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RECENT LEGAL DEVELOPMENTS IN INDONESIA

This report is a continuation of the survey on the more important developments in the area of commercial law in Indonesia published in previous editions of the Singapore Journal of Legal Studies.[1] The present survey covers the period from January 1992 to May 1994.

I. TRADEMARKS

ON 31 March 1993, the Government of the Republic of Indonesia ("GOI") issued the implementation regulations for Law No 19/1992 dated 28 August 1992 regarding marks, as stipulated in:

(a) Government Regulation No 23/1993, regarding Application Procedures for Mark Registration;

(b) Government Regulation No 24/1993, regarding Classification of Goods or Services for the Registration of Marks.

The new Trademark Law No 19/1992 (effective as of 1 April 1993) replaces Law No 21/1961 regarding Company Marks and Trademarks, which is no longer in line with current developments in this area of intellectual property. The 1992 Law is based on the so-called "active constitutive" system. Registration creates or constitutes the right in a trademark. Without registration, no protection is rendered to a mark (article 3 of Trademark Law 1992).

Other important changes in the new Trademark Law are:

(i) The 1961 Law was confined to "company marks and trademarks", while the 1992 Law also covers "service marks".

(ii) The 1961 Law adhered to the "declarative system", where the Trademark Office had a passive role, whereas under the 1992

[1] The last report appeared in the [1992] SJLS 285.

Law this office is more actively engaged in examining whether the applicant for registration is really the owner who acted in "good faith".

(iii) The registration procedure according to the new 1992 Law consists of several stages. Examinations are conducted, not only regarding the completeness of the formal requirements, but of a substantive nature as well (article 25). Material examination will take place.

(iv) Prior to the substantive examination, publication for 6 months has to be made so that interested parties are in a position to file an objection (article 20 of Law 1992).

(v) The system of licensing of a trademark for use by parties other than the registered owner is also provided for in the 1992 Law (article 44), whereas the old Law was silent on the matter.[2]

II. Banking

The Indonesian banking system has been improved, *inter alia*, through the streamlining of the types of bank through the reorganization of banks into commercial banks and smallholder credit banks, and the clarification of the scope and boundary of activities each type of bank may develop.

To further support development and modernization efforts in rural areas, the development of smallholder credit banks needs to be encouraged and directed to enable them to expand their service networks and to ensure them of business certainties in all parts of the country. To clarify the status of such banks, the GOI promulgated Government Regulation No 71/1992 dated 30 October 1992 regarding Smallholder Credit Banks.

The legal status of smallholder credit banks can either be regional administration-owned companies or cooperatives, or limited liability companies. It can only be established by (i) Indonesian citizens, (ii) Indonesian statutory bodies wholly owned by Indonesian citizens, (iii) regional administrations, (iv) Indonesian citizens, statutory bodies and/or regional administrations.

III. Tax Matters

On 19 September 1992, the GOI issued Government Regulation No 62/1992 regarding the Business Sector of Partners of Venture Capital Compa-

[2] For a more elaborate discussion of the 1992 Law, see Sudargo Gautama and Rizawanto Winata, *The New Indonesian Trademark Law* (Alumni Publishers, Bandung, 1993).

nies for The Implementation of Law No 7/1983 on Income Tax as amended by Law No 7/1991.

Under article 4 paragraph (3) letter (m) Law No 7/1983, as amended, the income of venture capital companies received or earned from partner companies which fulfill certain requirements shall be excluded from the category of income tax objects.

One of the requirements stipulates that such partner companies must be engaged in the business sectors specified by government regulations.

The business sectors of partners of venture capital companies covered by article 4 are:

(i) industries which produce goods for exports;

(ii) industries which produce electronic components;

(iii) industries which process products of agriculture, animal husbandry and fishery;

(iv) small scale and medium scale businesses, in line with the provisions laid down by the Ministry of Industry;

(v) construction of multi-storey houses in urban areas;

(vi) agriculture, plantations, forestry, animal husbandry and fishery;

(vii) inter-city land transport, sea transport and air transport;

(viii) trade services to support exports.

The provisions in this regulation do not set limits on the capital participation of venture capital companies, but only regulate the exemption from imposition of income tax on the income of venture capital companies received or earned from capital participation in partner companies which are engaged in the business sectors regulated herein.

