

Legal systems in Indonesia: overview

by Hanim Hamzah, Agnesya M. Narang and Anggi Yusari, Roosdiono & Partners (a member of *ZICOlaw*)

Country Q&A | Law stated as at 01-Apr-2021 | Indonesia

A Q&A guide to the legal system in Indonesia.

The Q&A gives a high level overview of the key legal concepts including the constitution, system of governance and the general legislative process; the main sources of law; the court structure and hierarchy; the judiciary and its appointment; the general rules of civil and criminal litigation, including reporting restrictions, evidentiary requirements, the roles of the judge and counsel, burdens of proof and penalties.

Constitution

Form

1. What form does your constitution take?

The constitution of the Republic of Indonesia is the 1945 Constitution (Constitution), which is in written form and is contained in a single document. The Constitution has been amended four times: in October 1999, August 2000, November 2001 and August 2002.

Indonesia is a unitary state in the form of a republic (*Article 1, Constitution*).

General constitutional features

2. What is the system of governance?

Based on the Constitution, Indonesia has a presidential system of government where the executive branch is led by a president who serves as both head of state and head of the government.

Under the fourth amendment to the Constitution, Indonesia has adopted a bicameral legislature system. The legislative body in Indonesia consists of The People's Consultative Assembly which is composed of members of the People Representative Council and the Regional Representative Council. Each of them has different areas of authority, as follows:

- **The People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*) (MPR).** This legislative body is responsible for amending and enacting the Constitution and for inaugurating or dismissing the president and the vice president in accordance with the Constitution.
- **The People's Representative Council (*Dewan Perwakilan Rakyat*) (DPR).** This legislative body issues laws and regulations, supervises the government and oversees and approves state budgeting.
- **The Regional Representative Council (*Dewan Perwakilan Daerah*) (DPD).** The DPD has authority limited to certain fields related to the regional government and can only propose, evaluate, give consideration and advise on Bills to the DPR.

3. Does the constitution provide for a separation of powers?

The Constitution provides for the separation of powers between the three branches of government. The authority for each of the branches of powers is executed by the executive body, the legislative body and the judicial body. This separation of powers is strictly upheld, and each of the government branches has an equal power and position in the government hierarchy to ensure checks and balances.

The different branches of government in Indonesia consist of:

- **Executive body (*Lembaga Eksekutif*).** Indonesia's executive body consists of the president and the vice president. The executive branch holds governmental power, can submit Bills to the DPR and appoints ministers (*Chapter III and Chapter V, Constitution*).
- **Legislative body (*Lembaga Legislatif*).** Indonesia's legislative body is the MPR which is composed of the members of the DPR and DPD (*Chapter II, Constitution*) (see [Question 2](#) for its functions and authority).
- **Judicial body (*Lembaga Yudikatif*).** The Indonesian judicial body consists of the Supreme Court and the general courts, military courts, religious courts, state administrative courts and the Constitutional Court (*Chapter IX, Constitution*) (see [Question 12](#)).

The checks and balances provided by the Constitution include the following:

- The executive body (president and vice president) can be dismissed by the legislative body for violation of the law or for treason, corruption, bribery and so on (*Article 7A, Constitution*). The Constitutional Court must conduct and assess impeachment procedures (*Article 7B, Constitution*).
- The president has no authority to disband the legislative body.
- The president must ask the legislative and judicial body for their advice or approval on certain matters including:
 - the president needs the approval of the DPR to declare war, enter into a peace treaty or other international agreement (*Article 11, Constitution*); and
 - the president must consider the advice of the: Supreme Court when granting clemency and rehabilitation, and of the DPR when granting amnesty and withdrawal of a prosecution against an individual (*Article 14, Constitution*).
- The DPR must discuss with and require approval from the president when issuing or enacting a law (*Article 20(2), Constitution*).
- The DPR holds the budgeting authority and represents the people in supervising the executive power by exercising the right to conduct interpellation (questioning the executive on an aspect of government policy) (*Article 20A, Constitution*).
- The Supreme Court is authorised to conduct a judicial review of regulations or decisions made by the executive if they are against the law (*Undang-Undang*) (*Article 24(A), Constitution*).
- The Constitutional Court has the authority to:
 - constitutionally review a law that may be contrary to the Constitution;
 - settle disputes among government institutions;
 - dissolve political parties; and
 - settle election disputes.

