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RECENT LEGAL DEVELOPMENTS IN INDONESIA

This report gives an outline of the more important recent legal developments in Indonesia. It covers the period from January 1990 to July 1991. The following topics included are bilateral agreements, ratification of international conventions, implementation of the 1958 New York Convention on Arbitral Awards, regulations issued by the Indonesian Government, capital market, deregulation packages, intellectual property and case law.

I. BILATERAL AGREEMENTS

IN expanding bilateral cooperation with other countries, the Government of the Republic of Indonesia (GOI) has ratified several bilateral agreements in various fields of cooperation.

1. *Agreement between the GOI and the Government of the Republic of Argentina for Cooperation in Peaceful Uses of Atomic Energy*

On 9 March 1991, on the basis of the Presidential Decree No. 13 of 1991, the GOI ratified the aforesaid Agreement, which was executed on 17 May 1990. Under this Agreement, the two countries undertook to promote and develop cooperation in the peaceful uses of nuclear energy.

Comision Nacional de Energia Atomica (CNEA) from *Argentina* and *Badan Tenaga Atom Nasional* (BATAN) from Indonesia are the local government institutions designated by the respective countries to carry out the implementation of the aforesaid Agreement. These two government institutions have also been granted the authority to promote the participation of private and public entities of the respective countries.

2. *Agreement between the GOI and the Government of the People's Republic of Bulgaria on Economic and Technical Cooperation*

The Agreement, signed in Sofia, Bulgaria on 12 October 1990, covers the development of economic and technical cooperation between state and private organizations and enterprises in the fields of common interest in both countries. This Agreement was ratified by Presidential Decree No. 14 of 1991 dated 9 March 1991.

3. *Agreement between the GOI and the Government of the Socialist Republic of Vietnam on Economic, Scientific and Technical Cooperation*

In contributing to the cause of peace and cooperation in South East Asia, the GOI concluded a bilateral agreement with the Government of the Socialist Republic of Vietnam on economic, scientific and technical cooperation on 21 November 1990. This Agreement, ratified by Presidential Decree No. 11 of 1991 dated 25 February 1991, is valid for a period of five years and shall automatically be extended for subsequent periods of one year.

4. *Agreement between the GOI and the Government of the Democratic People's Republic of Korea on Economic and Technical Cooperation*

An economic and technical cooperation agreement was also concluded with the Government of the Democratic People's Republic of Korea. The agreement was executed in Jakarta on 2 February 1991 and ratified by the GOI pursuant to Presidential Decree No. 24 of 1991 dated 14 June 1991.

5. *Treaty between the Republic of Indonesia and Australia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia (Timor Gap).*

The aforesaid Treaty was signed by the GOI and the Government of Australia on 11 December 1989. Parties to the Treaty agreed to establish a Zone of Cooperation in the *"Timor Gap"* (a gap at the south of East Timor) to undertake joint efforts in exploration for and exploitation of petroleum resources of the continental shelf of the area between the Indonesian Province of East Timor and Northern Australia. This Treaty is not an agreement to delimit the continental shelf boundaries between the two countries. It is instead, *a practical temporary arrangement to make possible the exploitation of the natural oil and gas resources* without waiting for the conclusion of an agreement on the continental shelf boundary which will be constantly sought.

Article 2 paragraph 3 of the Treaty stipulates that this Treaty and the actions or activities within its framework are not to be taken as prejudicing the position of the two countries on the continental shelf boundaries of the Zone of Cooperation or affect the sovereign rights claimed by the respective parties to the Timor Gap.

Several benefits are expected from this Treaty, especially in the economic, sociocultural, political/legal, defence and security fields. A Model Production Sharing Contract between the Joint Authority of the Zone of Cooperation and Contractors, exploring and exploiting the gas and petroleum resources

is annexed to the Treaty which was ratified by the GOI by Law No. 1 of 1991 dated 7 January 1991.

Double Tax Treaties

On 30 November, 1990, Indonesia and the United States of America exchanged instruments of ratification of the Double Taxation Avoidance Agreement in Washington D.C. This Agreement between Indonesia and the United States of America (***PersetujuanPenghindaran*** *Pajak* ***Berganda antara*** *Indonesia dan USA)* has been ratified by Indonesia pursuant to Presidential Decree No. 44/1988, dated 31 October 1988, published in the Official Gazette (***Lembaran*** *Negara)* No. 32 of 1988.

Following the exchange of instruments, the Director General of Taxes in his Circular Letter No. SE-03/PJ.341/1991 dated 9 February 1991, confirmed the effectiveness of the Agreement in the two countries and that it applies to income received or acquired in the tax year which started on or after 1 January 1990. With regard to withholding tax on dividends (Article 11), on interest (Article 12), and on royalty (Article 13), the stipulations are applicable to dividends, interests and royalty paid out or due on or after 1 February 1991.

