



ARMA Update: 15 May 2023

Judiciary Summary of Supreme Court Chamber Plenary Meeting 2022

General Overview

For practitioners, there are some prevailing laws and regulations regarding court procedures as well as the specific subject of laws that may need to be updated or at least to be interpreted comprehensively, and if there is no effort to update such laws, it may cause an ineffective court proceedings. To resolve this, the Head of the Supreme Court of the Republic of Indonesia issued the Head of Supreme Court Circular Letter No. 1 of 2022 regarding the Enforcement of the Supreme Court Chamber Plenary Meeting Summary as a Guideline for Performing Tasks for the Court, as a legal basis to establish the Judiciary Summary of Supreme Court Chamber Plenary Meeting of 2022 (“**Judiciary Summary of Supreme Court 2022**”), in which the Supreme Court judges of each Chamber have set out the guidelines for judges in Indonesia to be able to conduct more efficient and adaptive court proceedings.

To find out more regarding the recent developments, please find our ARMA Update which further discusses this matter ([here](#)).

Combining Breach of Contract and Tort in Civil Lawsuit

In Indonesian Civil Court proceedings, the plaintiff in a civil proceedings frequently conducts their civil lawsuit based on Breach of Contract (*wanprestasi*) and then asked the judges in charge of the dispute to declare that the defendant has performed Tort (*perbuatan melawan hukum*) to the contract. For years the said practice has arisen many debates regarding its legality and effectiveness, regardless there are no violations of such practice to the Indonesian Civil Law.

Through the Judiciary Summary of Supreme Court 2022, the Civil Chamber Judges have approved the practice of combining the Breach of Contract along with Tort into one lawsuit provided:

- (i) The Civil Chamber Judges emphasized in the event that explanation section of legal history between parties in a lawsuit highlighted the Breach of Contract, yet one party who arranged those may also input Tort in its lawsuit, thus it will not be considered obscure.¹
- (ii) if the lawsuit combined the Breach of Contract and Tort is accepted by the judges in charge of the dispute, as well as the lawsuit may request for non-material compensation or any compensation as a consequence of the declaration of Tort, it must be rejected by the judges in charge of the dispute.²

¹ Article 1 (a) of Judiciary Summary of Supreme Court Chamber Plenary Meeting 2022

² Article 1 (b) of Judiciary Summary of Supreme Court Chamber Plenary Meeting 2022



Debt of Suspension Payment for Cooperative (*Koperasi*)

The Special Civil Chambers have affirmed that the Application of Debt of Suspension Payment for a Cooperative (*Koperasi*) entity must be submitted through the Ministry of Cooperative and Small Medium Enterprises.³ On the other hand, the Application of Debt of Suspension Payment for the Cooperative that runs microfinance institutions businesses, in which its licenses were granted by the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”), as such must be submitted by OJK⁴.

Company Director is not an Employee

The Supreme Court Industrial Relations Chambers have reaffirmed the differences between an employee and a Director in a Company, as previously such differences are implicitly stipulated in the Law No. 13 of 2003 regarding Employment as lastly amended by Law No.11 of 2020 regarding Job Creation (“**Employment Law**”). The Employment Law defined an employee as any person who works and receives wages or compensation in another form⁵, while Director can be classified as an entrepreneur that independently managed a company owned by another person/entity⁶.

As soon as employees being appointed as directors in the same company through a general meeting of shareholders, their employment relationship has terminated. Therefore, such employee is entitled to termination of employment benefits calculated since the existence of previous employment relationship and the last wage is the wage prior being appointed as a director of the company.⁷

ARMA Law Commentary:

In regard with the enforcement of regulation and laws, the role of the judiciary institution to give its interpretation will be beneficial as it shall clarify the unclear and ambiguity contained in any regulation and laws. The judiciary institution shall build their interpretation based on the actual court proceedings, thus any interpretation such as the Judiciary Summary of Supreme Court 2022 would be an ideal reference for practitioners.

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³ Article 2 (a) (1) of Judiciary Summary of Supreme Court Chamber Plenary Meeting 2022

⁴ Article 2 (a) (2) of Judiciary Summary of Supreme Court Chamber Plenary Meeting 2022

⁵ Article 1 (3) of Employment Law

⁶ Article 1 (5) of Employment Law

⁷ Article 2 (b) of Judiciary Summary of Supreme Court Chamber Plenary Meeting 2022



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