(*Article 24C, Constitution*.)

4. What is the general legislative process?

The general legislative process is regulated by:

- Law No. 12 of 2011 on Law Making as last amended by Law No. 15 of 2019 (2011 Law).
- Presidential Regulation No. 87 of 2014 on Implementing Regulation of Law Making.

Proposal and drafting

Plans for laws must be included in the one-year and five-year national legislation programmes, which are discussed and **drafted** by the DPR, the DPD, and the government.

A draft law can be initiated and proposed by either the DPR or the president. In certain cases, the DPR or the president can submit the draft law outside of the legislation programme, in:

- Exceptional circumstances, conflict situations or natural disasters.
- Other circumstances, which require national urgency on a law that can be approved by the DPR and the government.

Draft laws on the following topics must be discussed between the president, the DPR and the DPD:

- Regional autonomy.
- Relations between regions and the centre.
- The establishment, expansion and merger of regions.
- Management of natural resources and other economic resources.
- Balancing central and local finance.

Draft laws proposed by the president are prepared by a minister or the head of a non-ministerial government agency in accordance with their scope of duties and responsibilities.

Scrutiny, discussion, and consultation process in the DPR

The head of the DPR distributes the draft law to all members of the DPR in a plenary session.

The draft law is scrutinised, with two levels of discussion in the DPR:

- **First level discussion.** This is conducted in a:
 - commission meeting;
 - joint meeting of the commission;
 - meeting of the legislative body;
 - meeting of the budget board; or
 - special committee meeting.

At this stage, there will be an introductory discussion, a listing of problems, and delivery of a mini-opinion by the DPR's faction, the DPD if related to the five regional issues (*see above, Proposal and drafting*), and the president.

- **Second level discussion.** The second level discussion is conducted in a plenary meeting. These meetings include:
 - submission of a report which contains the process of the first-level discussion, including the DPR's opinions, the DPD's opinions and the results of the first level discussion;
 - a statement of approval or rejection from each faction and members verbally, which is requested by the head of the plenary session;
 - the final opinion of the president delivered by a minister.

If no consensus is reached on the draft laws, decisions are taken by a majority vote. The decision of the DPR can be in the form of:

- Approval.
- Approval subject to changes.
- Rejection.

During the preparation and discussion of draft laws, the public is entitled to provide opinions verbally or in writing to the parliament through the head of the DPR, or other complementary organs of the DPR.

Enactment

Draft laws that have been approved by the DPR and the president are submitted to the president for ratification. The draft laws should be signed by the president within 30 days of approval. If this does not happen, the draft laws will automatically become law. Laws that have been approved and ratified are then promulgated in the *State Gazette* of the Republic of Indonesia.

5. Is there a procedure by which the judiciary can review legislative and executive actions?

The Indonesian judiciary can review both legislative and executive actions.

Review by the Constitutional Court

The Constitutional Court is authorised to conduct a constitutional review of the law issued by the DPR and has the power to revoke the article or the whole law if it is found to be contrary to the Constitution (*Article 24C, Constitution*).

Review by the Supreme Court

The Supreme Court has the right to conduct a judicial review on all regulations and decisions that might contradict applicable laws. If the Supreme Court finds that the regulation or decision contradicts the applicable law, it can

declare the regulations or decision inapplicable or invalid and order the institution that issued it to revoke it. (*Article 24A paragraph (1), Constitution*). This is further regulated in Law No. 14 of 1985 on Supreme Court as amended by Law No. 3 of 2009.

The Administrative Court (last court of appeal to which is the Supreme Court) is authorised to examine, adjudicate and decide on administrative disputes between an individual or private legal entity and a government administrative official or institution as a consequence of the issue of a state administrative decision (*beschikking*).