Double taxation agreements or treaties are playing an increasingly major role in the tax world. Since the enactment of Law No. 7 of 1983 concerning income tax, the Government of the Republic of Indonesia has negotiated on the Agreement for Double Taxation Avoidance and Prevention of Fiscal Evasion with 32 countries. Until March 1991, there are 18 Agreements which have become effective and these are with the United Kingdom and Northern Ireland, Canada, Germany, France, Thailand, Denmark, India, Austria, New Zealand, United States of America, Norway, Sweden, the Republic of Singapore, the Netherlands, Switzerland, Japan, the Philippines and Belgium.

II. RATIFICATION OF INTERNATIONAL CONVENTIONS

1. *Presidential Decree No. 26 of 1990 dated 18 June 1990*

This Decree is to ratify Convention 144, the Convention concerning Tripartite Consultations to Promote the Implementation of International Labour Standards. The General Conference of the International Labour Organisation adopted the above Convention at its 61st session held on 21 June 1976 at Geneva.

2. *Presidential Decree No. 36 of 1990 dated 25 August 1990*

By this Decree, the GOI has ratified the Convention on the Rights of the Child, signed in New York on 26 January 1990 and adopted by the United Nations General Assembly on 20 November 1989. The GOI has made a Declaration that the 1945 Constitution of the Republic of Indonesia guarantees the fundamental rights of the child irrespective of his or her sex, ethnic or race. The Constitution prescribes for those rights to be implemented by national laws and regulations.

The ratification of the Convention on the Rights of the Child by the Republic of Indonesia does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution.

The GOI has also declared that the provisions of articles 1, 14, 16, 17, 21, 23 and 29 of the Convention will apply these articles in conformity with the Constitution.

3. *Presidential Decree No. 45 of 1990 dated 26 September 1990*

At the 20th Conference of the Food and Agriculture Organization (FAO), held in November 1979, the Revised Text of the International Plant Protection Convention was accepted.

This Convention, ratified by the GOI by Presidential Decree No. 45 of 1990, applies to international cooperation in controlling pests of plants and plant products and in preventing their spread and especially their introduction across national boundaries. The contracting parties to this Convention undertake to adopt the legislative, technical and administrative measures specified in this Convention.

4. *Presidential Decree No. 51 of 1990 dated 15 October 1990*

The International Civil Aviation Organisation (ICAO), at its 22nd general session held in Montreal, Canada on 30 September 1977, accepted a Protocol Relating to an Amendment to the Convention on International Civil Aviation. This Protocol, ratified by Presidential Decree No. 51 of 1990, is effective as of 15 October 1990. The Convention on International Civil Aviation itself was adopted in Chicago on 7 December 1944.

5. *Presidential Decree No. 41 of 1990 dated 15 September 1990.*

This Decree was issued to ratify the international agreement on the use of Inmarsat (International Maritime Satellite) ship earth stations within the territorial sea and ports in order to achieve the objectives envisaged in

Recommendation 3 of the International Conference on the establishment of an International Maritime Satellite held in 1975-1976 in London. This Decree is effective as of 15 September 1990.

III. IMPLEMENTATION OF THE 1958 NEW YORK CONVENTION ON INTERNATIONAL ARBITRAL AWARDS

Indonesia is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards following its ratification on 5 August 1981 by Presidential Decree No. 34 of 1981. However, its implementation in practice has encountered many obstacles as the opinion of the Courts is that enforcement regulations are required before foreign arbitral awards could be enforced by the Courts in Indonesia.

On 1 March 1990, the Supreme Court of the Republic of Indonesia promulgated Regulation No. 1 of 1990 on the procedure for the enforcement of foreign arbitral awards.[1] This Supreme Court Regulation signifies a long awaited development in the field of arbitration in Indonesia, especially with regard to the recognition and enforcement of foreign arbitral awards.

According to article 3 of this Supreme Court Regulation, the conditions under which a foreign arbitral award will be recognised and enforceable within the territory of Indonesia are as follows:

(a) The award is made by an arbitration council or an individual arbitrator in a country to which Indonesia, on a reciprocal basis, is bound under the International Convention on Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention) or other treaties.

(b) The arbitral award is of a *commercial nature* according to Indonesian Law. As it is known, Indonesia makes no sharp distinction between civil and commercial transactions. According to article 1 of the Indonesian Commercial Code, the Civil Code in general is applicable to the provisions of the Commercial Code. Further, there is no distinction between civil and commercial courts as is the case in several other countries.

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1 For a more elaborate discussion on this Supreme Court Regulation, see S. Gautama, "Some Legal Aspects of International Commercial Arbitration in Indonesia" in *Journal of International Arbitration*, vol. 7, no. 4, December 1990, at p. 93 *et. seq*; see also Albert Jan van den Berg (ed.), *Yearbook of Commercial Arbitration*, vol. XVI, 1991; Albert Jan van den Berg (ed.), *International Handbook on Commercial Arbitration*, vol. 1, January 1990 and Albert Jan van den Berg (ed.), "Indonesia" in *International Handbook on Commercial Arbitration*, Supplement 6 November 1986.

