



# FINAL REPORT ON
# THE RESEARCH OF LEGAL SYSTEM OF INDONESIA
# AND LEGAL INFORMATION
# RELATED TO TRADE AND INVESTMENT IN INDONESIA

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OFFICE OF THE COUNCIL OF STATE OF THAILAND

RESEARCHED BY

DFDL (THAILAND) LTD.

FEBRUARY 2019

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# CHAPTER 1

# OVERVIEW OF GENERAL INDONESIAN LAW

## 1. Summary of Legal History in Indonesia

### 1.1 The Kingdoms' Era

Before 17th century the region which is presently known as Indonesia was divided into many kingdoms implementing their own laws which are derived from customary law (*adat*) and/or religious values including Islam, Hindu and Buddhism.

An example of law derived from customary law in this era is the implementation of Maritime Customary Law of Serdang Kingdom (1424-1444) which is derived from the Malayan people customary law.[1] This law basically sets out the matters relating to marine activities in the sea territory of Serdang Kingdom. Some provisions of this law are:

a. Rules and Norms in the Middle of the Sea

According to the Maritime Customary Law of Serdang Kingdom, everyone on board, including the captain, navigator, artisans, and other crews must obey the laws prevail on the ship, including the instructions given by the captain.[2] Failure to comply with this requirement may be subject to punishment in the form of flogging.

b. Rules on Shipload Banishment

Maritime Customary Law of Serdang Kingdom stipulates the procedure of shipload banishment in the event that the ship is required to reduce its burden due to storm. In short, this procedure requires the captain to arrange a discussion with the crews in such situation. If the captain fails to do so, the captain will be subject to punishment in accordance with the prevailing laws on the ship.[3]

[1] *Balai Pengembangan dan Pengkajian Budaya Melayu, 2011*, http://melayuonline.com/ind/culture/dig/2690/hukum-adat-kelautan-kesultanan-serdang-sumatra-utara.

[2] Tim Pengkajian Hukum Tentang Kontribusi Hukum Adat Dalam Pengembangan Hukum Laut di Indonesia, 2015, *Kontribusi Hukum Adat Dalam Pengembangan Hukum Laut di Indonesia*.

[3] Tim Pengkajian Hukum Tentang Kontribusi Hukum Adat Dalam Pengembangan Hukum Laut di Indonesia, 2015, *Kontribusi Hukum Adat Dalam Pengembangan Hukum Laut di Indonesia*.

c. Rules on the Ship Accident

Based on this rule, if a ship accident occurs, then 2/3 of the loss must be borne by the person who causes the accident. While the remaining 1/3 must be borne by the ship owner.[4]

d. Rules for Entering Harbor and Conducting Trading

This provision basically regulates the procedure for ship crews in conducting trade activities on land. According to this rule, the captain shall have a priority right over the ship crews in conducting trade activity.[5]

On the implementation of laws derived from religion values, there are some examples such as Samudra Pasai kingdom (1267-1345) which implements its laws based on the Islamic law. Furthermore, in 1293 -1500 there is a Kingdom named Majapahit which has a book named *Kutaramanawa* or also known as *Kutara Manawa Dharma Sastra*. This book is basically a book on criminal law. The book is mostly influenced by the values of Hindu.[6]

## 1.2 The Dutch Era

After the Dutch came to the region in the 17th century, the Dutch law started to influence the legal system of this region. The Dutch's era in Indonesia can generally be divided into two. The first one is the era of Vereenigde *Oost-Indische Compagn*ie ("**VOC**"). The second one is the era of the Dutch government – the colonialization era. Most of the Dutch laws which influenced the Indonesian legal system were introduced during the colonialization era.

VOC is a Dutch company which had a trade mission in Indonesia. During its stay in Indonesia, the Dutch government provided VOC with privilege rights known as *octrooi*, consisting of the rights on trading, shipping monopoly, war declaration, peace maker, and money printing. In implementing its roles in Indonesia, VOC introduced various Dutch law. Even more, one of VOC leader in Indonesia is authorized to create

[4] Tim Pengkajian Hukum Tentang Kontribusi Hukum Adat Dalam Pengembangan Hukum Laut di Indonesia, 2015, *Kontribusi Hukum Adat Dalam Pengembangan Hukum Laut di Indonesia*.

[5] Tim Pengkajian Hukum Tentang Kontribusi Hukum Adat Dalam Pengembangan Hukum Laut di Indonesia, 2015, *Kontribusi Hukum Adat Dalam Pengembangan Hukum Laut di Indonesia*.

[6] *Kutaramanawa*, 2015, http://majapahit1478.blogspot.co.id/p/kutaramanawa.html

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regulations, as well as to give decisions on civil and criminal matters.[7]

In 31 December 1799, VOC was dismissed under the order of Dutch Government. The dismissal mostly caused by corruption issues within the VOC. After the VOC is dismissed, the Dutch government takes over the roles of the VOC.

During the colonialization era the Dutch government issued a number of laws and regulations for Indonesia and some of the key laws and regulations were (a) *Algemene Bepalingen van Wetgeving voor* Indonesia or General Provisions of Laws and Regulations for Indonesia that was issued on 30 April 1847, (b) *Regerings Reglement or* Government Regulation that was issued on 2 September 1854, and (c) *Indische Staatsregeling* or Indonesian Constitution Regulation that was issued on 23 June 1925.

Through the *Indische Staatsregeling*, the Dutch made three classifications of resident i.e. European, foreign eastern and Indonesian. The main idea of this classification was to determine the law applicable to each class of the resident. The European class, which consisted of Dutch and other European people, was subject to civil and commercial law applicable in Ducth.[8] The foreign eastern class, which consisted of non-European class and non-Indonesian class, was subject to their own law but they may voluntarily subject themselves to the laws applicable to European class.[9] Meanwhile, the Indonesian class was subject to customary law (*adat*) and the religious law. The Indonesian class may also voluntarily subject themselves to the laws applicable to the European class.[10]

### 1.3 After The Independence Era

After the Dutch colonialization era ended, Indonesia was controlled by Japan. Japan did not bring any significant change in the Indonesian legal system. The only main law established by Japan was Law No. 1 of 1942 which reinstated all the Dutch laws and regulations which were not contradicting to the interest of Japanese military's power.[11]

[7] J.B. Daliyo, 1992, *Pengantar Hukum Indonesia*, Prenhallindo.

[8] J.B. Daliyo, 1992, *Pengantar Hukum Indonesia*, Prenhallindo.

[9] J.B. Daliyo, 1992, *Pengantar Hukum Indonesia*, Prenhallindo.

[10] J.B. Daliyo, 1992, *Pengantar Hukum Indonesia*, Prenhallindo.

[11] C.S.T. Kansil, 1986, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Balai Pustaka.

Before Indonesia declared its independence, the founding fathers of the Republic of Indonesia realized that there would be a legal vacuum if after the independent declaration all of the Dutch laws and regulations were declared to be invalid. Therefore, the founding fathers stipulated in Article II of Transitional Provision of the 1945 Constitution (the first text) (the "**1945 Constitution**")[12] that all existing state institutions shall continue to function and all existing regulations shall remain valid so long as no new ones are established and they are not in contradiction to the constitution.

Thanks to Article II of Transitional Provision of the 1945 Constitution, there are a number of Dutch laws and regulations which remain valid until now. Even the Indonesian Civil Code ("**ICC**"), Indonesian Commercial Code and Indonesian Criminal Code which are currently applicable in Indonesia are the legacies of the Dutch.

In addition to the Dutch laws and regulations, indeed, there are a big numbers of laws and regulations which have been issued by the Indonesian government up until now.

## 2. The General Legal System

Before its independence, law in Indonesia consists of a lot of rules which are mixed up with and conflicting to each other. For that reason, the scholars argued that it was necessary to embody a legal system which could arrange and structure those rules in order to achieve the ideal law for Indonesia.[13] After its independence, Indonesia formulated its own legal system, known as national legal system.

The national legal system consists of three major legal systems i.e. customary (*adat*) legal system, Islamic legal system and legal system derived from the Dutch law during the colonialization era.[14]

[12] Up until now the 1945 constitution has been amended four times i.e. in October 1999, August 2000, November 2001, and August 2002. The amendments are basically related to limitation of power and term of office of the President; decentralization of central government's authority to provincial and regional governments; and creation of additional state bodies such as House of Regional Representatives (Dewan Perwakilan Daerah), Constitutional Court (Mahkamah Konstitusi), and Judicial Commission (Komisi Yudisial).

[13] Sudikno Mertokusumo, 2007, *Mengenal Hukum – Suatu Pengantar*, 5th edn, Liberty.

[14] Donald Albert Rumokoy and Frans Maramis, *Pengantar Ilmu Hukum*, Rajawali Pers.

*Customary (Adat) Legal System*

As mentioned earlier, before the Dutch came to Indonesia the indigenous kingdoms have their own custom law, known as *adat*. It is basically a law applicable to a society in a particular area. Thousands of tribes exist in Indonesia and each of them has their own *adat.* Generally speaking *adat* can be defined as the entire unwritten and uncodified applicable rules of society's behavior which has sanctions for those people who breach the *adat*.[15]

Up until now, Indonesian legal system acknowledges the existence and the application of *adat*. For example, Indonesian agrarian law i.e. Law No. 5 of 1960 clearly stipulates that the agrarian law applicable in Indonesia is based on *adat*, to the extent that it does not contradict national interest and Indonesian legislation.[16] In addition to that, under Law No. 48 of 2009 on Judicial Powers ("**Law 48/2009**")[17], judges are required to take into account the living law in the society (*adat*) in making their decisions[18].

*Islamic Legal System*

Majority of the Indonesian populations are Muslims and the Islamic law has a great influence over Indonesian legal system. This is evidenced by the fact that Indonesia has special religious courts for Muslims which deal with issues relating to marriage, inheritance, testament, grant, *waqf*, *zakat, infaq, sadaqqah* (religious donations) and Islamic economics (*syariah* economics) matters.

Islamic law's source consists of (in order of hierarchy) *Al-Qur'an*, Hadith and *Ijtihad*. *Al-Qur'an* is the first and the main source of Islamic law. It contains the God (*Allah*)'s revelations given to human through the Prophet Muhammad. According to experts, *Al-Qur'an* contains matters relating to (i) faith (*akidah/Al-'Aqiydah*), (ii) rules governing interaction between people and people with Allah (*syariah)*, (iii) morals (*akhlak*), (iv) stories of human history, (v) stories of the future, and (vi) core principles of science and basic law.[19]

[15] C. Van Vollenhoven, 1981, *Orientasi dalam Hukum Adat* Indonesia, Djambatan.

[16] Article 5 of Law No. 5 of 1960 says "The law of agrarian applicable to land, water and air space shall be the customary law, to the extent it does not contradict to the national and State interests, based on the nation unity, Indonesian socialism as well as the provisions provided in this law and other legislations, everything by taking into account the elements of the religion."

[17] http://www.setneg.go.id/index.php?option=com_perundangan&id=2357&task=detail&catid=1&Itemid=42&tahun=2009

[18] Article 5 of Law 48/2009 says "Judges and Constitutional Judges shall find out, follow and understand the value of law and sense of justice which live in the society"

[19] Abdul Wahab Khallaf, 1985, *Kaidah-Kaidah Hukum Islam (Ilmu Ushul-Fiqh*), Rajawali Pers.

The second source of Islamic law is Hadith. Hadith is all words and behaviors of the Prophet Muhammad. Hadith governs almost every aspects of the Muslim's life. Hadith is more detailed than *Al-Qur'an* and some experts say that Hadith also reflects the Prophet Muhammad's interpretation and explanation about the text of *Al-Qur'an*.

The third source of Islamic law is *Ijtihad*. In general, *Ijtihad* can be defined as earnest efforts by using all the abilities conducted by a qualified person (legal expert) in order to formulate a law on matters that have not been governed by *Al-Qur'an* or *Sunnah* (Hadith).

*Legal System Derived From the Dutch Law*

Indonesian national legal system undoubtedly still depends on the laws brought by the Dutch during its colonialization era. The implementation of the Dutch law in Indonesia began in the period 1840 where the Dutch issued a policy to give the opportunity to all European investors to invest in plantation field in Indonesia. In order to attract the investors, the Dutch stipulated that all Dutch laws and regulations are applicable in Indonesia.[20] At that time, the indigenous people of Indonesia are allowed to voluntarily subject themselves to the Dutch law.

After its independence, Indonesia attempted to replace all regulations issued by Dutch during the colonialization era. However, different opinions of the scholars on whether it is necessary to make such replacement make some of regulations issued by Dutch during the colonialization era still apply until today.[21] They consist of, among other things:

(i) Algemene Bepalingen van Wetgeving voor Indonesia or General Provisions of the Laws and Regulations for Indonesia;
(ii) Burgerlijk Wetboek voor Indonesie or ICC;
(iii) Wetboek van Koophandel voor Indonesie or Indonesian Commercial Code;
(iv) The Herziene Inlandsch/Indonesisch Reglement or the Revised Regulation for Indonesian, which is applicable as civil procedural law in Jawa and Madura islands;
(v) Rechtsreglement Buitengewesten or Regulation for Outer Areas, which is applicable as civil procedural law for areas other than Jawa and Madura islands;

[20] Ministry of National Development Planning, Department of Sea and Fisheries, and Department of Law and Human Rights, 2005, *Menuju Harmonisasi Sistem Hukum Sebagai Pilar Pengelolaan Wilayah Pesisir Indonesia*.

[21] Wingjosoebroto, Soetandjo, 1995, *Dari Hukum Kolonial ke Hukum Nasional*, Rajawali Press.

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(vi) Wetboek van Strafrecht voor Indonesie or Indonesian Criminal Code.

## 3. Sources of Law

As a country adopting civil law as its legal system, Indonesia undoubtedly relies on the application of written law instruments. The hierarchy of written laws is stipulated under Law 12/2011. However, it does not necessarily mean that Indonesia does not recognize the existence of unwritten law at all. In Indonesia, unwritten law is recognized especially the ones which reflect the values of Indonesia's way of life.

Based on doctrines of legal experts, there are five sources of law acknowledged in Indonesia i.e. (i) law (statutory law), (ii) customary law, (iii) jurisprudence, (iv) treaty, and (v) doctrine of legal experts.

*Law (Statutory Law)*

The law here refers to legislation products specifically bearing the name of law and other regulations issued by the government and agencies given the power by the law to issue regulations. Law No. 12 of 2011 on the Formation of Law and Regulations ("**Law 12/2011**") defines laws and regulations as written regulations containing binding legal norms formed or stipulated by state bodies or authorized officials through the procedures stipulated by the laws and regulations[22].

*Customary law*

Custom is human's action on a matter that is performed repeatedly. Prof. Dr. Mr. L.J. Van Apeldoorn, a Dutch legal expert, opines that there are at least two elements for a custom to be considered as a source of law i.e. (a) the action must be conducted repeatedly, and (b) there must be consciousness from general members of the society to follow/adhere to such action.[23]

An example of acknowledgement of custom as a source of law can be seen in Article 1339 of the ICC which stipulates that an agreement is not only binding for the matters expressly set out thereunder but also for matters which, due to the nature of the agreement, are binding according to the custom.

[22] Article 1 paragraph (2) Law 12/2011.

[23] L.J. Van Apeldoorn, *Pengantar Ilmu Hukum*, Pradnya Paramita, Jakarta 2009, 113.

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*Jurisprudence*

Jurisprudence refers to previous judge decisions which are followed by other judges in making decisions on similar matters.[24] But note that, there is no requirement under Indonesian law for judges to follow decisions made by other judges.

*Treaty*

Treaty, whether it is made in private law field or public law field such as international treaty, serves as one of the sources of law. This is basically in accordance with the principle of *pacta sunt servanda* (agreement must be kept/complied with) which is adopted by the ICC.[25]

*Doctrine of Legal Expert*

A doctrine is an opinion on law from jurists or legal scholars. A doctrine is applied to interpret a general conception of law or to provide explanation on ambiguity of laws.[26] Doctrine in and of itself does not have a binding power.[27] However, in practice, it is common for litigators to use doctrines of legal experts to strengthen their arguments. Also, it is also common for Indonesian judges to take into account the doctrines in making their decisions.

## 4. Rank and Order of Law

Indonesian Constitution expressly states that Indonesia is a country based on law (state law). Indonesian law recognizes the principle of *lex superior derogat legi inferiori*. Based on this principle, laws and regulations having higher positions in the hierarchy supersede regulations with the lower positions.[28]

Since the independence of Indonesia, there have been some changes in the hierarchy of laws and regulations. On 2 February 1950, Law No. 1 of 1950 on Central Government Regulations was issued and stipulated the following types of the central government regulations (from the highest to the lowest):

(a) Laws and Government Regulations in Lieu of Law;

[24] R. Soeroso, 2014, *Pengantar Ilmu Hukum*, 1st edn, Sinar Grafika.

[25] R. Soeroso, 2014, *Pengantar Ilmu Hukum*, 1st edn, Sinar Grafika.

[26] R. Soeroso, 2014, *Pengantar Ilmu Hukum*, 1st edn, Sinar Grafika.

[27] R. Soeroso, 2014, *Pengantar Ilmu Hukum*, 1st edn, Sinar Grafika.

[28] Maria Farida Indrati, S, 2007, *Ilmu Perundang-Undangan*, Kanisius.

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(b) Government Regulations; and

(c) Minister's Regulations.

Stipulation of Temporary People Consultative Assembly No. XX/MPRS/1966 on Memorandum of Mutual Cooperation-House of Representatives on Legal Order of the Republic of Indonesia and Hierarchy of Republic of Indonesia's Laws and Regulations ("**MPRS Stipulation XX/1966**") stipulates that the hierarchy of laws and regulations (from the highest to the lowest) are as follows:

(a) The 1945 Constitution;

(b) Stipulations of People Consultative Assembly;

(c) Laws/ Government Regulations in Lieu of Law;

(d) Government Regulations;

(e) Presidential Decrees;

(f) Other implementing regulations, such as Minister's Regulation, Minister's Instruction etc.

On 18 August 2000, Stipulation of People Consultative Assembly No. III/MPR/2000 on Sources of Law and Hierarchy of Laws and Regulation was enacted ("**MPR Stipulation III/2000**"). Hierarchy of laws and regulations under MPR Stipulation III/2000 (from the highest to the lowest) is as follows:

(a) The 1945 Constitution;

(b) Stipulations of People Consultative Assembly;

(c) Laws;

(d) Government Regulations in Lieu of Law;

(e) Government Regulations;

(f) Presidential Decrees; and

(g) Local regulations.

On 22 June 2004, the government enacted Law No. 10 of 2004 on the Establishment of Laws and Regulations ("**Law 10/2004**") to stipulate hierarchy of laws and regulations (from the highest to the lowest), as folllows:

(a) The 1945 Constitution;
(b) Laws/Government Regulations in Lieu of Law;
(c) Government Regulations;
(d) Presidential Decrees; and
(e) Local regulations.

Currently, the hierarchy of laws and regulations is stipulated under Law 12/2011. The following is hierarchy of laws and regulations (from the highest to the lowest) under Law 12/2011:

(a) The 1945 Constitution;
(b) Stipulations of People Consultative Assembly;
(c) Laws/Government Regulations in Lieu of Law;
(d) Government Regulations;
(e) Presidential Regulations;
(f) Provincial Regulations; and
(g) Regency/Municipality Regulations.

*The 1945 Constitution of the Republic of Indonesia*

On 18 August 1945, one day after the declaration of independence of Indonesia, the Committee of Preparation of Indonesian' Independence (*Panitia Persiapan Kemerdekaan Indonesia)* (**"PPKI"**)'s meeting ratified the 1945 Constitution of the Republic of Indonesia (the "**1945 Constitution**"). The 1945 Constitution ratified at that time was relatively simple. There are still many basic principles that were not incorporated into the constitution. This was because, by considering the political situation at that time, the constitution ratified at that time was intended to be a temporary constitution that would require further improvement.[29]

Indonesia experienced a great political turmoil in 1997-1998. As the peak of the political turmoil, on 15 May 1998, President Soeharto resigned from his position and this symbolizes the end of the authoritarian new order era and the beginning of a democratic reformation era.

[29] Secretariat General and Clerk of the Constitutional Court, 2010, *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Latar Belakang, Proses, dan Hasil Pembahasan 1999-2002.*

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It was the spirit of reformation that pushed the amendments to the 1945 Constitution. Since the reformation era, there are four amendments over the 1945.

The 1945 Constitution consists of (i) preamble and (ii) the body of the constitution, consisting 16 chapters and 37 articles, transitional provisions, additional provision. Among the 37 articles there are provisions which guarantee the rights of individual such as right to live, right to defend life and existence, right to self-realization through the fulfillment of basic needs, right to education and to partake in the benefits of science of technology, art and culture and to improve the quality of life, right of recognition, guarantees, protection and certainty and equal treatment before the law, right to work and to receive fair and proper remuneration and treatment in employment, right to obtain equal opportunities in government, right to citizenship status, right to protect him/herself, family, honor, dignity, and property, and the right to feel secure against and receive protection from the threat of fear to do or not to do something that is a part of human rights, right to remain free from torture.

The 1945 constitution also sets out the government bodies such as the People Consultative Assembly, the President and his/her ministries, and the regional governments.

*Stipulation of People Consultative Assembly*

People Consultative Assembly is the state institution which consist of, among others, the members of the House of Representatives[30]. It was established as the reflection of people sovereignty. Before the first amendment to the 1945 Constitution, People Consultative Assembly was the highest state body (above House of Representatives and President) that has the power to issue stipulations which under MPRS Stipulation XX/1966 and MPR Stipulation III/2000 were classified as laws and regulations, having a position below the 1945 Constitution in the hierarchy.

[30] The House of Representative is one of the state's institution which consists of the member of political party which participates and elected in general elections. The House of Representative has the authority to establish the laws which is discussed with the President and such laws shall be agreed by the President as well as the House of Representative. The People's Representative Council has the (i) legislative function as the implementation of the People's Representative Council as the authorized party to establish laws, (ii) budgeting function as to discuss and give an approval or not giving an approval on the draft bill (*rancangan undang-undang*) on state's budget which is proposed by the President and (iii) supervisory function as to supervise the implementation of laws and state's budget.

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Following the change of Indonesian constitutional conducted through the first amendment of the 1945 Constitution, stipulations of People Consultative Assembly were taken out from the hierarchy of laws and regulations by 10/2004, and accordingly they were no longer applicable as laws and regulations.

However, there had been several stipulations of People Consultative Assembly issued before the enactment of Law 10/2004 and some of them having nature as laws and regulations. Consequently, there was an obscurity as to the status of the stipulations of People Consultative Assembly that have been issued, especially those having nature as laws and regulations. By considering this situation, the government then tried to accommodate the existence of those stipulations. Finally through Law 12/2011, stipulations of People Consultative Assembly are brought back to the hierarchy of law.

Law 12/2011 stipulates that not all stipulations of People Consultative Assembly should be classified as laws and regulations, but only those mentioned in Stipulation No. I/MPR/2003 on Review on Content and Status of Stipulations of Temporary People Consultative Assembly and Stipulations of People Consultative Assembly of 1960 to 2002.

*Laws/Government Regulations in Lieu of Law*

Law 12/2011 defines Laws as laws made by the House of Representatives jointly with the President. Article 10 of Law 12/2011 stipulates that matters that should be governed by a Law are:

(a) further arrangement on the provisions of the 1945 Constitution;
(b) order of a Law to be governed by a Law;
(c) ratification of particular international conventions;
(d) a follow up over the Constitutional Court's decision; and/or
(e) the fulfillment of the legal needs in the society.

Law 12/2011 defines Government Regulations in Lieu of Law as regulations issued by the President in extreme emergency situation. Government Regulations in Lieu of Law have the same position and as the Laws. Matters that can be governed by a Government Regulation in Lieu of Law are the same as the matters that can be governed by a Law.

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Unlike a Law, the creation of a Government Regulation in Lieu of Law does not involve House of Representatives. However, Government Regulation in Lieu of Law that has been issued must be submitted to the House of Representatives in the next hearing for the purpose of stipulating the same to become a Law. The House of Representatives may approve or not approve the issuance of the Government Regulations in Lieu of Law to become a Law. If the issuance of the Government Regulations in Lieu of Law to become a Law is rejected by the House of Representatives, such Government Regulation in Lieu of Law must be revoked and declared as inapplicable.

*Government Regulations*

Government Regulation is defined by Law 12/2011 as a regulation that is issued by the President in order to implement the Law. Based on the elucidation of Law 12/2011 "to implement the Law" means the issuance of a Government Regulation is to implement the order of the Law or to implement the Law so long it is required and does not deviate from the matters governed by the relevant Law.

*Presidential Regulations*

Presidential Regulation is defined by Law 12/2011 as a regulation stipulated by the President to implement the order of the higher laws and regulations or to perform the government's power.

*Provincial Regulations*

Administratively, Indonesian government is divided into central government level and local government level. Local government levels are divided into provincial government level which is led by a Governor and regency/municipality government level which is led by a Regent/Mayor. Each government level has the authority to issue regulations i.e. provincial local regulation for provincial government level and regency/municipality local regulation for regency/municipality government level.

Law 12/2011 defines Provincial Regulations as laws and regulations formed by the Governor and the House of Representatives the province. According to Law 12/2011, Provincial Regulation is issued to stipulate matters relating to the implementation of the local autonomy and co-administration and to accommodate the local special conditions and/or further elaboration of the higher laws and regulations.

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*Regency/Municipality Regulation*

Law 12/2011 defines Regency/Municipality Local Regulations as laws and regulations formed by the Regent/Mayor and House of Representatives of the regency/municipality. Similar to Provincial Regulation, Law 12/2011 stipulates that Regency/Municipality Regulation is issued to stipulate matters relating to the implementation of the local autonomy and co-administration and to accommodate the local special conditions and/or further elaboration of the higher laws and regulations.

## 5. Juridical System

*Indonesian Court*

Judicial power in Indonesia is held and carried out by Supreme Court, judicial bodies under the Supreme Court and the Constitutional Court. Under Law 48/2009 the Supreme Court is mandated as the highest level judicial body within the four court jurisdictions i.e. (a) General Court, (b) Religious Court, (c) Military Court, and (d) State Administrative Court. Each court jurisdiction consists of first level court and appeal level court. In addition to that, Indonesia also recognizes several special courts that are established within the four court jurisdictions.

The law on the procedures of dispute resolutions in Indonesia is mainly regulated under *Herziene Indonesisch Reglement* ("**HIR**") which is a heritage of the Dutch laws.

*General Court Jurisdiction*

Law 48/2009 stipulates that the General Court Jurisdiction is authorised to examine, adjudicate, decide upon and settle criminal and civil law cases in accordance with the laws and regulations. The General Court Jurisdiction consists of:

1) District Courts, which act as the first level court for criminal and civil law cases; and
2) High Courts, which act as:
   (a) the appeal level court for criminal and civil law cases; and
   (b) the first and final level court for jurisdiction disputes between District Courts under it.

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There are several special courts established within General Court Jurisdiction, namely:

1) Juvenile Court, which has the authority to examine and adjudicate juvenile criminal cases;
2) Commercial Court, which has the authority to examine and adjudicate:
   (a) bankruptcy and suspension of payment cases;
   (b) intellectual property cases; and
   (c) cases relating to liquidation of a bank by Indonesian Deposit Insurance Corporation.
3) Human Rights Court, which has the authority to examine and adjudicate serious human rights cases;
4) Corruption Crime Court, which has the authority to examine and adjudicate corruption crime cases;
5) Industrial Relations Court, which has the authority to examine and adjudicate industrial relation cases; and
6) Fishery Court, which has the authority to examine and adjudicate fishery criminal cases.

*Religious Court Jurisdiction*

Law 48/2009 stipulates that Religious Court Jurisdiction is authorized to examine, adjudicate, decide upon and settle cases between Muslims in accordance with the laws and regulations. Religious Court Jurisdiction consists of:

(i) Religious Courts, which act as the first level court for cases which fall under the authority of Religious Court Jurisdiction; and
(ii) High Religious Courts, which act as:
   (a) the appeal level court for cases which fall under the authority of Religious Court Jurisdiction; and
   (b) the first and final level court for jurisdiction disputes between Religious Courts under it.