A state administrative decision is a written decision issued by a state administrative official or institution, which contains administrative legal action based on the applicable laws and regulation with concrete, individual and final characteristics and has legal consequences for an individual or a private legal entity (*Article 1 number 9, Law No. 5 of 1986 on State Administrative Court as amended by Law No. 51 of 2009*). The Administrative Court has the jurisdiction to issue a decision to declare administrative decisions null and void.

6. Are certain emergency powers reserved for the executive?

Only the president can declare a state emergency (*Article 12, Constitution*). State emergencies and states of war can be declared in the following circumstances:

- The security and public order in the whole or part of Indonesian territory are threatened by rebellions, riots, or natural disasters, which cannot be resolved by regular means.
- War, or the threat of war, against the Indonesian territory arises by any means.
- The security of the nation is at risk, or conditions exist that indicate danger to Indonesia.

(*Government Regulation in lieu of Law No. 23 of 1959 on State Emergency Condition, as last amended by Government Regulation in lieu of Law No. 52 of 1960.*)

Under Indonesian Law, Government can issue a Government Regulation in Lieu of a Law, which is a statutory regulation stipulated by the President in compelling emergency situations.

During a state emergency, the president has the power to:

- Issue regulations, as long as they are not contrary to higher laws and regulations.
- Order the search for, examination, and seizure of documents or goods that are used to disturb public order.
- Control, limit, or prohibit communications.
- Prohibit the use of codes, secret words, or signs for communication.
- Control meetings, gatherings, and assemblies.
- Prohibit entry to certain buildings, such as restaurants, meeting places, and entertainment venues.

- Forbid people to leave their houses.
- Control air, land, and water transport.
- Control the borders of the territory.

During a state emergency, the president has the right to issue temporary government regulations in lieu of laws without requiring prior approval from the DPR. For the regulations to remain in effect, approval is required from the DPR at its next session. If approval is not granted the regulation will cease to have effect.

7. Are human rights constitutionally protected?

Human rights are protected by Article 28 of the Constitution, and include the rights to:

- Live and to defend one's life and existence.
- Freedom from enslavement.
- Peaceful assembly and association and to express written and oral opinions.
- Freedom to believe one's faith, and to express one's views and thoughts, in accordance with one's conscience.
- Create a family and to procreate based on lawful marriage.
- Protection from violence and discrimination.
- Develop oneself through the fulfillment of basic needs.
- An education and to benefit from science, technology, art, and culture for the purpose of improving the quality of one's life and for the welfare of the human race.
- Improve oneself through collective struggle for individual rights and to the development of society, nation, and state.
- Recognition, guarantees, protection, and certainty before a just law, and of equal treatment before the law.
- Work and to receive fair and proper remuneration and treatment in employment.
- Obtain equal opportunity in government.
- Citizenship status.
- Freedom of religion.
- Choose and practise one's religion, to choose one's education, employment, citizenship, and place of residence within the state territory.
- Leave the state territory and subsequently return to it.

- Communicate and to obtain information for the purpose of personal and social development .
- Seek, obtain, possess, store, process, and convey information, employing all available types of channel.
- Protection of oneself, family, honour, dignity and property.
- Feel secure against and receive protection from threats made to cause the individual to do or not to do something that the individual is entitled to as a human right.
- Freedom from torture and inhumane or degrading treatment.
- Obtain political asylum from another country.
- Live in physical and spiritual prosperity, to have a home, to enjoy a good and healthy environment, and to obtain medical care.
- Receive special treatment and have the same opportunity and benefit to achieve equality and fairness (for example, as provided for disabled persons under Law No. 8 of 2016 on Persons with Disabilities).
- Social security to develop oneself fully as a dignified human being.
- Own personal property.
- Not to be tried under law with retrospective effect.

The protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government. The protection of human rights and its implementation is further regulated in Law No. 39 of 1999 on Human Rights.