(c) The foreign arbitral award does not violate ***"public policy"(ketertiban umum)***.

(d) An ***"exequatur"*** (confirmation of enforcement) from the Supreme Court of Indonesia is required.

The Jakarta Central District Court ***(Pengadilan*** *Negeri Jakarta Pusat)* is the Court authorised to receive requests for foreign arbitral award enforcement. The request is passed on by this Court to the Supreme Court for the *"exequatur"* to be granted.

IV. REGULATIONS ISSUED BY THE INDONESIAN GOVERNMENT

A. *Administrative Courts*

1. *Law No. 10 of 1990 dated 30 October 1990*

The above law provides for the establishment of Administrative Courts of Appeal *(Pengadilan Tinggi Tata* ***Usaha****Negara)* in Jakarta, **Medan** and Ujung **Pandang** in accordance with article 6 paragraph 2 of Law No. 5 of 1986 on administrative tribunals.

2. *Presidential Decree No. 52 of 1990 dated 30 October 1990*

In accordance with article 6 of Law No. 5 of 1986, this Decree provides for the formation of administrative tribunals in Jakarta, Medan, **Palembang,** Surabaya and Ujung Pandang. Administrative tribunals are new institutions within the legal system in Indonesia.

Administrative courts are formed based on Law No. 5 of 1986 relating to **Administrative** Courts ***(Undang-Undang****No. 5* ***tahun 1986****tentang Peradilan Tata Usaha Negara)*. According to the Basic Law on the Judiciary (No. 5 of 1970) there will be 4 types of courts in Indonesia, viz., general courts; military courts; religious **courts;**[2] and administrative courts (Law No. 5 of 1986 dated 29 December 1986).

Before the promulgation of **this** Law, **the** only Administrative Court known is the Tax Review Council ***(Majelis Pertimbangan Pajak)*** in Jakarta.

Administrative law is regarded as the citizen's protection against abuse of powers by the government, *i.e.* acts effected *"ultra vires"* by government officials, ***(detournement de pouvoir)*** or ***"abus*** *de* ***droit"***. These type of cases instituted by civilians against government **officials,** ministers, government

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2 See "Circular Letter Supreme Court, No. 2 of 1990" - Law No. 7 of 1989 on Religious Courts, *infra.*

departments, local authorities or other public bodies come within the jurisdiction of the administrative courts.

The further implementation concerning formation of the administrative tribunals of first instance in several cities and of Administrative Courts of Appeal was effected by Presidential Decree No. 52 of 1990 and Law No. 10 of 1990 dated 30 October 1990 referred to above.

B. *Religious Courts*

Circular Letter of the Supreme Court No. 2 of 1990 dated 3 April 1990

The primary objective of the Supreme Court Circular Letter is to implement Law No. 7 of 1989 concerning Religious Courts *(Undang Undang No. 7 tahun 1989 tentang Peradilan Agama)*.

In this Circular Letter, several provisions are mentioned relating to the competence of the religious courts and to legal issues which are still under the jurisdiction of the General Courts *(Peradilan Umum)*.

Section 49 provides that the *Peradilan Agama* has the competence to decide in cases of first instance between those who professed the Islamic religion in the fields of marriage; inheritance, subject to Islamic Law; Waqaf and Syadaqah.

By this Circular Letter, parties have the right to choose between Islamic Law, Customary Law or the Civil Code in settling their inheritance matters. This is in line with modern trends in the field of *choice of law* related to marital property in cases of different laws originally applicable to the spouses. Generally, according to Indonesian conflicts of law, the choice of law for a specific act is limited to transactions in the field of commerce and property based on State Gazette 1917No. 12 (the so-called "*Onderwerping voor een bepaalde rechtshandeling*" choice of European private law for a specific transaction).

In the case of a dispute on competence between the General Court or Religious Court, the Supreme Court shall decide on this matter (section 4.3 of the Circular Letter).

V. CAPITAL MARKET

By the end of 1990, two new capital market regulations were promulgated, with effect as of 2 January 1991. These new regulations are:

(a) Presidential Decree No. 53 of 1990 dated 10 November 1990.

(b) Decree of the Minister of Finance No. No. 1548/KMK.013/1990 dated 4 December 1990 (the *"MOF Decree")*.

The 1990 capital market regulations go further than prior legislation in establishing a sweeping legal framework for the institutional development of the Indonesian capital market. It consolidates, expands, redefines and restructures the entire system.

These legislation changed the mission of BAPEPAM *("Badan Pelaksana Pasar Modal")* which, prior to 2 January 1991, held a dual function, as supervisory and executive agency in the capital market activities, and since then will only function in a supervisory capacity. The executive function or the responsibility for administration of the Jakarta Stock Exchange is transferred to the private sector. The name of the agency, previously known as *"Badan Pelaksana Pasar Modal"* ("BAPEPAM" - the Capital Market Executive Agency), will now be called *"Badan Pengawas Pasar Modal"* (the Capital Market Supervisory Agency) which still uses the same abbreviation.