Law No. 7 of 1989 on Religious Court Jurisdiction[31] as lastly amended by Law No. 50 of 2009[32] stipulates that Religious Court Jurisdiction is authorised to examine, adjudicate, decide upon and settle disputes between Muslims on, among other things, marriage, inheritance, testament, grant, *waqf*, *zakat, infaq, sadaqqah,* and Islamic economics (*syariah* economics)[33].

*Military Court Jurisdiction*

Law No. 31 of 1997 on Military Court Jurisdiction ("**Law 31/1997**") stipulates that Military Court Jurisdiction is authorised to:

1) adjudicate a criminal case committed by a person who, at the time of committing the criminal act:
   (a) is a soldier;
   (b) is under the laws and regulations, equivalent to a soldier;
   **(c)** is a member of a group or agency or body which under laws and regulations is equivalent to or deemed as a soldier, (the "**Equivalent to Soldier Accused**");
   (d) does not fall under the classification set out in Points (a) to (c) above (the "**Non-Soldier Accused**") but based on decision of Commander of Indonesian National Soldiers with the approval of Minister of Defence must be adjudicated by Military Court Jurisdiction[34].

2) examine, decide upon and adjudicate Indonesian National Soldiers' administrative cases.
3) consolidation of compensation claim case into the relevant criminal case.

[31] https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwidvoKMlqjMAhWHGJQKHZFUALIQFggsMAI&url=http%3A%2F%2Fwww.komisiyudisial.go.id%2Fdownlot.php%3Ffile%3DUU%2520No%25207%2520Thn%25201989%2520PERADILAN%2520AGAMA.pdf&usg=AFQjCNFgWMExBKKSUHwvQNKO0vK3PG8hVQ&bvm=bv.119745492,d.c2E

[32] http://www.setneg.go.id/index.php?option=com_perundangan&id=2359&task=detail&catid=1&Itemid=42&tahun=2009

[33] Article 49.

[34] https://www.kemhan.go.id/en_US/.

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Military Court Jurisdiction consists of:

(i) Military Courts, which act as the first level court for criminal cases where the accused is:
   (a) a soldier at captain rank or lower;
   (b) an Equivalent to Soldier Accused at captain rank or lower; and
   (c) a Non-Soldier Accused who based on decision of Commander of Indonesian National Soldiers with the approval of Minister of Defence must be adjudicated by Military Court.

(ii) High Military Courts, which act as:
   (a) first level court for criminal cases where the accused or one of the accused is:
      - a soldier at major rank or higher;
      - an Equivalent to Soldier Accused at major rank or higher; and
      - a Non-Soldier Accused who based on decision of Commander of Indonesian National Soldiers with the approval of Minister of Defence must be adjudicated by High Military Court.

   (b) first level court for Indonesian National Soldiers administrative cases.
   (c) appeal level court for criminal cases that have been adjudicated by Military Court.
   (d) first and final level court for jurisdiction disputes between Military Courts under it.

(iii) Primary Military Court, which acts as:
   (a) appeal level court for criminal and Indonesian National Soldiers administrative cases which have been adjudicated by Military High Court which acts as the first level court;
   (b) first and final level court for jurisdiction disputes between:
      - Military Courts under different High Military Courts;
      - High Military Courts; and
      - High Military Court and Military Court.

In addition to the above, the Primary Military Court is also authorised to decide upon

disputes between Case Submitter Officer (*Perwira Penyerah Perkara*) and Military Prosecutor (*Oditur Militer*) on whether or not a case must be submitted to courts within the Military Court Jurisdiction or courts within the General Court Jurisdiction.

(iv) Combat Court, which acts as the first and final level court for criminal cases committed by soldiers in a combat area.

*State Administrative Court Jurisdiction*

Law 48/2009 stipulates that State Administrative Court Jurisdiction is authorized to examine, adjudicate, decide upon and settle state administrative disputes in accordance with the laws and regulations. Law No. 5 of 1986 on State Administrative Court Jurisdiction[35] as lastly amended by Law No. 51 of 2009[36] (“**Law 5/1986**”) defines a state administrative dispute as a dispute between a person or private legal entity and state administrative body or officer, either at central or regional level, resulting from the issuance of a state administrative decision (e.g. rejection on license application), including the dispute on officialdom pursuant to the applicable laws and regulations[37].

The object of a state administrative dispute is a state administrative decision (in written from), issued by a state administrative body or officer, which contains state administrative action pursuant to laws and regulations, having concrete, individual and final natures, and has legal effect to a person or private legal entity.

Law 5/1986 stipulates that there are several types of state administrative decision that cannot be raised as an object of state administrative dispute under Law 5/1986, namely[38]:

1) state administrative decisions which are classified as state administrative body or officer’s actions in private law field;
2) state administrative decisions having nature as generally binding regulations;
3) state administrative decisions that still require further approval;
4) state administrative decisions issued pursuant to Indonesian Criminal Code or Indonesian Criminal Procedural Code or other criminal laws and regulations;

[35] http://www.bpn.go.id/Publikasi/Peraturan-Perundangan/Undang-Undang/undang-undang-nomor-5-tahun-1986-912.

[36] http://www.kemendagri.go.id/produk-hukum/2009/10/29/undang-undang-no-51-tahun-2009.

[37] Article 1 paragraph 10.

[38] Article 2.

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5) state administrative decisions issued based on examination conducted by a court pursuant to laws and regulations;
6) state administrative decision on administrative affairs of Indonesian National Soldiers;
7) decisions of election committee, either at central or local level, on the result of general election.

In addition, Law 5/1986 also stipulates that courts within the State Administrative Court Jurisdiction are not authorised to examine, decide upon and settle a state administrative decision if the state administrative decision is issued[39]:

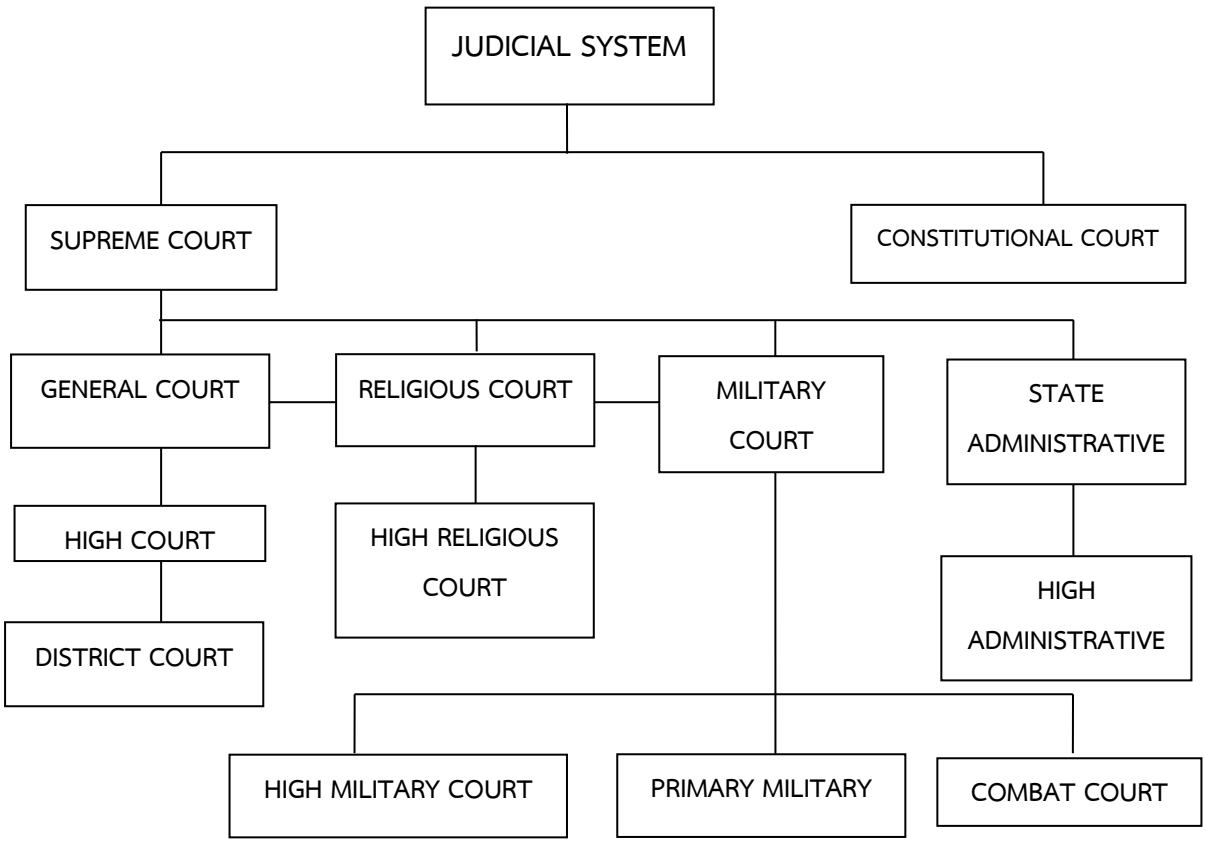
1) in a war, dangerous situation, natural disaster or other endanger situation, pursuant to applicable laws and regulations; or
2) in an emergency situation for public interest pursuant to applicable laws and regulations.

State Administrative Court Jurisdiction consists of:

(i) State Administrative Courts, which act as the first level court in examining, deciding upon and settling state administrative court disputes; and
(ii) High State Administrative Courts, which act as:
   (a) the appeal level court in examining, deciding upon and settling state administrative court disputes;
   (b) the first and final level court in examining, deciding upon and settling jurisdiction disputes between State Administrative Courts under it; and
   (c) the first level court for state administrative disputes over which the available administrative actions (outside the court) has been taken.

[39] Article 49.

Below is the organization chart of judicial system in Indonesia:




**6. Legal Interpretation**

Theoretically, there are several legal interpretation methods that are acknowledged and commonly used in Indonesia i.e. (i) grammatical interpretation method; (ii) historical interpretation method; (iii) systematical interpretation method; (iv) sociological interpretation method; (v) analogical interpretation method, and (vi) *argumentum a contrario* interpretation method. Legally there is no order on the use of the interpretation methods. In practice, the court may use several interpretation methods in examining a case.

*Grammatical Interpretation Method*

Grammatical interpretation method is the most commonly interpretation method used in Indonesia. Under this interpretation method, laws and regulations are interpreted according to the words (terms) contained therein.[40] In conducting grammatical interpretation method,

[40] Soeroso, R 2014, *Pengantar Ilmu Hukum*, Sinar Grafika.

interpreters are required to find the meaning and coverage of the words (terms) in question. Sometimes, this involves research in dictionary and historical research on the use of the words by the interpreter.

As an example, the panel of judges of district court of North Jakarta in its decision No. 1146/Pid.B/2013/PN.JKT/UT[41] in a criminal case where the defendants are alleged by the prosecutor to have violated the provisions of Article 378[42] (fraud) or 372[43] (embezzlement) of Criminal Code. In its consideration, the panel of judges uses the grammatical interpretation method where it tests each phrases of the articles applicable to the defendants.

Based on such consideration, the panel of judges concludes that the defendants are not legally and convincingly proven guilty of violating the articles, since the element of the articles are not shown in the charge made by the prosecutor. The panel of judges decides that the defendants are free from any charges

*Historical Interpretation Method*

Historical interpretation is conducted by investigating the history of the laws and regulations in question.[44] By doing so, the interpreter will understand the background and intention of the law maker in making the laws and regulations. There are two ways for conducting historical interpretation, namely:

(i) by investigating the history of the making of the laws and regulations; and
(ii) by investigating the legal history.

In the first way, the interpreter only tries to find the intention of the law maker, including the arguments involved in the law making process.[45] While in the second way, the interpreter tries to find whether a law or regulation comes from a legal system that has ever applied or

[41] Public Prosecutor v Dodi Pranowo bin Karsono and others (2013)

[42] Article 378 of the Indonesian Criminal Code says "any person who with the intention of benefitting himself or other person by violating the law, by using fake name or title, by using deception, or series of lie, moves another person to give any goods to him, or to provide loan or to release debt shall be subject to maximum 4 years imprisonment due to fraud".

[43] Article 372 of the Indonesian Criminal Code says: "Any person who intentionally and unlawfully appropriates any property belonging in whole or in part to another and of which he has control other than as a result of a crime is guilty of "embezzlement" and shall be subject to imprisonment of maximum 4 years or a fine of not more than 900 Rupiah".

[44] Soeroso, R 2014, *Pengantar Ilmu Hukum*, Sinar Grafika.

[45] Soeroso, R 2014, *Pengantar Ilmu Hukum*, Sinar Grafika.

from other legal system that is still applicable.[46]

As an example, the panel of judges of Constitutional Court in its decision No. 34/PUU-XI/2013[47] where article 268 paragraph (3) of Law No. 8 of 1981 on Criminal Proceeding Law[48] (judicial review of a cassation stage's decision in criminal proceeding can only be submitted once) is deemed by the applicant of judicial review to be contrary to the 1945 Constitution. In one of its considerations, the panel of judges clearly shows that it uses historical (and philosophical) perspective, where it opines that the historical and philosophical background of the judicial review of a cassation stage's decision is an extraordinary legal remedy which was created to protect the rights of the convicts.

Based on such consideration, the panel of judges concludes that the application from the applicant is legally reasonable. The panel of judges then decides that article 268 paragraph (3) of Law No. 8 of 1981 on Criminal Proceeding Law is contrary to the 1945 Constitution and therefore does not have any legally binding effect.

*Systematical Interpretation Method*

Systematical interpretation method is conducted by correlating a provision with other provisions of laws and regulations, or by reading the elucidation of the laws and regulations.[49]

Supreme Court decision No. 01/BANDING/WASIT.INT/2002 is an example of implementation of systematical interpretation. The decision is issued by the Supreme Court over a civil case on annulment of an international arbitration award. The main question that must be answered by the Supreme Court at that time was whether an international arbitration award can be annulled by an Indonesian court under Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (the "**Arbitration Law**"). To answer this question, the Supreme Court first assess whether the disputed arbitration award is classified as a domestic arbitration award or an international arbitration award under the Arbitration Law.

Having reviewed the definition of international arbitration award given under Article 1

[46] Soeroso, R 2014, *Pengantar Ilmu Hukum*, Sinar Grafika.

[47] Antasari Azhar and others (2013)

[48] http://ditjenpp.kemenkumham.go.id/inc/buka.php?czoyODoiZD0xOTAwKzgxJmY9dXU4LTE5ODFidC0xLmh0bSI7

[49] Soeroso, R 2014, *Pengantar Ilmu Hukum*, Sinar Grafika.

Paragraph (9) of the Arbitration Law[50], the Supreme Court is of the opinion that the disputed arbitration award is classified as international arbitration award under the Arbitration Law. The Supreme Court then reviews other articles of the Arbitration Law and find out that Articles 65 to 69 of the Arbitration Law which contain provisions on international arbitration award only govern the requirements of acknowledgement and enforcement of international arbitration award and procedure for enforcement of international arbitration award in Indonesia. Those articles do not contain any provision on annulment of international arbitration award. Therefore, the Supreme Court rules that international arbitration award cannot be annulled by an Indonesian court.[51]

*Sociological Interpretation Method*

In the sociological interpretation method laws and regulations are interpreted by considering social situation of the society. It is a fact that the society is dynamic, meaning that it develops from time to time. Meanwhile, laws and regulations are static. Therefore, there is a possibility that a provision of law or regulation is no longer relevant to the current situation of the society. In that case, a sociological interpretation is needed in order to make sure that the implementation of the provision can satisfy the sense of justice in the society.

In Indonesia, this method of interpretation is very important by considering the fact that there are many laws and regulations made during the colonization era are still applicable until now.

As an example, a decision of the panel of judges of Supreme Court No. 1616K/Pid.Sus/2013[52], where both the convict of a corruption case and the prosecutor file for cassation. In its consideration, the panel of judges stipulates that some of the aggravating factors are (i) that the convict's corruption act has snatched the social and economic rights of society, since the state's budget which has been determined is not utilized fully for public's benefit (ii) the convict is a people's representative and public's figure while she does not give good example to the society.

[50] Article 1 paragraph 9 of the Arbitration Law says: "International Arbitration Award is an award rendered by an arbitration institution or an arbiter outside the jurisdiction of law of the Republic of Indonesia, or an award of an arbitration institution or an arbiter which according to the law of the Republic of Indonesia shall be deemed as an international arbitration award".

[51] Karaha Bodas Company L.L.C., v Perusahaan Pertambangan Minyak dan Gas Bumi Negara (Pertamina) and PT PLN (Persero) 2002

[52] Public Prosecutor v Angelina Patricia Pingkan Sondakh (2013)

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Based on such consideration, the panel of judges decides to refuse the cassation of the convict and uphold the cassation of the prosecutor. It further decides that the appeal court's decision is revoked and decides that the convict shall be imprisoned for 12 years and fined in the amount of Rp500,000,000 and pay compensation to the State of Rp12,580,000,000 and US$2,350,000[53]

*Analogical Interpretation Method*

Simply put, analogy means equating two different things by finding their similarity. In using this interpretation method, the interpreter equates something that has not been governed by laws and regulations with something that has been governed by laws and regulations so that the laws and regulations also cover the mater which the interpreter tries to find a law for.

Analogy interpretation is not allowed to be used in interpreting criminal provisions as this will contradict to the principle of legality which is adopted by the criminal law based on Article 1 paragraph (1) of the Indonesian Criminal Code.

South Jakarta District Court decision No. 04/Pid.Prap/2015/PN.Jkt.Sel is an example of the implementation of analogical interpretation. The decision is issued over a pre-trial case between a General of Indonesian National Police versus Corruption Eradication Commission. One of the questions that should be answered by the pre-trial judge at that time was whether the validity of stipulation of a person as a suspect is within the pre-trial jurisdiction of the court. With regard to the pre-trial jurisdiction of the court, the judge finds out that Indonesian Criminal Procedural Code stipulates that the objects of pre-trial jurisdiction are (a) validity of an arrest, detention, termination of investigation or termination of prosecution; and (b) compensation and/or rehabilitation for a person whose criminal case is terminated at the stage of investigation or prosecution[54].

The Indonesian Criminal Procedural Code does not stipulate that the validity of stipulation of a suspect is an object of pre-trial jurisdiction or falls within the pre-trial jurisdiction of the court. The judge then compares the stipulation of a suspect with the objects of pre-trial jurisdiction as stipulated under the Indonesian Criminal Procedural Code and find out that

[53] Previously, the decision is 4 years and 6 months imprisonment and Rp250,000,000 fine

[54] Article 77.

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stipulation of a suspect has similarities with the objects of pre-trial jurisdiction as stipulated under the Indonesian Criminal Procedural Code, namely (i) stipulation of a suspect is also a result of investigation activities by the investigators; and (ii) stipulation of a suspect shall also be classified as a forceful measure by the investigators. Based on these findings, the judge then rules that stipulation of a suspect falls within the pre-trial jurisdiction of the court.[55]

*Argumentum a contrario method*

This method is constructed based on the logic that if a provision of laws and regulations governs a matter, that provision is exclusive for that matter and other matters are not subject to that provision.

An example of implementation of *argumentum a contrario* interpretation is stipulation of Takalar Religious Court No. 7/Pdt.P/2014/PA Tkl. The stipulation is issued over a petition filed by H. Rosliah binti H. Djuma Sarro who wants to be stipulated as a sole heir of her sister, St. Masita binti H. Djuma Sarro. The panel of judges finds that Surah An-Nissa paragraph (12) (a provision in *Al-Qur'an*) stipulates that if a person passes away and he/she does not have parents but only a sister, the sister is entitled to obtain a half of the inheritance. By interpreting Surah An-Nissa paragraph (12) with *argumentum a contrario* interpretation, the panel of judges concludes that if a person passes away and at that time she/he has parent(s), the sister cannot become an heir. From the facts presented during the examination of the case, the panel of judges find that St. Masita binti H. Djuma Sarro has a father at the time she passes away. Therefore, the father shall be the heir of St. Masita binti H. Djuma Sarro. Based on these findings, the panel of judges rejects the petition filed by H. Rosliah binti H. Djuma Sarro.[56]

## 7. Legal Enforcement and Practical Problems Faced in Enforcement

*Inconsistency between regulations*

As explained in Section D Rank and Order of law, administratively Indonesian government is divided into central government level and local government level. In relation to this division, sometimes there are problems on the implementation of regulations due to the inconsistency between the regulations issued by the central government and the regulations

[55] Budi Gunawan v Corruption Eradication Commission 2015

[56] Hj. Rosilah binti H. Djuma Sarro (petition) 2014

issued by local government. For example in 2003, it is noted that the Regent of Gresik Regency issued Local Regulation of Gresik Regency No. 7 of 2003 on Retribution of Operational License of Non-Motorized Vehicles ("**Local Reg. 7/2003**"). Under this local regulation, the non-motorized vehicles are categorized as public transportation in Gresik regency[57], hence the operational license (*izin operasi*) to operate non-motorized vehicles as public transportation is required and shall have a prior approval from the Regent of Gresik regency.

However, Law No. 14 of 1992 on Traffic and Road Transportation ("**Law 14/1992**")[58] and Government Regulation No. 41 of 1993 on Road Transportation ("**GR 41/1993**")[59] stipulate the opposite provisions where non-motorized vehicles are not considered as public transportation since according to them, public transportation can only be operated by motorized vehicles. Accordingly, it is clear that Local Reg. 7/2003 is inconsistent with Law 14/1992 and GR 41/1993 and these two central government regulations have a higher hierarchy. In relation to such situation, in 2009, the Minister of Domestic Affairs[60] issued Ministerial Decree No. 132 of 2008 to ban the implementation of Local Reg. 7/2003[61].

Inconsistency between regulations also happens between the government agencies in the central government level. The most recent example is related to construction business in Indonesia. In 2012, the government issued Government Regulation No. 62 of 2012 on support business for power plant project ("**GR 62/2012**")[62]. This government regulation stipulates that construction and installation of power plant in relation to electrical works are categorized as support business for power plant project and therefore requires license from the Minister of Energy and Mineral Resources ("**MEMR**")[63]. As the implementation to this government regulation, on 2014 the MEMR issued Regulation No. 28 of 2014 ("**MEMR Reg. 28/2014**") which basically emphasizes that construction and installation of power plant in relation to electrical works are categorized as support business for power plant project[64].

[57] Article 2 paragraph (2) of Local Reg 7/2003 says "every person or business entity who conduct public transport by using non-motorized vehicles shall require prior approval from the Regent".

[58] http://pkps.bappenas.go.id/dokumen/uu/Uu%20Sektor/Jalan%20Tol/16.%20UU%20No.%2014%20Tahun%201992.pdf

[59] http://hubdat.dephub.go.id/peraturan-pemerintah/80-pp-no-41-tahun-1993-tentang-angkutan-jalan

[60] http://www.kemendagri.go.id/

[61] http://www.kemendagri.go.id/produk-hukum/2008/03/17/keputusan-mendagri-no-132-tahun-2008

[62] http://peraturan.go.id/pp/nomor-62-tahun-2012-11e44c4f442ca070a95d313232303035.html

[63] http://esdm.go.id/

[64] http://prokum.esdm.go.id/permen/2014/Permen%20ESDM%2028%202014.pdf

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However, up until now, the regulations in the construction services business sector issued by the Minister of Public Works[65] ("**MOPW**") and the National Construction Services Development Board include the construction and installation of power plant (electrical works) as one of the construction services business which requires license from the Minister of Public Works and Housings and subject to the requirements of the National Construction Services Development Board. Therefore, there is a dualism on construction and installation of power plant (electrical works) in terms of its licensing matter.

In the late of 2015, there have been discussions between the MEMR and MOPW on the above matter. But formally, there has been no regulation clarifying the issue. But in practice, construction companies tend to follow the requirements under GR 62/2012 and MEMR Reg. 28/2014).

*Corruption and bribery*

The most important feature in the legal enforcement is corruption and bribery involving the legal enforcers, political intervention and the absence of political will of the state officials. Such illegal acts are surely affecting the legal enforcement. Bribery can make the law enforcement not to operate in a right way. In a simple example, a Police may not punish the traffic offender as the police take the bribe given by the offender. In general sense, if it occurs continuously then the enforcement of law will be a mere theory. Therefore, the eradication of corruption and bribery in Indonesia is crucially needed.

Since 2002, Indonesia has a state institution that focusses in corruption eradication known as Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*) ("**KPK**"). KPK[66] is established by virtue of Law No. 30 of 2002 on Corruption Crime Eradication Commission ("**KPK Law**")[67]. KPK has a strong track record and reputation as Indonesian corruption eradication hero. The strong track record and reputation cannot be separated from the broad authorities given to KPK. Some people even call this institution as a superpower institution.

Since its establishment, KPK has succeeded in revealing numbers of big corruption cases involving legal enforcers (such as high level police officers, public prosecutors, lawyers,

[65] *www.pu.go.id/*

[66] *www.kpk.go.id/*

[67] https://kpk.go.id/images/pdf/Undang-undang/uu302002.pdf

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judges), politicians and other high level state officials.

*Different Court Decisions*

In countries adopting the common law system, case precedent is highly taken into account by the judges in granting a decision against new cases that have the same issues or objects with cases that have been previously decided. However, this is not the case in Indonesia. Indonesian judges do not have the obligation to follow the decision of the judges in the previous cases.

As the consequence, there are some court decisions on similar matters which are contradicting to each other, leading to lack of legal certainty. One of the examples is illustrated by the case between PT Aryaputra Teguharta vs PT BFI Finance Indonesia, Tbk et. al and case between PT Ongko Multicorpora vs PT BFI Finance Indonesia, Tbk et. al.[68] The cases are basically disputing the same object, namely enforcement of pledge over shares of PT Aryaputra Teguharta by PT BFI Finance Indonesia Tbk. In the first case, the Supreme Court rules that the disputed pledge of shares agreement is null and void and therefore, PT BFI Finance Indonesia, Tbk must return the shares owned by PT Aryaputra Teguharta. However in the second case, the Supreme Court rules that the pledge of shares agreement is valid and the enforcement of pledge over shares conducted by PT BFI Finance Indonesia, Tbk is valid.

[68] *Gadai Saham Berujung Pada Dua Putusan Berbeda* 2007, http://www.hukumonline.com/berita/baca/hol17501/gadai-saham-berujung-pada-dua-putusan-berbeda.

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# CHAPTER 2

# OVERVIEW OF INDONESIAN TRADE AND INVESTMENT LAWS

## 1. Trade Law and Service of Foreigners

### 1.1. Trade Law

Indonesian national trade, a main economic driving force, is expected not only to function as mere economic activities of goods and/or services transaction conducted by business actors but also as economic activities which prioritises Indonesian national interest to be in line with the objectives of the establishment of Indonesia as mandated by the 1945 Constitution of the Republic of Indonesia i.e. realising fair and prosperous society.[69]

Historically, prior to 2014, Indonesia did not have any law which specifically deals with trade. Before 2014, regulations on trade were referred to the Indonesian Commercial Code, the ICC and other implementing regulations issued by the government.

However, as there have been dynamic changes in trade activities in Indonesia and with the objective to increase national economy growth based on the principles of, among other things, national interest, legal certainty, fairness, accountability and transparency, on 11 March 2014 the Indonesian government promulgated Law No. 7 of 2014 on Trade[70] ("**Trade Law**") which, in general, covers the following issues:

- domestic trade;
- foreign trade;
- standardization;
- trade by using electronic means;
- trade protection;
- export development;
- international trade cooperation;
- duty and authority of the government in the field of trade;

[69] Elucidation to Trade Law

[70] http://www.indolaw.org/UU/Law%20No.%207%20of%202014%20on%20Trade.pdf

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- national trade commission; and
- trade supervision and investigation.

The Trade Law defines trade as a series of activities related to goods and/or services transaction conducted domestically and internationally with a purpose of transferring the rights on goods and/or services in order to receive payment or compensation.

There are various types of trade agencies acknowledged by Indonesian law, but in essence, they can be classified into two i.e. wholesaler and retailer. Wholesaler includes main distributor, sub-distributor, main supplier, large dealer and the trademark holder sole agent (*agen pemegang merek tunggal*). Meanwhile, retailer includes selling agent, supplier, retailing dealer and retailer without store. In respect of foreign investment, a foreign investment company ("**PMA Company**") is only allowed to engage as a wholesaler and/or main distributor and may not act as a retailer.