In addition to the protections offered by the Constitution, other legislation guarantees the recognition and respect of other person's rights and freedoms based on morality, religious values, security, and public order in a democratic society, such as:

- Law No. 8 of 2016 on Persons with Disabilities.
- Law No. 21 of 2007 on Elimination of Human Trafficking Crimes.
- Law No. 5 of 1998 on Ratification of Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.
- Law No. 11 of 2005 on Ratification of International Covenant on Economic, Social and Cultural Rights.
- Law No. 19 of 2011 on Ratification of Convention on the Rights of Persons with Disabilities.
- Government Regulation No. 3 of 2002 on Compensation, Restitution, and Rehabilitation on Victim of Grave Human Rights Violation.
- Government Regulation No. 56 of 2010 on Supervisory Procedure to Eliminate Race and Ethnic Discrimination.

Amendment

8. By what means can the constitution be amended?

Only the MPR can amend the Constitution (*Article 3, Constitution*). The procedure for constitutional amendments is set out in Article 37 of the Constitution.

A proposal to amend the articles of the constitution can be included on the agenda of an MPR session if it is backed by at least one third of MPR members. The proposal must be introduced in writing and must clearly state the articles to be amended and the reasons for the amendment. At least two thirds of the MPR members must be present and at least 50% plus one member of the MPR must vote for the amendment.

Legal system

Form

9. What form does your legal system take?

Indonesia implements a mixed legal system with the civil law system as the main legal system adopted from the Dutch colonial law. Indonesia also recognises the customary legal system (*sistem hukum adat*) and religious legal system (Islamic sharia law).

The existence of customary law is recognised under the Constitution, which provides that the state recognises and respects indigenous peoples and their traditional rights and in accordance with community development and the principles of the unitary state of the Republic of Indonesia, which are regulated in law (*Article 18B paragraph (2), Constitution*).

Customary law is also recognised under Law No. 5 of 1960 on the Basic Agrarian Principle on the use of customary rights (*Hak Ulayat*) in rural communities.

Aceh is currently the only province in Indonesia that implements sharia law.

Main sources of law

10. What are the main domestic sources of law?

Article 7 of the 2011 Law stipulates the type and hierarchy of rules in Indonesia. The higher a source appears in the below list, the higher it is in the hierarchy of rules:

- The Constitution.
- MPR's decree.
- Law, or government regulation in lieu of a law.
- Government regulation.
- Presidential regulation.
- Provincial regulation.
- Regency or municipality regulation.

11. To what extent do international sources of law apply?

International laws and treaties are not directly applicable in the domestic sphere in Indonesia. To have effect in Indonesia, international law or treaties must first be enacted in domestic law.

International agreements that have broad and fundamental consequences for the lives of the people related to the financial burden of the state, and/or requiring amendments or formation of laws must be approved by the DPR (*Article 11, paragraph (2), Constitution*).

Court structure and hierarchy

12. What is the general court structure and hierarchy?

In general, Indonesian courts are divided into three tiers:

- District Courts or the court of the first instance in each regional area.
- The High Courts or court of appeal in each province.
- The Supreme Court at the national level as the final court of appeal and the highest judicial institution.

13. To what extent are lower courts bound by the decisions of higher courts?

The Indonesian legal system does not recognise the principle of *stare decisis*, so the lower courts are not bound to follow the decisions of higher courts. However, in some cases, the court can use or cite previous interpretations of an article, law, or regulation.

14. Are there specialist courts for certain legal areas?

The Constitution establishes four judicial institutions under the Supreme Court, which in some cases have authority over other courts (*see below*).

General court. The general court deals with general civil and criminal cases.

Special courts. These have the authority to examine, prosecute and decide certain cases under the authority of the general court, such as the:

- **Industrial Relations Dispute Court:** established by Law No. 13 of 2003 on Employment (as amended by Law No. 11 of 2020 on Job Creation and Law No. 2 of 2004 on Settlement of Industrial Relation Disputes). This court settles all employment-related disputes.
- **Juvenile court:** established under Law No. 11 of 2012 on the Juvenile Court System. Juvenile courts are subject to the authority of the courts of general jurisdiction and hear prosecutions of children aged 12 to 18. All are heard in a closed court to ensure the confidentiality of proceedings and to protect the identity of the child.
- **Commercial court:** authorised to settle disputes related to bankruptcy and Suspension of Debt Payments under Law No. 37 of 2004, all intellectual property rights and Indonesia Deposit Insurance Corporation under Law No. 24 of 2004;