The recent MOF Decree, containing 233 articles shifted considerable licensing authority of the Ministry of Finance to BAPEPAM. Among others, it deals with the authority of BAPEPAM; securities exchanges; clearing-settlement-depository institutions; the rules, regulation and system of procedures regarding the development and improvement of capital market participants (brokerage firms, security houses, custodian fund manager, investment trusts); the standard of conduct for securities companies and investment advisers; registration of securities; prohibited transactions; sanctions and appeals.

The policies under these new legislation are viewed as a means to establish a future basis of growth for the capital market in Indonesia.

VI. DEREGULATION PACKAGES

Two major deregulation packages have been issued by the Indonesian Government in 1991. These are known as the "28 February Package" and the "3 June Package". Indonesia's deregulation campaign started in 1986. The policies announced in the various deregulation packages of 1986 up to 1990 have been implemented in the field of business as diverse as banking, securities, financial services, importation, product distribution, shipping, insurance and foreign investment.

A. *"28 February Package"*

On 28 February 1991, the Minister of Finance announced further deregulation packages in the banking industry as continuing implementation of deregulation in the financial, monetary and banking sectors announced in October 1988 *(Pakto 27)*.

In addition to improvement of the banking laws, which is presently under process, the "28 February Package" covers improvements on provisions

relating to efforts to maintain a sound/healthy banking system. The improvement measures, in particular, cover conditions on licensing, ownership and management, operational guidelines based on prudent principles including capitalization, reporting system, evaluation procedures of the soundness level and supporting factors required in banking business development.

The "28 February Package" was followed by the issuance of further implementation regulations in March 1991.

Amongst the new deregulatory policies in banking, are rulings on offshore loans and bank guarantees. The legislation relevant to these matters are:

(a) Decree of the "*Direksi*" of Bank Indonesia No. 23/72/KEP/Dir dated 28 February 1991 relating to the issuance of guarantees by banks.

(b) Presidential Decree No. 15 of 1991 dated 18 March 1991 relating to the receipt of offshore loans and issuance of bank guarantees for the receipt of offshore loans by state banks and regional development banks already appointed as foreign exchange banks;

(c) Decree of the Minister of Finance No. 279/KMK.01/1991 dated 18 March 1991 relating to the implementation provision on the receipt of offshore loans and issuance of bank guarantees for the receipt of offshore loans by foreign exchange banks;

(d) Decree of "*Direksi*" Bank Indonesia No. 23/88/KEP/Dir dated 18 March 1991 relating to the issuance of guarantees by banks;

(e) Decree of "*Direksi*" Bank Indonesia No. 23/90/KEP/Dir dated 18 March 1991 relating to the report on debtors who receive offshore loans and applicants who obtain bank guarantees in the framework of fufilling foreign obligations; and

(f) Circular Letter of "*Direksi*" Bank Indonesia No. 23/7/UKU/ dated 18 March 1991 relating to the issuance of guarantees by banks.

The new regulations have confirmed the possibility for the issuance of bank guarantees and standby letters of credit ("SBLC") by banks.

State banks and regional development banks, which have been appointed as foreign exchange banks, are now allowed to receive offshore loans. These banks are also allowed to issue bank guarantees or act as guarantors for the repayment of offshore loans obtained by state enterprises or private companies (article 1 of Presidential Decree No. 15 of 1991).

Pursuant to these new regulations, the term *"bank"* has been defined to cover general banks, development banks, savings banks and non-bank financial institutions. It is further stipulated that a guarantee, either in the form of a bank guarantee or a standby letter of credit, may be in Rupiah or a foreign currency. The total guarantee allowed to be issued by a bank to secure offshore loans has been restricted to 20 per cent of its capital.

B. *"3 June Package"*

On 3 June 1991, the Indonesian Government announced new deregulatory policies in the fields of industry, agriculture, trade and foreign investment. This "3 June Package" is a further improvement of similar deregulation in May 1990. The trade reform relates to lowering import tariffs on 562 items and tariff surcharges on 137 items but also increases tariffs on 71 items and surcharges on 39 items.

Presidential Decree No. 23 of 1991 issued on 3 June 1991 provides deregulation measures in foreign investment. With this Decree, the *Negative Investment List (DNI)* announced in 1989 is now replaced by a new one. Certain field of investment which was closed under the 1989 DNI is now open. In the 1989 DNI, 75 fields of business were closed to foreign investment, whilst only 60 fields of business are now closed under the 1991 DNI. The 1991 DNI also provides for a list of fields of business closed to all investments as well as a list designating fields of investment activity allocated exclusively for small enterprises/industries in cooperation with middle level or big enterprises. This new DNI is effective for three years but may be reviewed annually if circumstances so requires.

VII. INTELLECTUAL PROPERTY

1. *Trademarks*

To counter the bad practices of trademark piracy, an important Decree was issued by the Minister of Justice, Ismail Saleh S.H. on 15 June 1991. This Decree No. M. 03-HC.02.01 is named the "Minister of Justice Decree concerning refusal of application for registration of well-known trademarks or similar to famous trademarks owned by other individuals or legal entities".

