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MAPPING THE INDONESIAN COURT SYSTEM

Part Two, Chapter One: District Court System

The discussion in last week's Indonesian Law Digest ("ILD") on mapping the Indonesian court system, the first series of four ILDs, covered the highest tier courts, the Supreme Court and the Constitutional Court (See ILD No. 324).

This week's ILD will discuss part two of mapping the Indonesian Court System and covers:

a. The District Court System which has it judicial powers rooted in Law No. 2 of 1986 on District Courts, as last amended by Law No. 49 of 2009 ("**Court of General Jurisdiction Law**")[1] ; and
b. The Administrative Court System, established by Law No. 5 of 1986 on Administrative Courts, as last amended by Law No. 51 of 2009.[2]

Although this ILD was initially intended to cover both of these topics, due to the depth of content necessary to sufficiently cover the subject matter, the coverage of the District Court System and Administrative Courts System will be divided into two separate chapters over two weeks. Chapter one will discuss the District Court System, while chapter two, next week's ILD, will cover the Administrative Court System.

DISTRICT COURTS

District Courts are a branch of the Supreme Court with general jurisdiction with jurisdiction to hear both criminal and civil cases.[3]

Jurisdiction

Under the applicable legislation, District Courts (*Pengadilan Negeri*) and the Court of Appeal (*Pengadilan Tinggi*) are classified as courts of general jurisdiction (*Peradilan Umum*). District Courts are established in every city and regency but with jurisdiction limited to the borders of their cities or regencies. Courts of Appeal are established in every provincial capital city with jurisdiction limited to their respective province.[4]

Criminal Jurisdiction

The jurisdiction of Districts Courts to adjudicate criminal cases is not solely regulated under the Court of General Jurisdiction Law, it is also complemented by Law No. 8 of 1981 on Criminal Procedure ("**Criminal**

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[1] Also previously amended by Law No. 8 of 2004
[2] Previously also amended by Law No. 9 of 2004
[3] Art. 3 and 50, Court of General Jurisdiction Law
[4] Art. 4, Court of General Jurisdiction Law

Procedure Law"), referred to by Indonesians by the acronym "KUHAP".

The existence of the Criminal Procedure Law provides technical rules for District Courts if ever there is a dispute over jurisdiction to adjudicate a criminal case between two or more District Courts, Courts of Appeal, and General and Special Jurisdiction Courts.

An example would be if a crime took place in three different cities/regencies (*locus delicti*) in one province thus providing sufficient nexus for a matter to potentially be under the jurisdiction of three different Districts Courts.

In such a scenario, the District Courts involved have the authority to refuse to hear the case or argue they have better jurisdiction than the other courts.[5]

To provide legal certainty, the Court of Appeal will resolve such disputes by deciding which District Court will adjudicate the case.[6]

However, if a crime were to take place in two different provinces, or if there are claims of jurisdiction between a general and special jurisdiction court to adjudicate a criminal case, the Supreme Court will determine which court has jurisdictional to hear the matter.[7]

Additionally the Criminal Procedure Law provides that if a criminal defendant commits a crime overseas and under criminal law principles Indonesia has jurisdiction to adjudicate the case, the Central Jakarta District Court is the first instance court with the sole jurisdiction to hear the case.[8]

PROCEDURAL RULES

Even though District Courts have jurisdiction over both civil and criminal cases, the procedural laws for criminal and civil cases are set out in two separate laws.

Criminal Procedure

Indonesian criminal procedural rules are set out in the Criminal Procedure Law, Law No. 8 of 1981 on Criminal Procedure, along with its implementing regulation, Government Regulation No. 27 of 1983, as amended by Government Regulation No. 58 of 2010 ("**Criminal Procedure Regulation**").