**Wholesaler**
- Main-distributor
- Sub-distributor
- Main supplier
- Large dealer
- The trademark holder sole agent (*agen pemegang merek tunggal)*

**Retailer**
- Selling agent
- Supplier
- Retailing dealer
- Retailer without store

***Several Main Topics on Trade Arrangements***

(1) Domestic Trade

The Trade Law defines domestic trade as the trade of goods and/or services

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conducted within the territory of the Republic of Indonesia[71]. The Trade Law stipulates that Indonesian government governs the domestic trade activities through policies and control. Policies and control in the domestic trade activities are directed:[72]

(a) to increase of efficiency and effectiveness of the distribution;
(b) to improve business climate and certainty;
(c) to integrate and expand domestic market;
(d) to increase market access for domestic products; and
(e) to give consumer protection.

Domestic trade policies shall at least cover the following matters:[73]

(a) harmonization of regulations, standards, and procedures of trade activities between central government and local government and/or between local governments;
(b) arrangement of licencing procedures for the smoothness of goods flow;
(c) fulfilment of availability and affordability of staple goods;
(d) development and reinforcement of businesses in the field of domestic trade, including cooperative and micro, small, and medium businesses;
(e) provision of facilities for development of trade means;
(f) increase of use of domestic products;
(g) inter-islands trade; and
(h) consumer protection.

As for the control in domestic trade, it covers licencing, standard, and restriction and limitation.[74]

(2) Foreign Trade

Foreign trade covers the activities of export and/or import of goods and/or

[71] Article 1 Paragraph Trade Law
[72] Article 5 Paragraph Trade Law
[73] Article 5 Paragraph Trade Law
[74] Article 5 Paragraph (4) Trade Law

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services' trading that extend beyond the country's territory.[75] The government governs the foreign trade activities through policies and control in the field of export and import, which are directed to:[76]

(a) to improve competitiveness of Indonesian export products;
(b) to improve and expand overseas market access; and
(c) to increase exporter and importer's capability to become reliable business actors.

Foreign trade policies shall at least cover the following matters:

(a) increase of number and types as well as value added of export products;
(b) harmonization of standard and trade activities procedures with trade partner countries;
(c) reinforcement of institutions in the field of foreign trade;
(d) development of foreign trade means and infrastructures; and
(e) protection and security of national interest from the negative impacts of foreign trade.

As for the control in foreign trade, it covers licencing, standard, and restriction and limitation.[77]

(3) Mandatory labelling of goods in Indonesian language

The Trade Law requires any business actors to have their goods traded in Indonesian market, whether sourced from domestic production or import activity, be labelled in clear and understandable Indonesian language. Violation of this provision will be subject to criminal sanctions in the form of imprisonment of maximum five years and/or fine of maximum Rp5,000,000,000 (five billion Rupiah).

[75] Article 1 Paragraph (3) Trade Law

[76] Article 38 Paragraph (2) Trade Law

[77] Article 38 Paragraph (4) Trade Law

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The labelling requirement set out under the Trade Law is further regulated in Minister of Trade ("**MOT**") Regulation No. 73/M-DAG/PER/9/2015 on Obligation to Use Label in Indonesian Language on Goods[78]. This regulation requires the label to be embossed or printed on the goods/packaging or completely attached to the goods/packaging or inserted to the goods/packaging.[79] But the labelling requirement under this regulation is not applicable to goods sold in bulk and directly packaged in front of customer and goods produced by micro-small-medium enterprises.[80]

(4) Standardization

The Trade Law defines standardization as the process of formulating, establishing, implementing, maintaining, enforcing, and monitoring the standards which is implemented in an orderly manner and cooperate with all relevant parties. Standardization is conducted for the following purposes:[81]

(a) to enhance the quality assurance, production efficiency, national competitiveness, fair and transparent business competition in trade, business certainty, and business actors' ability as well as technology innovation ability;

(b) to enhance the protection of consumers, business actors, labors, and the society, as well as protection of the state, on the safety, security, health, and preservation of environmental functions aspects; and

(c) to enhance the certainty, smoothness, and efficiency of goods and/or services trade transactions both inside and outside of Indonesia.

With regard to this standardization topic, the Trade Law requires every good/service traded in Indonesia to meet the mandatory Indonesian National

[78] http://www.kemendag.go.id/files/regulasi/2015/09/28/73m-dagper92015--id-1446169056.pdf

[79] Article 4 MOT Regulation No. 73/M-DAG/PER/9/2015

[80] Article 8 MOT Regulation No. 73/M-DAG/PER/9/2015

[81] Article 3 Law No. 20 of 2014 on Standardization and Conformity Assessment (http://bsn.go.id/uploads/download/UU-20_TAHUN_2014_TENTANG_SPK1.pdf)

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Standard/*Standard Nasional Indonesia* ("**SNI**") and other mandatory technical requirements. Violation of this requirement will be subject to an imprisonment of maximum five years and/or a fine of maximum Rp5,000,000,000 (five billion Rupiah).

SNI is a standard that is applicable to goods, services, systems, and processes used or traded in Indonesia. There are two types of implementation of SNI i.e. voluntary and mandatory implementation depending on the type of goods and/or services in accordance with the relevant ministerial/agencies regulations on such goods and/or services. The implementation of SNI is evidenced by SNI certificate and/or SNI mark and/or conformity sign attached to the relevant goods, services, systems, and processes.[82]

For products and/or goods that are subject to mandatory SNI, business actors must enrol their products in conformity assessment process for obtaining SNI certificate and SNI mark with agencies accredited by Indonesian Accreditation Commission (*Komite Akreditasi Nasional (*KAN)).[83] The conformity assessment process will include the process of examination, inspection and/or certification in accordance with national standard or competency acknowledged in Indonesia.

(5) Import and export activities

Goods, in relation to import and export activities, are categorised into:

(a) free imported and exported goods;
(b) limited imported or exported goods; and
(c) prohibited imported or exported goods.

Goods under category (b) and (c) are determined by the regulation of the MOT. In respect of import activity, the imported goods in principle must be new goods (has not been used previously). Import of used goods can be conducted by following certain procedures issued by the MOT.

[82] Article 20 Law No. 20 of 2014 on Standardization and Conformity Assessment

[83] Article 24 in conjunction with Article 36 Law No. 20 of 2014 on Standardization and Conformity Assessment

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In order to conduct import activity, an importer must have Importer Identification Number (*Angka Pengenal Importir* ("**API**")) – but API is not required for importation of certain goods e.g. temporary imported goods, promotional goods, and goods used for research and knowledge development. There are two types of API i.e. API-U and API-P. API-U is granted to companies importing goods for trade purposes. Meanwhile, API-P is granted to companies importing goods for own purposes such as capital goods, raw materials, auxiliary materials and/or for supporting production process. A company can only have either API-U or API-P.

In import activity, the relevant business actor is subject to the applicable tax requirements. In general, the applicable taxes on import activity are (i) value added tax (*Pajak Pertambahan Nilai*/PPN), (ii) sales tax on luxury goods (*Pajak Penjualan atas Barang Mewah*/PPnBM), and (iii) income tax.[84] In addition to applicable taxes, imported goods will be subject to import duty (except for goods that are given import duty exemption in accordance with the prevailing regulations). The import duty is calculated based on the import duty tariff pursuant to the prevailing regulations and the value of transaction of the imported goods (cost, freight and insurance).

Imported goods may also be subject to (a) antidumping import duty if the export price of the imported goods is lower than its normal price and this causes loss, as set out in Government Regulation No. 34 of 2011 on Antidumping Measure, Compulsory Measure and Trade Safeguard Measure ("**GR 34/2011**")[85]. The maximum amount of the antidumping import duties is as much as the margin of the dumping.[86] Antidumping import duty is imposed after completion of investigation by Indonesian Antidumping Committee.[87]

GR 34/2011 also stipulates that, in addition to import duty, imported goods

[84] Article 4 and Article 5 Law No. 8 of 1983 on Value Added Tax and Sales Tax on Luxury Goods as lastly amended by Law No. 42 of 2009 (http://www.ortax.org/ortax/?mod=aturan&page=show&id=13964); and Article 1 jo Article 22 of Law No. 7 of 1983 on Income Tax as lastly amended by Law No. 36 of 2008 (http://www.ortax.org/ortax/?mod=aturan&page=show&id=13430)

[85] http://peraturan.go.id/pp/nomor-34-tahun-2011-11e44c4efd070e408334313231383036.html

[86] Article 2 GR 34/2011

[87] Article 38 GR 34/2011

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may also be imposed with compulsory measure duty. Compulsory measure duty is a state levy imposed on imported goods which obtain a subsidy in the exporting country and the import of such goods causes losses to domestic industry. Furthermore, if during the investigation period, there are sufficient preliminary evidences which prove that the imported goods obtain a subsidy and the import of such goods causes losses to domestic industry, the imported goods may be imposed with temporary compulsory measure duty. The maximum amount of each compulsory measure duty and temporary compulsory measure duty is as much as the amount of the subsidy.[88]

Further, GR 34/2011 stipulates that the imported goods may also be imposed with safeguard measure in addition to import duty if there is an increase of the amount of the import of the goods, be it absolute or relative, and the increase causes serious losses or serious loss threat against domestic industry. The safeguard measure can be in the form of safeguard measure duty and/or quota.[89]

With regard to export activity, a company basically must have taxpayer registration number ("**NPWP**"), business licence, customs identity number for export, export notification and other documents as may be required. For the exporter who intends to conduct limited export goods, it must also obtain an acknowledgement as a registered exporter, export approval, surveyor report, certificate of origin (*surat keterangan asal barang*), and/or other documents as may be required. Limited export goods are determined based on the following considerations:

(1) to protect national security and public interest;
(2) to protect human, animals, plants or environment health;
(3) to observe international agreement or arrangements as ratified by Indonesian government;
(4) to preserve domestic supply or to ensure effectiveness of conservation;

[88] Article 37 and Article 52 paragraph (7) GR 34/2011

[89] Article 70 GR34/2011

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(5) to make adjustment if the market capacity in the target country is limited; and/or

(6) to ensure the sufficient amount of raw materials for local industrial processing.

Pursuant to the Trade Law, the government must develop local business actors for the purpose of increasing export activity by providing incentive (be it fiscal or non-fiscal), facility, market opportunity information, technical guidance and marketing as well as promotion assistance.[90] Further provision on this matter is stipulated under Minister of Trade Regulation No. 83 of 2017 on Development of Business Actors for the Purpose of Increasing Export ("**MOT Reg. 83/2017**"). Under MOT Reg. 83/2017, the development of local business actors is conducted by providing the local business actors with (i) fiscal and/or non-fiscal incentives, (ii) facilities, (iii) information on market opportunity, (iv) technical guidance, and (v) promotion and marketing assistance.

Finally, Law No. 10 of 1995 on Customs as amended by Law No. 17 of 2006 sets out that exported goods may be imposed export duty.[91] The amount of the export duty will be calculated based on tariff and export price of the goods in accordance with the prevailing regulations.

(6) Trade by using electronic means

The Trade Law stipulates that any business actor who trades goods and/or services using electronic system must provide complete and correct data and/or information. This provision is in line with Law No. 11 of 2008 on Electronic Information and Transaction[92] as amended by Law No. 19 of 2016 ("**Law 11/2008**")[93] and Government Regulation No. 82 of 2012 on the Implementation of Electronic System and Transaction ("**GR 82/2012**")[94]. The

[90] Article 74 Trade Law

[91] Article 2A Law No. 17 of 2006

[92] https://www.setneg.go.id/index.php?option=com_perundangan&id=1969&task=detail&catid=1&Itemid=42&tahun=2008

[93] https://jdih.kominfo.go.id/produk_hukum/view/id/555/t/undangundang+nomor+19+tahun+2016+tanggal+25+november+2016.

[94] http://peraturan.go.id/pp/nomor-82-tahun-2012-11e44c4f5baa02a0a922313232303435.html

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data and/or information must at least contain the following:[95]

(1) identity and legality of the business actor as the producer or distributor;
(2) technical requirements of the offered goods and/or services;
(3) price and payment procedure for the goods and/or services; and
(4) delivery method of goods.

There is also a requirement for the electronic system provider to convey at least the following information as set out in GR 82/2012:[96]

(1) identity of the electronic system provider;
(2) object of transaction;
(3) feasibility or security of the electronic system;
(4) procedures to use the system;
(5) contractual terms;
(6) procedure to obtain approval of the parties; and
(7) privacy warranty and/or personal data protection.

Under Indonesian law, an electronic transaction can be set out in an electronic contract which will be binding for the parties thereto. An electronic transaction will take place when an offer sent by the sender is accepted and approved by the recipient and such approval must be made by virtue of an electronic statement of acceptance. GR 82/2012 stipulates that an electronic contract will be valid if:[97]

(1) there is an agreement between the parties;
(2) conducted by the parties that are capable and entitled under law;
(3) there is a certain object; and
(4) the object of the transaction does not violate prevailing laws, morality and public norm.

[95] Article 65 Trade Law

[96] Article 25 GR 82/2012

[97] Article 47 GR 82/2012

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(7) Trade protection

The Trade Law mandates the government to stipulate trade protection policy covering:

(a) defence on dumping and/or subsidy allegations against exported national goods;
(b) defence for exporters whose goods are deemed by the importing country as causing import increase in the importing country;
(c) defence against exported national goods which are adversely affected by implementation of policy and/or regulation in the importing country;
(d) imposition of antidumping measure to overcome unfair business competition;
(e) imposition of safeguard measure for handling increase of import quantity; and
(f) defence over national policy on trade which is contested by other countries.

(8) International trade cooperation

The Trade Law allows Indonesian government to enter into international trade cooperation with other countries, organisations or institutions. Every international trade cooperation agreement must be conveyed to the House of Representatives of Indonesia no later than 90 business days after signing of the agreement to be reviewed by the House of Representatives. After receiving the agreement, the House of Representative will have 60 days for determining whether or not the agreement requires approval from the House of Representatives.[98]

Legalisation of an international trade cooperation will be conducted through a law if the agreement gives large and essential impact to Indonesian people's life and is related to state budget and/or requires amendment or issuance of a law. Other than the foregoing, the legalisation will be conducted through a

[98] Article 84 Trade Law

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president regulation.

(9) Duty and authority of the government in the field of trade

The Trade Law stipulates duties and authorities of both central government and local government in the field of trade.

Duties of central government in the field of trade are:[99]

(a) to formulate and stipulate trade policies;
(b) to formulate national standards;
(c) to formulate and stipulate trade norms, standards, procedure, and criteria;
(d) to stipulate trade licencing system;
(e) to control the availability, price stabilization, and distribution of staple goods and/or essential goods;
(f) to conduct international trade cooperation;
(g) to manage trade information;
(h) to conduct development and supervision of trade activities;
(i) to encourage the expansion of national export;
(j) to create a conducive business climate;
(k) to develop national logistic; and
(l) other duties in accordance with the prevailing laws and regulations.

In carrying out its duties, the central government shall have the following authorities:[100]

(a) to grant licences for business actors in the field of trade;
(b) to implement harmonization of domestic trade policies in order to improve the efficiency and effectiveness of national distribution system, commercial order, market integration, and business certainty;
(c) to cancel the trade policies and regulations stipulated by local

[99] Article 93 Trade Law

[100] Article 94 Trade Law

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government which contradicts with policies and regulations of the central government;

(d) to impose restrictions and/or limitation on trade of goods and/or services;

(e) to develop national logistic to ensure availability of staple goods and/or essential goods; and

(f) other authorities in accordance with the prevailing laws and regulations.

Duties of local government in the field of trade are:[101]

(a) to implement the central government's policies in the field of trade;

(b) to implement the trade licencing activities at local level;

(c) to control the availability, price stabilization, and distribution of staple goods and/or essential goods;

(d) to monitor the implementation of international trade cooperation at local level;

(e) to manage trade information;

(f) to conduct development and supervision of trade activities at local level;

(g) to encourage the expansion of national export;

(h) to create a conducive business climate;

(i) to develop local logistic; and

(j) other duties in accordance with the prevailing laws and regulations.

In carrying out its duties, the local government shall have the following authorities:[102]

(a) to stipulate policies and strategies in the field of trade at local level in order to implement the central government's policies;

(b) to grant licences for business actors in the field of trade which authority to grant the same are assigned or delegated by the central government;

(c) to manage trade information at local level in order to organize trade

[101] Article 95 Trade Law

[102] Article 96 Trade Law

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information system;

(d) to develop and supervise trade activities at local level; and

(e) other authorities in accordance with the prevailing laws and regulations.

(10) Trade supervision and national trade commission

Supervision and protection of trade activity is conducted by Indonesian government, in central and regional levels. In case of supervision by central government, MOT has the authorisation to (i) temporarily prohibit the distribution and/or order withdrawal of the goods from distribution or cease the service traded in violation of relevant laws and regulations; and/or (ii) revoke the licencing in trade field. Further supervision by MOT is delegated to relevant officers in trading sectors such as officials in Directorate General of Customs and Excise.

The Trade Law says that, in order achieve the objectives of trade regulations expeditiously; the President may form a national trade commission which will be chaired by the MOT. The commission members do not only involve government elements but also business actors and academicians. The commission will have the function to, among other things, give advice on the making of trade policy and trade financing, assist the government in monitoring trade practices and policies in other country, and assist the government in socialising trade policies and regulations.

### 1.2. Laws in Relation to Operation of Business and Working of Foreigner

(1) Operation of Business of Foreigner

Indonesian law stipulates that foreign individuals and entities may not do business directly in Indonesia (as distinct from holding shares in Indonesian entities which do business in Indonesia). The clearest single statutory expression of this principle is Government Regulation No. 36 of 1977 on Termination of Foreign Business Activities in Field of Trade[103] as lastly amended by

[103] http://www.sjdih.depkeu.go.id/fulltext/1977/36TAHUN~1977PP.HTM

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Government Regulation No. 15 of 1998[104] ("GR 36/1977") which states that trading activities conducted by foreign individuals and entities must end at the latest on 31 December 1977.[105]

GR 36/1977 defines "trade" as "the sale and purchase of goods or services which are carried out continuously for the purpose of transferring the rights to the goods or services accompanied by (i.e. in consideration of) fees or compensation". In other words, it covers the sale and purchase of services as well as goods. This definition is very broad and may cover any revenue-generating business of any kind.

There are exceptions on the above such as in construction and oil and gas business where the businesses may be conducted directly by foreign individuals or entities. But for other businesses, foreign individuals or entities must establish an Indonesian company in order to conduct business in Indonesia.

In relation to employment of foreign workers, under the Manpower Law foreigners may be employed in Indonesia under the following conditions:[106]

(1) the foreigner has an employer in Indonesia which intends to employ him/her (the "Sponsor");

(2) the Sponsor must first obtain a written permit from the relevant minister or official (except for representatives of foreign countries which bring foreigners as diplomatic staffs and consulates); and

(3) foreigners may be employed in Indonesia for certain positions and under definite period of employment.

[104] https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjrzp31gPvRAhUIP48KHU_aDCUQFggZMAA&url=http%3A%2F%2Fwww.bpkp.go.id%2Fuu%2Ffiledownload%2F4%2F68%2F1293.bpkp&usg=AFQjCNG3JxNUPmCR2OXRxaT7DLJqoN-iVQ&bvm=bv.146094739,d.c2I

[105] Article 6 GR 36/1977.

[106] Article 42 Manpower Law.

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With regard to Sponsor, President Regulation No. 72 of 2014 on Utilisation of Foreign Worker and the Implementation of Education and Training for Accompanying Worker ("PR 72/2014")[107] and Ministry of Manpower ("MOM") Reg. 16/2015 stipulate that the permission to employ foreigners in Indonesia is limited to:

(1) a government institution, foreign country's representative and international organisation;
(2) a foreign body;
(3) a foreign trade company representative office, foreign company representative office and foreign news agency conducting activity in Indonesia;
(4) a foreign private company conducting business in Indonesia;
(5) a legal entity incorporated under Indonesian law in the form of a company or a foundation, or a foreign legal entity registered with the relevant authorised institution;
(6) a social, religious, education and cultural organisation; and
(7) an impresario service business.

There is also a decree issued by the MOM stipulating positions which are restricted to be held by foreign workers i.e. MOM Decree No. 40 of 2012. Those positions are as follows:

(1) Personnel Director;
(2) Industrial relation manager;
(3) Human Resource Manager;
(4) Personnel Development Supervisor;
(5) Personnel Recruitment Supervisor;
(6) Personnel Placement Supervisor;
(7) Employee Career Development Supervisor;
(8) Personnel Declare Administrator;
(9) Chief Executive Officer;

[107] http://www.peraturan.go.id/perpres/nomor-72-tahun-2014-11e44c5038c2bf609c18313232363536.html

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(10) Personnel and Careers Specialist;
(11) Personnel Specialist;
(12) Career Advisor;
(13) Job Advisor;
(14) Job Advisor and Counselor;
(15) Employee Mediator;
(16) Job Training Administrator;
(17) Job Interviewer;
(18) Job Analyst;
(19) Occupational Safety Specialist;
(20) Personnel Recruitment supervisor.

Note that, the MOM has also issued various decrees stipulating positions that can be held by foreign worker in specific sectors.

(2) Procedures for employing foreign workers

The procedures for employing foreign workers are basically divided into two stages of permit granting, i.e.:

1. the granting of the permit for the company planning to employ foreign workers; and

2. the granting of permit for the foreign worker to be able to enter into, stay and work in Indonesia.

The first stage is processed at MOM or its designated authority. This stage involves Foreign Worker Utilisation Plan (*Rencana Penggunaan Tenaga Kerja Asing*/"**RPTKA**") and Permit to Employ Foreign Worker (*Izin Mempekerjakan Tenaga Asing*/"**IMTA**") which will be elaborated below.

As for the second stage, this will be processed at the Minister of Law and Human Rights ("**MOL**"), Directorate General of Immigration or its designated authority.

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(a) RPTKA

Prior to employing foreigners in Indonesia, a Sponsor (except government institution, foreign country's representative and international organisation) must first prepare RPTKA and submit an application to the MOM to obtain RPTKA approval.

The application for getting RPTKA approval must be submitted through online system or manually to Director of Foreign Worker Utilisation Control ("**DPPTK**") under the Directorate General of Development and Placement of Manpower or the authorised official in the special economic zone if the foreign worker is going to be placed in the special economic zone.

The application for getting RPTKA approval requires the followings:

(1) reasons for using the foreign worker;
(2) description on the background of foreign worker utilisation;
(3) RPTKA form which contains (i) name of the Sponsor; (ii) address of the Sponsor; (iii) name of the Sponsor's head/director; (iv) position of the foreign worker; (v) description of the position of the foreign worker; (vi) number of foreign workers who will be employed in Indonesia; (vii) location of work of the foreign worker; (viii) period of employment of the foreign worker; (ix) salary of the foreign worker; (x) date of commencement of the employment; (xi) number of Indonesian workers and the work opportunities created by the Sponsor; (xii) appointment of accompanying Indonesian worker; and (xiii) plan of education and training for Indonesian worker;
(4) business licence of the Sponsor;
(5) deed of establishment of the Sponsor and its approval from the MOL;
(6) the Sponsor's organisation chart;
(7) the Sponsor's domicile letter;

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(8) the Sponsor's taxpayer registration number;
(9) letter of appointment of the accompanying Indonesian employee;
(10) statement letter to provide education and training for Indonesian worker in accordance with the qualification of the foreign worker's position;
(11) evidence of submission of the mandatory report of employment; and
(12) recommendation on the position which will be held by the foreign workers from the relevant institutions (if required).

The approval on RPTKA for employing 50 or more foreign workers will be issued by the Director General of Development and Placement of Manpower while the approval on RPTKA for employing less than 50 foreign workers will be issued by DPPTK.

(b) IMTA

Once approval on the RPTKA is issued, the Sponsor may commence the application for IMTA to the MOM by submitting:

(1) evidence of compensation payment for the foreign worker utilisation (amounting to USD100/month for each foreign worker);
(2) copy of RPTKA approval;
(3) copy of the foreign worker's passport;
(4) one photograph of the foreign worker with the size 4x6;
(5) letter of appointment of the accompanying Indonesian employee;
(6) education certificate of the foreign worker which shall match the position that is going to be held by the foreign worker;
(7) certificate of competence or work experience for the last five years which shall match the position that is going to be held by the foreign worker;
(8) draft of employment agreement of the foreign worker;

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(9) copy of insurance policy in an Indonesia insurance company (which in practice, in the form of health insurance); and

(10) recommendation on the position which will be held by the foreign worker from the relevant institutions (if required).

Upon submission of a complete and correct application, the DPPTK shall issue the IMTA within four working days (in practice, it may take up to 12 working days). IMTA is valid for a period of maximum one year and may be extended. The application for IMTA extension must be submitted no later than 30 days prior to the IMTA expiration.

The extension of IMTA will be issued by:

(i) Director of Foreign Worker Utilisation for foreign worker who has more than one work locations;

(ii) Head of Provincial Manpower Office for foreign worker who has work location in more than one regencies/cities in one province; and

(iii) Head of Regency/Municipality Manpower Office for foreign worker who has work location only in one regency/city.

(c) Limited Stay Visa ("**VITAS**")

The issuance of VITAS is mainly regulated under Government Regulation No. 31 of 2013 on Implementing Regulation of the Immigration Law[108] as amended by Government Regulation 26 of 2016[109] ("**GR 31/2013**"). VITAS can be granted to a foreigner to enter into Indonesia for conducting the following works:

(1) act as an expert;

[108] http://www.imigrasi.go.id/phocadownloadpap/pp%20nomor%2031%20tahun%202013.pdf

[109] http://www.peraturan.go.id/pp/nomor-26-tahun-2016.html

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(2) work on vessel, floating equipment or installation in Indonesia region;
(3) conduct task as clergymen;
(4) conduct activity relating to a profession with payment;
(5) conduct activity for commercial film making;
(6) conduct supervision of goods or production quality;
(7) conduct inspection or audit on branch company in Indonesia;
(8) provide after-sales services;
(9) install and repair machine;
(10) engage in non-permanent work for construction purposes;
(11) carry out professional sport activities;
(12) engage in medical activities; or
(13) foreign worker candidate who will take competency examination.

The application for VITAS must be submitted to the Directorate General of Immigration after IMTA is issued. A letter of approval on VITAS will be delivered to the immigration official at the Indonesian embassy in the country nominated by the foreign worker. Within four working days after the letter of approval is delivered, the immigration official will issue VITAS for the foreign worker. The relevant foreign worker must then visit the Indonesian embassy to have the VITAS stamped on his/her passport and the VITAS will be used as a basis to enter Indonesia.

Please note that under GR 31/2013, VITAS may also be granted to a foreigner for non-working purposes which shall include:

(1) carry out foreign investment;
(2) participate in training and scientific research;
(3) participate in education;
(4) have a family reunification;
(5) repatriation; or
(6) foreign aged traveler.

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(d) Limited Stay Permit Card ("**KITAS**")

The procedure to obtain KITAS is regulated under MOL Regulation No. 27 of 2014 on the Technical Procedure for the Issuance, Extension, Rejection, Cancelation and Expiration of Visit Stay Permit, Limited Stay Permit and Permanent Stay Permit and the Exemption from Obligation to Possess Stay Permit ("**MOL Reg. 27/2014**").[110] KITAS is needed as the permit to stay in Indonesia for the foreign worker.

The foreign worker who enters into Indonesia by using VITAS will be given an entry pass by the immigration official at the immigration checking area. Such entry pass will be temporarily valid for 30 days. Within this period, the Sponsor must submit application for KITAS to the Immigration Office in the location where the foreign worker is domiciled by attaching the following documents:

(1) valid passport of the foreign worker and entry pass;
(2) letter of guarantee from the Sponsor;
(3) power of attorney if the application is submitted by the attorney;
(4) approval of the RPTKA;
(5) recommendation from the relevant ministries or institutions (if applicable);
(6) Sponsor's business licence;
(7) Sponsor's company registration certificate;
(8) Sponsor's taxpayer registration number; and
(9) Sponsor's deed of establishment and articles of association.

After the submission of KITAS application, KITAS will be issued after the following procedures are taken:

(1) examination on the required documents;

[110] http://peraturan.go.id/permen/kemenkumham-nomor-27-tahun-2014.html

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(2) data entry, identification, data verification, documents scanning and the application receipt printing;
(3) payment of immigration fees in accordance with the prevailing regulations; and
(4) interview, identification and data verification as well as the taking of biometric photograph data and fingerprints of the foreign workers.