As it is known, the same Minister of Justice has on 15 June 1987 issued another Decree No. M. 02-HC 01.01 on the same matter concerning famous trademarks. However, there is an obvious difference between the Decrees of 1991 and 1987. The 1991 Decree, which is broader in scope, defines what is a famous or well-known trademark. The 1991 Decree does not limit the qualification of *"famous trademark"* to marks known *"within"* the territory of the Republic of Indonesia only. It also covers brands which are known

"throughout the world" or *"outside Indonesia"*. It is further not limited to *"similar goods"* as covered by the famous brands. But it also includes goods of other *(i.e.* different) classes. For example, the trademark *"Arrow"* which is famous and used throughout the world for shirts cannot be registered in Indonesia for other goods, *e.g.* coffee or tea. The trademark *"Honda"* for automobiles cannot also be used for foodstuffs. In the daily household markets, especially in the territories of mid- and east-Java, food flavouring foodstuffs often used famous brand names, such as *"Honda", "Jeep" etc.* Generally there will be no confusion by suggesting that the *"Honda"* trademark owner in Japan is also the producer of this food flavourings presently circulating in the Indonesian market!

Considering that one of the main reasons given by the Minister of Justice in issuing this Decree is "to prevent confusion of the Indonesian consumer society with regard to the *origin* and *quality* of the goods" (*"dapatmenyesatkan konsumen terhadap asal usul dan kwalitas barang yang memakai merek tersebut"*), it is in the above mentioned examples at least questionable whether the scope of protection for famous trademarks has not gone too far and is not too over protective. Perhaps article 1 of the 1987 Decree which is limited to protection of the "same class of goods" (*"jenis barang tertentu"*), may be reconsidered.

However, it is evident that not only the protection of the consumer is regarded as of vital importance. Moreover, it has been the intention of the Minister of Justice to also create a sound climate for foreign investments in Indonesia. Besides, in an interview with *Bisnis Indonesia* on 22 May 1991, the Minister clearly stated that "falsified trademarks should no longer benefit from legal protection. Our society should respect creations of others and not become a society of pirates (*"Masyarakat kita harus menghargai karya orang lain, jangan jadi masyarakat pembajak"*). Trademark pirates have so far earned great profits to the detriment of others, the real owners of famous brands. Therefore, the present 1991 regulation should be broader in scope and cover not only similar goods and trademarks well-known within the territory of the Republic of Indonesia. The 1987 regulation should be replaced with the new provisions of the 1991 Decree, covering dissimilar goods and brands well-known abroad (not only in Indonesia). It is left to be seen how in practice the courts will interpret the Minister of Justice's Decree. It is obvious that the Patent and Trademark Registrar has to follow the directions of their superior, *i.e.* the Minister of Justice. But judges are not bound by it, and could express their own opinion of what is to be considered as a famous trademark and whether confusion to the public will arise with regard to wholly different products!

2. *Patents*

On 11 June 1991, President Suharto issued three regulations (***Peraturan Pemerintah***) with regard to the implementation of the new Patent Law No. 6 of 1989. The three regulations are:

(a) No. 32/1991 (S.G. 1991 No. 40, Elucidation in Additional S.G. No. 3442) on the importation of raw materials or certain products protected by patent in connection with local pharmaceutical production. *(Peraturan Pemerintah No. 32* ***Tahun*** *1991 tentang impor bahan* ***baku atau*** *produk* ***tertentu*** *yang* ***dilindungi*** *paten bagi* ***produksi obat didalam*** *negeri).*

(b) No. 33 of 1991 relating to the Special Registration of Patent Consultants *(Peraturan Pemerintah No. 33* ***tahun*** *1991 tentang* ***Pendaftarankhusus Konsultan*** *Paten),* S.G. 1991 No. 41, Elucidation in Additional S.G. No. 3443).

(c) No. 34 of 1991 regarding the Procedure for Request of Patents *(Peraturan Pemerintah No. 34 tahun 1991 Republik Indonesia tentang Tata Cara* ***Permintaan*** *Paten, S.G. 1991 No. 42, Elucidation in Additional S.G. No. 3444).*

The first Government Regulation No. 32/1991 was issued for the purpose of safeguarding the importation of raw materials and other specific products which are protected by patent, but vital for the production of Pharmaceuticals within the territory of Indonesia. As far as possible this flow of essential raw materials should be safeguarded so as to continue. Article 21 of the Indonesian Patent Law 1989 No. 6 explicitly provides that the import of patented products or products fabricated according to patented products by others than the patent owners, will not be regarded as an infringement of patent rights, except in certain situations to be further elaborated by Government Regulations (article 20 of the Patent Law 1989 No. 6). The 1991 Government Regulation No. 32 is an example of such an elaboration. Based on the general idea that importation of patented pharmaceutical products as a rule are not regarded as an infringement of the patent owner's rights (article 20 of the Patent Law 1989 No. 6), it is deemed necessary to give certain limitations to the import of patented products. These products, if imported before 1 August 1991 (the date of coming into force of the new patent law), are not to be regarded as contravening the patent rights. But imports after that date are regarded as contrary to the Patent Law.

