaties and doctrines. Laws can be distinguished into: statutes, government regulation in

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lieu of laws, government regulation, presidential regulation, regional regulation on provincial level, and regional regulation on city or regency level.

Statute is law that is enacted by the House of Representative and ratified by the President. Statutes are enacted to implement either the Constitution or a decree by the People's Assembly. Government regulation in lieu of statute is a regulation promulgated by the President in an emergency situation. It has the same rank as statutes, but it needs approval from the House of Representative. Failure to obtain such approval leads to the withdrawal of such regulation. Government regulation is promulgated by the president in order to implement statutes. Presidential decision is also promulgated by the President to implement the Constitution, a decision of the People's Assembly in the executive sphere or a government regulation. Elucidation can be found subsequent to all statutes and government regulations. Elucidation is an explanatory memorandum prepared simultaneously with the basic document and enacted along with the statutes or government regulations. Elucidation serves as a clarification of the legislators intentions when formulating a law and is considered as part of the law itself.

In terms of Customary law or Adat law, not all customs are law. For a custom to be considered as customary law, it must fulfill the following requirements:

1. There are a series of actions or behaviors done by the people and followed by others in the same region;
2. The people in the group are in an agreement that such behavior or actions are necessary due to its respected value and therefore needed for the community and have a binding power.

Even though Indonesia is a Civil Law country, judge-made law or precedent plays role in the legal system. Like in Common Law countries, Indonesian judges are empowered with the authority to interpret, apply and create laws. This method is used especially when the law is absent on certain legal issue. The judge may, in their discretion, refer to previous judgment. Unlike in the Common Law system where previous case with similar facts and similar application of laws must be followed, in Indonesia, courts are not bound by decisions of higher court despite of similarities of fact and laws. However, in practice, some Supreme Court judgements are consistently followed and referred to by other lower court judges and create a precedent which is called *yurisprudensi* and is considered as a source of law.

## IV. THE JUDICIARY SYSTEM

The judiciary system in Indonesia consists of the Supreme Court and the Constitutional Court. In addition to the court of general jurisdiction, there

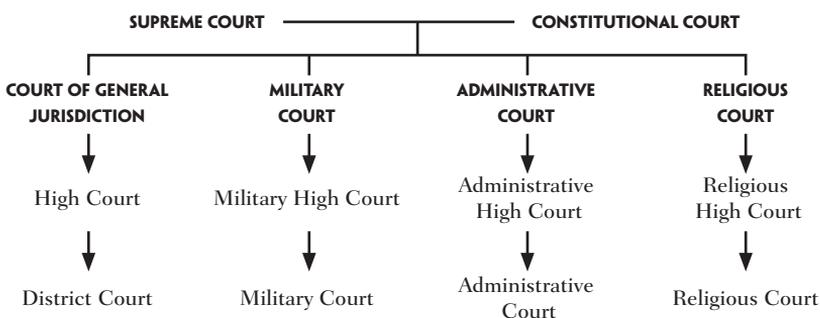
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are several special courts namely the military court, religious court and administrative court. The Indonesian Constitution guarantee the independence of the court in Article 24 which states that “*the judicial power shall be independent and shall possess the power to organize the judicature in order to enforce law and justice*”. Therefore, no intervention toward the judiciary in any form or any manner is allowed.

The Indonesian judiciary system reflects the inquisitorial method of trial as applied in other Civil law jurisdictions. Under this method, the court is actively involved in adjudicating the case. This is different from the adversarial system in which the judges’ primary role is to serve as the referee between the prosecutor and the defense counsel. Under the Indonesian system, judges are fact finders who lead the inquiry by questioning the defense counsel, the prosecutor and the witness. Judges focus on both the issue of establishing facts and applying the laws.

Article 24 (1) of the Constitution states that “*the judicial power shall be independent and shall possess the power to organize the judicature in order to enforce law and justice.*” The Constitution accepts that independence of the judiciary is a condition *sine qua non* for the enforcement of law. Thus, the Constitution admits that law enforcement cannot be separated from justice and it can only be realized if judicial power is exercised in an independent and unbiased manner.