- **Human Rights Court:** established by Law No. 26 of 2000 on Human Rights Courts. These courts only have jurisdiction over grave violations of human rights, such as genocide and crimes against humanity.
- **Corruption Court:** established by Law No. 46 of 2009 on Criminal Corruption Courts. Article 5 of Law No. 46 of 2009 states that the Corruption Court is the only court in Indonesia that has the authority to examine, try, and decide criminal corruption cases.
- **Fishery Court:** established by Law No. 31 of 2004 on Fishery and further as amended by Law No. 45 of 2009, as further regulated by Supreme Court Regulation No. 1 of 2007 on the Fishery Court. The court has the authority to adjudicate crimes including exporting or importing fish without health certification; using illegal means of fishing such as explosives and chemicals; and using fishery tools that do not meet the required standards.

(Law No. 48 of 2009 on Judicial Authority).

State administrative court. This court is established by Law No. 5 of 1986 as amended by Law No. 9 of 2004 and Law No. 51 of 2009 on Administrative Judiciary, the state administrative court has judicial power to decide state administrative disputes due to the issuance of decisions by administrative officials.

Tax Court. The tax court is one of the special courts under the authority of the State Administrative Court. The tax court has the authority to examine any matters related to taxation in Indonesia. It was established by Law No. 14 of 2002 on the Tax Court.

Religious Court. This court is established by Law No. 7 of 1989 on the Court of Religion as amended by Law No. 50 of 2009. The court has the authority to adjudicate matters among Muslims relating to marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and sharia economics. The judicial authority of the Religious Court is carried out by the District Court of Religion located in municipalities and its appellate court, and it is established outside the General Court.

Military Court. The Military Court is established by Law No. 31 of 1997 on the Military Court and has the authority to adjudicate:

- Crimes by a soldier or other persons considered as a soldier or determined by the commander of the army and approved by the minister of justice and human rights.
- Administrative disputes within the army.
- Civil lawsuits related to military crimes.

15. Are quasi-legal authorities commonly used?

Indonesia recognises the existence of quasi-legal authorities or quasi-judicial institutions as a part of judicial power that is independent from the judicial institution. They are regulated by Article 24, paragraph (3) of the Constitution and Law No. 48 of 2009 on Judicial Power.

The quasi-legal authorities established in Indonesia are the:

- **Ombudsman.** Ombudsman is governed by Law No. 37 of 2008 on Ombudsman. The ombudsman has the authority to supervise the administration of public services, as administered by state and public officials, including:
 - services organised by state-owned companies;
 - regional government-owned companies;
 - state-owned legal persons; and
 - private sector entities or persons assigned to administer public services that are funded in whole or in part from the state or regional government budget.
- **Commission for Supervision of Business Competition (KPPU).** KPPU was established to enforce Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition. It aims to prevent business actors from creating monopolies and/or conducting unfair competition.
- **Indonesian Broadcasting Commission (KPI).** KPI is established by Law No. 32 of 2002 on Broadcasting, which aims to regulate and supervise the broadcasting content in the country.
- **Election Supervisory Agency (Bawaslu).** Bawaslu is governed under Law No. 7 of 2017 on General Elections. It aims to organise and supervise general elections in Indonesia.
- **Central Information Commission and Regional Information Commission.** The Information Commission was set up by Law No. 14 of 2008 on Public Information Openness and its implementing regulations. It aims to establish standard technical guidelines for public information services and resolve public information disputes through mediation and/or adjudication.

16. Does the constitution provide for an independent judiciary?

The judiciary is independent and has the power to organise the judicature to enforce law and justice (*Article 24(1), Constitution*).

17. How are members of the judiciary typically appointed?

It is not necessary to have experience as a lawyer to be appointed as a judge.

