

ACTIO

ISSUE NO. 8 / OCTOBER 2018

Regulation Of The Supreme Court Of The Republic Of Indonesia Number 3 Of 2018 Concerning Electronic Case Administration

Lawsuit Online Registration



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We, Akasa Cipta Tama (ACT), was established in April 2015 as a response to the demand of highly qualified translators for business, legal, technical, and general documents; as well as interpreters and note takers for meetings, seminars, and conference. Our translators, interpreters and note takers have extensive experiences in their respective fields.

With a comprehensive database of qualified human resources, ACT works to ensure the best results in every project we run. Some of our top personnel have worked for various international events and some of our clients include the Office of the President of the Republic of Indonesia, People's Consultative Assembly, The United Nations, The World Bank, AusAID, USAID, and some prominent law firms in Indonesia.



Please do not hesitate to contact us if you have any question at marketing.akasa@gmail.com.
Looking forward to hearing from you.



“Sports teaches you character, it teaches you to play by the rules, it teaches you to know what it feels like to win and lose, it teaches you about life.”

-Billie Jean King-

Our dearest readers,

Indonesia has just successfully hosted the biggest Asian sports competition, the 18th Asian Games. The two host cities, Jakarta and Palembang, prepared and tidied themselves to welcome all the contingents of the participating countries. What resulted was a bustling and spectacular event, as if to declare to the world that “Indonesia Can”.

The 2018 Asian Games inspired us at Actio to present the topic of disputes in the field of sports. One of the most prevalent types of disputes concern the transfer of athletes in violation of procedure or an objection from the athlete themselves because there is no consent on their part to be transferred.

The 8th edition of ACTIO also discusses the theme of resolving disputes in the field of sports through 2 (two) arbitration institutions that handle sports disputes, namely the National Sports Arbitration Board (“BAORI”) and the Indonesian Sports Arbitration Agency (“BAKI”).

In addition to the topic of sports disputes, the 8th edition of ACTIO also addresses topics regarding online claim registration, E-Court applications regulated by Supreme Court Regulation No.3 of 2018, and a review of tax court decisions related to the elimination of uncollectible accounts.

Lastly, all of us from ACTIO Team wish our dearest readers happy reading and may it be useful to all of us.

Warmest Regards,

Setyawati Fitri A, S.H., LL.M., FCIArb., FAIADR.

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ACTIO

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LAWSUIT ONLINE REGISTRATION

Since April 4, 2018, registration of a lawsuit in the district court has been done more practically. The Head of the Supreme Court issued Supreme Court Regulation Number 3 of 2018 concerning Case Administration in the Electronic Court ("Supreme Court Regulation No. 3/2018"). Supreme Court Regulation No. 3/2018 regulates electronic case administration services that can be used by registered lawyers and individuals, including the registration process, summons and announcement of court decisions.

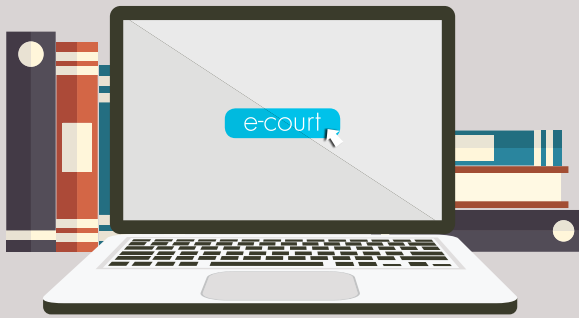
The registration process is performed through the Court Information System provided by the Supreme Court. The Court Information System can vary by court. For example, in the Central Jakarta District Court, the lawsuit can be registered on the website <https://perkara.info>. For prospective applicants who are advocates, they must have: (i) an Identity Card; (ii) Advocate membership card; and (iii) Evidence of jurat of affidavit by the high court. Prospective

registrants will be charged court fees which are electronically estimated. Furthermore, registration will be processed and verified by the registrar of the court if deemed complete.

Summons for the plaintiff and the defendant will also be submitted electronically, for (i) the plaintiff/applicant who registers the claim electronically; and (ii) if the plaintiff/applicant, as well as the defendant/other parties have stated their written consent to be summoned electronically. For legal counsels who want to proceed electronically, it is mandatory to obtain the written approval from the principal.