IV. Bilateral Agreements

On the basis of Presidential Decree No 53/1992 dated 12 September 1992, the Government of the Republic of Indonesia ratified the Agreement between the Government of the Republic of Indonesia and the Government of the Republic of Hungary for the Promotion and Protection of Investments. The aim of this Agreement is to create favourable conditions for investments

by investors of one contracting party in the territory of the other contracting party on the basis of mutual benefit.

During the months of August up to December 1993, the Government of the Republic of Indonesia ratified several bilateral agreements concluded with other countries in various fields of cooperation, such as, air transport, tax, maritime shipping, investment, *etc.*

A. *Air Transport*

(i) The Air Transport Agreement between the GOI and the Government of the Kingdom of Saudi Arabia, ratified by Presidential Decree No 105/1993 dated 6 November 1993.

(ii) The Air Transport Agreement between the GOI and the Government of the Kingdom of the Netherlands, ratified by Presidential Decree No 107/1993 dated 6 November 1993.

(iii) The Air Transport Agreement between the GOI and the Government of Papua New Guinea, ratified by Presidential Decree No 108/1993 dated 6 November 1993.

(iv) The Air Transport Agreement between the GOI and the Government of the Socialist Republic of Vietnam, ratified by Presidential Decree No 113/1993 dated 3 December 1993.

(v) The Air Transport Agreement between the GOI and the Government of the People's Republic of China, ratified by Presidential Decree No 113/1993 dated 3 December 1993.

The aforesaid agreements are intended for the purpose of establishing and operating scheduled air services between and beyond the countries' respective territories.

B. *Tax*

Two double taxation treaties were ratified:

(i) The Agreement between the Government of the Republic of Indonesia ("GOI") and the Government of the Republic of Poland for The Avoidance of Double Taxation And The Prevention of Fiscal Evasion with Respect to Taxes on Income was ratified by the GOI on the basis of Presidential Decree No 72/1993 dated 4 August 1993.

This Agreement shall apply to taxes on income imposed on behalf of a Contracting State, or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.

(ii) The Agreement between the Government of the Republic of Indonesia and the Government of the United Kingdom of Great Britain and Northern Ireland for The Avoidance of Double Taxation and The Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, ratified by the GOI on the basis of Presidential Decree No 118/1993 dated 8 December 1993.

Presidential Decree No 118/1993 replaces Presidential Decree No 32/1975 regarding Ratification of the Agreement between the Government of the Republic of Indonesia and the Government of the United Kingdom of Great Britain and Northern Ireland for The Avoidance of Double Taxation and The Prevention of Fiscal Evasion with respect to Taxes on Income and Capital.

C. *Investment*

The Agreement between the Government of the Republic of Indonesia ("GOI") and the Government of the Socialist Republic of Vietnam for The Promotion and Protection of Investments was ratified by Presidential Decree No 115/1993 dated 3 December 1993.

The aim of this Agreement is to create favourable conditions for greater economic cooperation between the contracting parties and, in particular, for the investment of capital by investors of one contracting party in the territory of the other contracting party on the basis of respect for the independence and sovereignty of each other, equality and mutual benefit.

D. *Maritime Shipping*

The Agreement between the Government of the Republic of Indonesia and the Government of the Socialist Republic of Vietnam on Maritime Merchant Shipping, ratified on the basis of Presidential Decree No 114/1993 dated 3 December 1993.

The aim of this Agreement is to promote cooperation in the field of maritime merchant shipping and to improve the efficiency of maritime merchant shipping in accordance with the principle of equality and mutual benefit.

V. Economic Cooperation

Presidential Decree No 26/1994 dated 21 April 1994, concerning the Coordinating Team for the Growth Triangle of Indonesia – Malaysia – Thailand. To further intensify the development of the Growth Triangle of Indonesia – Malaysia – Thailand, it is deemed necessary to establish a coordinating team for the said Growth Triangle.

VI. Export-Import

Decree of the Minister of Finance No 979/KMK.05/1993 dated 29 December 1993, regarding Import Duty Tariff Relief for Goods Imported under the Common Effective Preferential Tariff (CEPT) Scheme.

Goods imported from Brunei Darussalam, Malaysia, the Philippines, Singapore and Thailand under the CEPT scheme shall be granted import duty tariff relief in accordance with the Agreement of CEPT for AFTA, which was signed by the ASEAN Economic Ministers in January 1992 in Singapore.

VII. Investment Deregulation Measures

As part of a series of legislative packages over the past ten years, the most recent of which was issued on 19 May 1994, the Indonesian Government has liberalised regulations on investments, particularly on foreign investment.

