

Fair play

Written by Judy Tjh

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A while back, I arbitrated a dispute over mining concessions between an Indonesian company and their foreign counterpart. The foreign firm made major investments to get the concessions. And then after a few years decided to cancel the transaction and pull out of Indonesia. They filed an arbitration case to reclaim their investment. The Indonesian company, however, blamed the claimant for terminating the contract due to their failure to understand the country's business culture. Inevitably, all permits were approved, and the concessionaires could start operations. All that was required was patience and understanding.

In another instance, a mining company that had been operating in eastern Indonesia for more than 40 years was struggling to renew its operating licence due to a change in the mining law and the extension was not granted despite a principle agreement to extend authorized by the government. Some major issues were still pending. Including the divestment of majority shares and establishment of a dispute mechanism. Negotiations took a great deal of time and although a principle agreement was eventually reached, the details were far from clear. Divestment, for instance, is potentially a serious issue if there are questions to be raised about the sort of valuation method that was used? A dispute over valuation could end up in a court of arbitration.

Many well-known trademarks are occasionally subject to bad faith registrations filed by local companies in the Indonesian trademark office. Of course, they are not entirely the same, as the similarities are typically crafted in a subtle way. Although those who are familiar with the well-known trademark would easily spot any intentional similarities and bad-faith red flags. The motivation behind bad faith registrations of well-known trademarks is simple and straightforward: to sell them back to the legitimate owners once they enter the Indonesian market. It has happened before and unfortunately it is still happening to this very day.

In this kind of situation the trademark office, among other agents. Should be held accountable for their approvals of bad faith registrations. In addition, we also need to keep supporting efforts to curb corruption—a recurring issue in the country—which in many cases, is behind most of questionable and problematic government approvals or decisions.

What problems are we talking about? We are talking about the transition from pre-modern state into a modern state, where a clean and healthy government is the norm. In the case of

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Indonesia, it is indeed conceivable to argue that real change and reform are evolving gradually. The rule of law is being improved, and through this the legal institutions are being enhanced. A friendly business climate has always been the long-term objective; however, one has to be realistic and see that the drastic changes needed will take time to be implemented successfully.

The central government is still in the process of diluting its power to the provinces and regencies as part of its decentralisation programme, and this is happening in spite of problems faced by the regions in terms of resources and infrastructure. Foreign investors need to be aware but not discouraged. After all, Indonesia is a rich country with growing purchasing power among the consumer class. Please take into consideration that over time, the deeper integration of the ASEAN economies will turn the region into one of the most attractive places to do business.

Let there be no mistake that we are not condoning infringement of law or breach of contract. We do not accept corruption and inefficiency, and refuse to ever perceive it as an expression of local culture. At the end of the day, our primary objective is to make Indonesia the most attractive business destination in the region. Therefore, all those unfair business practices, infringements, breaches of contract, abuses of power, and instances of corruption and collusion must not be considered normal, let alone the "new normal".

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