Supreme Court Regulation No. 3/2018 states that the case information contained in the Court Information System has the same legal force as the case register book, and it is expected that Perma No. 3/2018 is able to facilitate litigants, both in submitting trial documents and obtaining all the latest information regarding the trial. **KBA/FDH/HE**

1. Article 4 paragraph (1) Supreme Court Regulation No. 3/2018; **2.** Article 7 Supreme Court Regulation No. 3/2018; **3.** Article 11 Supreme Court Regulation No. 3/2018; **4.** Article 16 Supreme Court Regulation No. 3/2018; **5.** Article 7 Supreme Court Regulation No. 3/2018 Jo. Article 1 number 2 Supreme Court Regulation No. 3/2018; **6.** Article 4 paragraph (3) Supreme Court Regulation No. 3/2018; **7.** Article 9 Supreme Court Regulation No. 3/2018; **8.** Article 12 paragraph (1) a and b Supreme Court Regulation No. 3/2018; **9.** Article 12 paragraph (1) c Supreme Court Regulation No. 3/2018; **10.** Article 19 paragraph (2) Supreme Court Regulation No. 3/2018.



REGULATION OF THE SUPREME COURT OF THE REPUBLIC OF INDONESIA NUMBER 3 OF 2018 CONCERNING ELECTRONIC CASE ADMINISTRATION

Registration of lawsuit can now be done more easily. Like other developed countries, currently Indonesia also has an e-court application that is made to make it easier for parties to register a lawsuit in court. This was initiated by the Chairman of the Supreme Court of the Republic of Indonesia by issuing Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2018 concerning Electronic Case Administration (“**Supreme Court Regulation No. 3/2018**”). Supreme Court Regulation No. 3/2018 regulates a series of processes for claims/lawsuit registration, response, rebuttal, surrebutal and conclusions, management, submission and storage of civil/religious/military/state administrative documents using an electronic system that applies in each court environment (“**Electronic Administration**”).¹

First, this Electronic Administration service can be used by lawyers and registered individuals.² The registration is done through the Court Information System³ by completing: (i) KTP; (ii) Advocate membership card; and (iii) Evidence of jurat of affidavit by the high court;⁴ for registrants who are advocates. For individual registrants, the procedures and completeness of the documents have not been further regulated in this regulation and will be regulated in the Decree of the Head of the Supreme Court. Prospective applicants will be charged

court fees according to the estimation. If all registration requirements have been fulfilled, the registration will be verified by registrar of the court.

Second, Supreme Court Regulation No. 3/2018 regulates the delivery of the summons, the summons can be delivered electronically for: (i) the plaintiff/applicant who registers the claim electronically; and (ii) the plaintiff/applicant, as well as the defendant/other parties who have stated their written consent to be called electronically.⁵ For legal counsel who want to proceed electronically, it is mandatory to obtain written approval from the principal.⁶ Furthermore, Supreme Court Regulation No. 3/2018 stipulates that all information delivery electronically will be directed to the electronic domicile of the parties, in the form of an electronic mail address or cell phone number that has been verified.⁷

Third, Supreme Court Regulation No. 3/2018 regulates the process of announcing court decisions. At this stage, the court will issue a copy of the decision/determination electronically. to be sent to the parties no later than 14 (fourteen) days after the decision is read or 7 (seven) days after the decision/determination, specifically for the bankruptcy decision and the postponement of the debt settlement obligation.

In this Electronic Administration system, case registration and all the information recording are performed by the registrar of the court in the information system provided by the Supreme Court (“**Court Information System**”).⁸ The registrar of the court no longer need to record all the information manually.⁹ Supreme Court Regulation No. 3/2018 also stipulates that information on cases stated in the Court Information System has the same legal force as the case registration book.¹⁰