(a) Presidential Decree No 97/1993 dated 23 October 1993 regarding Capital Investment Procedures, which was issued to replace Presidential Decree No 33/1993 regarding the same matter.

On 23 October 1993, the Government of the Republic of Indonesia issued the Decree of the State Minister of Investment Fund Mobilisation/Chairman of the Investment Coordination Board No 15/SK/1993 regarding the Application Procedures for Domestic Capital Investment and Foreign Capital Investment. This Decree constitutes the implementing regulation for the aforesaid Presidential Decree No 97/1993.

Capital Investment Procedures for Foreign Capital Investment ("PMA")

(i) Applications for new capital investment for PMA may be submitted by a foreign participant in the form of a corporate body, and an Indonesian participant in the form of a corporate body and/or an individual.

(ii) Applications for new investments within the framework for PMA with all *shares owned by the foreign participant(s)* can be submitted by the foreign participant in the form of a corporate body.

(iii) Applications for the aforesaid new investments must be submitted in writing, accompanied by the required model I/PMA.

(iv) Based on the evaluation of the capital investment application, the MENINVES/Chairman of BKPM forwards the application to the President with its considerations on the matter.

(v) The Presidential Approval for the foreign capital investment is then issued by the MENINVES/Chairman of the BKPM to the respective investor(s) in the form of a "*Surat Pemberitahuan Persetujuan Presiden*" – SPPP (Notification Letter on the Presidential Approval), with copies to the relevant agencies.

(b) Government Regulation No 20/1994 dated 19 May 1994 regarding Share Ownership in Companies Established under Foreign Capital Investment.

This recent government regulation is to replace Government Regulation No 50/1993 dated 23 October 1993, with the aim of strengthening competitiveness in investments and foreign trade. The new capital investment policies under the aforesaid Government Regulation No 20/1994, *inter alia*, are:

(i) Foreign capital investment may be realised in the form of:

(1) joint ventures between foreign capital and capital owned by Indonesian citizens and/or Indonesian legal entities, or

(2) direct investments, with the *entire capital* being *owned by foreign citizens or foreign legal entities.*

(ii) No stipulation on the minimum investment required. The amount of capital required of a foreign capital investment shall be determined according to the economic feasibility of the relevant business activities.

(iii) Foreign investment may now enter business sectors regarded as strategic, such as sea ports, generation, transmission as well as distribution of electricity to the public, telecommunications, sea transport, aviation, supply of drinking water, public railways, atomic energy and the media. Such foreign investment must be in the form of a *joint venture*, and may be established with an initial share capital on the part of the Indonesian partner of only 5%.

(iv) The location for foreign capital investment is no longer restricted. It may be located *throughout the territory* of the Republic of Indonesia. Priority is, however, given to bonded zones or industrial estates in regions with such zones.

(vi) Wholly owned foreign capital investments must be divested within 15 years from the commencement of the company's commercial production, by selling part of their shares to Indonesian citizens/legal entities through direct sale or the domestic capital market.

VIII. PUBLICATIONS

Parts 5 and 6 of "*Jurisprudensi Indonesia*", which is a publication of the decisions of the Supreme Court, have appeared. Volumes 1-9 of Sudargo Gautama "*Himpunan Jurisprudensi Indonesia Yang Penting untuk Praktek Sehari-hari (Landmark Decisions) Berikut Komentar*" (Collection of Indonesian Case Law Important for Legal Practice – Landmark Decisions with Commentary) have been published (Citra Aditya Bakti – Publishers Bandung).

In the field of intellectual property the following books are worth mentioning: Sudargo Gautama and Rizawanto Winata, *The New Trademark Law* (in English) (Alumni Publishers, Bandung 1993), *Undang-Undang Merek Baru* (The New Trademark Law, 1992, Alumni Bandung), *Komentar atas Undang-Undang Merek Baru 1992 dan Peraturan Pelaksanaannya,* Commentary on the New Trademark Law 1992 and its Implementing

Regulation (Alumni, Bandung 1994). *Hukum Merek Indonesia* (Indonesian Trademark Law), revised 4th edition, (Citra Aditya Bakti, Bandung 1993), Sudargo Gautama – Essays in Indonesian Law, second printing (Alumni, Bandung 1993), *Segi-segi Hukum Perdagangan Internasional* (GATT dan GSP) Legal aspects of International trade, (Citra Aditya Bakti, Bandung 1993).

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