The following are the general eligibility criteria for appointment as a judge:

- Indonesian citizenship.
- Belief in God (that is, the candidate must have a religion that is recognised by the Government of Indonesia).
- Loyalty to *Pancasila* (the official philosophical foundation of Indonesia), and the Constitution.
- A Bachelor of Laws degree.
- Passed the judicial training course.
- Physically and mentally capable to carry out their duties and obligations.
- Charismatic, honest, fair and well behaved.
- Between 25 and 40 years old for District Court judges, and at least 40 years old for High Court judges.
- Has never been sentenced to prison due to the commission of a crime proven by a final and binding court decision.

(Articles 14(1) and 15(1), Law No. 2 of 1986, amended by Law No. 49 of 2009 on General Judiciary System.)

There are additional eligibility criteria applicable for the appointment of a High Court judge, as follows:

- Has prior experience of at least five years as the Head or Deputy Head of District Court, or 15 years as a District Court judge.
- Passed the examination conducted by the Supreme Court.
- Has never been sanctioned with a temporary suspension due to violations of the code of ethics or code of conduct of judges.

(Article 15(1), Law No. 2 of 1986 as amended by Law No. 49 of 2009 on General Judiciary System.)

To be appointed as a judge, a candidate must register and participate in training, and pass written and oral tests regarding the judge's code of ethics and code of conduct (*Supreme Court regulations and Judicial Commission No. 01/PB/MA/IX/2012, 01/PB/P.KY/09/2012 of 2012*). The training and tests are administered by the judge recruitment committee. After passing the training and tests, the candidate is given a mentor and participates in an internship. After evaluation of the internship, the judge recruitment committee can propose that the candidate should be appointed as a judge by the president.

Litigation (civil and criminal)



18. Do the courts use an adversarial, non-adversarial or other system?

The Indonesian courts use a non-adversarial, inquisitorial system that gives the judge a central position to actively assess the facts presented at court hearing, relevant law, and judgment.

19. Who is responsible for gathering evidence?

Civil cases

The parties to the proceedings are responsible for gathering and submitting evidence to the court to support their claims or arguments (*Article 1865, Civil Code*).

Criminal cases

The investigators are police officers or civil officials such as the Corruption Eradication Commission's investigators who have legal authority to conduct investigations (*Article 1 paragraph (1) read in conjunction with Article 6 paragraph (1), Law No. 8 of 1981 on Criminal Procedure*) are responsible for gathering the evidence for trial (*Article 8 paragraph (3)(b), Law No. 8 1981 concerning Criminal Procedure*).

20. Is evidence independently examined before a trial?

In both civil and criminal cases, evidence is not independently examined before trial. All types of evidence are examined during the hearing.

21. Are trials/hearings open to the public?

All trials are open to the public unless otherwise stated by the law (*Article 13, paragraph (1), Law No. 48 of 2009 on Judiciary Power*).

Examples of closed hearings are:

- Cases concerning morals, or where the accused is a minor (*Article 153, paragraph (3), Criminal Procedural Law*). In principle, all cases concerning minors are closed to the public (*Article 8, paragraph (1) and (2), Law No. 3 of 1997 on Juvenile Court*).
- Cases concerning public order or state security, which can be declared closed to the public by judges (*Article 70 paragraph (2), Law No. 5 of 1986 l amended by Law No. 51 of 2009 on State Administrative Court*).
- Divorce hearings in the Religious Court (*Article 80, paragraph (2), Law No. 7 of 1989 amended by Law No. 50 of 2009 on Religious Court*).
- Cases concerning morality, military or state secrets (*Article 141, paragraphs (2) and (3), Law No. 31 of 1997 on Military Court*).

22. Are reporting restrictions typically imposed in relation to a trial?

Generally, all types of media are free to report all stages of a trial from pre-trial to post-trial. However, the media is prohibited from reporting content or material of the closed hearing and disclosing sensitive information, such as the identity of minors, victims of sexual offences or any related information that can identify the minor or victim.

23. What is the main function of the trial and who are the main parties to it?

The main function of the trial is to examine, decide and settle civil and criminal cases (*Article 50, General Judiciary System Law*). Trials may include cross-examination of witnesses and experts at the discretion of the judge(s). As the Judges are the main examiners of the witnesses and experts in court trials, the other party is only able to examine the witnesses or experts with permission (*Articles 150, Indonesian Civil Procedural Rules (Het Herziene Indonesisch Reglemen) (HIR) 163 and 178 Rbg (civil cases); Article 164, Indonesian Criminal Procedure Law (criminal cases)*).