Along with the issuance of Supreme Court Regulation No. 3/2018, the parties are expected to follow the Electronic Administration procedures provided by the Supreme Court. The Supreme Court has also issued the Decree of the Chairperson of the Supreme Court of the Republic of Indonesia number 122/KMA/SK/VII/2018 concerning Guidelines for Governance of Registered Users of the Court Information System, for further regulations related to Supreme Court Regulation No. 3/2018. Thus, this new regulations expected to be able to assist and facilitate the disputing parties to deliver and access all information related to the trial process. **KBA/FDH/HE**

1. Article 1 point 5 Supreme Court Regulation No. 3/2018; 2. Article 4 paragraph (1) Supreme Court Regulation No. 3/2018; 3. Article 4 paragraph (4) Supreme Court Regulation No. 3/2018; 4. Article 4 paragraph (3) Supreme Court Regulation No. 3/2018; 5. Article 12 paragraph (1) point a and b Supreme Court Regulation No. 3/2018; 6. Article 12 paragraph (1) point c Supreme Court Regulation No. 3/2018; 7. Article 1 number 3 Supreme Court Regulation No. 3/2018; 8. Article 19 paragraph (1) Supreme Court Regulation No. 3/2018; 9. Article 20 Supreme Court Regulation No. 3/2018; 10. Article 19 paragraph (2) Supreme Court Regulation No. 3/2018.



THE EFFECTIVITY OF BAORI IN THE RESOLUTION OF ATHLETE TRANSFER DISPUTES

In the midst ASIAN GAMES 2018 euphoria in Indonesia, sports disputes become an interesting to discuss. One of the most common disputes in Indonesia is dispute concerning athlete transfer between regions. Disputes on athlete transfers can be defined as disputes that occur as a result of violation of procedures that happened in the process of transfer or rise from the objection coming from the athlete towards the disapproval of the proposed mutation request. In the event of a dispute, the settlement will be resolved through the Indonesian Sports Arbitration Board ("BAORI"). The establishment of BAORI is stipulated in the KONI Articles of Association and is intended to provide a fast, efficient, effective and cost settlement in the event of a sport dispute, which include disputes on athlete transfer. However, the big question is, has BAORI performed its arbitration function to its full potential?

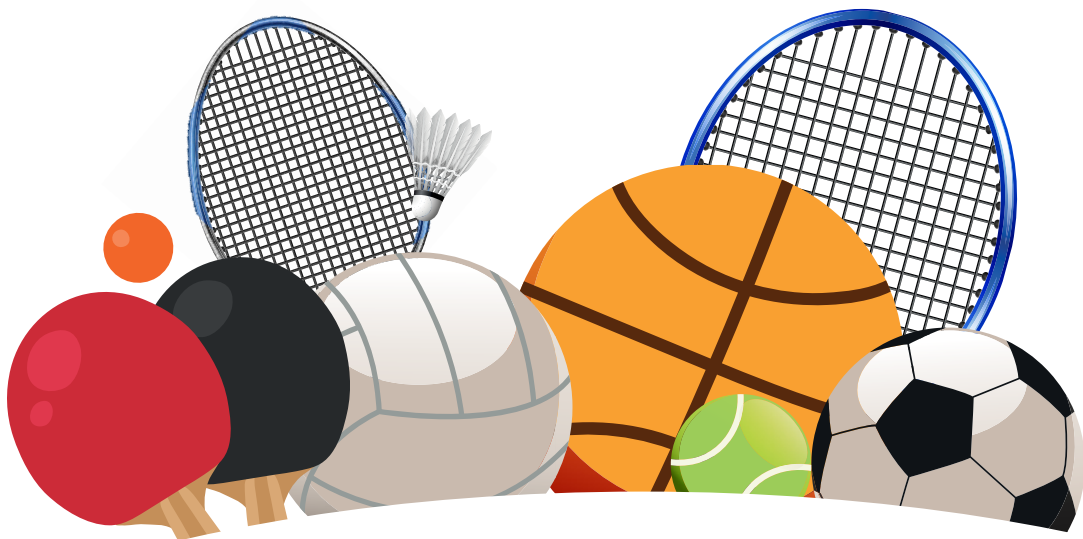
Regarding the effectiveness of BAORI, we need to take a look at the decisions that have been issued by this particular sports arbitration body. One of BAORI's decisions related to the dispute over athlete transfers can be found in Arbitration Decision Number 16 / P.BAORI / VIII / 2014 dated December 23, 2014. In general, this dispute arise due to refusal from the KONI of South Sumatra related to the transfer of a number of fencing athletes under the management of IKASI South Sumatra to East Java. In respond to the rejection, KONI East Java filed a claim to BAORI in order to resolve the dispute through an arbitration process. In its arbitration award, BAORI decided to reject the transfer proposed by South Sumatra fencing athletes and the athletes were still considered as South Sumatra's athletes.