(3) Requirements for Foreigners to Work in Indonesia

Under MOM Reg. 16/2015, a foreign worker employed by an Indonesian company must meet the following general requirements:

(1) having compatible education with the job requirements to be taken by the foreign worker;
(2) having competency certificate or at least five year's work experience in the job to be taken by the foreign worker;
(3) preparing a statement letter that he/she is going to transfer his/her knowledge to the accompanying Indonesian worker which will be evidenced by the education and training implementation report;
(4) having NPWP for foreign worker who has worked for more than six months;
(5) having insurance policy with an insurance company which is an Indonesian legal entity; and
(6) having membership at social security program for foreign worker who works for more than 6 months.

Please note that the requirements (1), (2), and (3) above are not applicable to foreign workers who will hold position as member of Board of Directors and/or Board of Commissioners of an Indonesian company.

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(4) Sanctions

Under the Manpower Law, an employer who employs foreign worker without obtaining proper licences as mentioned above may be subject to criminal sanction of imprisonment of at least one year and maximum four years and/or fine at least Rp100,000,000 and maximum Rp400,000,000. For the foreign worker, since he/she must have misused or conducted activities which are not in accordance with his/her stay permit, then he/she may be subject to criminal sanction as stipulated under Law 6/2011 in the form of imprisonment up to five years and fine up to Rp500,000,000.

(5) Foreigners Supervision

Supervision of foreigners in Indonesia is mainly regulated in Law No. 6 of 2011 on Immigration ("**Immigration Law**")[111]. According to the Immigration Law the obligation to conduct supervision of foreigners lays with the MOL. The Immigration Law further stipulates that supervision of foreigners shall be conducted at the time of visa application, entry and exit from Indonesia, and the granting of stay permit. For conducting the supervision, the Immigration law stipulates that the MOL shall form a supervision team.

In relation to foreign workers, MOM Reg. 16/2015 stipulates that supervision over the employer shall be conducted by the manpower supervisory officer. The manpower supervisory officer can give recommendation to the IMTA issuer to revoke the IMTA if the employer employs foreign worker not in accordance with the IMTA.

**2. Investment law in Indonesia**

Matters regarding investment in Indonesia are governed under Law No. 25 of 2007 on Investment[112] ("**Investment Law**"). This law stipulates, among other things:

(i) the form of business entity and capital requirements;

[111] http://www.imigrasi.go.id/phocadownloadpap/Undang-Undang/uu-6-tahun-2011.pdf

[112] http://www.setneg.go.id/index.php?option=com_perundangan&id=1600&task=detail&catid=1&Itemid=42&tahun=2007

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(ii) rights and obligations of the investor;

(iii) restriction for foreign investor to engage in certain fields of business; and

(iv) investment agency in Indonesia.

On the form of business entity, there are several types of business entity under Indonesian law such as limited liability company, firm, partnership, *commanditaire vennootschaap,* and cooperative. But for foreign investors, they can only conduct business in Indonesia through a limited liability company/*perseroan terbatas* (“**PT**”) known as PMA Company. Regarding the forms of business entity other than PT, these will be explained in the next section on Rules Regarding Indonesian Business Internally.

### 2.1 Establishment of a PT

Based on Law No. 40 of 2007 on Limited Liability Company (“**Law 40/2007**”)[113], PT is a legal entity established by virtue of an agreement and having its capital divided into shares. A PT has three organs i.e. (a) board of directors, (b) board of commissioners, and (c) general meeting of shareholders. The board of directors is responsible to carry out management of the PT. Meanwhile, the board of commissioners is responsible for carrying out supervision on the management of the PT by the board of directors, and general meeting of shareholders has the authority not given to the board of directors and board of commissioners.

In order to establish a PT, the founders (two persons or more) must execute a deed of establishment in the form of a notarial deed. The deed of establishment must then be submitted to the MOL for approval and the PT will obtain its legal entity status after its deed of establishment obtains approval from the MOL.

The deed of establishment of a PT will contain articles of association of the PT concerned which basically will cover the following provisions of the PT:

(1) name and domicile;

(2) purposes and objectives;

(3) duration;

(4) capitalization;

[113] https://www.setneg.go.id/index.php?option=com_perundangan&id=1776&task=detail&catid=1&Itemid=42&tahun=2007

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(5) shares, shares classification (if any), rights of the shares, and nominal value of the shares;
(6) names and titles of the members of board of directors and board of commissioners;
(7) determination of place and procedures of general meeting of shareholders;
(8) procedures of appointment, replacement, and termination of the members of board of directors and board of commissioners;
(9) procedures for using the company's profit and dividend distribution.

The articles of association may contain provisions other than the above, but must not stipulate (i) provisions on the right to receive fixed return over shares, and (ii) provisions on the granting of personal benefit to the founders/shareholders or other party.

In relation to capital requirements, Law 40/2007 classifies capitalization of a PT into authorised capital, issued capital and paid-up capital. 25% of the PT authorised capital must be issued and paid up. The authorised capital of a PT is determined based on the agreement among the founders.[114]

But note that, a PMA company will need higher capital as there is a requirement for a PMA company to have investment value of more than Rp10 billion (excluding investment for land and building) which can be sourced either from equity or loan or combination of the two with the maximum ratio of 1:3.[115]

**2.2 Rights and obligations of the investor**

For the purpose of providing legal certainty to investors, the Investment Law gives the investor:

(i) certainty of rights, law and protection;
(ii) transparent information on the business sectors it engages in; and
(iii) various forms of facilities in accordance with laws and regulations.

[114] Article 1 Government Regulation No. 29 of 2016 on the Change of Authorised Capital of Limited Liability Company (http://www.kemendagri.go.id/media/documents/2016/09/20/p/p/pp0292016.pdf)

[115] BKPM may consider other debt to equity ratios, depending on the line of business of the Company and purpose of investment value

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The investors, on the other hand, must ensure that they:

(i) apply the good corporate governance principle;
(ii) implement the corporate social responsibility; and
(iii) make a report on investment activities and submit it to the Investment Coordinating Board (*Badan Koordinasi Penanaman Moda* ("**BKPM**")).

**2.3 Restriction to fields of business**

Investment Law stipulates that basically all business fields in Indonesia are open to foreign investment, except for business fields which are clearly stated as closed to foreign investment. There are also business fields which are open to foreign investment but with certain conditions. A list of business fields which are closed and conditionally open to foreign investment is currently set out in President Regulation No. 44 of 2016 on List of Businesses that are Closed and Open with Conditions to Investment (the "**Negative Investment List**"). Note that some businesses which are not listed in the Negative Investment List may also be closed to or conditionally open to foreign investment. Therefore, consultation with BKPM will need to be conducted for identifying whether a business which is not listed in the Negative Investment List is open, closed or conditionally open to investment.

Please see below list of some business fields and its maximum shares restriction for foreign investors according to the Negative Investment List.

| Business Fields | Maximum Foreign Shares' Ownership | Remarks |
|---|---|---|
| Growing of staple food crops with an area of more than 25 Ha | 49% | Subject to recommendation from the Minister of Agriculture |
| Operation of natural tourism through provision of ecotourism facilities, activities and services within the forestry areas (e.g. water tours and natural | 51% | - |

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| Business Fields | Maximum Foreign Shares' Ownership | Remarks |
|---|---|---|
| adventure tours) | | |
| Power generation with capacity more than 10 MW | 95% | - |
| Manufacture of (wood) paper pulp | 100% | Raw materials shall be collected from plantation forests (HTI), or in case of domestic insufficiency, obtained from imported chips |
| Construction services (construction contractors) with high technology and/or high risks and/or work value of more than fifty billion Rupiah | 67% | - |
| Distributorship | 67% | - |

Under the Negative Investment List, Indonesia gives less strict restriction to foreign investors from ASEAN countries, as can be seen under the table below:

| Business Fields | Maximum Foreign Shares' Ownership for Investors from ASEAN countries | General Restrictions |
|---|---|---|
| Public opinion polling/survey and market research | 70% | Closed |
| Motels | 70% | 67% |
| Golf courses | 70% | 67% |
| Motion picture advertising, advertisements, posters, stills, photographs, slides, negatives, banners, pamphlets, billboards, | 51% | Closed |

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| Business Fields | Maximum Foreign Shares' Ownership for Investors from ASEAN countries | General Restrictions |
|---|---|---|
| folders etc. | | |
| Hospital/specialist/subspecialist hospital services | 70% (specifically for capital cities in Eastern Indonesia, except Makassar and Manado) | 67% |
| Clinic specialized medical services | 70% (specifically for capital cities in Eastern Indonesia, except Makassar and Manado) | 67% |
| Clinic specialized dental services | 70% (specifically for capital cities in Eastern Indonesia, except Makassar and Manado) | 67% |
| Specialised nursing services | 51% (for Makassar and Manado) or 70% (specifically for other capital cities in Eastern Indonesia) | 49% |
| Construction services (construction contractors) with high technology and/or high risks and/or work value of more than fifty billion Rupiah | 70% | 67% |
| Tourism travel bureau | 70% | 67% |
| Travel agent | 70% | 67% |
| Catering service | 70% | 67% |
| Loading and unloading of goods | 70% | 67% |

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| Business Fields | Maximum Foreign Shares' Ownership for Investors from ASEAN countries | General Restrictions |
|---|---|---|
| (maritime cargo handling service) | | |

**2.4 Investment agency in Indonesia**

Based on President Regulation No. 90 of 2007 on the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* ("**BKPM**")) as amended by President Regulation No. 86 of 2012 ("**PR 90/2007**")[116], the BKPM is formed to assume the implementation duty of coordination and supervision function to investment activity in Indonesia, as the non-department government institution. The Head of BKPM is directly responsible to the President of Republic of Indonesia in conducting its duties and authorities.

The duties assumed by BKPM are, among others,

(i) analyzing and drafting the national investment plan;
(ii) coordinating national policies' implementation in investment sector;
(iii) stipulating norms, standards and procedures for the implementation of investment activity and service;
(iv) developing investment business sector through the investment guidance; and
(v) coordinating and implementing one stop service for investors.

In relation to the foreign investment, BKPM grants licensing and non-licensing services in most of business sectors, except for certain business line e.g. bank, non-bank financing institution and insurance.

**2.5 One Stop Integrated Service (Pelayanan Terpadu Satu Pintu ("PTSP")) at BKPM**

As regulated under Law 25/2007 and PR 90/2007, BKPM provides an integrated investment service for investors wishing to carry out an investment activity in Indonesia.

Based on Head of BKPM Regulation No. 9 of 2015 on the Implementation of One Stop

[116] http://www.kemendagri.go.id/produk-hukum/2007/09/03/peraturan-presiden-nomor-90-tahun-2007

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Integrated Service Center at the BKPM[117], delegation of authorities on licensing from most of Indonesian ministries/government agencies are given to BKPM. BKPM also coordinates with several ministries/agencies to organize the PTSP at BKPM for not only general services related to foreign investment but also certain services (such as consultation and technical/business licences) relating to certain ministries/agencies (e.g. Ministry of Energy and Mineral Resources, Ministry of Transportation, etc.).

### 2.6 Online System and Company Folder at BKPM

Under Head of BKPM Regulation No. 4 of 2014 on the Electronic System of Information Service and Investment Licensing, the BKPM launches an electronic system managed by BKPM, namely SPIPISE, which replaces the manual system application. The SPIPISE was commenced in October 2014 and has been fully enforced since December 2014.

SPIPISE is established in the form of a centralized electronic system for the implementation of licensing and non-licensing in the field of investment, data integration and data storage facility in the field of investment. Any investors or existing Indonesian companies intending to submit a licensing and non-licensing application to BKPM must firstly obtain the access right from BKPM, which can be applied online through SPIPISE. From the perspective of the investor, SPIPISE includes the following investment service:

(1) online submission of licensing and non-licensing application;
(2) online submission of investment activity report (LKPM); and
(3) company folder for the data storage.

### 2.7 Foreign investment procedures

(1) Establishment of a PMA Company

Head of BKPM Regulation No. 13 of 2017 on Guidance and Procedure of Investment Licencing and Facility[118] (“**BKPM Reg. 13/2017**”) introduces new regime on procedure of licencing in relation to establishment of a PMA Company. In general (subject to further explanation on exemption to obtain

[117] http://ditjenpp.kemenkumham.go.id/arsip/bn/2015/bn756-2015.pdf

[118] https://peraturan.bkpm.go.id/jdih/userfiles/batang/2017._13_PERBKPM_Perizinan_dan_Fasilitas_PM_.pdf

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investment registration set out below), foreign investors who intend to establish a PMA Company in Indonesia shall observe the following stages:

***Stage 1 – Preparation – Establishment***

(1) obtain investment registration from BKPM;
(2) execute deed of establishment before an Indonesian notary;
(3) procure the approval on the deed of establishment from the MOL;
(4) obtain domicile letter from the head of local district office;
(5) obtain taxpayer registration number (*Nomor Pokok Wajib Pajak*/NPWP) from the head of local tax office;
(6) obtain company registration certificate (*Tanda Daftar Perusahaan*/TDP) from the relevant company registration office; and
(7) announce the establishment of company in state gazette.

***Stage 2 – Pre-operation – Obtaining facilities and necessary permits***

(1) submit quarterly investment activity report (*Laporan Kegiatan Penanaman Modal* ("**LKPM**")) to BKPM and the relevant local investment agencies;
(2) obtain facilities such as import duty exemption for machineries and approval of tax facilities;
(3) obtain other relevant licences for carrying out the business, such as:
    a. importer identification number (*Angka Pengenal Importir*/API) from BKPM for companies which conduct import, e.g. manufacturing company or trading company;
    b. location license from the relevant governor/mayor/regent for companies which will acquire land;
    c. building construction permit (*Izin Mendirikan Bangunan*/IMB) from the relevant local government institution for companies which will construct building/manufacturing facilities; and
    d. relevant environmental licence/document from the relevant environmental office.

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(1) realise all investment value plan of the company as stated in the investment registration from BKPM;

(2) obtain the relevant business license from BKPM or the relevant government institution; and

(3) submit semi-annual LKPM to BKPM and other relevant investment offices.

*(a)* *Investment Registration*

Under BKPM Reg. 13/2017, certain businesses are required to obtain an investment registration from BKPM. Those businesses are:

(a) business which requires time for conducting development/construction;

(b) business which can obtain investment facility pursuant to the prevailing laws and regulations;

(c) business which has the potential to cause moderate and enormous environmental pollution pursuant to the prevailing laws and regulations;

(d) business relating to state defence, management of natural resources, energy, and infrastructure; or

(e) other businesses pursuant to the prevailing sectoral laws and regulations.

The investment registration can be obtained by submitting an application for obtaining the investment registration to BKPM through SPIPISE. Prior to submitting the application, there are several documents and/or information that must be provided, which are as follows:

*Information required*

(1) name of the PMA company shall be reserved with the MOL;

(2) details of office premises of PMA company, including address, telephone, facsimile and e-mail address;

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(3) business field, type of goods/services, capacity, export percentage (if any);
(4) project location;
(5) estimation of annual export value (if any);
(6) size of land (whether leased/purchased);
(7) number of Indonesian and foreign manpower;
(8) details of investment value plan;
(9) details of source of funds (whether from loans or own capital);
(10) details of authorised, paid up and issued capital;
(11) details of name, address and nationality of the shareholders; and
(12) details of shares subscription by each shareholder.

*Documents required*

(1) power of attorney from the shareholders (if the submission of investment registration application is conducted by a third party);
(2) documents showing identity of shareholders:

a. Indonesian shareholder(s)
- individual shareholder: Indonesian identity card (*Kartu Tanda Penduduk*/KTP) and NPWP.
- entity shareholder: deed of establishment, articles of association, latest notarial deed showing composition of board of directors and board of commissioners, NPWP, domicile letter, TDP, business license.

b. Foreign shareholder(s)
- individual shareholder: passport.
- entity shareholder: articles of association and supporting documents showing current composition of board of directors.

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(3) description of the business/flow chart

After obtaining access right into SPIPISE, the proposed shareholders or their authorised person can submit the application for obtaining investment registration to BKPM through SPIPISE. The BKPM will then issue a formal receipt after receiving complete and correct application documents and the investment registration will be issued within one working day upon the issuance of such receipt.

Please note that under BKPM Reg. 13/2017, if BKPM requires further explanation on the proposed business of the PMA Company, BKPM may require the investors to conduct a presentation before BKPM prior to issuance of the investment registration.

*(b)* *Business License*

Prior to commencing its business operation, a PMA company must secure business licences from BKPM or other business licences from the relevant government institutions (as applicable). Under BKPM Reg. 13/2017[119], there are several business licences that have been delegated by several ministries/government institutions to BKPM, e.g. business license for trade, tourism, energy sector, environmental/forestry. For business licences which have not been delegated to BKPM, they must be obtained from the relevant government institution having the authority to issue the license.

In order to apply for business license from BKPM, a PMA company must have realized all investment value stated under its investment registration. The application for business license can be submitted throughout SPIPISE or physically to the relevant government institution.

[119] http://www.bkpm.go.id/images/uploads/prosedur_investasi/file_upload/Perka_BKPM_15_2015.pdf

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Please note that under BKPM Reg. 13/2017, certain businesses are exempted from the requirement to obtain investment registration and may directly proceed with the obtaining of a business licence. Those businesses shall fulfill the following criteria:[120]

(a) the business does not require any construction activity; and
(b) the business does not require import duty exemption facility for the import of machineries or capital goods.

In addition, BKPM Reg. 13/2017 stipulates that a PMA Company may directly obtain a business licence (without the need to firstly obtain an investment registration) if the PMA Company:[121]

(a) has obtained its legal entity status and the shareholding composition in the PMA Company is in line with the shareholding limitation set out under the prevailing laws and regulations;
(b) has obtained a NPWP; and
(c) has office/business premises.

(2) Acquisition of Company by Foreign Investor

Other than establishing a new PMA Company, to conduct business activities in Indonesia, foreign investors may also acquire shares in an existing company fully owned by Indonesian investors or an existing PMA Company which has been duly established. Both acquisition of shares in an existing company fully owned by Indonesian investors or an existing PMA Company which has been duly established requires approval from BKPM, in the form of investment registration (for acquisition of shares in an existing company fully owned by Indonesian investors) or amendment of investment registration (for acquisition of shares in an existing PMA Company which has been duly established).

[120] Article 11 Paragraph (3) BKPM Reg. 13/2017

[121] Article 11 Paragraph (2) BKPM Reg. 13/2017

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Please see below steps applicable in acquisition of a company's shares by a foreign investor:

(a) execution of a shareholders' resolution approving the shares' acquisition by shareholders of the target company;
(b) the target company obtains BKPM's approval on the shares' acquisition, whether in the form of investment registration or amendment of investment registration;
(c) restatement of the shareholders' resolution set out in Point (a) into a notarial deed;
(d) (i) execution of deed of share transfer by the transferring shareholder of the target company and the foreign investor, if the shares' acquisition is conducted by acquiring shares of an existing shareholder of the target company or (ii) issuance of new shares by the target company, if the shares' acquisition is conducted by acquiring shares newly issued by the target company; and
(e) the target company reports the shares' acquisition (change of shareholders' composition) to the MOL.

In addition to the above, if the acquisition of shares conducted by the foreign investor falls within the definition of "shares' acquisition" under Law 40/2007[122], the following announcement requirements shall also be applicable:

(a) pre-acquisition announcement to the target company's creditors in an Indonesian newspaper. If the shares' acquisition is conducted by the foreign investor acquiring shares newly issued by the target company, the pre-acquisition announcement shall also contain an acquisition plan;
(b) pre-acquisition announcement to the target company's employees; and
(c) post-acquisition announcement to the target company's creditors in an Indonesian newspaper.

[122]Definition of "shares' acquisition" given under Law 40/2017 is a legal action conducted by a legal entity or an individual to acquire shares in a target company which causes the change of control in such target company

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## 3. Immigration

The Immigration Law plays a part in the framework of foreign investment in Indonesia, especially with regard to permit for foreigners to enter into and work in Indonesia. The Immigration Law stipulates that any foreigner who enters into Indonesian territory must have valid visa (except stipulated otherwise by the law)[123]. Furthermore, the Immigration Law stipulates that any foreigner who stays in Indonesia must have stay permit.

There are several types of visa and stay permit. Specifically for foreigners who want to come to Indonesia for the purpose of working in Indonesia, they will need to obtain:

(i) VITAS

A visa which is given to foreigners who enter into Indonesia with working purposes or non-working purposes. [124]

According to GR 31/2013, VITAS must be used within 90 days after it is issued.[125]

(ii) limited stay permit ("**ITAS**")

A stay permit which is given to the holder of VITAS. According to GR 31/2013, ITAS can be given for a maximum period of two years and can be extended.[126] But in practice, ITAS for foreigners who work in Indonesia will normally be issued for one year period and it can be extended.

A holder of ITAS must have ITAS card known as "KITAS".

## 4. Rules regarding Indonesian business internally

### 4.1. Partnership, company etc.

As explained earlier, there are several types of business entity under Indonesian law such as PT, firm, partnership, *commanditaire vennootschaap,* and cooperative. But for foreign investors, they can only conduct business in Indonesia through a PT.

[123] Article 8 Immigration Law

[124] Article 102 GR 31/2013

[125] Article 110 GR 31/2013

[126] Article 148 GR 31/2013

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We have discussed about PT in the beginning of section B. While the characteristics of a firm, partnership, *commanditaire vennotschaap* and cooperative are as follows:

| | |
|---|---|
| Firm | (1) Established by two persons or more by virtue of an authentic deed (deed of establishment);<br><br>(2) Each ally must provide its capital participation to the firm and all of the allies are jointly and severally liable for the liabilities of the firm;<br><br>(3) The firm uses a joint name of its allies;<br><br>(4) Registration of the deed of establishment with a district court having jurisdiction over legal domicile of the firm; and<br><br>(5) Announcement in the state gazette. |
| Partnership | (1) Established by two persons or more by virtue of an agreement; and<br><br>(2) Each partner must provide its capital participation to the partnership and all of the partners are jointly and severally liable for the liabilities of the partnership. |
| *Commanditaire vennotschaap* | (1) Established by two persons or more by virtue of an authentic deed (deed of establishment).<br><br>(2) One or more allies must act as the allies who provide capital of the *commanditaire vennotschaap* only (“**Passive Ally**”), while the remaining allies run the daily business activities of the *commanditaire vennotschaap* (“**Active Ally**”). The Passive Ally will have limited liability while the Active Ally are jointly |

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| | |
|---|---|
| | and severally liable for the liabilities of the *commanditaire vennotschaap*;<br><br>(3) Registration of the deed of establishment with a district court having jurisdiction over legal domicile of the *commanditaire vennotschaap*; and<br><br>(4) Announcement in the state gazette |
| Cooperative | (1) Established by at least twenty persons for a Primary Cooperative (this is a cooperative whose members consist of individuals), or established by at least three Primary Cooperatives for a Secondary Cooperative (this is a cooperative whose members consist of cooperatives), by virtue of a deed of establishment;<br><br>(2) To obtain the cooperative's legal status, the deed of establishment of the cooperative must be ratified by the Minister of Cooperative and Small and Medium Business or other officials authorised by the Minister of Cooperative and Small and Medium Business;<br><br>(3) Establishment of a cooperative shall be announced in the state gazette;<br><br>(4) A cooperative has three organs, namely (i) members' meeting, (ii) management board and (iii) supervisory board;<br><br>(5) Members of a cooperative are entitled to receive distribution of profit (*sisa hasil usaha*). |

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### 4.2. Public sector/government procurement

Matters regarding procurement of goods/services for government ("**Government Procurement**") are regulated under President Regulation No. 54 of 2010 on Government's Goods/Services Procurement[127] as lastly amended by President Regulation No. 4 of 2015 ("**PR 54/2010**"). Under PR 54/2010[128], Government Procurement means any activity to procure goods/services by any government institutions by using state and/or regional government's budgets starting from planning until completion of the entire activities of the procurement of goods/services.

In general, the methods for selecting goods/services provider in the Government Procurement are as follows:

(1) Public auction.

This method is available for all kind of work and can be participated by all goods/services providers which meet the auction requirements.

(2) Limited auction.

This method is used for procurement of goods/construction work services where the numbers of providers that are able to provide the goods/services are believed to be limited and the work is complex.

(3) Simple auction.

This method is used for procurement of goods/services having a maximum value of Rp5 billion.

(4) Direct selection.

This method is used for a construction work having a maximum value of Rp5 billion.

(5) Direct appointment.

This is a selection method of goods/services provider by appointing one goods/services provider directly.

[127] http://www.setneg.go.id/index.php?option=com_perundangan&id=2593&task=detail&catid=6&Itemid=42&tahun=2010

[128] http://peraturan.go.id/perpres/nomor-4-tahun-2015-11e4b100f46d6fd2b4e8313534333538.html

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(6) Direct procurement.

In this method the Government Procurement is conducted directly without going through auction, selection, or direct appointment method.

(7) Contest.

This method is for goods/services whose price cannot be determined based on unit price.

The use of the above methods will depend on specific requirements set out under PR 54/2010. For example, direct appointment method can only be used in certain conditions (such as emergency condition).

PR 54/2010 sets out that Government Procurement process must be conducted in efficient, effective, transparent, open, competitive, fair/indiscriminative and accountable manners. The following are some conducts which are prohibited by PR 54/2010 and may be subject to administrative sanctions, black-listing, civil lawsuit and/or criminal sanctions:

(a) trying to influence authorised government's officials in any form whatsoever, either directly or indirectly, in order to achieve an objective which is contrary to the provisions and procedures stipulated in the procurement documents and/or the prevailing laws;
(b) conspiring with other goods/services providers in arranging bid price with the objective to decrease/hamper/reduce and/or eliminate fair competition and/or cause loss to other persons;
(c) falsifying and/or delivering incorrect documents and/or statements in fulfilling the requirements of Government Procurement stipulated in the procurement documents;
(d) withdrawing from the implementation of the contract of Government Procurement without a valid reason acceptable to the government procurement's official;
(e) not completing contract of Government Procurement in a responsible manner; and

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(f) not fulfilling the requirement to use domestic goods/services.

### 4.3. Public private partnership

President Regulation No. 38 of 2015 on Public Private Partnership in the Infrastructure Provision defines a public private partnership as a partnership between government and business entity in the infrastructure provision for the public interest by referring to specifications determined by Minister/Chairman of the Institution/Regional Head/State-Owned Enterprises/Regional-Owned Enterprises, using (be it partially or entirely) the resources of the business entity by taking into account risks allocation between the parties ("**PPP**").

PPP must be conducted based on the following principles:

(a) Partnership. The cooperation must be conducted based on the laws and regulations by taking into account the interests of both parties.

(b) Benefit. The infrastructure to be provided must give social and economic benefits to the society.

(c) Competitive. The procurement of business entity which will carry out the project must be conducted through a fair, open and transparent selection as well as by taking into account fair business competition. Procurement of the business entity can be conducted through an auction or a direct appointment.

(d) Control and management of risk. The PPP must be conducted with assessment of risk, development of management strategy, and mitigation of risk.

(e) Effective. The PPP must be able to accelerate development as well as increase the quality of infrastructure management and maintenance services.

(f) Efficient. The PPP must have sustainable and sufficient funding needs in the infrastructure provision through private sector funds support.

Infrastructures that can be developed through the PPP are transportation, roads, water

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resources and irrigation, water supply, centralized waste water management system, local waste water management system, waste management system, telecommunications and informatics, electricity, oil and gas and renewable energy, energy conservation, urban facilities, education facilities, sports and arts facilities, zone, tourism, health, correctional institutions, and public housing infrastructures.

In the PPP project, the government can provide government support, such as tax incentive and government guarantee to the business entity carrying out the PPP project.

### 4.4. Tax law

(1) Resident Individual Income Tax

Indonesian tax law defines individual[129] as an individual staying in Indonesia for more than 183 days in any 12 consecutive months, or an individual who resides in Indonesia or intends to reside in Indonesia.