This ILD limits its discussion on criminal procedural laws to court proceedings, and does not cover processes in the investigation and prosecution stages at the Police and Attorney General's Office. Accordingly discussion, commences from the point of the start of an indictment being filed by a Prosecutor at the District Court.[9]

Subpoena

Upon receiving an indictment, the head of a District Court will appoint judges to adjudicate the case. The appointed panel of judges will decide the date of the first hearing, which will be notified to the Prosecutor who will be ordered to subpoena the Defendant and related witnesses to appear at court on the first day of proceedings.[10]

At the first proceeding, the Presiding Judge will inquire as to the Defendant's identity, including his/her full name, birthplace, age, nationality, domicile, religion and occupation.[11]

After the Presiding Judge is satisfied that the information provided is sufficient, he/she will request the Prosecutor to read the indictment.[12]

Once the Prosecutor finishes reading the indictment, the Presiding Judge will ask the Defendant whether s/he understood the indictment. If the Defendant does not fully comprehend the substance of the indictment,

[5] Art. 84 (3) and 150, Criminal Procedure Law
[6] Art. 151 (1), Criminal Procedure Law
[7] Art. 151 (2), Criminal Procedure Law
[8] Art. 86, Criminal Procedure Law

[9] See: Article 143 (1) of the Criminal Procedure Law
[10] Art. 152, Criminal Procedure Law
[11] Art. 155 (1), Criminal Procedure Law
[12] Art. 155 (2) (a), Criminal Procedure Law

the Prosecutor must provide further explanation until the Defendant understands.[13]

Injunction

If the Defendant submits a motion to dismiss the case for reasons that the District Court does not have jurisdiction or the indictment is unreasonable or must be dismissed, the panel of judges will request the Prosecutor to submit an opinion on the said motion.[14]

After the Prosecutor has submitted their opinion, the judges will render an injunction on the merits of the motion.[15]

If the motion is granted, the proceedings will immediately terminate. However, if the motion is not granted or the panel of judges is of the view the motion can only be decided after further examination, the court proceedings will continue onto the examination of witnesses' stage.[16]

Appeals against an injunction are filed with the Court of Appeal. If the motion is reaffirmed, the Court of Appeal must nullify the injunction within fourteen days, and order the authorized District Court to take over the case.[17]

Second Hearing: Witnesses

The second stage of proceedings involves the examination of witnesses. In this stage both the Prosecutor and the Defendant may call witnesses to support their legal arguments. The first witness that must be cross examined is the victim (*saksi korban*). The subsequent order of cross examination of other witnesses is determined by the panel of judges.[18]

Before a witness is examined, the witness must take an oath based on their religion promising to tell the truth and nothing but the truth in his/her testimony. The panel of judges may also require the witness to take another oath after being cross-examined.[19]

Once the witness has taken their oath, the Presiding Judge will first ask preliminary questions on his or her identity, similar to what is asked of the Defendant at the first proceedings. The Presiding Judge will then inquire whether the witness is acquainted with the Defendant, or has marital or kinship relations with them.[20]

After the Presiding Judge has finished with questioning a witness, the Prosecutor and the Defendant will both be granted an equal chance to cross examine the witness. Noteworthy is that the Presiding Judge has the authority to reject questions from the Prosecutor and the Defendant, and that entrapment questions are strictly prohibited.[21]

When the panel of judges, the Prosecutor, and the Defendant have no further questions for the witness, the Presiding Judge will make enquiries as to the Defendant's opinion on the statements provided by the witness(es).[22]

Unless otherwise provided by prevailing laws and regulations, the following persons cannot give testimonies as a witness in a criminal case:[23]

a. Those who are related by blood to the Defendant, up to third degree relatives;[24] and
b. The Defendant's spouse or former spouse(s).

However, such people may still be witness if they voluntarily wish to give testimony. If both the Prosecutor and the Defendant explicitly consent to the Court hearing the testimony of such witness, the

[13] Art. 155 (2) (b), Criminal Procedure Law
[14] Art. 156 (1), Criminal Procedure Law
[15] *Ibid*
[16] Art. 156 (2), Criminal Procedure Law
[17] Art. 156 (4) and (5), Criminal Procedure Law
[18] Art. 159 (1), 160 (1) (a) and (b), and 165 (4), Criminal Procedure Law
[19] Art. 160 (3) and (4), Criminal Procedure Law
[20] Art. 160 (2), Criminal Procedural Law
[21] Art. 165 (2), and 166, Criminal Procedure Law
[22] Art. 164 (1), Criminal Procedure Law
[23] Art. 168, Criminal Procedure Law
[24] Includes the defendant's children, grandchildren, great grandchildren, parents, brothers or sisters, nephews or nieces, grandparents, uncles or aunties, and great grandparents

witness can take an oath before being examined. If consent is not given by the Prosecutor and the Defendant, the testimonies will still be heard. [25] However, this type of testimony is given a different weight to other testimonies given under oath under the criminal evidentiary rules.

