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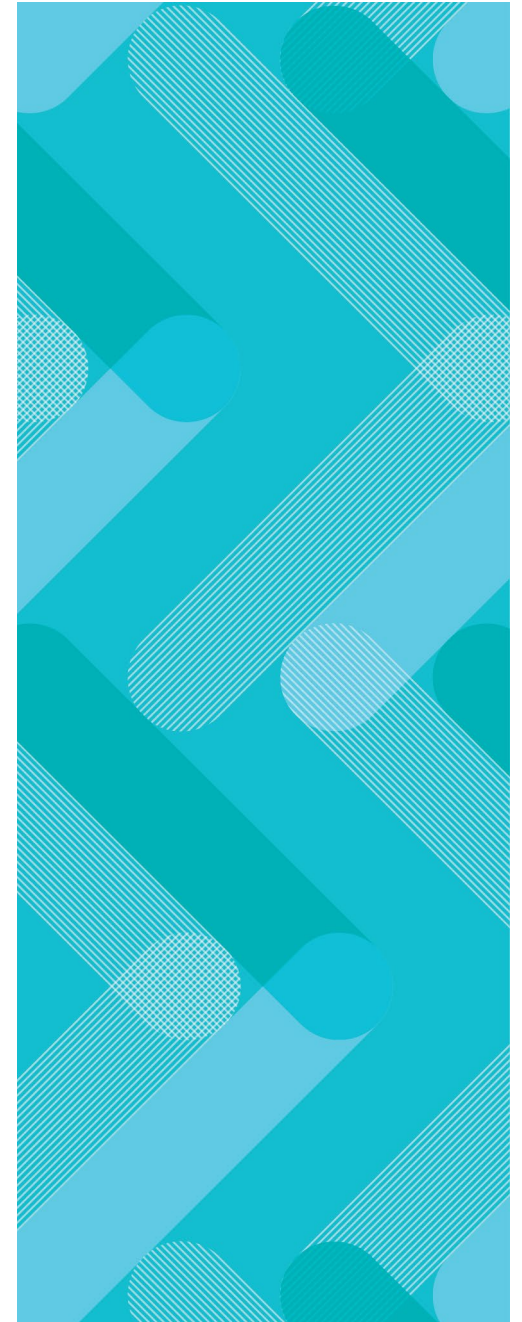
# Contemporary Legal Knowledge and Practice

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# 1. Basis of Jurisdiction – Indonesian Law

- In the Indonesian legal system, there are two kinds of jurisdiction: absolute jurisdiction and relative jurisdiction.

## Absolute Competence

- Court's authority to decide on case based on subject matter.

## Relative Competence

- Dependent on geographical location and proximity / registration

# 1. Basis of Jurisdiction – Indonesian Law

**Article 118(1)** Herzien Inlandsch Reglement ("HIR"). *"Civil suits, which in the first instance fall under the jurisdiction of the district court, shall be brought by a writ of demand signed by the plaintiff or by his representative in accordance with Article 123, to the president of the district court in whose jurisdiction the defendant has his domicile or, if his domicile is not known, his actual residence."*

*"The court authorised to hear a case is the District Court where the **defendant** resides."*

# 1. Basis of Jurisdiction – Indonesian Law

- The Defendant can however file **an exception to this competence**.
- This objection must be decided first before the judge rules on the merits of the case.

*If the dispute is a matter that does not fall within the jurisdiction of the district court, then at any time during the examination of the case, it may be requested that the judge declare himself incompetent and the comptroller shall also recognise it by virtue of his office.*

## Case Study 1

Company incorporated and registered with District Court 1; litigation in relation to land ownership disputes

## Case Study 2

500 employees sue Company C for unpaid wages and breach of employment contract before Indonesia's Industrial Relations Court . Company C is a shareholder of the actual employer, and is incorporated in Singapore.

## Case Study 3

Annuling an international arbitration award before the Central Jakarta District Court.

Indonesian Arbitration Law limits authority of district courts to registration, setting aside and enforcement of international arbitral awards.

# 1. Basis of Jurisdiction – Thai Law

**Section 4 of the Civil Procedural Code.** In civil cases, the Plaintiff generally files a case with the Civil Court within the jurisdiction of which the cause of action arises or the defendant has a domicile.