In the next development, KONI East Java as the Respondent subsequently filed an application to cancel of the arbitral award on the ground of deception which supposedly happened in the arbitration process. In response to this cancellation request, the Central Jakarta District Court through Decision No. 64 / PDT.G / ARB / 2015 / PN Jkt.Pst dated March 2, 2016 decided to reject all of the Respondent's requests. Facing the rejection, the Respondent tried to file another appeal against the District Court's decision to maintain the arbitral award to the Supreme Court. However, this appeal was declared to be unsuccessful by Supreme Court in Decision No. 939 B / Pdt.Sus-Arbt / 2016 dated November 24, 2016. The reason is that, based on the provisions of Article 72 paragraph (4) and its explanation, an appeal may only be done against the decision of the District Court that cancels the arbitral award.

Through the chronology of the cases as described above, it's obvious that athlete transfer disputes resolution take a considerable

period of time. The dispute should have been resolved when the arbitration award was handed down in December 2014. However, in reality, this case was only finished by the end of 2016. In this case, the reason for the lengthy process is due to legal recourse taken by the Respondent by requesting for the cancellation of the arbitral award on the grounds of deception. However, if we take a further look, the Applicant's attempt to cancel the arbitration was motivated by Applicants' desire to keep the athletes that are still practicing in East Java until today and expressed their desire to join the East Java KONI. Thus, it can be concluded that the decision of BAORI take the interests of both parties into consideration, causing the Petitioner to continue to take various legal recourses to cancel the decision. Through this dispute, it can be concluded that the role of BAORI still left much to be desired. The arbitration award which are given are considered to be uncomprehensive resulting in the necessity for by the unsatisfied party to take further legal efforts. **WNA/HE**



RESPONDING DUALISM OF ARBITRATION IN SPORTSMANSHIP DISPUTE

The exhibition of ASIAN Games 2018 has left an important note for the development of sports for Indonesia. In ASIAN Games 2018, Indonesia achieved the highest medals in its participation history in ASIAN Games. Indonesia successfully won 98 medals comprised of 31 gold medals, 24 silver medals, and 43 bronze medals. The Indonesian contingent was also recorded as the biggest contingent for ASIAN Games 2018 with 935 athletes, followed by China 859 athletes and Thailand 812 athletes.

Fast-growing in the number of enthusiasts in sports, cannot resist commercialization flow in the relevant sports branch, nowadays, many athletes have managers to manage their career for a brighter future of the relevant athletes. Friction between athletes, sports organization and athletes, or between sport organizations in provincial region will be inevitable. In the end, many frictions become disputes.

In the same time, conventional dispute resolution through judicial institution is deemed unable to accommodate the needs of the sports actors. Sports actors not only need a fast, simple, and low cost, but also meet the sense of justice and equity.

In response to the abovementioned issue, then arbitration will be the best solution. Pursuant to Article 56 Law No. 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution ("Arbitration Law"), panel of arbitration may take an award based on the prevailing law or justice and equity. Therefore, arbitration award more fulfils the sense of justice to the party instead of verdict from judiciary institution which sees a dispute in solely in formal-legal perspective. In addition, arbitration has more definite time to process the dispute since Arbitration Law requires disputes shall be resolved not later than 180 days as of the formation of arbitration panel.

Furthermore, arbitration is not only about how a dispute is resolved, but also by whom such dispute will be resolved. In short, arbitration give a freedom to the disputing parties to choose the most qualified arbitrator to resolve the case. Arbitration is an option to put the right man on the right place.