The main parties to a criminal trial are a panel of judges, the public prosecutor, the defendant and their legal counsel.

The main parties to civil hearings are a panel of judges, the plaintiff, the defendant and their legal counsel.

24. What is the main role of the judge and counsel in a trial?

Role of judiciary

In criminal cases, the judges proactively examine evidence, interrogate witnesses and issue verdicts.

In civil cases the judges are more passive in the sense that the subject matter which they will examine is principally determined by the parties. The judge examines the case based on arguments and evidence submitted by the parties.

In both criminal and civil cases, the judges acts both as the implementer of the law, but also as a lawmaker (*rechtsvinding*) where there are gaps in the law through their decisions, based on the norms and cultural values in the society.

Role of legal counsel

In criminal cases, the role of legal counsel is to defend the accused in trial by ensuring that the rights of the accused are not violated and that they receive a fair trial.

In civil cases, the legal counsel of the claimant is responsible for raising arguments and submitting evidence to support the claim. The legal counsel for the respondent is responsible for defending the claims raised by the claimant or submitting counterclaims.

25. To what extent are juries used?

Juries are not used in Indonesia.

26. What restrictions exist as to the evidence that can be heard by the court?

Civil cases

The court only recognises the following types of evidence (*Article 164, HIR*):

- Documents.
- Witness statements.
- Presupposition (*Persangkaan* or *vermoeden*) is information derived from the laws, general events or other issues known to the public to clarify other events in the hearings that are currently unclear (*Article 1915*,

Civil Code). The judges can only apply presupposition to settle the case when it is very pertinent, exact, relevant, and corroborates another fact (*Article 173, HIR*).

- Confessions.
- Oaths.

The principle that no one can be a witness in their own cause (*nemo in propria causa testis esse debet*) applies to witness statements. Further, no testimony can be heard from (*Article 145, HIR*):

- Family related by blood, or relatives by marriage.
- The spouse or ex-spouse of one of the parties.
- Children of less than 15 years old.
- A person suffering from a mental illness.

Witnesses must provide information on how they know what they claim to know. A witness' opinion or presumption is not acceptable witness testimony.

In addition, digital evidence has also been recognised as evidence in civil case proceedings (*Article 5, paragraph (1), Law No. 11 of 2008, amended by Law 19 of 2016 on Electronic Information and Transaction*).

Criminal cases

The court only accepts the following types of evidence (*Article 184, Criminal Procedural Law*):

- Witness testimony.
- Expert witness testimony.
- Documents.
- Hints or indications (*Petunjuk*). These are acts, events or situations that, because of their occurrence with each other, or with the criminal act itself, indicate the occurrence of a criminal act. These indications can only be obtained from the testimony of a witness, a letter, or a statement by a defendant.
- Statements by the accused.

Witness testimony cannot be heard from the following people:

- Family related by blood or kinship directly to the third degree (ascendants or descendants) to the accused or to someone who is also accused.
- A sibling of the accused or of someone also accused, a sibling of the mother or sibling of the father, and those who are related by marriage and the children of siblings of the accused to the third degree.
- The husband or wife of the accused or of someone who is also accused, even if they are divorced.

Hearsay evidence is inadmissible in criminal courts, as Article 185 of the Criminal Procedural Law states that witness testimony should not include information learned from another party (hearsay evidence) (*testimonium de auditu*).

In addition, digital evidence has also been recognised as evidence in criminal case proceedings (*see above, Civil cases*).

27. Which party has the burden of proof in a trial and at what standard is this burden met?

Civil cases

The burden of proof in civil cases is on those who claim or assert a right or assert a fact to justify the right or deny another's right (*Article 1865, Civil Code; Article 163, HIR*). It is further elaborated in *Supreme Court Case No. 3164 K/Pdt/1983* that the applicant will have the burden of proof. The HIR does not clearly regulate the standard of proof in civil cases, but in practice the judge will assess the validity of all evidence presented by the parties.