Individual's annual income is subject to income tax under progressive tax rates, as follows:

| Annual Income | Tax Rate |
|---|---|
| up to Rp50,000,000 (equal with US$3,728)[130] | 5% |
| more than Rp50,000,000 (equal with US$3,728) but less than Rp250,000,000 (equal with US$18,639) | 15% |
| more than Rp250,000,000 (equal with US$18,639) but less than Rp500,000,000 (equal with US$37,277) | 25% |
| more than Rp500,000,000 (equal with US$37,277) | 30% |

Indonesian Government stipulates non-taxable income for individuals' annual

[129] Article 2 Paragraph (3) Point (a) Law No. 7 of 1983 on Income Tax as lastly amended by Law No. 36 of 2008 stipulates that one of resident taxpayers is "*an individual who resides in Indonesia, an individual who presents in Indonesia for more than 183 (one hundred and eighty-three) days within a period of 12 (twelve) months, or an individual who resides in Indonesia within a particular tax year and intends to reside in Indonesia*"

[130] The amounts in US$ provided in the table are under the assumption that 1US$ = Rp13,413

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income i.e. (1) single: Rp36,000,000, (2) married individual: additional Rp3,000,000, (3) additional Rp3,000,000 for each family member (either by blood or marriage) with maximum 3 individuals per family.

There is also occupational expense which serves as a deduction of taxable income for employees with the rate of 5% of gross income of the employee but with maximum amount per year of Rp6,000,000 (Rp500,000 per month).

(2) Resident corporate income tax

Indonesian tax law defines corporation[131] as a group of persons and/or capital (as a unity) whether it conducts business or not. This includes company, partnership, cooperatives and other forms of corporation.

In relation to income tax applicable for corporations, Indonesian Government imposes a flat rate of 25% on a net basis. Different rate may be applicable for a corporation whose annual turnover is not more than Rp50,000,000,000 (it will obtain 50% discount on taxable income for the first Rp4,800,000,000). A corporation whose annual turnover is not more than Rp4,800,000,000 will only be subject to 1% tax rate based on gross basis.

Publicly listed companies which fulfill certain requirements (for at least 183 days in the respective fiscal year) may also obtain 5% corporate income tax cut. The requirements are: (1) 40% of all paid up shares are listed in the Indonesian Stock Exchange, and (2) the public shareholders must be at least 300 individuals and each shareholder holds less than 5% of all paid up shares.

Certain types of income are taxed by a single final tax method applied on gross income. In general, the application of final tax method is through a withholding tax system.

[131] Elucidation of Article 2 Paragraph (3) Point (b) Law No. 7 of 1983 on Income Tax as lastly amended by Law No. 36 of 2008 [*corporation is a group persons and/or capital which constitutes a unity, whether it conducts business or not, which shall include limited liability company, commanditaire vennotschaap, other forms of corporation, state-owned company and local government-owned company bearing any name and form, firm, joint venture, cooperative, pension fund, partnership, association, foundation, mass organization, social-political organization, or other organizations, institution, and other form of corporation including mutual fund and permanent establishment*]

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(3) Non-resident

A non-resident is a corporation or an individual residing or domiciled outside Indonesia, who derives income from Indonesia, through or not through a permanent establishment.

On income received by a non-resident who is considered to have a permanent establishment in Indonesia, income tax will be imposed through its permanent establishment, where in general, treated as a resident corporate.

On income received by a non-resident who is not considered to have a permanent establishment in Indonesia, income tax will be imposed directly to the non-resident where in general, imposed through a withholding tax system.

(4) Double taxation agreement

Indonesia has entered into double taxation agreements with other countries, where exemptions and/or reductions of withholding tax rates are given in accordance with the provisions of the relevant double taxation agreement.

Exemption and/or reduction of tax rates are applicable to a non-resident who does not stay in Indonesia for a period exceeding the time test where one would be considered to have permanent establishment in Indonesia.

We note that to activate such provision, the non-resident must be able to present certificate of domicile issued by tax authority in its country of domicile to the local Indonesian tax office through the Indonesian party paying the income.

(5) Tax deduction expense

Resident corporate is entitled to claim deductible expense for expenses incurred for earning, collecting and securing its income. The expenses must be directly or indirectly related to the resident corporate business.

A purchase of tangible and intangible assets which have useful life more than one year should be used as deductible expense by way of depreciation and

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amortisation.

Debts which are confirmed to be uncollectible can be used as deductible expense under the following conditions:

(1) it has been deducted in the corporate profit and loss statement;
(2) the list of bad debts has been sent to the Directorate General of Taxes; and
(3) the case has been filed with court or government agencies that handle state's receivables or there is a written agreement on the discharge of indebtedness between the debtor and creditor; or it has been published in media; or there is a statement from the creditor stating that the amount of bad debts has been written off (but these are not applicable to small debtors)

(6) Tax incentive

Indonesian government provides tax facilities to corporations which contribute to new investment in pioneer industries, among others things, basic metals manufacture industry, oil refinery industry, basic organic chemical industry sourced from oil and gas, machinery industry, cultivation of agriculture, forestry, fishery industry, telecommunication and information industry, and sea transportation industry.

The tax facilities are provided in the form of exemption in the maximum amount of 100% and the minimum amount of 10% of the applicable corporate income tax for a period of five up to fifteen years since the relevant company commercially operates.

In order to obtain the tax facilities, the corporation must meet the following requirements:

(1) incorporated after 15 august 2011;
(2) has investment value plan of Rp1,000,000,000,000 or more;
(3) comply with general regulation of debt to equity ratio; and

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(4) has a deposit of at least 10% of its investment value plan in bank(s) in Indonesia and must not withdraw such amount prior to the realisation of the investment plan.

(7) Custom and excise

Import duty applicable in Indonesia is payable at various rates, ranging from 0% to 150% of the customs value of the relevant imported goods. To determine the customs value of certain goods, the cost, insurance and freight (CIF) are used as a basis.

We note that Indonesia has given reliefs from paying import duties for goods that have minimum 40% of ASEAN countries' content and have been directly shipped between ASEAN countries. This is a direct implementation of the ASEAN Trade in Goods Agreement (ATIGA) which is effective starting from 2010. Other than with ASEAN countries, Indonesia has also entered into several agreements in relation to free import duty rates, among others:

1. ASEAN China Free Trade Area
2. ASEAN Korea Free Trade Area
3. ASEAN India Free Trade Area
4. ASEAN Australia New Zealand Free Trade Area
5. Indonesia – Japan Economic Partnership Agreement

Export duty applicable in Indonesia is calculated based on a certain percentage of customs value or a duty rate/quantity in certain currency. Customs value is stipulated by the Director General of Customs and Excise in accordance with the benchmark pricing.

Excise is imposed on certain goods which need to be controlled due to adverse effect on social community. Some goods which are subject to excise in Indonesia are: (i) ethyl alcohol (ii) alcoholic drinks and (iii) tobacco products.

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## 4.5. Banking and finance

(1) Banking business

Banking business in Indonesia is mainly governed by Law No. 7 of 1992 on Banking as amended by Law No. 10 of 1998. This law defines a bank as a business entity collecting funds from the public in the form of deposits and provides the funds to the public in the form of credit and/or other forms for the purpose of increasing the living standard of the people. [132]

There are two categories of bank i.e. (a) commercial bank, and (b) rural bank. The main difference between the commercial bank and rural bank lays on its operational activities. Rural bank may not create deposit money and has limited coverage and scope of activity (it cannot provide service in payment transaction).[133] Law No. 7 of 1992 on Banking as amended by Law No. 10 of 1998 stipulates that business activities of rural bank are:

(a) collecting funds from the people in the forms of deposits i.e. time deposit, saving, and/or other similar forms;
(b) providing credit;
(c) providing financing and placement of funds based on sharia principle (Islamic rules), in accordance with the provisions set out by Bank of Indonesia; and
(d) placing its funds in the form of Bank of Indonesia Certificate (SBI), time deposit, deposit certificate, and/or saving in other banks.[134]

Banks may conduct its business in a conventional manner or based on sharia principle (Islamic rules). With regard to the latter there is a law which specifically regulates this matter i.e. Law No. 21 of 2008 on Sharia Banking.

In terms of capital, a commercial bank is required to have paid -up capital of at

[132] Article 1 Paragraph (2) Law No. 7 of 1992 on Banking as amended by Law No. 10 of 1998 [*bank is a business entity collecting funds from the public in the form of deposits and provides the funds to the public in the form of credit and/or other forms for the purpose of increasing the living standard of the people*]

[133] "*Ikhtisar Perbankan – Institusi Perbankan di Indonesia*", http://www.ojk.go.id/lembaga-perbankan, accessed on 28 December 2015.

[134] Article 13 Law No. 7 of 1992 on Banking as amended by Law No. 10 of 1998

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least Rp3 trillion upon its establishment. As for a rural bank the paid capital requirement varies, depending on the location of the rural bank, ranging from Rp4 to 14 billion.

In order to conduct their businesses, banks are regulated and supervised by the Financial Service Authority (*Otoritas Jasa Keuangan* ("**OJK**")). Law No. 21 of 2011 on OJK stipulates that the OJK has authorities to regulate and supervise banks on the following matters:

1. bank organization, i.e. licensing of bank establishment, opening of branch office, articles of association, work plan, ownership, management and human resource, merger, consolidation and acquisition of bank and revocation of bank business licence; and source of fund, fund availability and activities in service field;
2. health level of bank, i.e. liquidity, solvability, assets quality, capital adequacy ratio, maximum credit provision, loan to savings ratio and bank reserve, bank reporting, debtor information system, credit testing and bank accounting standard;
3. prudential principle of bank, i.e. risk management, corporate governance, know-your-customer principle and anti-money laundering and prevention of funding for terrorism and banking crime; and
4. bank investigation

(2) Non-bank financial institutions

Aside from banks, there are also non-bank financial institutions. These includes, among other things, insurance companies, pension fund companies, and financing institutions.

(a) Insurance company

Insurance companies are regulated under Law No. 40 of 2014 on Insurance. The businesses of insurance companies basically consist of general insurance business, life insurance business and reinsurance business.[135] Note that:

[135] "*Asuransi*" http://www.ojk.go.id/asuransi, accessed on 28 December 2015

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1) a general insurance company may only carry out (a) general insurance business, including health insurance and personal accident insurance, and (b) reinsurance business for other general insurance companies' risks.
2) life insurance company may only carry out life insurance business including annuity business, health insurance business, and personal accident insurance business; and
3) reinsurance company may only conduct reinsurance business.

Insurance company must be in the form of a PT or cooperative. In terms of capital requirement, an insurance company must have paid -up capital in the amount of at least:

1) Rp100 billion upon its establishment for a general/life insurance company; and
2) Rp200 billion upon its establishment for a reinsurance company.

If the insurance company conducts its business based on sharia principle, the minimum paid-up capital is:

1) Rp50 billion for a general/life insurance company; and
2) Rp100 billion for a reinsurance company.

Foreign company may hold up to 80% shares in an insurance company in the form of PT provided that the foreign company has similar business with the insurance company or constitutes a holding company which has a subsidiary engaging in similar business with the insurance company.
In order to conduct its business, an insurance company must obtain business license from OJK.

(b) Pension Fund

Pension fund is regulated under Law No. 11 of 1992 on Pension Fund ("**Law 11/1992**"). Pension fund is a legal entity which manages and carries out a program which provides pension benefits. There are two types of pension fund

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regulated under Law 11/1992 i.e.

(a) employer pension fund – this is a pension fund established by an employer for its employees; and
(b) financial institution pension fund.

In this section, we will only discuss financial institution pension fund.

Law 11/1992 defines financial institution pension fund as a pension fund established by a bank or a life insurance company for the purpose of organising defined contribution pension plan (DCPP). Financial institution pension fund is a separate legal entity from the bank or life insurance company which establishes the pension fund.

Establishment of financial institution pension fund must be approved by OJK. At the time the founders submit the application for obtaining the OJK's approval, they must attach the pension fund rules to the application.

Participation in financial institution pension fund is open to employees and self-employed. The participants are entitled to receive their contribution plus development gain as from the date the relevant participant is registered with the financial institution pension fund.

Based on OJK Regulation No. 3/POJK.05/2015, pension fund is only allowed to place investment on certain investment instruments such as bank savings, on call deposit in bank, time deposit in bank, deposit certificate in bank, securities issued by Bank Indonesia, government securities, shares listed in the Indonesia Stock Exchange, medium term notes, asset backed securities, direct investment in Indonesia and overseas and land and/or building in Indonesia.

Pension fund business is closed to foreign investment.

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(c) Financing institutions

President Regulation No. 9 of 2009 defines financing institutions as business entities conducting financing by way of providing funds and/or capital goods. Financing institutions consist of

1) financing companies whose businesses may cover leasing, factoring, credit card and/or consumer financing.
2) venture capital companies whose businesses may cover equity participation, quasi equity participation and/or profit sharing based financing.
3) infrastructure financing companies whose businesses may cover the provision of direct lending for infrastructure project, refinancing of infrastructure project and subordinated loan for infrastructure project. To support its business activities, infrastructure financing companies may also provide credit enhancement including guarantee for infrastructure financing, advisory services, equity investment, procure swap market related to infrastructure financing and/or conduct any activity or provide other facilities related to infrastructure financing (based on approval from MOF).

Financing institution must be in the form of a PT or cooperative. Foreign investors may hold up to 85% shares in a financial institution in the form of PT.

### 4.6. Money laundering

Matters regarding money laundering in Indonesia are regulated under Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crime ("**Law 8/2010**"). This law stipulates, among other things:

(1) Acts that are considered as money laundering crime

such as placement, transfer, use, grant or exchange of assets acquired from criminal actions and criminal sanctions against such acts. Criminal actions include, among other things, corruption, bribery, narcotics, labour smuggling, immigrant smuggling, criminal actions in banking, capital market, insurance, customs, excise, taxation, forestry, environment and marine and fisheries,

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human trafficking, terrorism, gambling, prostitution, and other criminal actions which are subject to imprisonment of four years or more.

(2) Criminal actions which are associated with money laundering crime

such as violation of the obligation to conceal document or information in relation to the implementation of duty under Law 8/2010, divulgence of information by directors, commissioners or employees of the reporting party to the reported party regarding suspicious financial report which is being prepared for submission or has been submitted to the Financial Transaction Report and Analysis Centre (*Pusat Pelaporan dan Analisis Transaksi Keuangan* ("**PPATK**")).

(3) Reporting obligation.

The reporting parties include

(a) financial service provider e.g. bank, financing company, insurance company, pension fund company, investment manager, pawn shop, foreign exchange trader, and

(b) goods/services provider, including property company/agent, motor vehicles dealer, gems, jewellery and precious metal dealer, antique and artistic stuff dealer and auction house.[136]

(4) Obligation to implement know your customer principle for the reporting party.

(5) Transporting cash and other payment instruments to inside or outside of Indonesian customs area.

Law 8/2010 stipulates that anyone who transports cash in the currency of Rupiah and/or foreign currency and/or other payment instruments in the form of cheque, traveller cheque, promissory note, bank draft of at least Rp100 million or its equivalent into or from Indonesian customs area are obliged to give notification to the Directorate General of Customs.

(6) The roles of PPATK.

[136] Minister of Finance Regulation No. 176/PMK.06/2010 on Auction House as amended by Minister of Finance Regulation No. 160/PMK.06/2013 defines auction house as an Indonesian legal entity in the form of limited liability company which is specifically established to conduct action business

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PPATK is an independent institution which has the duty to prevent and eradicate money laundering crime. In conducting its function, PPATK has the authorities to, among other things,

(a) request and obtain data and information from the government institutions and/or private institutions which have the authority to manage data and information, including from government institutions and/or private institutions which receive report from certain professions;
(b) stipulate the identification standard of suspicious financial transactions;
(c) represent the government in international organisation and forum which are associated with the prevention of money laundering crime;
(d) provide recommendation to the government on the effort of prevention of money laundering crime;
(e) conduct audit;
(f) give warning to the reporting party who violates the reporting obligation;
(g) provide recommendation to the authorised institution which is authorised to revoke business license of the reporting party; and
(h) request the relevant financial service providers to discontinue a transaction which is suspected as suspicious financial transaction.

(7) Protection for the reporter and witness.

PPATK, investigator, prosecutor, judge and attorney are obliged to conceal the reporting party and the reporter in money laundering case. Further, anyone who reports the allegation of money laundering crime is entitled to special protection by the state from the possibility of threat(s) which endanger his/her life, assets and family.

### 4.7. Law of instrument exchange and stock exchange

Law No. 8 of 1995 on Capital Market ("**Law 8/1995**") provides the main provisions of capital market and activities related thereof. This law defines capital market as activities related to public offering and securities trading, publicly listed companies in relation to securities issued by them as well as institutions and professions related to securities. Whereas, securities themselves under Law 8/1995 is defined as promissory notes, commercial paper, shares, bonds, evidence of indebtedness, participation units of collective investment contract, future contracts related to securities, and of

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derivatives of securities.

Derivatives refer to rights that are derived from either debt or equity securities such as option or warrant. An option is a right to purchase or sell, within a certain time, a specified number of securities at a specified price. While, a warrant is a security issued by a company giving the holder the right, sixth month or more after the security is issued, to subscribe for shares of the company at a specified price.

Previously, capital market activities are regulated and supervised by Capital Market Supervisory Board (Badan Pengawas Pasar Modal (BAPEPAM)). But after the issuance of Law No. 21 of 2011 on OJK, the roles of BAPEPAM are replaced by OJK. BAPEPAM (during its time) and OJK have issued various regulations in relation to capital market as implementing regulations of Law 8/1995.

In addition to OJK, the actors in Indonesian capital market include, among other things, the Indonesian Stock Exchange, clearing guarantee institutions, central securities depository, securities companies, capital market supporting institutions[137], capital market supporting professions[138], issuer and investors.

[137] Under Law 8/1995, capital market supporting institutions comprising of (i) custodian, (ii) security administration bureau, and (iii) trustee.

Those who can act as a custodian are clearing and settlement institution, securities company, and commercial bank which has obtained OJK's approval. A custodian may conduct the activities of, among others, deposit counter for the securities or other assets owned by any account holders, including to receive dividends, interest and other rights, to settle securities transaction and to represent the account holders under a contract between the custodian and account holders.

Securities administration bureau shall be a limited liability company which has obtained OJK's approval, and may conduct the activities of recordation of securities ownership and rights distribution of the securities under a contract between the securities administration bureau and listed company.

Trustee is a commercial bank or other party which has obtained OJK's approval which represents the interest of securities holders in the form of debt, inside or outside the court.

[138] Under Law 8/1995, capital market supporting professions comprising of accountant, legal consultant, adjuster, notary and other profession stipulated by the law. In order to carry out its activity in capital market sector, each profession shall be registered with OJK and shall comply with ethical codes and profession standard stipulated by the respective profession association provided that they do not violate the applicable laws and regulations. Each capital market supporting profession shall provide independent opinion or judgement for their clients in relation to capital market-related activities.

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## 5. Land Law and Zoning Issues for Land Usage

*General Discussion on Land law*

The main source of the Indonesian land law is the Indonesian land law is Law No. 5 of 1960 on Basic Principles of Agrarian ("**Agrarian Law**"). the Agrarian Law sets out basic provisions of land law, such the state's right to control land, water and airspace, acknowledgement of rights under customary law, basic provisions on land registration and most importantly, types of land ri ghts.

Agrarian Law stipulates the following land rights which are recognized in Indonesia:

(1) Right of ownership (*hak milik*),

which is an inheritable right and the most conclusive and fullest right on land which one can hold. *Hak milik* can only be held by Indonesian individuals and certain legal entities determined by the government[139] (but none of these is applicable for foreigners conducting businesses in Indonesia).

(2) Right to build (*hak guna bangunan* or "**HGB**"),

which is a right to construct and own a building(s) over a parcel of land for a maximum period of 30 years (extendable for maximum 20 years). HGB can be held by Indonesian individuals and legal entities. This includes an Indonesian legal entities fully or partially owned by foreigners.

(3) Right to cultivate *(hak guna usaha),*

which is a right to cultivate land that is controlled directly by the state for maximum 25 years (or 35 years for a company that needs a longer period), for the purpose of agriculture, fisheries and cattle breeding activities. *Hak guna usaha* can be held by Indonesian individuals and legal entities. This land right is extendable for a maximum period of 25 years.

[139] Under Article 8 Minister of Agrarian/Head of National Land Office Regulation No. 9 of 1999 on Procedure of the Granting and Cancellation of Right over State Land and Right of Management of Land stipulates that legal entities that can be granted with right of ownership are:

(a) State banks; and

(b) Religious bodies and social bodies appointed by the government.

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(4) Right to use (*hak pakai*),

which is a right to use and/or collect harvests over a parcel of land which is under direct control of the state or of other person, but does not constitute a land lease or management agreement. Right to use can be granted to Indonesian individuals and legal entities, government agencies, social and religion organisations, foreigners residing in Indonesia, foreign representative offices, foreign state's representatives and international organisation's representatives. Right to use can be granted for a maximum period of 25 years or so long as the land is still being used, but the latter only applies if the right is granted to other than individuals and Indonesian legal entities.

Specifically for residency purpose, Indonesian government has issued Government Regulation No. 103 of 2015 on Ownership of House or Residence by Foreigner Residing in Indonesia[140]. According to this government regulation, foreigner can own house or apartment unit built on top of right to use land.[141] In this matter, the right to use can be granted for thirty years and can be extended for twenty years. After the extension period expires, the right to use can be renewed and extended perpetually.[142]

(5) Right of management of land,

this right is related to state land where the implementation of the control of the state is assigned to the holder of the right of management.

Please be advised that the above land rights can be obtained by way of application to the land office or transfer of the existing rights (e.g. sale and purchase) followed by registration of the transfer of right with the land office. Upon successful application of the land right to the land office, the land office will issue land certificate evidencing the ownership of the land right.

There is a unique feature under the Agrarian Law i.e. it provides a provision prescribing that the law applicable to Indonesian land law is customary law (to the extent that it does not contradict national interest and Indonesian legislation). Therefore, in order to understand the

[140] http://www.bpn.go.id/Publikasi/Peraturan-Perundangan/Peraturan-Pemerintah/peraturan-pemerintah-republik-indonesia-nomor-103-tahun-2015-61369.

[141] Article 2 Government Regulation 103 of 2015.

[142] Article 6 Government Regulation 103 of 2015.

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whole picture of Indonesian land law, one must also understand customary law applicable to land in Indonesia.

Among the principles of the customary law, there is one principle which is very important, especially in conducting land transaction. This principle is the principle of concrete and final. This principle basically says that a land transaction must be conducted in a concrete (meaning that it must be real, witnessed by the head of village or other relevant authority) and final (meaning that the payment must be made in full) manner.

With regard to the land rights mentioned above, please note that those land rights are registered land rights, meaning that they are registered with land offices having jurisdiction over the locations of the land and the relevant land offices will issue land certificates for those land rights.

Note that in addition to registered land, there are also unregistered land, being land which have not been registered with the land offices and, therefore, no land title certificates have been issued upon such land.[143] Depending on the location of the land, there are various names of unregistered land. But the most common name of unregistered land is *girik*.

Unregistered land can also be in the form of customary land or often called as *adat* land. This is a parcel of land which bears customary right of certain customary society. This land does not belong to any individuals of the customary society but it belongs to the entire customary society. Under the law, *adat* land will be deemed to be in existence and recognized so long as:

(a) the customary society is still in existence and the members are bound by and are still implementing the rules of the customary society in question;
(b) there is land which is used as a living environment of the members of the customary society; and
(c) there is a customary rule which governs the management, possession and usage of the land which is still adhered by the members of the customary society.

[143] According to Presidential Decree No. 2 of 2015 concerning The Middle Term of National Development Plan For 2015 – 2019, only 51.8% of national land area that has been certificated.

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### 5.1. Lease of land and property

Lease of land and property in Indonesian are made possible under Indonesian law. The relationship of the lessee and the lessor will be of contractual basis which is subject to Indonesian Civil Code ("**ICC**"). Based on Article 1548 of the ICC lease shall mean an agreement upon which a party bind himself to give enjoyment of a goods to another party during a certain period, with payment of price agreed by the later. Anyone may lease any types of goods, be it movable or immovable.

One of the most highlighted provisions under the ICC with regard to lease is that sale and purchase of the leased object shall not terminate the lease unless the termination has been agreed under the lease agreement.

### 5.2. Sale and Purchase of Land

Sale and purchase of land is implemented by the relevant parties (seller and buyer) entering into a deed of sale and purchase of land (*akta jual beli* or "**AJB**"). The AJB must be made in the form of authentic deed prepared by a land deed official (*pejabat pembuat akta tanah* or "**PPAT**"). The execution of AJB must be conducted before the PPAT.

Before executing AJB, the PPAT is obliged to check the land title certificate with the land office having jurisdiction over the location of the land in order to check conformity of information specified in the land title certificate with the land registry. After AJB is executed, the PPAT must register the AJB with the land office and apply for change of name of the owner of land in the land certificate.

### 5.3. Taxes in Land Acquisition

There are two types of tax applicable in land and/or building acquisition transaction, namely

(1) income tax over income derived from a transfer of title of a land and/or building ("**Income Tax**"); and

(2) (ii) land and building acquisition tax (*bea perolehan hak atas tanah dan bangunan* or "**BPHTB**"). The Income Tax must be paid by the seller, while BPHTB shall be for the account of the buyer.

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Under Government Regulation No. 34 of 2016 on Income Tax over Income Derived from a Transfer of Title of a Land and/or Building, and Sale and Purchase Binding Agreement of Land and/or Building and its Amendments ("**GR 34/2016**")[144], the rate of the Income Tax is:

(a) 2.5% of gross amount of the value of the transfer of title ("**Transfer Value**"), for transfers of title of land and/or building other than transfers of title of land and/or building in the form of simple house or simple apartment conducted by taxpayer whose main business is conducting transfer of title of land and/or building;

(b) 1.5% of Transfer Value, for transfers of title of land and/or building in the form of simple house and simple apartment conducted by taxpayer whose main business is conducting transfer of title of land and/or building; or

(c) 0%, for transfers of title of land/or building to the government, state owned company having special task from the government, or local government owned company having special task form head of the local government, as referred to in the laws and regulations on land procurement for development for public interest.

GR No. 34/2016 further stipulates that the Transfer Value in transfer of title of land and/or building transaction shall mean:

(a) the value pursuant the authorized official's decision, if the title of land and/or building is transferred to the government;

(b) the value pursuant to minutes of auction, if the title of land and/or building is transferred by virtue of auction pursuant to *Reglement Staatsblad* of 1908 No. 189 and its amendments;

(c) the value which the transferor should receive, if the title of land and/or building is transferred by virtue of sale and purchase transaction influenced by special relationship, other than the reasons set out in (a) and (b);

(d) the actual value received by the transferor, if the title of land and/or building is transferred by virtue of sale and purchase transaction which is not influenced by special relationship, other than the reasons set put in (a) and (b); or

[144] http://www.pajak.go.id/content/peraturan-pemerintah-ri-nomor-34-tahun-2016

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(e) the value which the transferor should receive based on market value of the land and/or building, if the land and/or building is transferred by virtue of exchange, relinquishment of right, surrender of right, grant and inheritance transactions or any other ways agreed by the parties.

BPHTB is a tax imposed over an acquisition of title over land and building (the "**Tax Objects**"). BPHTB will be imposed based on the acquisition value of the Tax Objects (*nilai perolehan objek pajak*, or "**NPOP**").

In a sale and purchase, the NPOP shall be the actual transaction value **or** sales value of tax object (*nilai jual objek pajak* or "**NJOP**")[145] (whichever is higher).

The tariff of BPHTB is 5% and shall be calculated based on following formula:

BPHTB = 5% x (NPOP - NPOPTKP)

"**NPOPTKP**" is non-taxable acquisition value of a tax object (*nilai perolehan objek pajak tidak kena pajak*) which is determined by relevant local authority.

### 5.4. Condominium

In Indonesia, matters regarding condominium are governed under Law No. 20 of 2011 regarding Condominium ("**Law 20/2011**"). Law 20/2011 stipulates that condominium can be built on top of:

a. Right of ownership land;
b. Right to build or right to use granted on top of the state land; and
c. Right to build or right to use granted on top of right of management.

A foreigner can only own a condominium unit if the condominium is built on top of right to use land.

[145] NJOP is a price determined by the government as the basis for calculating land and building tax. The NJOP is set out under the outstanding tax notification statement (*surat pemberitahuan pajak terutang*) of land and building tax (SPPT PBB) of the relevant land and this document will be sent annually by the tax office to the owner of the land.

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In addition to ownership to condominium units, owners of the condominium units will have common ownership over the following:

- Common section:

  Law 20/2011 defines common section as sections of condominium that are jointly owned by owners of condominium units for their common use in an integrated function with condominium units. Elucidation of Law 20/2011 explains that those which shall be classified as common section are, among others, foundation, column, partition, floor and roof.