The use of arbitration center in sports dispute resolution has been accommodated in Article 88 of Law No. 3 Year 2005 concerning National Sportsmanship System which stipulates sportsmanship dispute may be resolved by arbitration center. In Indonesia, there are two arbitration centers having jurisdiction to handle sports dispute namely Indonesian Court Arbitration of Sports/Badan Arbitrase Olahraga Indonesia ("BAORI") and Indonesian Sportsmanship of Arbitration/Arbitrase Keolahragaan Indonesia ("BAKI").

BAORI and BAKI at a Glance

BAORI

BAORI was established in 2006 under Decree No. 187 Year 2006 concerning Establishment of BAORI. Pursuant to Articles of Association of KONI, BAORI is authorized to solve sportsmanship disputes arising from the following violations:

- a. articles of association and memorandum of association;
- b. other regulations as determined by KONI or its member;
- c. dispute on dualism of management;
- d. violation of National Sports Week (as panel of the judge); and
- e. other dispute in relation to the development of sports organization.

Pursuant to Regulation of the Head of BAORI No. 1 Year 2017 concerning Procedural Law of BAORI, requirements to be appointed as BAORI arbitrator are as follows:

- capable to conduct legal action;
- not less than 30 years of age;
- holding minimum bachelor degree at law (S1) and any other equals field of study;
- has participated actively at least 5 years in Indonesian sportsmanship organization or branch sport;
- certified/licensed as arbitrator and mediator issued by authorized institution and recognized by BAORI;
- appointed and confirmed by the Head of BAORI

Therefore, those who may be appoint as BAORI's arbitrator are athletes, former athletes, coaches, and any other party as long as they meet the abovementioned qualifications.

Pursuant to official website of BAORI on 9th October 2018, BAORI has 28 registered arbitrators among other, Laica Marzuki dan Jimly Asshiddiqie.

BAKI

BAKI was established in 2012 under Member Meeting of Indonesian Olympic Committee/ Komite Olahraga Indonesia ("KOI") No. Kep.08/ RA-KOI/I/2012. BAKI is an arbitration center



established by KOI to resolve sports dispute for any branch of sports played in the Olympic in accordance with Olympic Charter Year 2015. BAKI serves as representative of Court of Arbitration for Sport ("CAS"). Pursuant to online searching, there is no rules publication regulating qualification of BAKI's arbitrator, either issued by KOI or BAKI. Pursuant to official website of CAS on 9th October 2018, Indonesia has 2 arbitrators registered at CAS, namely M. Idwan Ganie and Anangga Roosdiono.

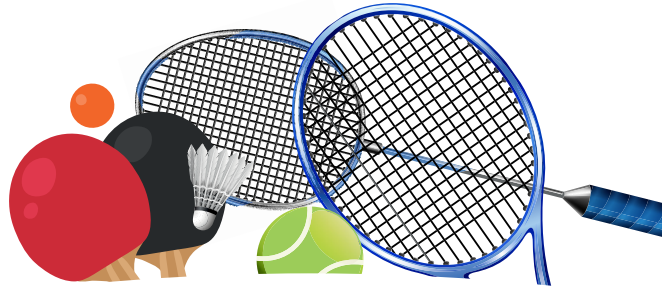
Freedom of the Parties

The disputing parties may choose to bring its dispute to BAKI or BAORI provided that such disputed sports are played in the Olympic and fulfill qualifications as determined by the Head of BAORI. The dualism of arbitration center shall not prejudice the freedom of the parties and legal binding force of arbitration award.

BAORI or BAKI still will examine and resolve any dispute brought to them in accordance with mutual consent of the parties as regulated under arbitration agreement. Even have some similar jurisdiction to solve sports dispute, there is no jurisdiction dispute between BAKI and BAORI.

Sports Arbitration and Commercial Arbitration

Dualism of arbitration center is not only occurred in the field of sportsmanship, but also in the field of commerce. There are two commercial arbitration centers in Indonesia, namely Indonesian Arbitration Center/Badan Arbitrase Nasional Indonesia (BANI) domiciled in Mampang, led by M. Husseyn Umar ("BANI Mampang"), dan BANI domiciled in Sovereign Plaza, led by Anita Kolopaking ("BANI Sovereign"). Different from BAKI and BAORI, both commercial arbitration center claim that its arbitration center is the valid arbitration center under prevailing Indonesian law and regulations.