With the exception of products mentioned in the Appendix to the Government Regulation No. 32 of 1991 which are vital for pharmaceutical plants in

Indonesia (50 products, *i.e.* atenolol, cyclosporin, *etc.),* imports of patented protected products are prohibited (article 1). According to the official Elucidation of this article, the Government can from time to time make changes in the respective list of goods.

The second Government Regulation (No. 33 of 1991) makes provisions for a special procedure for the registration of officially recognized Patent Consultants (*Konsultan Paten).*

Persons having a technical and science degree or in other related fields, having experience for at least two years in requesting patents for clients prior to 7 November 1989 (the date of the Minister of Justice's Decree No. M.O1-HC.02010 of 1989 suspending the provisional application for patent based on the 1953 Minister of Justice Regulation No. J.S.5/41/4) are in a position to apply for registration as Patent Consultants. A registration fee of Rp. 500,000 is required (article 1). The opportunity to register is open for six months after 11 June 1991 (the date of issuance of this Government Regulation, article 2). The Minister of Justice will issue further implementory regulations regarding the registration of Patent Consultants (article 3). The third Government Regulation No. 34 of 1991 makes provisions for the administrative procedures to be followed to obtain a patent.

Chapter II elaborates on the requirements to be fulfilled in order to request for a patent. It follows closely the provisions set forth in article 30 of the Patent Law No. 6 of 1989. It should be submitted in the Indonesian language by the inventor himself or an authorised Patent Consultant (article 2). Certain documents should be submitted, *i.e.* the request to obtain a patent, description of the invention, one or more claims covered by the inventions, drawing(s) mentioned in the description to be elaborated, an abstract of the invention (article 4). The patent application should contain the date of filing, full name and address of the applicant, full name and nationality of the inventor and of the Patent Consultant if the request is done by an attorney, the heading of the invention and the type of patent requested (article 5). The documents referred to in articles 4 and 5 follow closely the requirements outlined in article 30 of the Patent Law No. 6 of 1989.

The articles further regulate the splitting up of patent applications into two or more applications if it turns out that the patent request relates to two or more inventions (articles 7-10). It would be possible to change the patent request from an ordinary patent to a simple patent or *vice versa.* An ordinary patent is for a period of 14 years (with the possibility of a two-year extension article 9 *juncto* 42 Patent Law 1989 No. 6). A simple patent is issued for five years (articles 10, 109 and following, Patent Law 1989 No. 6), without possibility of extension (article 112).

The procedure for substantive investigation is set ultimately within a period of not more than 36 months since the date of filing (article 52). The decision to grant or refuse the requested patent is based on the following

considerations: whether it is a novelty, whether inventive steps are present and whether it is industrially applicable. Furthermore, consideration will also be given to whether the invention is one for which no patent could be given (No. 7 Patent Law 1989 No. 6), being an invention contrary to prevailing laws, public policy or food morals, or one for the processing of goods and beverages, new variety of plant or cattle, methods of research and treatment of men and animals or inventions concerning theory and methods of science and mathematics.

Chapter XIII contains transitional measures for provisional patent requests filed according to the Minister of Justice Announcement of 1953, No. J.S. 5/41/4 dated 12 August 1953 and No. J.S. 1/2/17 dated 29 October 1953, S.G. No. 91 of 13 November 1953. According to article 131 of the 1989 Patent Law, only provisional patent applications filed within ten years before the coming into force of the new Patent Law 1989 are allowed to be refiled within one year, *i.e.* between 1 August 1991 until 31 July 1992 (article 67).

Article 72 provides an opportunity to file patent applications for inventions of which the novelty period ends between 1 November 1989 and 31 July 1991. Inventions produced in Indonesia and publicised at national or international official exhibitions of which the novelty will end between 1 November 1989 and 31 July 1991, will not loose the opportunity to obtain patent if the application for it is filed between 1 August 1991 and 31 January 1992.

Patent applications filed abroad of which the priority period ends between 1 November 1989 and 31 July 1991, should be filed in Indonesia between 1 August 1991 and 31 January 1992 (article 73). Patent applications filed abroad of which the priority period ends between 1 August 1991 and 30 September 1991 should be filed, the latest, on 31 October 1991.

VIII. COURT DECISIONS ON ARBITRAL AWARDS

An important arbitral award was given on 5 June 1990 by an ICSID (International Center for the Settlement of Investment Disputes) Tribunal chaired by Professor Rosalyn Higgins in a long pending arbitration proceeding between a foreign investor, Amco Asia Corporation, Pan American Development, P.T. Amco Indonesia, and the Republic of Indonesia.