- Common properties:

  Common properties are defined by Law 20/2011 as properties which are not part of the condominium but jointly owned by owners of condominium units for their common use. Elucidation of Law 20/2011 explains that those which shall be classified as common properties are, among others, meeting room, social infrastructure building, worship place and playing ground.

- Common land:

  As for common land, it shall refer to land where the condominium is built.

As evidence of ownership of a condominium unit, a condominium unit's owner shall be granted with an ownership certificate of condominium unit ("**SHM Sarusun**"). SHM Sarusun is issued by relevant land office having jurisdiction over the location of the condominium.

Based on Law 20/2011, owners of condominium units are obliged to establish a legal entity called Association of Owners and Residents of Condominium (*perhimpunan pemilik dan penghuni rumah susun* ("**PPPSRS**")) to manage the condominium. Developer of the condominium is obliged to facilitate the establishment of the PPPSRS and before the PPPSRS is established the developer shall manage the condominium. PPPSRS may appoint a third party company to carry out management of condominium. PPPSRS shall have articles of association and bylaws which will further set out provisions on organization and management of PPPSRS as well as procedure and quorum of PPPSRS' members meeting.

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### 5.5. Land zoning

Law No. 26 of 2007 on Zoning ("**Law 26/2007**") regulates general provisions on zoning. Under this law, based on its function, an area can be classified into either protected-area or productive-area. Protected area covers, among other things, protected forest and natural preserves. Meanwhile, productive-area covers any area of production and people's forests, farming, fisheries, mining, housing, industry, tourism, educational and state's defence and security.

Stipulations on zoning are made by central government and regional governments. The central government must prepare and stipulate national zoning. Meanwhile, the regional governments must prepare and stipulate their own zoning by taking into account the national zoning stipulated by the central government.

In the process of land acquisition, identification of zoning stipulation over the land which is intended to be acquired is very important in order to confirm that the land can be used in accordance with intention of the acquirer. For this purpose, an application must be submitted to the relevant government office which has the authority to provide regional zoning (normally the City Spatial Planning Office or Regional Development Agency (*Bappeda*)) accompanied by coordinates and map of the land to be acquired.

But note that in practice, we may not always be able to obtain information on the zoning by reason that the government of the region concerned has not stipulated its zoning.[146] There are various reasons why some regional governments have not stipulated their zoning. Some of the reasons are prolonged discussion with local parliaments with regard to stipulation of the zoning, the data required to prepare the zoning is not up to date, and establishment of new autonomous regions.[147]

We may also find an issue with regard to inconsistency between the zoning stipulation and the development plan of the regional government. This inconsistency issue

[146] Minister of National Development Plan, "Spatial Arrangement", Regional Development Issues and Policies, November 2011, p. 3 – p. 4

[147] "*StatusRTRWProvinsi/Kabupaten/KotaSeluruh Indonesia*",http://www.tataruangpertanahan.com/file_publikasi/942Status%20RTRW%20prov%20kab%20kota%20per%2029%20Juli%202016.pdf, accessed on 2 February 2018

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results in legal uncertainty on issuance and validity of licences issued by the government to business actors utilizing the relevant space. Please note that under Law 26/2007, even a space utilization licence that is obtained through a correct procedure may be cancelled by the central government or the relevant regional government, pursuant to its respective authorities, if it is proven that the space utilization licence is not in line with the applicable zoning.[148]

## 6. Labour Law

Matters regarding labour are mainly regulated under Law No. 13 of 2003 (the "**Manpower Law**"). The Manpower Law sets out the rights and obligations of the employer and employee as well as requirements in relation to employment matters that need to be complied by both employer and employee, including among other things, employment agreements, company regulation and collective labour agreement, working hours, wages (including the principle of a minimum wage), welfare facilities, leave entitlements, and termination of employment. The Manpower Law also imposes sanctions in the form of administrative and criminal sanctions for any non-compliance with the requirements set out under Manpower Law.

### 6.1. Employment Agreement

Under the Manpower Law, an employment relationship arises due to the existence of an employment agreement between the employer and the employee. An employment agreement can be made either in writing or verbally. The Manpower Law requires that an employment agreement made in writing must at least contain:

(1) name, address and line of business of the employer;
(2) name, gender, age and address of the employee;
(3) title/position or type of work;
(4) place of work;
(5) amount of wages and manner of payment;
(6) terms of employment which cover the rights and obligations of the employer and the employee;
(7) effective date and validity period of the employment agreement;
(8) place and date of the execution of the employment agreement; and
(9) signatures of the parties to the employment agreement.

[148] Article 37 Law 26/2007

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If an employment agreement is made verbally, the employer is obliged to make an appointment letter which must at least contain the name and address of the employee, the starting date of work, the type of work, and the amount of wages.

The Manpower Law stipulates that an employment agreement is made for a definite period (the "**Definite Period Employment Agreement**") or for an indefinite period (the "**Indefinite Period Employment Agreement**"). The Definite Period Employment Agreement is also known as a non-permanent employment agreement and the Indefinite Period Employment Agreement is also known as a permanent employment agreement.

A Definite Period Employment Agreement must be made in writing and in Indonesian language and must be based on:

(i) a certain period (maximum two years, extendable once for maximum one year or renewable once for maximum two years but such renewal can only be made after 30 days have elapsed following the expiration of the agreement); or
(ii) completion of certain work.

A Definite Period Employment Agreement can only be made for certain work which according to its type and characteristics or nature will be completed in a certain period of time, i.e.:

(1) one time completion type of work or a work which is temporary in nature;
(2) work which will be completed within a short period of time and no longer than three years;
(3) seasonal work; or
(4) work relating to new products, new activities, or supplemental products that are still in experimental or in exploration stages.

The following matters must be observed in respect of the Definite Period Employment Agreement:

(1) it shall be made in writing and in Indonesian language using the Latin letters

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(otherwise, it will become an Indefinite Period Employment Agreement);

(2) it shall be registered with the relevant manpower office within seven working days after its execution;

(3) it cannot stipulate any probation period (otherwise the probation period will be declared to be null and void by the operation of law); and

(4) if either party in the agreement terminates the employment prior to the expiration of the agreement, the party who terminates the relation is obliged to pay compensation to the other party in the amount of the employee's remaining salaries until the expiration of the agreement.

### 6.2. Labour Welfare

The Manpower Law defines Labor Welfare as the fulfilment of the physical and spiritual needs, either within or outside employment, which can directly or indirectly improve productivity within a safe and healthy work environment. The Manpower Law also sets out the Labor Welfare is achieved, among other things, through work training, social security, facility provided by Employer.

(1) Work training

Work training is mainly regulated under the Manpower Law and Ministry of Manpower and Transmigration Decree No. KEP.261/MEN/XI/2004 on Companies which are Obliged to Implement Work Training ("**MOM 261/2004**").

In general, the Manpower Law stipulates that all employees are entitled to obtain and/or increase the work competency that is suitable to their talents, interests and capability through work training. Further, the Manpower Law mentions that the job training shall be carried out by taking into account the need of the job market and the need of the business activity, either within or outside the scope of employment relations. In relation to this, under the MOM 261/2004, the company which employs at least one hundred employees is obligated to implement the work training and fully borne all the cost incurred for implementing such work training. Further, MOM 261/2014 also sets out that the work training shall at least cover five percent of the total employees working in such company in each year. The work training may be performed by a private or public work training institution and can be performed at a training

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camp or work place. The employee who has completed the work training is entitled to obtain a certificate of competence issued by the relevant work training institution.

(2) Social Security Program

The Manpower law mandates that all employees and their families shall each be entitled to the manpower social security. In relation to this, on 25 November 2011, Indonesian Government enacted Law No. 24 of 2011 on Social Security Administrative Body ("**Law 24/2011**") and amended various social security programs that were previously known as "*Jamsostek*". Under the Law 24/2011, it is stipulated that any person (including foreigners working in Indonesia for at least 6 months) must be enrolled in the social security program which is administered by two social security bodies ("**BPJS**") i.e. Health BPJS and Manpower BPJS.

The Health BPJS is formed to administer health social security program (the "**Health BPJS' Social Security Program**"), and the Manpower BPJS which is formed to administer manpower social security program, consisting (a) work accident insurance, (b) life insurance, (c) old age insurance and, (d) pension fund.

**6.3. Minimum wage**

The government sets minimum wages based on the reasonable living needs and by taking into consideration the productivity and economic growth, which consist of:

(i) minimum wages based on the provincial or municipality area;
(ii) minimum wages based on sectors in the provincial or municipality area.

The minimum wages must be set by the relevant governor by considering the recommendation from the relevant provincial wages committee and the relevant regent/mayor. The employer is prohibited from paying wages less than the prevailing minimum wages set by the relevant governor.

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### 6.4. Working hours

The working hours stipulated by the Manpower Law are as follows:

(i) seven hours per day and forty hours per week for six working days in a week; or
(ii) eight hours per day and forty hours per week for five working days in a week.

This provision on working hours, however, will not be applicable to certain business sectors or certain work. Such certain business sectors or certain works are stipulated by a ministerial regulation. Example of this business sector is mining.

An employer is obliged to pay overtime payment to the employee should the employee work in excess of the working hours stipulated in the employment agreement and/or the prevailing laws and regulations. This obligation to pay the employee for the overtime payment does not apply to certain business sectors or certain job positions.

### 6.5. Probation period

An Indefinite Period Employment Agreement may stipulate a probation period for maximum three months. During the probation period, the employer is prohibited from paying wages below the prevailing minimum wages.

### 6.6. Leave Entitlement

The Manpower Law sets out the right of employees to take leave, as follows:

(1) Annual Leave

Law 13/2003 stipulates that an employer must provide an employee with annual leave for at least 12 working days after the employee works for 12 consecutive months.

(2) Sick Leave

Employees are entitled to paid leave if the employees suffer illness or injury evidenced by written statement from doctor. Furthermore, female employees are entitled to paid leave on the 1st and 2nd days of menstruation provided that they can provide the employer with a sick statement letter from doctor.

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(3) Personal Leave

The employer shall also provide paid leave for personal issues as follows:

| Reason | Days of Paid Leave |
|---|---|
| Worker's marriage | 3 |
| Marriage of worker's child | 2 |
| Son's circumcision | 2 |
| Child's baptism | 2 |
| Wife gives birth or has a miscarriage | 2 |
| Death of employee's spouse, child, child in law, parents or parent in law | 2 |
| Member of worker's household dies | 1 |

(4) Maternity and Parental Leave

Female employees are entitled to receive full wages during maternity leave, including 1.5 months before the birth and 1.5 months after the birth as certified by an obstetrician or midwife.

(5) Leave for Certain Obligation

Employee should also be paid for their salary while they take leave for fulfilling obligations to the state, performing religious obligations, undergoing and educational program required by the employer, and performing labour union duties with permission from the employer.

### 6.7. Labour Union

The Manpower Law mandates that every employee has the right to form and become a member of a labour union. The labour union itself is defined by Law 13/2003 as an organization that is formed from, by and for employees either within a company or outside of the company, which is free, open, independent, democratic and responsible in order to strive for, defend and protect the rights and interests of the employee and increase the welfare of the employee and their families. Labour Union is specifically regulated by Law No. 21 of 2000 on Labour Union ("**Law 21/2000**"). Under Law 21/2000, at least ten employees are required to form a labour union.

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Furthermore, an employee can only join one labour union in the company. Labour union shall give a written notice of their establishment to the local government agency responsible for manpower affairs, as designated by the Ministry of Manpower and Transmigration. Labour Union must have an articles of association and bylaws, which contain the labour union's name, principles and objectives, date of establishment, location, membership and committees, funds and method of amending the articles of association and by-laws.

In practice, labor union outside company takes several forms, for example craft union and industrial union

### 6.8. Strikes

The employees are entitled for the fundamental right to strike. A strike is defined as a collective action of employees, which are planned and carried out by a labour union to stop or slower the work. Strikes should be carried out in a legal, orderly and peaceful fashion, only as last resort if the negotiation between the company and employee fail, which occurs when labour union has requested the company to negotiate twice in writing within a 14 days period, and the company was unwilling to do so, or the parties reach a deadlock in negotiations, and this is declared by both parties in the negotiation minutes.

Employees must provide at least seven days written notice to the employer and local manpower office stating on the starting and ending time of the strike, the location as well as the reasons of the strike.

### 6.9. Termination of employment

(1) <u>Basis of Termination of Employment</u>

The procedure for terminating a permanent employee is different from the procedures for terminating a non-permanent employee. Termination of employment of a permanent employee can only be conducted based on specific reasons set out under the Manpower Law and, in general, before the employment is terminated, the parties must enter into bipartite negotiation, tripartite negotiation (if the bipartite negotiation fails) and obtain decision from

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the relevant industrial relations court (if any of the parties disagrees with the result of the tripartite negotiation). Meanwhile, termination of a non-permanent employee can be conducted based on any reason but the party terminating the employment must pay for the remaining salary of the employee until the end of his/her contract.

(2) Termination Payment

Depending on the reason of the termination, to terminate a permanent employee the employer must pay

- severance payment
- service payment
- compensation of rights and/or
- separation payment.

The amount of the severance payment and service payment are calculated based on the employee's monthly salary and length of service. The formulas are as follows:

*Severance Payment*

1 month's salary for service period less than 1 year;
2 months' salary for service period of at least 1 year but less than 2 years;
3 months' salary for service period of at least 2 years but less than 3 years;
4 months' salary for service period of at least 3 years but less than 4 years;
5 months' salary for service period of at least 4 years but less than 5 years;
6 months' salary for service period of at least 5 years but less than 6 years;
7 months' salary for service period of at least 6 years but less than 7 years;
8 months' salary for service period of at least 7 years but less than 8 years;
9 months' salary for service period of 8 years or more.

*Service Payment*

2 months' salary for service period of at least 3 years but less than 6 years;
3 months' salary for service period of at least 6 years but less than 9 years;
4 months' salary for service period of at least 9 years but less than 12 years;
5 months' salary for service period of at least 12 years but less than 15 years;

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6 months' salary for service period of at least 15 years but less than 18 years;
7 months' salary for service period of at least 18 years but less than 21 years;
8 months' salary for service period of at least 21 years but less than 24 years;
10 months' salary for service period of 24 years or more.

While the compensation of rights consists of the following:

(i) compensation for the employees' untaken annual leave;
(ii) travel expenses for the employee and family to return to location of hire, if applicable;
(iii) housing and medical compensation which is 15% of the employees' severance payment and/or service payment; and
(iv) other compensations as determined in the employment contract, company regulation/collective labour agreement.

With regard to separation payment, the Manpower Law stipulates that this will only be applicable if it is stipulated under the company regulation/collective labour agreement.

**6.10. Company regulation**

Under the Manpower Law, any employer employing at least 10 employees is obliged to prepare a company regulation but this requirement is not applicable to a company which has a collective labour agreement. A company regulation must be prepared by and be the responsibility of the employer concerned but by taking into account the opinions of the employees. Terms and conditions of a company regulation must not contravene the provisions of the laws and regulations and must at least contain the rights and obligations of the employer and the employee, work conditions, rules of conducts in the company and validity period.

A company regulation will be effective upon ratification by the following government agencies:

(i) if the employer has an office(s) within a regency/municipality, by the relevant head of regency/municipality manpower office;

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(ii) if the employer has offices within more than one regency/municipality in a single province, by the relevant head of provincial manpower office; and

(iii) if the employer has offices in more than one province, by the Director General of Industrial Relations Development.

The validity period of a company regulation is maximum two years and must be renewed upon its expiration. Any changes to the company regulations prior to its expiration can only be made if the changes are agreed by the employer and the employees' representatives. Such changes must also be ratified by the relevant government officials as mentioned above.

### 6.11. Collective labour agreement

A collective labour agreement is prepared by a labour union or several labour unions which have been registered with the responsible agency, and an employer or several employers through deliberation to reach consensus, in writing and in Indonesian language. The validity period of a collective labour agreement is maximum two years and may be extended for maximum one year based on a written agreement between the relevant employer(s) and labour union(s).

A collective labour agreement must at least contain the rights and obligations of the employer(s), the labour union(s) and the employees, the period and date of the validity of the collective labour agreement and the signatures of the drafting parties of the collective labour agreement. A collective labour agreement will take effect on the day it is signed unless otherwise stated in the relevant collective labour agreement. The collective labour agreement that has been signed by the parties must be registered by the employer with the relevant manpower authority.

### 6.12. Industrial relation dispute settlement

Law 2/2004 stipulates that industrial relation dispute covers the following:

(1) <u>Rights Dispute</u>

Rights dispute is a dispute arising from the unfulfilled rights due to discrepancy of implementation or interpretation of provisions under the laws and

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regulations, employment agreement, company regulation or collective labour agreement.

(2) Interest Dispute

Interest dispute is a dispute arising in employment relationship due to inconsistency of view in respect of the preparation of and/or amendment to employment terms stipulated in the employment agreement or company regulation or collective labour agreement.

(3) Employment Termination Dispute

Employment termination dispute is a dispute arising from inconsistency of view in respect of employment termination performed by one of the parties.

(4) Labour Union Dispute

Labour union dispute is a dispute between one or more labour unions in one company, due to discrepancy of understanding in respect of membership, implementation of rights and obligations of labour union.

In general, industrial relation dispute must first be settled through bipartite negotiation to reach consensus between the parties. If the bipartite negotiation fails to settle the dispute, the parties may brought the dispute to the manpower office for settlement through tripartite negotiation (mediation). If the mediation is also fruitless, the parties may brought the dispute to the industrial relation court for settlement. Against the decision of the industrial relation court, the parties may file a cassation to the Supreme Court.

## 7. Intellectual Property Rights

Indonesia does not have a single law which regulates all of intellectual property rights. Each of the intellectual property rights is protected under different laws. In total, there are seven laws regulating the following intellectual property rights (i) copyright, (ii) patent, (iii) mark, (iv) industrial design, (v) trade secret, (vi) integrated circuit design, and (vii) protection of plant variety.

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### 7.1. Copyright

Copyright is regulated under Law 28 of 2014 on Copyright.[149] Copyright is defined as an exclusive right which automatically arises based on declarative principle after a creation is made into a real form.[150] A creation in the field of science, art, and literature can be protected by copyright, for example, phonogram, picture, book, and music. Copyright gives its owner right to exclusively gain commercial benefit from its creation. The owner of a copyright may copy, distribute, or sell the creation.

### 7.2. Patent

Patent is regulated under No. 13 of 2016 on Patent ("**Law 13/2016**").[151] Law 13/2016 revokes the previous patent law i.e. Law No. 14 of 2001 on Patent.

Patent is defined as an exclusive right granted by the state to an inventor for its invention in the field of technology, for a certain time, to exploit the invention or to authorize another person to exploit the same.[152] Patent is given for inventor's idea that is implemented in any activity of solving a specific problem in the field of technology, either in the form of a product or process, or an improvement and development of a product or a process. Rights given to an owner of patent will depend on whether the patent is given for a product or a process. The owner of a patent for a product will have the right to create, sell, import, and lease the patented product. The owner of a patent for a process may use the patented process to create goods or licence the right to another person to use the process.

In order to obtain patent right, the applicant must submit application for obtaining patent right to the MOL. If the application fulfill the requirements, the application will be given reception date. Subsequently, the MOL will announce the application within seven days after 18 months of the reception date. After the announcement, there will be six months waiting period in which third party may file objection on the application.

The applicant must also apply for substantive examination. The application for

[149] http://peraturan.go.id/uu/nomor-28-tahun-2014.html

[150] Article 1 Law 28 of 2014

[151] http://peraturan.go.id/uu/nomor-13-tahun-2016.html

[152] Article 1 Law 13/2016

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substantive examination must be filed no later than 36 months after the reception date. Upon receipt of a complete application for substantive examination the MOL will issue his decision on the patent right application.

### 7.3. Mark and Geographical Indication

Mark is protected under Law No. 20 of 2016 on Mark and Geographical Indication ("**Law 20/2016**").[153] Mark is defined as a sign in the form of a picture, name, word, letter, numeral, composition of colours, in the form of 2 dimensional or 3 dimensional, sound, hologram or a combination of the said elements, having distinguishing features and used in the trading activities of goods or services. Mark is differentiated into two types i.e. trade mark and service mark. Trade mark is a mark that is used on goods traded by a person or by several persons jointly or a legal entity to distinguish the goods from other goods of the same kind, while service mark is a mark that is used for services traded by a person or by several persons jointly or a legal entity to distinguish the services from other services of the same kind. The owner of a mark may sell its goods or provide its service under such mark.

### 7.4. Industrial design

Industrial design is protected under Law No. 31 of 2000 on Industrial Design.[154] Industrial design is defined as a creation on the shape, configuration, or the composition of lines or colours, or lines and colours, or the combination thereof in a two or three dimensional form which gives an aesthetic impression and can be realized in a two or three dimensional pattern and used to produce a product, goods or industrial commodity and handy craft. The owner of an industrial design may exclusively create, use, sell, or distribute the goods with the industrial design.

### 7.5. Trade secret

Trade secret is protected under Law No. 30 of 2000 on Trade Secret.[155] Trade secret is defined as information in the field of technology and/or business that is not known to the public and has economic value as it is useful in conducting business activities, and its confidentiality is maintained by its owner. The owner of a trade secret will be

[153] http://peraturan.go.id/uu/nomor-20-tahun-2016.html

[154] http://peraturan.go.id/uu/nomor-31-tahun-2000.html

[155] http://peraturan.go.id/uu/nomor-30-tahun-2000.html

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deemed to have the right for such trade secret as long as the trade secret is not known to the public. The owner of the trade secret must take proper measures to protect the confidentiality of its trade secret. Trade secret does not need to be registered.

### 7.6. Integrated circuit design

Integrated circuit design is protected under Law No. 32 of 2000 on Integrated Circuit Design.[156] Integrated circuit design is defined as a finished or half-finished product that contains various elements, at least one of which is active, which are partly or entirely interconnected and integrated in a semiconductor to produce electronic functions. The owner of the integrated circuit design has exclusive right to use, create, or distribute goods which has the integrated circuit design inside of it.

### 7.7. Protection of plant variety

Plant variety is protected under Law No. 29 of 2000 on Protection of Plant Variety.[157] Protection of plant variety is defined as protection specifically given by the government to plant variety which is produced by breeder on the breeding process. Protection of plant variety is given to a new type or species of plant, plant growth, leave, flower, fruit, seed, and genotype characteristic.

### 7.8. Intellectual property right protection

Intellectual property right gives its owner exclusive right to use and gain commercial benefit from such right. With the exception of copyright and trade secret, an owner of intellectual property right must first register its intellectual property right to obtain protection over such right. Generally speaking, the registration of intellectual property right is administered by Directorate General of Intellectual Property Right which is a directorate under the MOL. Protection of plant variety is the only intellectual property right whose registration is administered by the Ministry of Agriculture.

[156] http://peraturan.go.id/uu/nomor-32-tahun-2000.html

[157] http://peraturan.go.id/uu/nomor-29-tahun-2000.html

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Every intellectual property right has different protection period as explained below:

| Intellectual Property Right | Protection Period | Applicability |
|---|---|---|
| Copyright | For a person, 70 years after the creator deceased<br><br>For a legal entity, 50 years since the creation is published | a. books, pamphlets, and all other written creations;<br>b. sermons, lectures, speech, and all other similar creations;<br>c. props which are made for educational purposes;<br>d. songs or music with or without lyrics;<br>e. dramas, musical dramas, dances, choreography, puppetry, and pantomime works;<br>f. all forms of arts such as paintings, pictures, engravings, calligraphy, sculptures, statues, or collages;<br>g. architecture;<br>h. map; and<br>i. batik or other art form. |
| | 50 years since publication | a. photography;<br>b. portrait;<br>c. cinematography;<br>d. video game;<br>e. computer program;<br>f. typographical arrangement of literature;<br>g. translations, interpretations, adaptations, modification, and other work from transformation result;<br>h. translations, adaptation, |

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| Intellectual Property Right | Protection Period | Applicability |
|---|---|---|
| | | arrangements, or modification traditional culture expression;<br>i. compilation of creation or data, whether in the format readable by computer program or other media; and<br>j. compilation of traditional culture expression as long as the compilation is original work. |
| | 25 years since publication | applied art |
| Patent | 20 years since the date of receipt of the patent application which meets administrative requirement | Patent |
| | 10 years since the date of receipt of the patent application which meet administrative requirement | simple patent |
| Mark and Geographical Indication | 10 years since the date of receipt of the mark application which meets administrative requirement. The protection period can be extended | - |
| Industrial design | 10 years since the date of receipt of the industrial design application which meets | - |

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| Intellectual Property Right | Protection Period | Applicability |
|---|---|---|
| | administrative requirement | |
| Trade secret | - | - |
| Integrated circuit design | 10 years since the design is exploited commercially, or since the date of receipt of the integrated circuit design application which meets administrative requirement | - |
| Protection of plant variety | 20 years since the protection of plant variety right is given | seasonal plant |
| | 25 years since the protection of plant variety right is given | yearly plant |

Intellectual property right can only be used exclusively by its owner or any third parties who are licenced by the owner. Every intellectual property right law provides criminal sanction for every person who violates other person's intellectual property right.

## 8. Dispute Resolution System

Dispute resolution in Indonesia can be conducted through Indonesian court, arbitration and alternative dispute resolutions.

### 8.1. Indonesian Court

Judicial power in Indonesia is held and carried out by Supreme Court, judicial bodies under the Supreme Court and the Constitutional Court.[158] Under Law 48/2009 the Supreme Court is mandated as the highest level judicial body within the four court

[158] Article 18 Law 48/2009

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jurisdictions i.e.

(a) General Court;

(b) Religious Court;

(c) Military Court; and

(d) State Administrative Court.

Each court jurisdiction consists of first level court and appeal level court. In addition to that, Indonesia also recognises several special courts that are established within the four court jurisdictions.

Despite (a) the division of judicial power between the Supreme Court, judicial bodies under the Supreme Court and the Constitutional Court, and (b) the division of court jurisdictions under the Supreme Court into four court jurisdictions, the basic principles of Indonesian court under Law 48/2009 include:

(1) court proceeding is conducted based on simple, quick and low-cost principles.[159]

(2) in deciding upon a case, the judge shall explore, follow and understand the living legal values and sense of fairness in the relevant society.[160] Therefore, the judge is prohibited from denying to examine, adjudicate and decide upon a case by reason that there is no law for the case or the relevant law is unclear.

(3) Indonesian court must honour presumption of innocence principle.[161]

(4) unless the laws and regulations stipulate otherwise, a case must be examined, adjudicated and decided by a panel of judges which consists of three judges and one of them must act as the chairman of the panel while the remaining two must act as the members of the panel.[162]

(5) unless the laws and regulations stipulate otherwise, every court hearing must be opened for public.[163]

(6) unless the laws and regulations stipulate otherwise, every first level court decision can be appealed to a High Court and every appeal decision can be

[159] Article 2 Law 48/2009

[160] Article 5 Law 48/2009

[161] Article 6 Law 48/2009

[162] Article 11 Law 48/2009

[163] Article 13 Law 48/2009

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requested to be examined by the Supreme Court as the cassation level court.[164]

(7) a final and binding decision may be requested for a judicial review to the Supreme Court.[165]

(8) a court decision is valid and binding only if it is recited in a court hearing which is opened for public.[166]

The law on the procedures of dispute resolutions in Indonesia is mainly regulated under *Herziene Indonesisch Reglement* (HIR) which is a heritage of the Dutch laws.

(1) General Court Jurisdiction

Law 48/2009 stipulates that the General Court Jurisdiction is authorised to examine, adjudicate, decide upon and settle criminal and civil law cases in accordance with the laws and regulations.[167] The General Court Jurisdiction consists of:

1) District Court, which acts as the first level court for criminal and civil law cases; and
2) High Court, which acts as:
   (a) the appeal level court for criminal and civil law cases; and
   (b) the first and final level court for jurisdiction disputes between District Courts under it.

There are several special courts established within General Court Jurisdiction, namely:

1) Juvenile Court, which has the authority to examine and adjudicate juvenile criminal cases;
2) Commercial Court, which has the authority to examine and adjudicate:
   (a) bankruptcy and suspension of payment cases;
   (b) intellectual property cases; and
   (c) cases relating to liquidation of a bank by Indonesian Deposit Insurance Corporation.