The judiciary is carried out by the Constitutional Court and the Supreme Court. Under the Indonesian legal system, the Constitutional and the Supreme Court are on the same level of power. The following discussion explain the jurisdiction of each court. The court hierarchy in Indonesia can be seen in the following chart:



- Juvenile Court
- Commercial Court
- Industrial Relation Court
- Anti-Corruption Court
- Human Rights Court
- Tax Court
- Fishery Court

**SOURCE:** Compiled by the author

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### A. THE CONSTITUTIONAL COURT

The Indonesian Constitutional Court was established in 2003. It was established based on Articles 24 (2) and 24C of the Constitution with the jurisdiction to conduct judicial review of laws against the Constitution. In addition, the Constitutional Court is also given the jurisdiction to adjudicate dispute of authorities between state institutions, to decide upon the dissolution of political parties, and to decide upon electoral disputes. The Court also decides upon the opinion of the parliament about alleged violations of the Constitution committed by President and/or Vice President.

The decision of the Constitutional Court is final and binding. Until present day, all decisions are fully enforced. In the case where a certain decision of the Constitutional Court has not been enforced, the public and press may put pressure towards the institution to whom the decision was meant to be executed to (Mahfud MD, 2011, p. 7). The Constitutional Court consists of nine justices. To guarantee the independence, each justice is given the opportunity to give either concurring or dissenting opinion when adjudicating a case. In doing such power, a deliberation meeting is conducted where each justice give his or her opinion which is different from that of the majority. The dissenting justice is allowed to express the different opinion in a special section provided in the decision (Mahfud MD, 2011, p. 14).

Transparency is also promoted in the Constitutional Court. The hearing process is open to public and the press. In addition, the whole litigation process is recorded in audio and video recordings. Moreover, the Court also runs video conference networks placed at law schools across the country and video streaming facility through its website (Mahfud MD, 2011, p. 15). These facilities are developed to enable Indonesians and foreigners to follow the hearing process. Court decisions can easily be found in the Court's official website not long after the decision was read in the court.

### B. THE SUPREME COURT

The Supreme Court of the Republic of Indonesia maintains the judiciary system and serves as the highest level of court among other courts. The Court has the authority to hear and rule on all final judgments made by high courts through cassation. The jurisdiction covers criminal, civil, religious, military and administrative matters. In a cassation case, the Supreme Court deals with the question of law, meaning it may annul or confirm the decision of the high court based on its evaluation on the points of law, but not on factual evaluation. Furthermore, it has jurisdiction to adjudicate all disputes of different court systems, including disputes between high courts and district courts of different court systems, and between high courts and district courts located in different region. In addition to the judiciary function, the

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Supreme Court is also obliged to give an advisory opinion to the government upon request.

In term of justices' selection, the candidates for Supreme Court Justices are proposed to the House of Representatives by the Judicial Commission. If approved, the candidates are then confirmed by the President. The Supreme Court consists of 51 justices which are divided into eight chambers.

There are two types of court under the Supreme Court, namely the Court of General Jurisdiction and Specific Jurisdiction. Court of General Jurisdiction covers both criminal and civil matters. It consists of district courts and high courts. District court is located at every regency or municipalities that serves as the first resort for those who would like to file a case. High Court is located in each province and functions as an appellate court as well as to supervise the administration of district courts. Meanwhile, Court of Specific Jurisdiction consist of the Religious Court, Administrative Court and Military Court.