Indonesia has ratified the Washington Convention on the Settlement of Investment Disputes by Law No. 5 of 1968 (State Gazette 1968 No. 32). In case of a dispute arising out of an investment, the foreign investor is in a position to file for arbitration through the World Bank's International Centre for the Settlement of Investment Disputes in Washington.

As their investment in a well-known Jakarta Hotel, the *"Hotel Kartika Plaza"*, was revoked, the plaintiffs claimed for damages against the Republic of Indonesia. Until now the case has proceeded in no less than three "rounds".

The first proceeding started on 15 January 1981, and was decided on 20 November 1989. The ICSID team of arbitrators was chaired by Professor Berthold Goldman. The plaintiffs were awarded US$ 3.2 million with 6 per cent interest as from the date of registration of the Arbitration Request (15 January 1981).[3]

The second "round" was an annulment proceeding filed by the Republic of Indonesia, registered at ICSID on 18 March 1985 and decided on 16 May 1986 (Decision of the *Ad Hoc* Committee chaired by Professor Ignaz Seidl-Hohenveldern on 16 May 1986).[4]

The decision of the First Tribunal was annulled "as a whole" with respect to damages, but "with certain qualifications" only with regard to liability.

The third "round" was the re-submission of the original plaintiffs' claim before a new ICSID Tribunal chaired by Professor Rosalyn Higgins, filed on 11 May 1987. On 10 May 1988 an interim decision on *res judicata* matters and issues still open for reconsideration was issued.[5] An award was subsequently issued on 5 June 1990. The plaintiffs' claim was reduced to US$ 2.5 million plus 6 percent interest, but only as of the date of the award (5 June 1990).

Until today, after no less than ten years of proceedings, the case is still pending as Amco has requested an amendment and Indonesia has filed a request for annulment of the award of 5 June 1990.

Some of the other more important decisions are mentioned hereunder:

(a) Supreme Court 20 January 1989 No. 1400 K/Pdt/1986, published in 2 "*YurisprudensiIndonesia*" (1990) No. 11. In this *cassation* request of Andy Vonny Gary P., the Supreme Court annulled the Jakarta Central District Court's Decision of 11 April 1986 No. 382/Pdt.P/1986/P.N.Jkt.Pusat, refusing to order the Jakarta Civil Registrar of Marriage (Kantor Catatan Sipil) to conclude the marriage between requestrant, a Moslem and her proposed Christian husband *Adrianus Petrus Hendrik Nelwan*. The refusal of the Jakarta Civil Registrar of Marriage and the Chief of Religious Affairs Office (*Kantor UrusanAgama*) to conclude the marriage based on difference of religion, was not upheld. Before the coming into force of the new Marriage Law 1974 No. 1, cases of religious inter-marriage are regarded as legally permissible since the Regulation on Mixed Marriages (Gazette 1898 No. 158) explicitly stated that "difference of religion, race or descent could never be accepted

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3 For the Award on the Merits, see 1 Int. Arb. Rep. (1985) 601 and for the Award on Jurisdiction of 25 September 1983, see 23 I.L.M. (1984) 351.

4 See 1 Int. Arb. Rep. (1986) 649; 25 I.L.M. (1986) 1439.

5 For the decision on Jurisdiction, 3 ICSID Review, see *Foreign Investment Law Journal* (1988) 166; 27 I.L.M. (1988) 1281.

as being a prohibition to marry" (Supreme Court Decision No. 245K/Sip/1953, dated 16 February 1955 in the famous case of *Raden Adjeng Soemarni and Ursinus Elias Medellu*).[6]

After the introduction of Law 1974 No. 1 some doubt arose regarding the possibility of religious inter-marriage as this new marriage law only recognizes marriages which are concluded in accordance with the religion or faith of the respective spouses. And most religions, especially Islam, do not allow marriage with partners professing another religion.

According to the Supreme Court, marriage between Indonesian citizens with different religious beliefs is made possible by article 27 of the 1945 Constitution which states that all citizens are equal in status before the law, in which is included the fundamental right to marry other citizens although the proposed spouses are of a different religion. And as long as it is not stipulated in the law that difference of religion is a prohibition to marry, then this principle is in line with article 29 of the 1945 Constitution in which all citizens are assured of the right to freely profess their own religion.[7]

(b) *P.T. Maskapai Asuransi Ramayana* v. *Sohandi Kawilarang,* Supreme Court 27 January 1983 No. 455K/Sip/1982, *Himpunan Putusan Mahkamah Agung Tewang Arbitrase* (1989) 36.