In relation to the abovementioned dispute, there are verdict contradictory each other granted by the court. Verdict from the Higher Court (PT) of Jakarta No. 315/PDT/2018/PT.DKI dated 8 August 2018, which confirmed verdict of the District Court (PN) of South Jakarta No. 674/Pdt.G/2016/PN.Jkt.Sel stipulates the establishment of BANI Sovereign has been in accordance with the prevailing laws and regulations. However, in Administrative case at the cassation, the Supreme Court stipulates the establishment of BANI Sovereign is invalid and shall be revoked. Up to the issuance of this articles, dispute resolution between BANI Mampang and BANI Sovereign is still on progress.

Regardless the authority issue of BANI Sovereign, in practice there are disputing parties bringing their case to BANI Sovereign or BANI Mampang. Therefore, legal protection and certainty for the parties who has brought its case to both arbitration centers strictly shall be granted.

Quality of Arbitration Center

The quality of arbitration center is not solely determined by how long such arbitration center has been established and completeness of establishment documents. In the end, arbitration center rendering the highest quality award which will prove quality of the relevant arbitration center. An award, not only understanding the laws, but also sense of justice and equity. **SCN/HE**



Q: What is the definition of a Collective Agreement?

A: There is no expressed definition of a Collective Agreement in Law No. 2 of 2004 concerning Industrial Relation Dispute Settlement ("IRDS Law"). However, based on Article 7, Article 13 paragraph 1 and Article 23 paragraph 1 of the IRDS Law, we can conclude that the definition of a Collective Agreement is an agreement which is made by the parties who are in an industrial relations dispute and have found resolution to the dispute. The Articles also provide that a Collective Agreement is binding and becomes a legal obligation which shall be performed by the parties.

Q: Is there any requirement to submit the Collective Agreement to the Industrial Relation Court?

A: In the event the parties resolve the industrial relation dispute through the Collective Agreement, then Article 7, Article 13, and Article 23 of the IRDS Law provides that the Collective Agreement shall be registered by the parties in the Industrial Relation Court or District Court in the territory of the parties who entered into the Collective Agreement. After the registration of the Collective Agreement, parties will obtain a deed of Collective Agreement registration receipt as proof that the Collective Agreement has been registered in the Industrial Relation Court, and that deed of Collective Agreement registration receipt becomes part of the Collective Agreement.

Q: Is there any legal option for Employees, if the Collective Agreement which has already been registered in the Industrial Relation Court is not executed by the Company?

What legal options do Employees have if the Company fails to perform its obligations under the Collective Agreement?

A: In the event that one of the parties fails to perform its obligations under the Collective Agreement, the aggrieved party (in this case the employee) can seek for an execution order from the Industrial Relation Court or District Court in the territory where the parties entered into the Collective Agreement. If the applicant for execution has a different domicile, and not domiciled with the District Court where the Collective Agreement was registered, then the applicant must submit the application for execution to the Industrial Relation Court or District Court in the domicile of the applicant. This Industrial Relation Court will then forward the registration to the Industrial Relation Court which will have the authorization to execute the Collective Agreement.

VCI/HE

A REVIEW OF THE TAX COURT'S DECISIONS RELATED TO THE ELIMINATION OF UNCOLLECTIBLE DEBT

Background

There are several definitions of debt under Indonesian Law.

The definition of debt in Article 1 Number 6 of Act Number 37 of 2004 concerning Bankruptcy and Postponement of Obligation to Pay Debt is an obligation that is stated, or can be stated, in an amount in Indonesian currency or foreign currency, either directly or may be

a contingent debt arising from an agreement or law. It must be satisfied by the debtor and if not paid, gives the creditor the right to obtain satisfaction from the debtor's assets.

The definition of debt in the Minister of Finance Regulation Number: 201 / PMK.06 / 2010 concerning the Quality of Receivables of State Ministries / Institutions and Establishment of Allowance for Uncollectible Debt has the meaning of the amount of money that must be paid to the state ministries / institutions and / or the rights of state ministries / institutions which can be assessed with money as a result of an agreement or other consequences based on the prevailing laws or other legal consequences. In essence, this can be understood that debt is a sum of money that must be paid to creditors by the debtor as a result of an agreement or other legitimate consequences. The Indonesian Language Dictionary defines debt as money which can be borrowed (which can be billed from someone).