Within the Court of General Jurisdiction, there are several specializations, namely:

1. Commercial court. It has jurisdiction to examine, adjudicate and decide issues in respect to bankruptcies, intellectual property and bank liquidations. The procedural law of a commercial court uses the civil procedural law as identically applicable to civil cases. Until present day, commercial court is only located in Medan, Surabaya, Semarang, Central Jakarta, and Makassar district courts.
2. Industrial relation court. This court is governed by Law No. 2 of 2004 concerning Industrial Relations Dispute Resolution. It has power to examine, adjudicate and decide upon industrial disputes concerning: rights, interest, termination of employment contract and disputes between labor unions in a company. Industrial relation court can be found in every province in Indonesia. Before the parties submit their dispute to the court, they must first bring the dispute to a bipartite meeting which must be registered to the Ministry of Manpower and Transmigration. The bipartite meeting will recommend the parties to either resort to mediation or arbitration. Failure in these process gives the disputing parties the right to submit their dispute to the industrial relation court.
3. Fishery court. The specific authority of fishery court is to examine, adjudicate and decide upon fishery-related crimes by Indonesian citizens as well as foreigners. It follows the criminal procedural law with some exceptions. At the moment, five fishery courts have been established in the following district courts: Medan, Bitung, Tual, Pontianak and North Jakarta.
4. Juvenile court. This is a special court to adjudicate criminal cases involving children (anyone below the age of 18 years old). The court uses criminal

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procedural law with some exceptions. The juvenile court takes the approach of restorative justice which aims to repair the harm rather than retribution. It is established in every district court.

5. Human rights court. The jurisdiction of human rights courts is to examine, adjudicate and decide upon grave human rights violations, including those committed outside the territory of Indonesia by Indonesian citizens. The procedural law is the same as criminal procedural law. This court is established in every district court in the capital of each regency throughout the country.
6. Anti-Corruption court. The anti-corruption commission was established through Law No. 31 of 1999 concerning Corruption as amended by Law No 20. of 2001 and Law No 30. of 2002 concerning the Anti-Corruption Commission. Law No. 30 of 2002 stipulates the guidance concerning the establishment of specialized court for corruption cases and rules regarding the anti-corruption commission.

In addition to court of general jurisdiction, Indonesian legal system recognizes three different specialized courts, namely: military, religious and administrative.

### 1. MILITARY COURT

The jurisdiction of a military court includes offenses committed by members of the armed forces or persons who are declared to be of a similar status. This court follows separate procedural law pursuant to Law No. 31 of 1997 regarding Military Court. The Military court is divided into four jurisdictions, namely:

- Military court. This is the first level court that oversees criminal cases involving defendants with the rank of captain and below.
- Military high court. This is the first level court and has the authority to examine and decide criminal cases involving defendants with a rank of major and above. It also has power to examine and decide military administrative disputes.
- Military primary court: This is an appellate court that oversees appeals of decisions made by the military high court. This is also the first and last level for dispute resolution regarding the authority of military courts.
- Military combat court. It has the jurisdiction to oversee criminal cases in combat zone.

### 2. RELIGIOUS COURT

The jurisdiction of religious court is to adjudicate dispute between spouses that holds Islamic faith and cases involving Islamic law in specific areas such as dowry, divorce, inheritance, and gifts. In addition, religious court also

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oversees commercial disputes if the transaction is conducted based on *Syaria* law. This court falls under the supervision of the Ministry of Religious Affairs. First level Religious Court is established in each district and city, while the appellate level court is located in every province. The Aceh province is granted a special autonomy to implement Sharia law. This is why Aceh province has a special court known as *Mahkamah Syar'iah* that also adjudicates certain criminal matters using Islamic law.

### 3. ADMINISTRATIVE COURT

This court is regulated under Law No. 51 of 2009 concerning the Second Amendment of Law No. 5 of 1986 concerning State Administrative Court. The jurisdiction of administrative court is to adjudicate state administrative disputes which is a dispute between a person or a civil entity and a state official or state institution as a result of the issuance of an administrative decision. The administrative decision that can be adjudicated has the characteristic of being concrete, individual and final.

Under the Administrative Court, there is one special court which is the Tax Court. This is to adjudicate and decide upon tax dispute. Tax dispute is a dispute between a taxpayer and an authorized official issuing a decision regarding tax.