Criminal cases

The burden of proof is on the prosecutor to prove that the defendant is guilty beyond reasonable doubt (*Article 66, Criminal Procedural Law*) except for corruption trials and money laundering cases that apply the reversal burden of proof which imposes the accused to prove the defendant assets are not bought/received from the proceeds of a criminal offence (*Article 37, Law No. 31 of 1999 amended by Law No. 20 of 2001 on Corruption*).

28. What verdicts can the court give?

Civil law

There are three types of decision (*Article 185 paragraph (1), HIR*):

- **Condemnatoir.** A verdict requiring the losing party to meet performance or pay a certain amount of money. A *condemnatoir* decision gives the right to an executorial ruling, which means it is binding and can be enforced.
- **Constitutive.** A decision which negates or nullifies a certain legal condition or produces a new legal condition. An example is a decision that declares a person bankrupt.
- **Declaratoir.** A decision declaring what is lawful or affecting rights. For example, a decision stating that the defendant or the plaintiff is entitled to the goods in dispute.

Criminal law

Judges can issue the verdicts that the defendant is acquitted, that the case is dismissed, or that the defendant is guilty (*Article 191, Criminal Procedure Law*).

29. What range of penalties/relief can the court order upon a verdict?

Civil law

In civil cases, the range of penalties or reliefs available is not regulated by laws and regulations. However, Article 1365 of the Civil Code states that "*every illegal act, which causes damage to third party and punish the party at fault to pay the damage caused.*"

The type of damages or compensation that must be paid by the party at fault to the injured party are (*Article 1243, Civil Code*):

- Costs, that is, expenses actually incurred.
- Damages sustained as a direct and immediate result of the default or the action of the party at fault.
- Lost profits that were foreseeable as a result of the default or the action of the party at fault.
- Statutory interest of 6% annually or interest as agreed by both parties.

If requested by the parties to the case, the court can determine and calculate the number of damages or compensation based on principle of what is fair and just (*ex aequo et bono*). Judges usually award compensation to put the injured party in the position they would have been in had no unlawful act occurred.

Criminal law

Sentences that can be imposed in criminal cases are categorised as:

- Basic punishment:
 - capital punishment including the death penalty;
 - imprisonment ranging from short periods of imprisonment up to life-time imprisonment;
 - fines.
- Additional punishment:
 - deprivation of certain rights (for example to occupy certain positions or rights over child custody);

- forfeiture of specific property.

Contributor profiles

Hanim Hamzah, Senior Foreign Counsel

Roosdiono & Partners (a member of ZICOLaw)

T +62 21 2978 3888

F +62 21 2978 3800

E hanim.hamzah@zicolaw.com

W www.zicolaw.com

Professional qualifications. Barrister-at-Law of the Lincoln's Inn, United Kingdom; Advocate and Solicitor of the High Court of Malaya; Licensed Indonesian Foreign Counsel of the Indonesian Advokat Association (PERADI)

Areas of practice. Mergers and acquisitions; corporate and commercial; resources and projects; banking and Islamic finance.

Languages. English, Malay, Indonesian, Japanese (conversational)

Anggi Yusari

Roosdiono & Partners (a member of ZICO|Law)/ZICOLaw Indonesia

T +62 21 2978 3888

F +62 21 2978 3800

E anggi.yusari@zicolaw.com

W www.zicolaw.co.id

Professional qualifications. Bachelor of Law, University of Indonesia; Licensed Advocate.

Areas of practice. Resources and projects; corporate and commercial, foreign direct investments, M&As.

Agnesya Munita Narang

Roosdiono & Partners (a member of ZICO|Law)/ZICOLaw Indonesia

T +62 21 2978 3888

F +62 21 2978 3800

E agnesya.narang@zicolaw.com

W www.zicolaw.co.id

Professional qualifications. Bachelor of Law, University of Indonesia; Master of International Trade and Commerce Law ,Macquarie University; Licensed Advocate

Areas of practice. Dispute resolution, corporate commercial, arbitration, bankruptcy and employment.

END OF DOCUMENT