[164] Article 23 Law 48/2009

[165] Article 24 Law 48/2009

[166] Article 13 Law 48/2009

[167] Article 25 Law 48/2009

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3) Human Rights Court, which has the authority to examine and adjudicate serious human rights cases;
4) Corruption Crime Court, which has the authority to examine and adjudicate corruption crime cases;
5) Industrial Relations Court, which has the authority to examine and adjudicate industrial relation cases; and
6) Fishery Court, which has the authority to examine and adjudicate fishery criminal cases.

(2) Religious Court Jurisdiction

Law 48/2009 stipulates that Religious Court Jurisdiction is authorized to examine, adjudicate, decide upon and settle cases between Muslims in accordance with the laws and regulations.[168] Religious Court Jurisdiction consists of:

1) Religious Court, which acts as the first level court for cases which fall under the authority of Religious Court Jurisdiction; and
2) High Religious Court, which acts as:
   (a) the appeal level court for cases which fall under the authority of Religious Court Jurisdiction; and
   (b) the first and final level court for jurisdiction disputes between Religious Courts under it.

Law No. 7 of 1989 on Religious Court Jurisdiction as lastly amended by Law No. 50 of 2009 stipulates that Religious Court Jurisdiction is authorised to examine, adjudicate, decide upon and settle disputes between Muslims on, among other things, marriage, inheritance, testament, grant, *waqf*, *zakat, infaq, sadaqqah,* and Islamic economics (*syariah* economics).

(3) Military Court Jurisdiction

Law No. 31 of 1997 on Military Court Jurisdiction ("**Law 31/1997**")[169] stipulates that Military Court Jurisdiction is authorised to: [170]

[168] Article 25 Law 48/2009

[169] http://peraturan.go.id/uu/nomor-31-tahun-1997.html

[170] Article 9 Law 31/1997

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1) adjudicate a criminal case committed by a person who, at the time of committing the criminal act:
   (a) is a soldier;
   (b) is, under the laws and regulations, equivalent to a soldier;
   (c) is a member of a group or agency or body which under laws and regulations is equivalent to or deemed as a soldier, (the "**Equivalent to Soldier Accused**");
   (d) does not fall under the classification set out in Points (a) to (c) above (the "**Non-Soldier Accused**") but based on decision of Commander of Indonesian National Soldiers with the approval of Minister of Defence must be adjudicated by Military Court Jurisdiction.

2) examine, decide upon and adjudicate Indonesian National Soldiers' administrative cases.
3) consolidation of compensation claim case into the relevant criminal case.

Military Court Jurisdiction consists of:[171]

1) Military Court, which acts as the first level court for criminal cases where the accused is:
   (a) a soldier at captain rank or lower;
   (b) an Equivalent to Soldier Accused at captain rank or lower; and
   (c) a Non-Soldier Accused who, based on decision of Commander of Indonesian National Soldiers with the approval of Minister of Defence, must be adjudicated by Military Court.

2) High Military Court, which acts as:
   (a) first level court for criminal cases where the accused or one of the accused is:
      - a soldier at major rank or higher;
      - an Equivalent to Soldier Accused at major rank or higher; and

[171] Article 12 Law 31/1997

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- a Non-Soldier Accused who, based on decision of Commander of Indonesian National Soldiers with the approval of Minister of Defence, must be adjudicated by High Military Court.

(b) first level court for Indonesian National Soldiers administrative cases.

(c) appeal level court for criminal cases that have been adjudicated by Military Court.

(d) first and final level court for jurisdiction disputes between Military Courts under it.

3) Primary Military Court, which acts as:

(a) appeal level court for criminal and Indonesian National Soldiers administrative cases which have been adjudicated by Military High Court which acts as the first level court;

(b) first and final level court for jurisdiction disputes between:

(a) Military Courts under different High Military Courts;

(b) High Military Courts; and

(c) High Military Court and Military Court.

In addition to the above, the Primary Military Court is also authorised to decide upon disputes between Case Submitter Officer (*Perwira Penyerah Perkara*) and Military Prosecutor (*Oditur Militer*) on whether or not a case must be submitted to courts within the Military Court Jurisdiction or courts within the General Court Jurisdiction.

4) Combat Court, which acts as the first and final level court for criminal cases committed by soldiers in a combat area.

(4) <u>State Administrative Court Jurisdiction</u>

Law 48/2009 stipulates that State Administrative Court Jurisdiction is authorized to examine, adjudicate, decide upon and settle state administrative disputes in accordance with the laws and regulations. Law No. 5 of 1986 on State

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Administrative Court Jurisdiction[172] as lastly amended by Law No. 51 of 2009[173] ("**Law 5/1986**") defines a state administrative dispute as a dispute between a person or private legal entity and state administrative body or officer, either at central or regional level, resulting from the issuance of a state administrative decision, including the dispute on officialdom pursuant to the applicable laws and regulations.

The object of a state administrative dispute is a state administrative decision (in written from), issued by a state administrative body or officer, which contains state administrative action pursuant to laws and regulations, having concrete, individual and final natures, and has legal effect to a person or private legal entity.

Law 5/1986 stipulates that there are several types of state administrative decision that cannot be raised as an object of state administrative dispute under Law 5/1986, namely:[174]

1) state administrative decisions which are classified as state administrative body or officer's actions in private law field;
2) state administrative decisions having nature as generally binding regulations;
3) state administrative decisions that still require further approval;
4) state administrative decisions issued pursuant to Indonesian Criminal Code or Indonesian Criminal Procedural Code or other criminal laws and regulations;
5) state administrative decisions issued based on examination conducted by a court pursuant to laws and regulations;
6) state administrative decisions on administrative affairs of Indonesian National Soldiers;
7) decisions of election committee, either at central or regional level, on the result of general election.

[172] http://www.bpn.go.id/Publikasi/Peraturan-Perundangan/Undang-Undang/undang-undang-nomor-5-tahun-1986-912.

[173] http://peraturan.go.id/uu/nomor-51-tahun-2009.html.

[174] Article 2 Law 5/1986.

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In addition, Law 5/1986 also stipulates that courts within the State Administrative Court Jurisdiction are not authorised to examine, decide upon and settle a state administrative decision if the state administrative decision is issued:[175]

1) in a war, dangerous situation, natural disaster or other endangered situation, pursuant to applicable laws and regulations; and
2) in an emergency situation for public interest pursuant to applicable laws and regulations.

State Administrative Court Jurisdiction consists of:

1) State Administrative Court, which acts as the first level court in examining, deciding upon and settling state administrative court disputes; and
2) High State Administrative Court, which acts as:
   a. the appeal level court in examining, deciding upon and settling state administrative court disputes;
   b. the first and final level court in examining, deciding upon and settling jurisdiction disputes between State Administrative Courts under it; and
   c. the first level court for state administrative disputes over which the available administrative action (outside the court) has been taken.

[175] Article 49 Law 5/1986.

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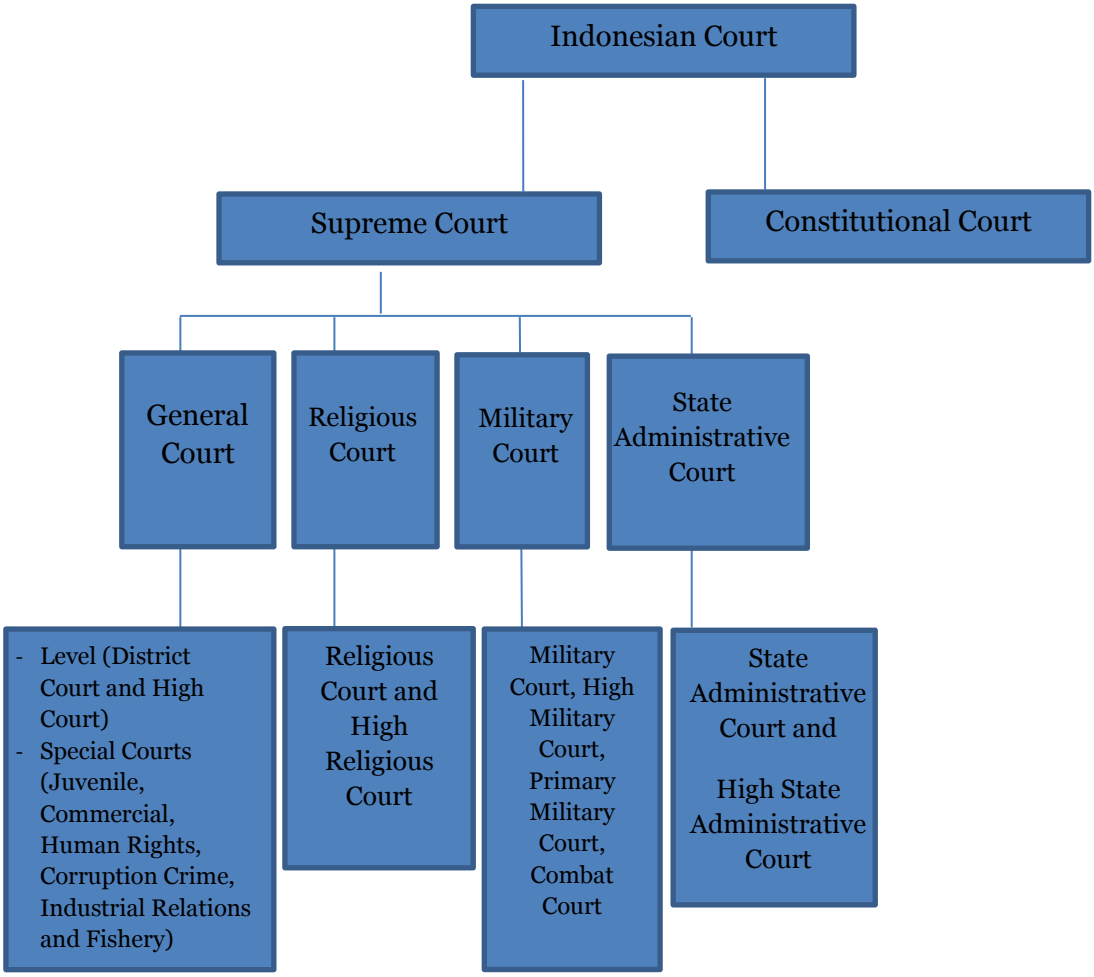
Please see below summary of the jurisdiction division within Indonesian court:



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### 8.2. Arbitration and Alternative Dispute Resolutions

Indonesia has Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolutions[176] ("**Arbitration Law**") which serves as the basis for conducting dispute resolution out of court, namely through arbitration and alternative dispute resolutions.

Arbitration Law defines arbitration as a civil dispute resolution method conducted out of General Court Jurisdiction based on an arbitration agreement made in writing by the disputing parties.[177] Arbitration Law stipulates that disputes that can be settled through arbitration are only disputes on commercial and relating to rights which according to the laws and regulations are fully controlled by the disputing parties.[178] Arbitration Law further asserts that disputes that cannot be settled through arbitration are those, which according to laws and regulations, cannot be settled through amicable settlement by the disputing parties.

Arbitration Law recognises two types of arbitration, namely arbitration organised by an arbitration body (institutional arbitration) and ad hoc arbitration.

There are five alternative dispute resolutions recognised by Arbitration Law, namely consultation, negotiation, mediation, reconciliation and expert determination.

### 8.3. Dispute settlement related to investment

Law 25/2007 stipulates that in the event there is a dispute occurred between the government and the investors, the parties shall firstly settle the dispute through deliberation and consensus. Specifically to the dispute occurred between the government and foreign investors, the parties shall settle the dispute through an international arbitration as agreed by the parties.

Indonesia has become the member of International Center for Settlement of Investment Disputes (ICSID) on 1958 through Law No. 5 of 1968 on the Dispute Settlement between the State and Nationals of other States ("**Law 5/1968**"). Article 2 of Law 5/1968 stipulates that the Indonesian government has the authority to grant its

[176] http://peraturan.go.id/uu/nomor-30-tahun-1999.html

[177] Article 1 Arbitration Law

[178] Article 5 Arbitration Law

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consent for a dispute relating to foreign capital investment to be decided under ICSID convention and to represent the Republic of Indonesia, with the right of substitution.

However, please note that the dispute that is caused by the state administrative decision issued by regency governmental level in Indonesia is being exempted to be settled by way of ICSID arbitration pursuant to the Presidential Decree No. 31 of 2012 on the Dispute that is not Settled by ICSID Jurisdiction.

If the parties choose ICSID arbitration for the settlement of investment related dispute, please see below the procedure of dispute settlement:[179]

[179] ICSID, "Overview of an Arbitration under the ICSID Convention", https://icsid.worldbank.org/en/Pages/process/Arbitration.aspx, accessed on 1 February 2017

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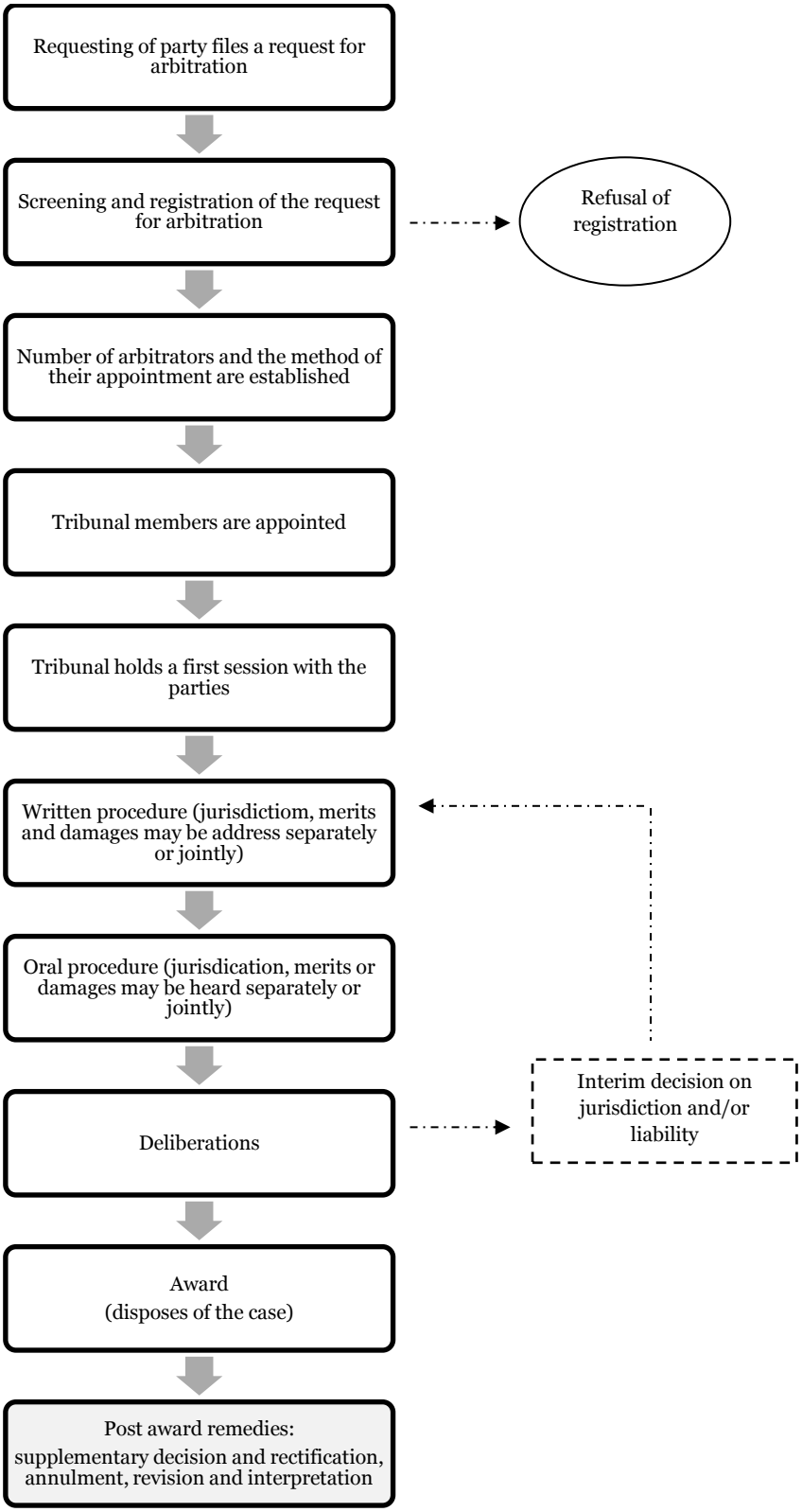

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# CHAPTER 3

# OVERVIEW OF INDONESIAN ADMINISTRATIVE AGENCIES

## 1. Investment Coordinating Board ("BKPM")

BKPM is a non-department government institution having a position under and directly responsible to the President and headed by a Head of BKPM. PR 90/2007 stipulates that BKPM has the authority to conduct policy coordination and services in field of investment in accordance with the laws and regulations. In addition to that, BKPM is mandated as the institution organizing One Stop Service at central government level. As the institution organizing One Stop Service at central government level, BKPM has the authority to conduct licencing and non-licencing services which fall under the central government's affairs.

BKPM has the authority to issue regulations, licences and to provide non-licence services relating to investment activities. Additionally, due to BKPM's function as the institution organizing One Stop Service at central government level, there are several technical ministries that have delegated the authority to issue technical licences to BKPM. There are also several ministries and institutions that place their officers in BKPM, who also known as liaison officers, in order to support BKPM's function in organizing One Stop Service at central government level.

Please use the contact details below to get more information on BKPM:

| | |
|---|---|
| Competent administration | One Stop Integrated Services, Deputy of Investment Services |
| Web site address | http://www.bkpm.go.id/ |
| Address | Jl. Jend. Gatot Subroto No. 44, South Jakarta 12190<br>Indonesia |
| Telephone/Call Center | +6221 – 5252008/ +62 8071002576 |

Please see below the organisation chart and duties of the BKPM[180]

[180] Republic of Indonesia, 2015, *Presidential Decree No. 90 of 2007 on Investment Coordinating Board as amended by Presidential Decree No. 86 of 2012*.

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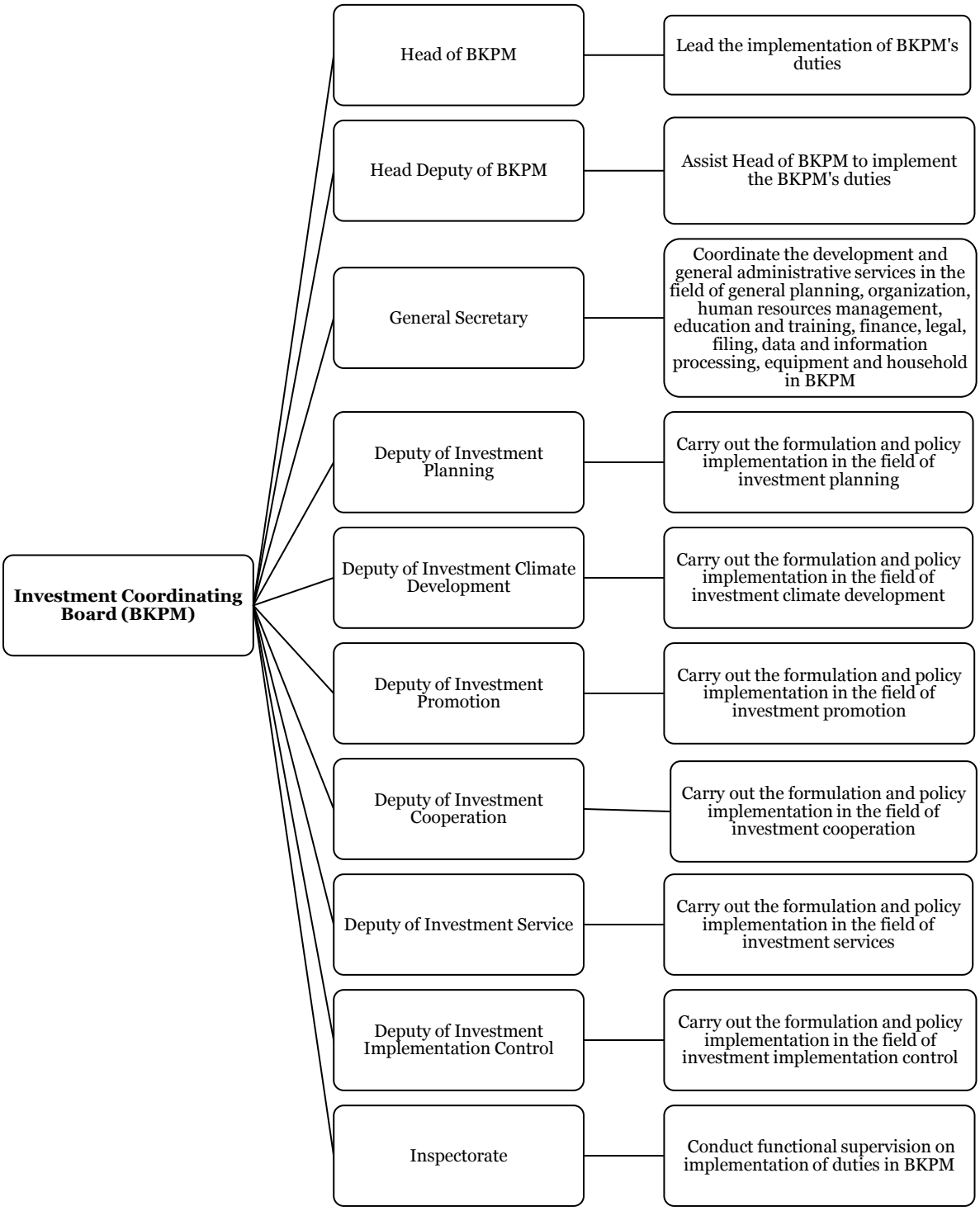

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## 2. Ministry of Trade ("MOT")

Ministry of Trade is a ministry under and directly responsible to the President. Ministry of Trade is headed by the MOT. According to Presidential Regulation No. 48 of 2015 on Ministry of Trade[181] ("**Presidential Regulation 48/2015**"), the duties of the Ministry of Trade are to organize government's affairs on trade and to help the president in organizing the state's government.

Presidential Regulation 48/2015 stipulates that Ministry of Trade has the following functions:

(1) formulation and stipulation, implementation and technical guidance and supervision of policies on strengthening and development of domestic trade, customers empowerment, trade standardization and quality control of goods, proper measurement, and supervision over goods and/or services in the market, and supervision of trading activities, enhancement and facilitation of the export of non-oil and gas goods having added value and services, control, management and facilitation of import and security of trade, enhancement of market access of goods and services in international forums, promotion, development and enhancement of products, export market and export actors, and expansion, development and supervision of commodity futures trading, warehouse receipt system and commodity auction market;

(2) implementation of research and development on trade;

(3) implementation of substantial support to all organization components in Ministry of Trade;

(4) development and provision of administrative support in Ministry of Trade;

(5) management of state's assets under the Ministry of Trade's control;

(6) supervision over the execution of duties in Ministry of Trade.

[181] http://www.peraturan.go.id/perpres/nomor-48-tahun-2015.html

Ministry of Trade has the authority to issue regulations, licences and to provide non-licence services relating to trade. The following are several major licences and non-licence services which authorities to issue/provide are currently held by the Ministry of Trade:

(1) Company Registration Certificate

Company Registration Certificate is a certificate that must be obtained by every company in Indonesia.

(2) Trading Business Licence

Trading Business Licence is a business licence that must be obtained by every company engaging in trading business.

(3) Registration Certificate of Distributor/Agent

Registration Certificate of Distributor/Agent is a certificate that must be obtained by every distributor or agency company.

(4) Warehouse Registration Certificate

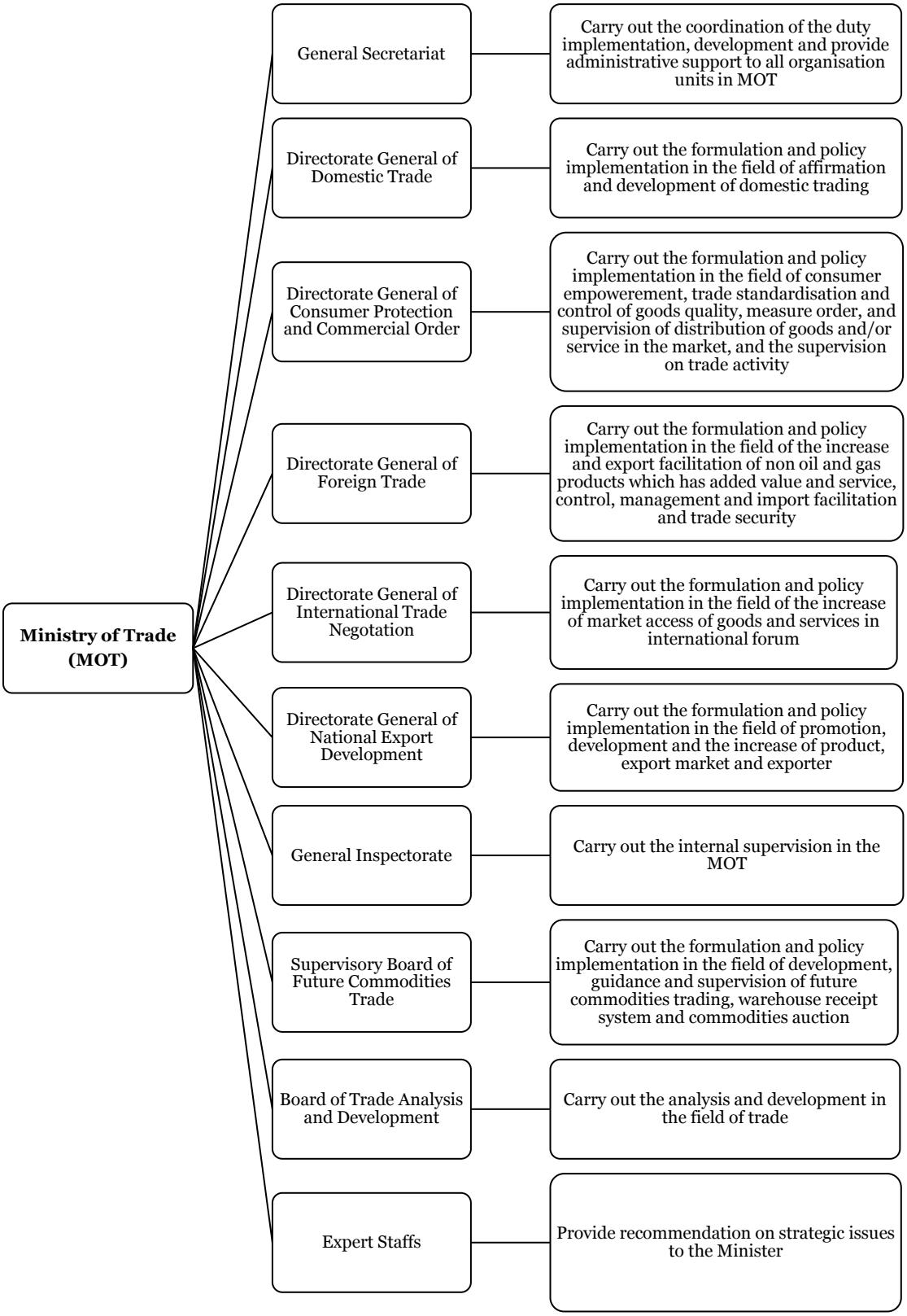
Warehouse Registration Certificate is a certificate issued to prove that a warehouse has been registered for distribution facilities activities.

Please use the contact details below to get more information on Ministry of Trade:

| | |
|---|---|
| Web site address | http://www.kemendag.go.id/en |
| Address | Jl. M. I. Ridwan Rais No. 5<br>Jakarta Pusat 10110 |
| Telephone | +6221 - 3841961/62 |

Please see below the organisation chart and duties of the Ministry of Trade[182]

[182] Republic of Indonesia, 2015, *Presidential Regulation No. 48 of 2015 on Ministry of Trade*.