Based on the two legal definitions above, there is a reciprocal transactional relationship between the debtor who is the party that owes and has the obligation to pay the creditor. Correspondingly, the creditor has an account receivable and is the party that receives payment for the amount paid by debtor or that can be billed by the creditor to the debtor.

In practice, not all receivables can be billed by creditors to the debtor. This can happen for example because the debtor is bankrupt, and cannot pay or pay off his debts, or is deceased, or because of some other event. When this happens, the receivables changes in status from the assets or income of the creditor into losses and expenses that must be borne by the creditor.



In such event, the creditor must make reasonable efforts to recover the debt. If unsuccessful, the creditor will inevitably need to initiate an Elimination of debt. Elimination of debt means that the loss must be borne by the creditor because the debt cannot be collected. The elimination of uncollectible debt will thus affect the tax liability of the Parties.

Decision

A legal review came before the Court involving such a situation. The Minutes of Tax Court Decisions Number: Put-60174 / PP / M.XIIB / 15/2015, March 16, 2015 concerned the Director General of Taxes (Respondent Appeals) against PT. Carsurin or PT. Geoservices (Appellant), with the subject matter of the dispute being an appeal against the correction of Overseas Income of IDR 10,863,903,456 - (Ten Billion Eight Hundred Sixty-Three Million Nine Hundred Three Thousand Four Hundred and Fifty-Six Rupiah).

The Appellants transacted a sale of coal based on the Contract for Sale and Purchase of Coal Number: RICOH-IN / 0 / COAL / 2004, dated April 6, 2004, The purchasers were is Ricoh Union Co., Ltd., a company domiciled overseas with address 46 Alley 8, Lane 63, Wu-Fong Rd, Hsin Tien City, Taipei, Taiwan.

In 2004, the Appellant exported coal to Ricoh Union Co., Ltd., and issued a commercial invoice and Export Goods Notification. The Appellants reported the income in their Annual Income Tax Form for year 2004. However, Ricoh Union Co., Ltd., did not pay for the transaction. The Appellants made every possible effort to obtain payment for the transaction from the Buyer, but the Buyer failed to make payment for the transaction.

In 2008, the Appellant acknowledged the loss on the transaction at the Annual Corporate Income Tax Year 2008 by removing the debt. However, the tax department did not recognise the Elimination and treated it as income from outside the Applicant's business. It was argued

that the Appellant did not fulfill two cumulative requirements as stipulated in Article 6 paragraph (1) letter h point 2 and point 3 of Regulation Number 36 of 2008 concerning Income Tax, which states:

"... (h). the Debt that are obviously uncollectible with the following conditions:
 (2) Taxpayers must submit a list of the Debt that can be billed to the Directorate General of Taxes; and
 (3) the case has been submitted to the District Court or government agency that handles statesdebt; or there is a written agreement concerning the elimination of accounts receivable / debt relief between the creditor and debtor; or has been published in public or special publications; or an acknowledgment from the debtor that the debt has been remove for a certain amount; "

The Panel of Judges argued that the formal condition for the elimination of uncollectible debt as stipulated in Article 6 paragraph (1) letter h of the Income Tax Regulation in conjunction with Regulation of the Minister of Finance Number: 105 / PMK.03 / 2009 and Regulation of the Minister of Finance Number: 105 / PMK.03 / 2009 has been fulfilled by the Appellant, namely by having uncollectible debts charged as expenses in the commercial income statement in 2008. The debt had also been submitted to the Courts in Taipei, Taipei and the Appellant has also submitted the list of debts that cannot be recovered from the Buyer.