## Absolute Competence

Thailand has four specialized courts that have jurisdiction over specific types of cases:

- the Central Labour Court,
  - the Central Intellectual Property and International Trade Court,
  - the Central Tax Court, and
  - the Central Bankruptcy Court.
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- These courts were established so that specific issues would be heard by career judges with the appropriate background and expertise. They are all Courts of the First Instance, and most appeals go directly to the Supreme Court. All the Specialized Courts have jurisdiction throughout the entire Kingdom, but most are located in the Central Court in Bangkok, apart from the Labour Court which has eight regional branches.

## 2. Ex Aequo et Bono as a Remedy

### Ex Aequo et Bono in Indonesia

A party may ask to seek relief based on the principle of ex aequo et bono (i.e. justice and fairness, rather than strict legal positions).

#### Article 2

- (1) Judiciary is conducted Peradilan dilakukan "IN THE NAME OF THE JUSTICE OF GOD".
- (2) State judiciary shall apply and enforce law and justice based on Pancasila.
- (3) All judiciary within the territory of the Republic of Indonesia is state judiciary which is regulated by laws.
- (4) Judiciary is conducted simple, quick, and low cost.

#### Article 5

- (1) Judge and constitutional judge must explore, follow, and understand the legal values and sense of justice within society.
- (2) Judge and constitutional court shall have integrity and honorable personality, honest, fair, professional and is experienced in law sector.
- (3) Judge and constitutional court must obey Code of Conduct and Judicial Conduct Guidelines.

#### Article 5

##### Paragraph (1)

This provision is intended, so that judge and constitutional court decision is in accordance with laws and sense of justice in society.

#### Article 10

- (1) Court is prohibited to refuse to examine, prosecute, and decide cases which are submitted under the pretext that law is absence or unclear, but obliged to examine and prosecute it.
- (2) Provision as referred to in paragraph (1) does not close the attempt to settle the civil cases amicably.

## 2. Ex Aequo et Bono as a Remedy

### Ex Aequo et Bono in Indonesia – exceptions in arbitration applying Indonesian law as the substantive law

#### Article 56

- (1) Arbitrator or arbitral tribunal shall render an award based on legal provisions, or based on justice and appropriateness.

#### Article 56

##### Paragraph (1)

Basically, both parties may arrange an agreement to decide that the arbitrator when judging a case must be based on legal provisions or in accordance with justice and appropriateness (ex aequo et bono).

In the event that the arbitrator is given the freedom to render an award based on justice and appropriateness, then laws and regulations may be overridden. In certain conditions however, the mandatory law (dwingende regels) must be implemented and cannot be overridden by the arbitrator.

In the event that the arbitrator is not given the competence to render an award based on justice and appropriateness, then arbitrator may only render an award based on material legal norms as performed by a judge.

### 3. Discovery / Document Production

#### Common Law Position

Common law jurisdictions enable parties in a dispute to have access to factual elements in possession of the other party, or third parties, through discovery or disclosure proceedings

#### Civil Law Position

Conversely, under the civil law, plaintiffs are expected to gather all the necessary evidence for their claim before filing a lawsuit. Although certain disclosure mechanisms are available in civil law jurisdictions, these tend to be very limited. Cases are therefore typically decided on the evidence that has mostly been voluntarily submitted by each party.

# Spotlight on civil jurisdictions

- **No disclosure / discovery process in civil litigation:** a party is responsible for providing evidence to support its case – although the court may also (but rarely) investigate and collect evidence.
- **Limited of “privilege”:** Some protection afforded by the duty imposed on lawyers to keep confidential the following information obtained in the course of their legal professional activities:



State secrets

Trade secrets

Private information  
of the client

- **In-house** lawyers generally not bound by confidentiality obligation

# Whistle-stop tour of APAC

Jurisdiction	Concept of privilege		Privilege re: in-house counsel
	Legal advice	Litigation	
Singapore	✓	✓	✓
Hong Kong	✓	✓	✓
Australia	✓	✓	✓ + hold practicing certificate
India	✓	✓	?
Korea	?	?	?
Japan	✓	✓	✗
China	✗	✗	✗