Ministry of Trade (MOT)
General Secretariat
Carry out the coordination of the duty implementation, development and provide administrative support to all organisation units in MOT
Directorate General of Domestic Trade
Carry out the formulation and policy implementation in the field of affirmation and development of domestic trading
Directorate General of Consumer Protection and Commercial Order
Carry out the formulation and policy implementation in the field of consumer empowerement, trade standardisation and control of goods quality, measure order, and supervision of distribution of goods and/or service in the market, and the supervision on trade activity
Directorate General of Foreign Trade
Carry out the formulation and policy implementation in the field of the increase and export facilitation of non oil and gas products which has added value and service, control, management and import facilitation and trade security
Directorate General of International Trade Negotation
Carry out the formulation and policy implementation in the field of the increase of market access of goods and services in international forum
Directorate General of National Export Development
Carry out the formulation and policy implementation in the field of promotion, development and the increase of product, export market and exporter
General Inspectorate
Carry out the internal supervision in the MOT
Supervisory Board of Future Commodities Trade
Carry out the formulation and policy implementation in the field of development, guidance and supervision of future commodities trading, warehouse receipt system and commodities auction
Board of Trade Analysis and Development
Carry out the analysis and development in the field of trade
Expert Staffs
Provide recommendation on strategic issues to the Minister

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### 3. Ministry of Industry ("MOI")

Ministry of Industry is a ministry under and directly responsible to the President. Ministry of Industry is headed by a Minister of Industry. According to Presidential Regulation No. 29 of 2015 on Ministry of Industry[183] ("**Presidential Regulation 29/2015**"), the duties of the Ministry of Industry are to organize government's affairs on industry and to help the President in organizing the state's government.

Presidential Regulation 29/2015 stipulates that Ministry of Industry has the following functions:

(1) formulation and stipulation, implementation and technical guidance and supervision of policies on the deepening and strengthening of industry structure, enhancement of competitiveness, development of business climate, promotion of industry and industrial services, industrial standardization, industrial technology, development of strategic industry and green industry, development and empowerment of small and medium industry, deployment and equalization of industrial development, resilience of industry and cooperation and enhancement of local products utilization;

(2) implementation of research and development in industry field;

(3) implementation of substantial support to all organization components in Ministry of Industry;

(4) development and provision of administrative support in Ministry of Industry;

(5) management of state's assets that are under Ministry of Industry's control; and

(6) supervision over the execution of duties in Ministry of Industry.

Ministry of Industry has the authority to issue regulations and licences and to provide non-licence services relating to industry. The following are several major licences and non-licence services which authorities to issue/provide are currently held by the Ministry of Industry:

[183] http://peraturan.go.id/perpres/nomor-29-tahun-2015.html

(1) Industrial Business Licence

Industrial Business Licence is a business licence that must be obtained by a company engaging in industry business (except for small industry).

(2) Industrial Registration Certificate

Industrial Registration Certificate is a certificate that must be obtained by a company engaging in small industry business activities.

(3) Industrial Area Business Licence

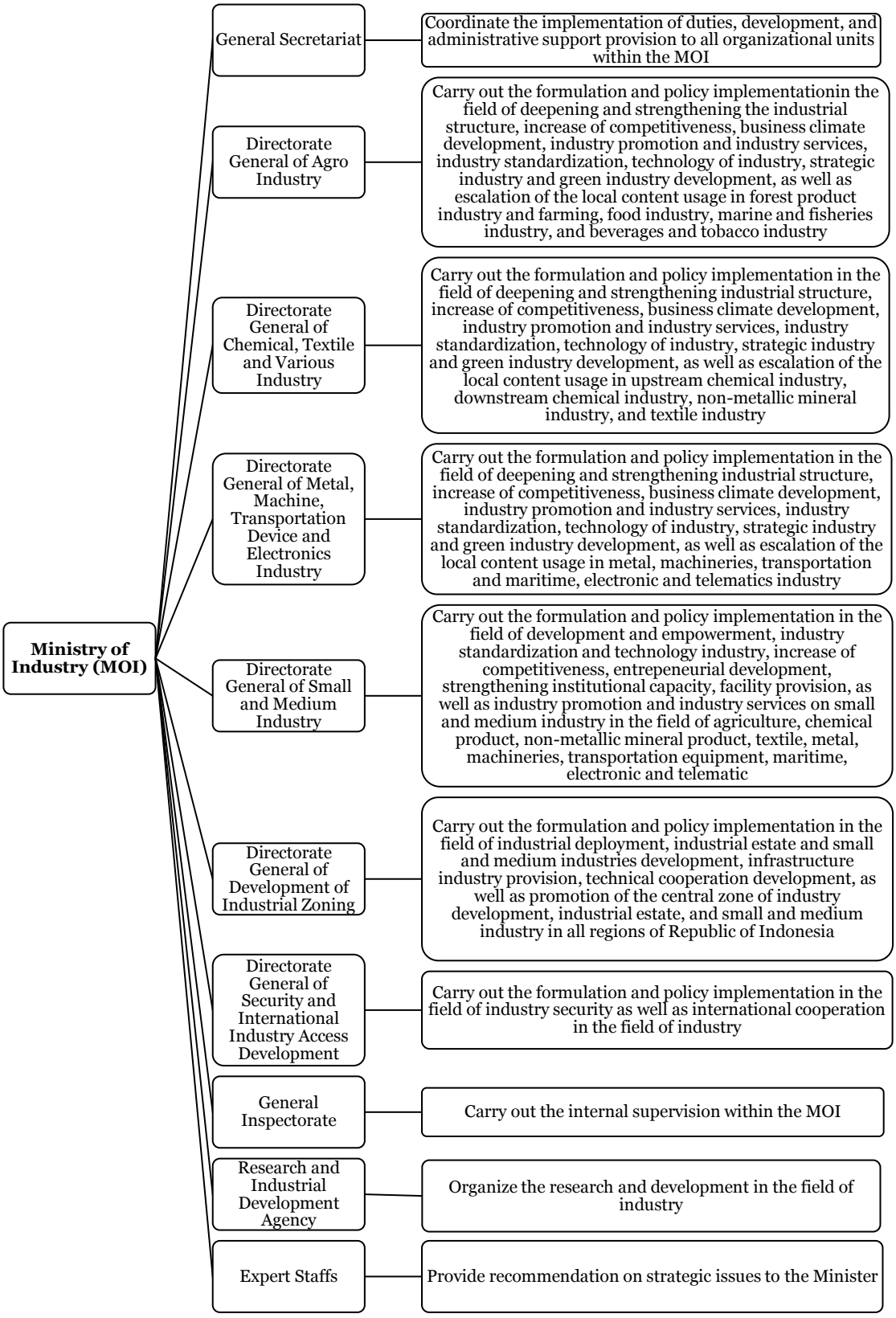
Industrial Area Business License is a certificate that must be obtained by a company engaging in industrial area business activities.

Please use the contact details below to get more information on Ministry of Industry:

| | |
|---|---|
| Web site address | http://www.kemenperin.go.id/ |
| Address | Jl. Jend. Gatot Subroto Kav. 52-53<br>Jakarta Selatan 12950 |
| Telephone | +6221 5255509 ext 2666 |

Please see below the organisation chart and duties of the Ministry of Industry[184]

[184] Republic of Indonesia, 2015, *Presidential Decree No. 29 of 2015 on Ministry of Industrial Affairs*.


Ministry of Industry (MOI)
General Secretariat
Coordinate the implementation of duties, development, and administrative support provision to all organizational units within the MOI
Directorate General of Agro Industry
Carry out the formulation and policy implementationin the field of deepening and strengthening the industrial structure, increase of competitiveness, business climate development, industry promotion and industry services, industry standardization, technology of industry, strategic industry and green industry development, as well as escalation of the local content usage in forest product industry and farming, food industry, marine and fisheries industry, and beverages and tobacco industry
Directorate General of Chemical, Textile and Various Industry
Carry out the formulation and policy implementation in the field of deepening and strengthening industrial structure, increase of competitiveness, business climate development, industry promotion and industry services, industry standardization, technology of industry, strategic industry and green industry development, as well as escalation of the local content usage in upstream chemical industry, downstream chemical industry, non-metallic mineral industry, and textile industry
Directorate General of Metal, Machine, Transportation Device and Electronics Industry
Carry out the formulation and policy implementation in the field of deepening and strengthening industrial structure, increase of competitiveness, business climate development, industry promotion and industry services, industry standardization, technology of industry, strategic industry and green industry development, as well as escalation of the local content usage in metal, machineries, transportation and maritime, electronic and telematics industry
Directorate General of Small and Medium Industry
Carry out the formulation and policy implementation in the field of development and empowerment, industry standardization and technology industry, increase of competitiveness, entrepeneurial development, strengthening institutional capacity, facility provision, as well as industry promotion and industry services on small and medium industry in the field of agriculture, chemical product, non-metallic mineral product, textile, metal, machineries, transportation equipment, maritime, electronic and telematic
Directorate General of Development of Industrial Zoning
Carry out the formulation and policy implementation in the field of industrial deployment, industrial estate and small and medium industries development, infrastructure industry provision, technical cooperation development, as well as promotion of the central zone of industry development, industrial estate, and small and medium industry in all regions of Republic of Indonesia
Directorate General of Security and International Industry Access Development
Carry out the formulation and policy implementation in the field of industry security as well as international cooperation in the field of industry
General Inspectorate
Carry out the internal supervision within the MOI
Research and Industrial Development Agency
Organize the research and development in the field of industry
Expert Staffs
Provide recommendation on strategic issues to the Minister

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**4. Ministry of Law and Human Rights ("Ministry of Law" or "MOI")**

Ministry of Law and Human Rights is a ministry under and directly responsible to the President. Ministry of Law is headed by the MOL. According to Presidential Regulation No. 44 of 2015 on the Ministry of Law[185] ("**Presidential Regulation 44/2015**"), the duties of the Ministry of Law are to organize government's affairs on law and human rights matters and to help the president in organizing the state's government.

Presidential Regulation 44/2015 stipulates that Ministry of Law has the following functions:

(1) formulation, stipulation and implementation of policies on laws and regulations, general legal administrative, correctional, immigration, intellectual property and human rights;

(2) coordination of implementation of duties, development and provision of administrative support to all organization components in the Ministry of Law;

(3) management of state's assets under the Ministry of Law's control;

(4) supervision over the implementation of duties in the Ministry of Law;

(5) implementation of technical guidance and supervision over the implementation of the Minister of Law's affairs at local level;

(6) implementation of national law development;

(7) implementation of research and development on law and human rights fields;

(8) implementation of development of human resources in the Ministry of Law;

(9) implementation of technical activities at national scale;

(10) implementation of the main duties up to local level; and

[185] http://peraturan.go.id/perpres/nomor-44-tahun-2015.html

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(11) implementation of substantial supports to all organization components in the Ministry of Law.

The following are several major licences and non-licence services which authorities to issue or conduct are currently held by the Ministry of Law:

(1) approval on establishment of a limited liability company;

(2) approval on amendment to articles of association of a limited liability company;

(3) stay permit for foreigners;

(4) registration of intellectual property rights;

(5) registration of *fidusia* security; and

(6) visa.

Please use the contact details below to get more information on Ministry of Law:

| | |
|---|---|
| Competent administration | The Secretariat General of Ministry of Law and Human rights |
| Web site address | www.kemenkumham.go.id |
| Address | Jl. HR. Rasuna Said Kav 6-7 Kuningan, South Jakarta, Jakarta, Indonesia-12940 |
| Telephone | +6221 - 5253004 |

Please see below the organisation chart and duties of the Ministry of Law and Human Rights[186]

[186] Republic of Indonesia, 2015, *Presidential Decree No. 44 of 2015 on Ministry of Law and Human Rights*.

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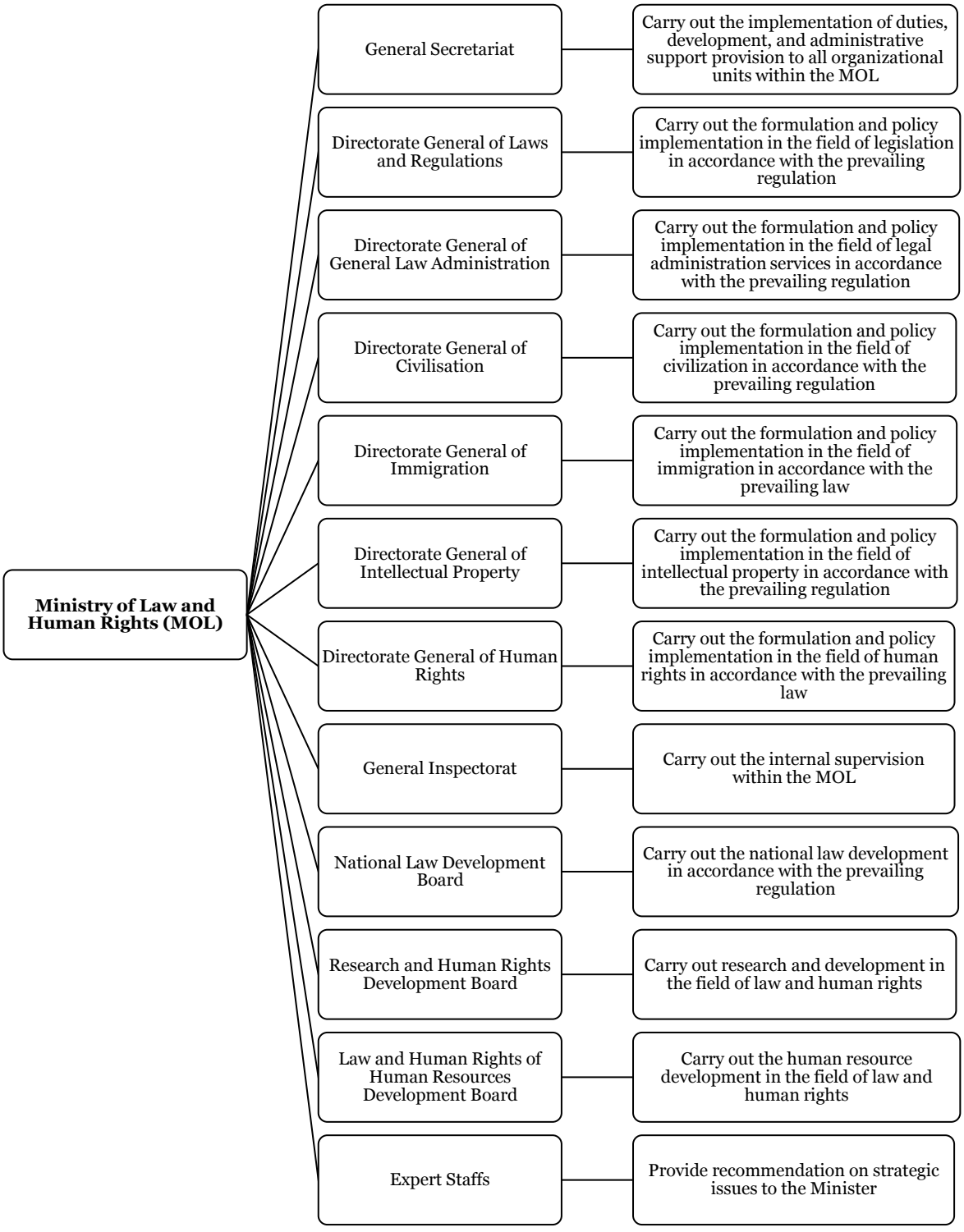

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## 5. Ministry of Manpower ("MOM")

Ministry of Manpower is a ministry under and directly responsible to the President. Ministry of Manpower is headed by the MOM. According to Presidential Regulation No. 18 of 2015 on Ministry of Manpower[187] ("**Presidential Regulation 18/2015**"), the duties of the Ministry of Manpower are to organize government's affairs on manpower and to help the president in organizing the state's government.

Presidential Regulation 18/2015 stipulates that Ministry of Manpower has the following functions:

(1) formulation, stipulation and implementation of policies on enhancement of manpower's competitiveness and productivity, enhancement of employees' placement and expansion of employment opportunity, enhancement of the role of industrial relation and employees social security, development of manpower supervision and working healthiness;

(2) coordination of implementation of duties, development and provision of administrative support for all organization components in the Ministry of Manpower;

(3) management of state's assets under the Ministry of Manpower's control;

(4) supervision over implementation of duties in the Ministry of Manpower;

(5) implementation of technical guidance and supervision over implementation of the Ministry of Manpower's affairs at local level;

(6) implementation of technical actions having national scale, in accordance with the laws and regulations; and

(7) implementation of the planning, research and development on manpower field.

Ministry of Manpower has the authority to issue regulations and licences and to provide non-

[187] http://peraturan.go.id/perpres/nomor-18-tahun-2015.html

licence services relating to manpower. The followings are several major licences and non-licence services which authorities to issue/provide are currently held by the Ministry of Manpower:

(1) approval on RPTKA;

(2) IMTA;

(3) registration of Definite Period Employment Agreement;

(4) registration of company regulation; and

(5) operational licence of outsourcing company.

Please use contact details below to get more information on Ministry of Manpower:

| | |
|---|---|
| Website address | www.kemnaker.go.id |
| Address | Jl. Jendral Gatot Subroto Kav. 51, South Jakarta, Jakarta, Indonesia-12750 |
| Telephone / Call Center | +6221 - 5255733 / 1500133 |

Please see below the organisation chart and duties of the Ministry of Manpower[188]

[188] Republic of Indonesia, 2015, *Presidential Regulation No. 18 of 2015 on Ministry of Manpower*.

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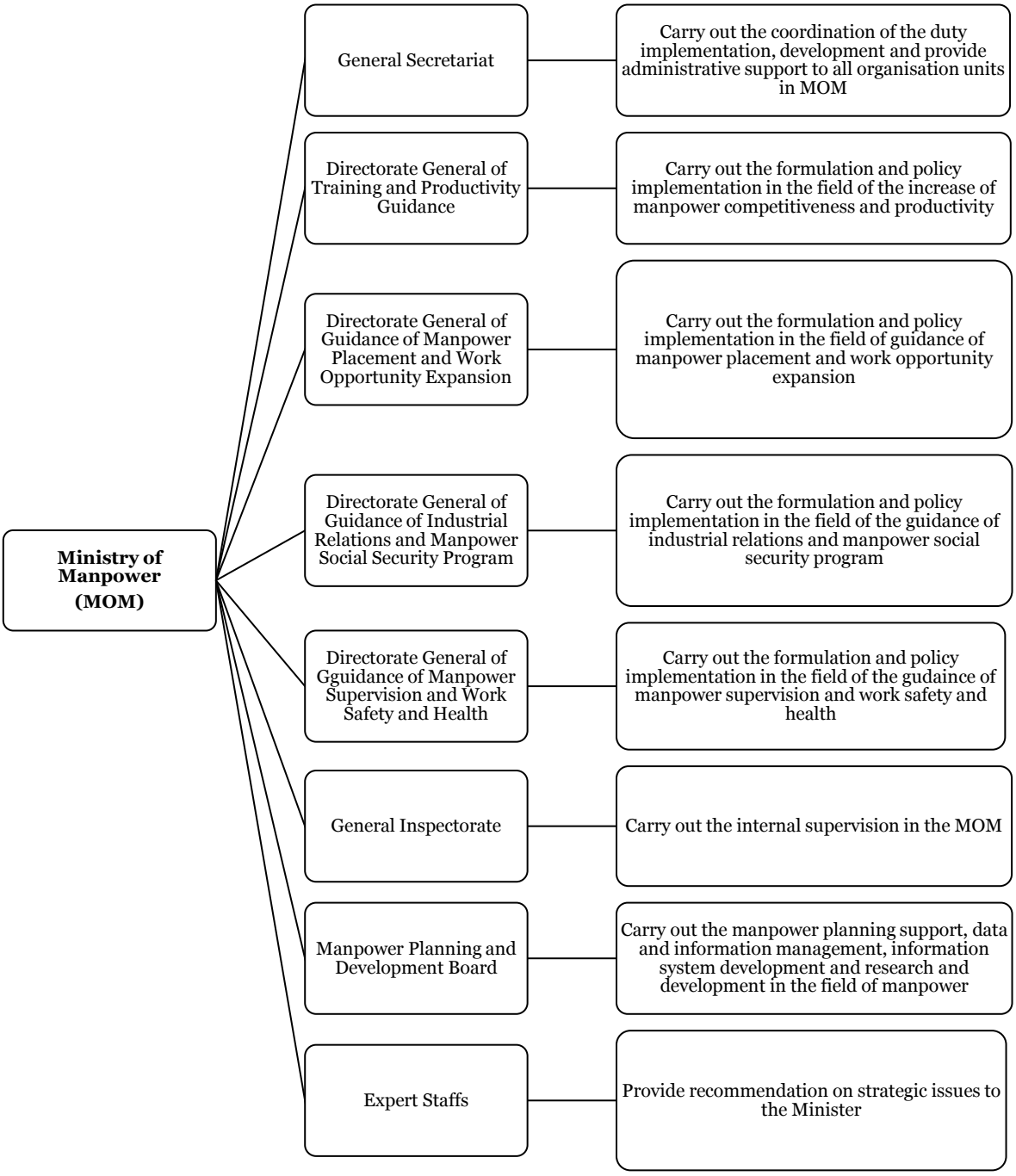

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## 6. Ministry of Agrarian and Spatial Planning ("MOA")

Ministry of Agrarian and Spatial Planning is a ministry under and directly responsible to the President and headed by a Minister of Agrarian and Spatial Planning. Ministry of Agrarian and Spatial Planning also has the function as the National Land Office. Therefore, Minister of Agrarian and Spatial Planning is also called as Head of National Land Office.

According to Presidential Regulation No. 17 of 2015 on Ministry of Agrarian and Spatial Planning[189], the main duty of Ministry of Agrarian and Spatial Planning is to organize the government's affairs on land. In order to carry out its duties, Ministry of Agrarian and Spatial Planning has the following functions:

(1) formulation, stipulation and implementation of policies on spatial planning, agrarian infrastructure, legal relationship on agrarian, regulation of agrarian, land procurement, management of spatial and land control, and handling of agrarian issues, utilization of space and land;

(2) coordination of implementation of duties, development and provision of administrative support for all organization components in the Ministry of Agrarian and Spatial Planning;

(3) management of state's assets under the Minister of Agrarian and Spatial Planning's control;

(4) supervision over implementation of duties in Ministry of Agrarian and Spatial Planning;

(5) implementation of technical guidance and supervision over implementation of Ministry of Agrarian and Spatial Planning affairs up to local level; and

(6) implementation of substantial support to all organization components in the Ministry of Agrarian and Spatial Planning.

[189] http://www.bpn.go.id/Publikasi/Peraturan-Perundangan/Peraturan-Presiden/peraturan-presiden-republik-indonesia-nomor-17-tahun-2015-56987

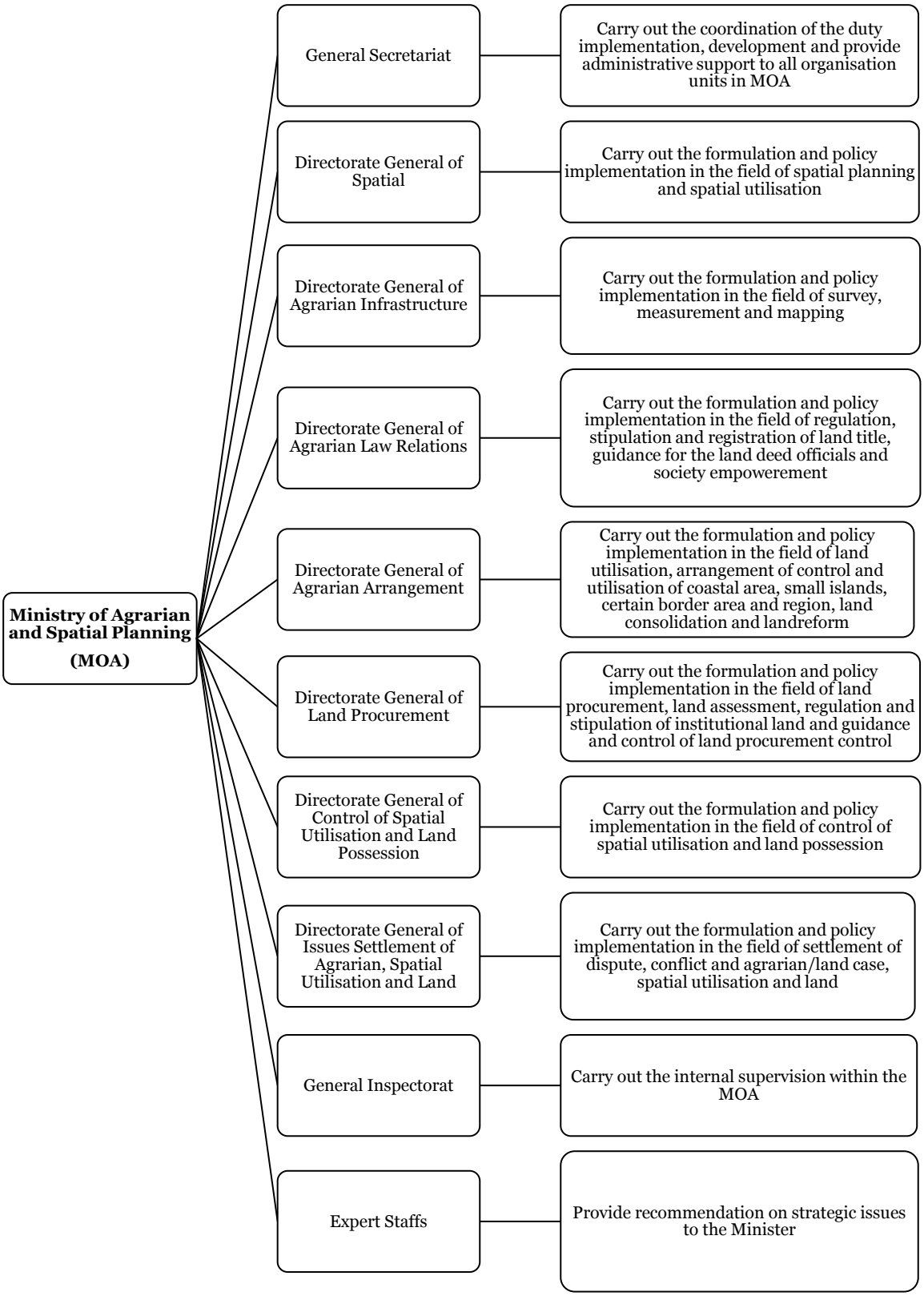
The most important authorities of Ministry of Agrarian and Spatial Planning relating to investment and business activities are the land registration and the granting of land titles. Please note that Ministry of Agrarian and Spatial Planning/National Land Office has several offices scattered in each province and regency/city In Indonesia (land offices), therefore, the land offices which deal with the land matters in terms of investment will depend on the location of the land.

Please use contact details below to get more information on Ministry of Agrarian and Spatial Planning/National Land Office:

| | |
|---|---|
| Website address | http://www.bpn.go.id/ |
| Address | Ministry of Agrarian and Spatial Planning/National Land Office Building No. 2, Kebayoran Baru, South Jakarta 12110 |
| Telephone / Call Center | +6221 - 7228901 |

Please see below the organisation chart and duties of the Ministry of Agrarian and Spatial Planning[190]

[190] Republic of Indonesia, 2015, *Presidential Regulation No. 17 of 2015 on Ministry of Agrarian and Spatial*.


Ministry of Agrarian and Spatial Planning (MOA)
General Secretariat
Carry out the coordination of the duty implementation, development and provide administrative support to all organisation units in MOA
Directorate General of Spatial
Carry out the formulation and policy implementation in the field of spatial planning and spatial utilisation
Directorate General of Agrarian Infrastructure
Carry out the formulation and policy implementation in the field of survey, measurement and mapping
Directorate General of Agrarian Law Relations
Carry out the formulation and policy implementation in the field of regulation, stipulation and registration of land title, guidance for the land deed officials and society empowerement
Directorate General of Agrarian Arrangement
Carry out the formulation and policy implementation in the field of land utilisation, arrangement of control and utilisation of coastal area, small islands, certain border area and region, land consolidation and landreform
Directorate General of Land Procurement
Carry out the formulation and policy implementation in the field of land procurement, land assessment, regulation and stipulation of institutional land and guidance and control of land procurement control
Directorate General of Control of Spatial Utilisation and Land Possession
Carry out the formulation and policy implementation in the field of control of spatial utilisation and land possession
Directorate General of Issues Settlement of Agrarian, Spatial Utilisation and Land
Carry out the formulation and policy implementation in the field of settlement of dispute, conflict and agrarian/land case, spatial utilisation and land
General Inspectorat
Carry out the internal supervision within the MOA
Expert Staffs
Provide recommendation on strategic issues to the Minister