However, even though the Appellant has met the formal requirements for an uncollectible debt, there were 2 (two) formal requirements that were not in accordance with the terms in the Coal Sale and Purchase Agreement Number: RICOH-IN / 0 / COAL / 2004 dated April 6, 2004. The Agreement provided in Article 17 and Article 21, that Parties had agreed that in the event of a dispute to resolve disputes through SIAC (Singapore Institute of Arbitration Center). The agreement also provided that the Agreement was subject to the laws of the State of Singapore;



The Judge found that the Appellant has proven that the Appellant had made billing efforts to recover the export debt from Ricoh Union, Co., Ltd., a company domiciled in Taiwan. However, the Court found that the Appellant has not made any steps to settle the disputes through the SIAC (Singapore Institute of Arbitration Center) as agreed in the contract for sale and purchase of coal No. RICOH-IN / 0 / COAL / 2004 dated April 6, 2004.

Despite this anomaly, the panel of Judges in The Tax Court concluded that the positive correction made by appellee on the loss of uncollectible debt amounting to IDR 10,863,903,456.00 in the 2008 was appropriate and is maintained.

In Indonesian law, the elimination of debt requires that there is clearly no further claims relating to uncollectible debt. This is regulated by Article 6 paragraph 1 letter h Regulation Number 36 of 2008 concerning Income Tax that states: **“the debt that are clearly uncollectible (and fulfilling certain conditions) can be charged as deduction of gross income in calculating taxable income (as deductible expenses)”**. The elimination of debt can thus be calculated as a deduction from gross income as follows:

1. has been charged as a cost in the commercial income statement;
2. Taxpayers must submit a list of receivables that cannot be billed to the Directorate General of Taxes; and
3. the case has been submitted to the District Court or government agency that handles state debts; or
4. there is a written agreement concerning the elimination of accounts receivable / debt relief between the creditor and debtor in question; or has been published in public or special publications; or an acknowledgment from the debtor that the debt has been written off for a certain amount of debt;

In the explanation of Article 6 paragraph (1) letter h of the PPh Regulation, it is explained: “the Debts that are clearly uncollectible can be charged as costs as long as the Taxpayer (in this case the Creditors) has recognized it as a cost in the commercial income report and has tried maximum or final billing effort. ”

The impact of the provisions of Article 6 paragraph (1) letter h point 4 of the Income Tax Regulation above is:

1. When the Debt of the Debtor has been paid off, the provisions of Article 1439 of the Civil Code apply that, “Debt exemption is an agreement stating that the creditor voluntarily frees the debtor from all debt obligations.”
2. The debt exemption has the effect that the debtor gets a profit because the debt is paid off so that it requires the debtor to pay his tax obligations (Article 4 paragraph (1) letter k of the Income Tax Regulation; (This requirement does not apply to the elimination of debt for small debtors)
3. The debt of uncollectible debt of the Creditors are shifted into Costs in the income statement Creditor which becomes a deduction factor for taxable income for Creditors.

From the analysis of the Judgement and regulations, a conclusion can be drawn that to carry out the elimination of uncollectible debt, a Creditor must meet the requirements as stipulated in Article 6 paragraph (1) letter h of the Income Tax Regulation. **EDN/DGM/HE**

PRESIDENT REGULATION NUMBER 95 OF 2017 CONCERNING INCREASE OF NATIONAL SPORTS ACHIEVEMENT

The Asian Games 2018 raised public concern regarding the performance of Indonesian athletes. The Issuance of President Regulation Number 95 of 2017 Concerning Increase of National Sports Achievement ("PERPRES 95/2017") informed citizen on the government program to improve the achievement of Indonesian athletes.

Development of athletes is the responsibility of the Association of Sports and National Paralympic Committee of Indonesia ("NPC") with the program called high performance exercise. Its main concerns are:

- Knowledge and sports technology;
- Preparation of athlete physical performance through power and conditioning programs; and
- A Plan of achievement, clear

timelines and yearly training that combines the elements of coaching including objective conditioning, processes and training phases from every athlete.

In this process by the Sports Associations and NPC, the Minister will act as a supervisor. In addition to conducting supervision, the Minister must also provide a salary and a facility for the athlete while participating in the program.

The Ministry must also, under Article 16 (i) provide a budget (ii) distribute the budget to accomplished athletes and coaches of the accomplished athletes, supporting teams, administration systems and sports organization management and (iii) Conduct technical guidance of the financial administration of the Sports Association and NPC. **MAD/HE**





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