### C. CRIMINAL AND CIVIL JUSTICE SYSTEM

The creation of a criminal procedural code is manifested in the KUHAP (Kitab Undang Undang Hukum Acara Pidana). This is different from KUHP or the Indonesian criminal code. The most updated version of KUHAP was ratified by the President and was promulgated on December 31, 1981. Het Herzeiene Indonesich Reglement (HIR) and Reglement od de buitengewesten (RBg) were also known as a revised procedural law for Indonesian that are still applicable as the source of Indonesian Civil procedural law in present day. Indonesian criminal and civil justice system allow individuals to represent themselves before the court.

The decision of a district court is final and binding unless there is an appeal to the High Court by the relevant party within 14 days period. The decision of a high Court is final binding if no appeal is submitted to the Supreme Court within 14 days from the date the decision was notified to the parties. The Supreme Court decision at the cassation level is final and binding. However, further appeal called a judicial review is possible under limited grounds (Law No. 5 of 2004, Article 65). A judicial review does not automatically delay the enforcement of the judgment. The chairman of the relevant district court has the discretion to consider on whether enforcement should be delayed or should proceed.

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Enforcement procedure starts when the winning party submits application to the relevant District Court which is the Court that rendered the judgment. If the court lacks jurisdiction over the object of the case, the chairman may delegate the power of enforcement to another district court with a stronger jurisdiction. The district court then summons the losing party to be reprimanded to comply with the decision within eight days. If it fails, the Court then issued an executorial order to seize the losing party's assets for sale in a public auction. Indonesia is not a party to any convention or international agreement with other countries for reciprocal enforcement of foreign court judgments. Therefore, foreign court judgments cannot be enforced in the country.

### V. ALTERNATIVE DISPUTE RESOLUTION

Indonesian Law No 30. of 1999 on Arbitration and Alternative Dispute Resolution provides that arbitration can be used to settle commercial disputes. The parties to arbitration shall have a written arbitration clause prior to resorting to arbitration. An arbitral award is final and binding. Annulment of the award is very limited on the basis of Article 70 of Arbitration and ADR Law.

Indonesia is a signatory party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1985 (New York Convention) in 1981. Therefore, foreign arbitral award is enforceable in Indonesia provided that decision is within commercial dispute and the decision does not contradict with the Indonesian public policy. In addition, Indonesia is a member state to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention 1965). This enables foreign direct investors to sue the Indonesian government before ICSID arbitral tribunal for any breach of investment treaties.

Due to the absence of voluntary enforcement, arbitral award is enforced the same way as the enforcement of court judgment. The enforcement procedure states that the time limit of 30 days for the registration of arbitral award and must be done to the relevant district court. For international arbitral award, the relevant court is the District Court of Central Jakarta, while the relevant court for domestic arbitral award is the district court that has jurisdiction over the domicile of the losing party.

Mediation is not only used as an option to settle dispute. In civil court proceedings, mediation is mandatory before a civil dispute can proceed to litigation. This requirement can be found and accommodated by Supreme Court Regulation No. 1 of 2016 on Mediation in Court.

Before starting the hearing, the judges are obliged to order both parties to go through a mediation process. They are given 30 days to finish the media-

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tion which can be extended if highly necessary. Should the parties reach to an agreement during the mediation process, the judge will enforce the settlement agreement which becomes enforceable similar to that of a final and binding court judgment.

### VI. QUASI LEGAL AUTHORITIES

Ombudsman was established through the Presidential Decree No. 44 of 2000 with the name of National Ombudsman Commission as part of a legal reform following the 1998 Asian economic crises. It was aimed to create good governance which uphold the principle of transparency, and free of corruption, collusion and nepotism (Presidential Decree No. 44 of 2000, Article 1-5). In a relatively short period of time after its establishment, the Commission received about 800 complaints. In 2008, Law No. 37 of 2008 concerning Ombudsman was enacted to replace the Presidential Decree. Under this Law, the ombudsman institution in Indonesia becomes more powerful.