An insurance company "*Ramayana*" has filed for cassation to the Supreme Court, requesting that the High Court's judgment of 18 November 1981 No. 236/1980/PT Perdata and West Jakarta District Court Judgment No. 338/1979GB be annulled due to the fact that the ordinary courts are not competent to sit in this case as there was an arbitration clause appearing in the Personal Accident Policy, No. 7 No. 210 PA/20.318 dd. 10 August 1978, that "all disputes concerning this Policy will be finally settled in Jakarta by three arbitrators". This decision is in accordance with many other Supreme Court decisions, where the general courts are regarded as not competent to sit in cases where an arbitration clause is present.[8]

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6 See S. Gautama (Gouw Giok Siong), *Segi-segi Hukum Peraturan Perkawinan Tjampuran (Legal Aspects of the Regulation on Mixed Marriages)* (4th edn. 1973 Annex No. 9) and S. Gautama, *Himpunan Keputusan2 Hukum Antar Golongan (A Collection of Interpersonal Law Cases),* Jakarta-Bandung (2nd Edn., 1973, No. 31).

7 See further, S. Gautama *Aneka Masalah dalam Praktek Pembaruan Hukum di Indonesia (Problems Concerning Law Development in Indonesia),* (1990) Chaps. VI-VIII.

8 See the comments of Professor Asikin Kusumah Atmadja, Supreme Court Justice, in this decision of 27 January 1983 No. 455K/Sip/1982, at pp. 8, 9; see also *"Himpunan*

(c) *P. T. Ripe Indonesia Ltd.* v. ***P.T. Pan Indonesia Bank Ltd.***, Supreme Court 31 May 1986, No. 1520K/Pdt/1984.

This case once again reiterates the Supreme Court's stand that so-called notarial *"acknowledgement of indebtedness"* do not fall under the category of "***GrosseActe***" (first copy of notarial deeds), which could be immediately enforced (executed) *via* the District Court as if they were Courts' judgments with enforceable status (based on article 224 of the Indonesian Civil Procedure Regulation).[9] The claim should be filed anew along ordinary procedural channels, which means that many years of proceedings approximately 5-7 years (in three instances, before the District Court, Appellate Court and Supreme Court) should be exhausted first, before the enforcement stage is reached. It is pointed out by the Supreme Court that article 224 of the Indonesian Civil Procedure Regulation is reserved for simple loans only, where the debtor has signed a clear "***I.O.U.***".

(d) *United States Government c.q. American Embassy in Indonesia* v. ***Syamsir Iskandar S.H.***, Supreme Court 23 October 1986, Reg. No. 3221 K/Pdt/ 1985, No. 48/1990 *Perdata,* 3 ***Yurisprudensi*** *Indonesia,* 1990, No. 4.

The American Embassy in Jakarta, in a house eviction request and a claim for payment of rent by the houseowner, has complained that the service of process to appear before the Jakarta District Court should be submitted *via* diplomatic channels, *i.e.,* via the Foreign Office Department and not directly by the court process server, as the Embassy is to be regarded as situated "outside the territory" of the Republic of Indonesia. The Supreme Court considered that the Embassy has not forwarded *"autonomy of the parties"* ("***choice*** *of law" or* "***partijautonomie***") as a defence, and has not choosen a certain national law to be applicable, so that the ***lex fori*** as law of the Court, should prevail. It was further considered by the Supreme Court that based on article 18 of the General Principles on Lawmaking *(AB., **Algemene Bepalingen van Wetgeving***),[10] the law of the country where the respective act took place should be the applicable law. Moreover, where the dispute is of a private and not of a public law nature, the procedure of submitting the case and the serving of process, being rules on civil procedure should

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Putusan Mahkamah Agung Tentang Arbitrase" *(Collection of Supreme Court Decisions in Arbitration)* ***Intermanual Proyek*** *Yurisprudensi, 1989* and other cases mentioned in S. Gautama, "Some Legal Aspects of International Commercial Arbitration in Indonesia", 7 Journal of International Arbitration No. 4, December 1990, at p. 97.

9 *Reglemen Indonesia Diperbaiki* (State Gazette 1848 No. 16, republished in State Gazette 1941 No. 44).

10 State Gazette 1847 No. 23.

follow that of the law of the respective court, in this case the Indonesian Regulation on Civil Procedure.

A commentator of this decision, Professor Asikin Kusuma Atmadja, correctly criticized the Supreme Court's considerations of "extra territoriality" and "party autonomy" as being confusing. Perhaps it was the Supreme Court's intention to point out that "sovereign immunity" could not be used in this case, as the matter involved belong not to the field of sovereign acts *(jure imperii)*, but are only *"jure gestionis"* transactions.

IX. PUBLICATIONS

A case law publication of the Supreme Court decisions, *"Yurisprudensi Indonesia"*, of which the first volume started in 1989, has appeared in 1990. This publication, which is hoped to be on a continuous basis, is the positive result of the Dutch Government's financial contribution in the frame of a joint cooperation project in the field of legal development in Indonesia. Important Supreme Court decisions, formerly difficult to obtain, are now made readily available. These published court decisions, which form an important part in the legal development of the country, could serve as a guide for the other (lower) courts spread out throughout the vast island territory of Indonesia.

Although the principle of *stare decisis* is not adhered to in Indonesia's legal system, Supreme Court decisions in general are as a rule followed by all the lower courts. As such this publication will bring a unifying effect.

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