Article 2 of the Ombudsman Law stipulates that “*Ombudsman institution is a state organ which has an independent character, has no relationship with other State organs and public agencies, and is free from the intervention of other authorities in performing its duties and authorities.*” Thus, Ombudsman of the Republic of Indonesia (ORI) is an independent state institution. It is not a part of the executive branch, nor is it a part of the parliament even though it has the obligation to report to the parliament.

ORI aims to supervise the administration of public services executed by the central and regional government, state-owned enterprises, and also private enterprises that are assigned to deliver public services. In short, ORI’s responsibility is to supervise the implementation of public service administered by state and regional government. In doing so, ORI can mediate a dispute or give recommendation over a dispute.

### VII. THE LEGAL PROFESSION

#### A. JUDGES

In a Common Law country, a judge acts as an impartial referee. Meanwhile in Indonesia, judges are more active in trial. In a Civil law system, the judges actively conduct inquiries in an inquisitorial trial to find out the facts that happened between the two parties. Hence, the judges control the litigation process entirely.

#### B. PROSECUTORS

The Attorney General’s office (*Kejaksaan Agung*) in Indonesia is an autonomous agency. The structure consist of prosecutors in regency level (District Prosecutor) and prosecutor at provincial level (High Court Prosecutor). The

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Attorney general sits at highest level of the agency with supervisory powers over District Prosecutors and High Court Prosecutors. The main responsibility is to prosecute crimes. In addition, the office of the prosecutor also functions as the state's lawyer. It gives legal advice whenever needed such as when the state is sued before the court.

### C. LAWYERS

Under Article 1(1) of Law No. 18 of 2003 concerning Advocate, the Indonesian legal system only recognizes one category of lawyer which is called an "advocate". This covers all kinds of legal services inside and outside the court such as in-house lawyers, legal counsel, practicing lawyers and legal consultants. To have a license to practice law in Indonesia, one must be a national of Indonesia, domiciled in the country, graduated from a law school, pass the extended special education for advocate, pass the bar exam, pass the internship requirement for at least two years, and have a good reputation. Once a person fulfill those requirements, they can practice throughout the country without restriction.

Foreign lawyers are not allowed to practice even though they are permitted to work as legal advisors. Some foreign lawyers work in Indonesia to represent foreign companies. They are bound to meet the requirements set out by the Ministry of Justice through Decree No. M.11. HT.04.02 of 2004 on Requirements and Procedure in Employing Foreign Advocate and Duty to Provide Free Legal Services for Education Purposes and Legal Research.

### D. NOTARY PUBLIC

In Indonesia, like in many other Civil Law countries, notary is responsible for making essential documents under civil law. Article 1(1) of Law No. 2 of 2014 concerning Notary states that a notary is an official authorized to make authentic deeds and other authorities which covers: (1) attribution, giving authority to a position based on law; (2) delegation, a transfer of authority based on laws and regulations; and (3) mandate, a temporary transfer because of a person's absence.

## VIII. JUDICIAL COMMISSION

Article 24B of the 1945 Constitution requires the establishment of an independent judicial commission. Law No. 22 of 2004 concerning the Judicial Commission states that the duties of the Commission are recruiting and supervising the conduct of judges. The Judicial Commission is authorized to guard and enforce judicial ethics. In implementing its duties and function, Judicial Commission is given the authority, among other things, to: (1) accept complaints of any allegation towards infringement of the Code of

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Conduct for Judges, (2) examine and determine such allegations, and (3) improve the capacity and the welfare of judges.

### IX. LEGAL AID

Law No. 16 of 2011 on Legal Aid formally established legal aid program in Indonesia. Legal aid understood as providing legal services to the poor who are usually not familiar of the law as well as not having access to get adequate legal services. The first private legal aid institution was established in Jakarta at 1971 and is called “*Lembaga Bantuan Hukum (LBH)*” (Thoolen, 1987, p. 65). Until present day, there are many other private legal aid institution in the country. While the government provide reimbursement for any free legal assistance provided, many of them still struggle get proper funding.

### X. LIST OF REFERENCES

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- Law No. 14 of 1970 concerning Judiciary
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- Presidential Decree No. 4 of 2000

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