After all witnesses have been cross examined, the Defendant will also be called to give his/her testimony. If the Defendant refuses to answer a particular question during these proceedings, the Presiding Judge may suggest that the Defendant answer the questions so that the proceedings can continue.[26]

Expert Witnesses

In addition to hearing witness who provides testimonies for the case, the Prosecutor and the Defendant may also call forth experts, commonly referred to as expert witness, relevant to the case.[27] The same provisions applicable to witnesses as elaborated above also apply to experts witnesses.[28]

Evidence

Evidence (*barang bukti*) that has been acquired by the Prosecutors from the police may be one of the following:[29]

a. Items acquired to commit the criminal act;
b. Items that are directly used to commit the criminal act;
c. Items used to deter the investigation processes of the case;
d. Items specially made to commit criminal acts, and;
e. Other items relevant to the case.

Evidence is submitted to the Court along with the indictment. The Defendant, on the other hand, will be given the opportunity to submit his/her evidence once proceedings commence, if deemed necessary.

The evidence may be presented to the Defendant and the Prosecutor before, during, or after the cross examination proceedings. Evidence that is submitted by the Prosecutor will be asked to be crossed examined with the Defendant, and the judge will ask the Defendant whether he/she is familiar with the evidence presented. If deemed necessary, the Presiding Judge may also show evidence to witnesses.[30]

The items that can be admitted as evidence in criminal case proceedings are:[31]

a. Witness statements;
b. Testimonies of relevant experts;
c. Letters or any other form of writing;
d. Statements by the Defendant; and
e. Clues concluded from witness statements, letters or any other form of writing and statements by the Defendant.

Since 2008, following the enactment of Law No.11 of 2008 on Electronic Transactions and Information, digital and electronic data and information may also be admitted as evidence.

Criminal Charges, Deliberation, Decision

After the adjudicating judges determine that the examination of evidence stage is complete, the Prosecutor will submit the criminal sentence charges (*requisitor*) against the Defendant, consisting of the prescribed criminal sentence under the law.[32]

In response, the Defendant may submit a defense (*pledoi*) orally or in writing. At the discretion of the Prosecutor, the Prosecutor may challenge the Defendant's defense by lodging a written reply (*replik*) if the defense was submitted in writing.

The Defendant may also submit a rejoinder (*duplik*) to challenge the Prosecutor's reply.[33] Depending on the

[25] Art. 169 (1), Criminal Procedure Law
[26] Art. 164 (2), and 175, Criminal Procedure Law
[27] Art. 7 (1) (h), and 65, Criminal Procedure Law
[28] Art. 179 (2), Criminal Procedure Law
[29] Art. 39 (1), and 181 (1), Criminal Procedure Law
[30] Art. 181 (1) and (2), Criminal Procedure Law
[31] Art. 184 (1), Criminal Procedure Law
[32] Art. 182 (1) (a), Criminal Procedure Law
[33] Art. 182 (1) (b), Criminal Procedure Law

complexity of the case, not all Defendants submit a written defense.

Upon receiving the Defendant's rejoinder, if any, the Presiding Judge will officially close the case examination proceedings[34] and commence deliberations in order to make a decision based on the indictment, evidence presented, and testimonies. At this stage every person that is the court room will be asked to leave. [35]

Upon reaching a majority vote on a decision (not unanimous), the panel of judges will render and announce the decision on the same or a later day. The Prosecutor and the Defendant will be notified of the decision.[36]

The decision rendered by the panel of judges may result in the following outcomes:[37]

a. The criminal act allegedly committed by the Defendant was not proven, and therefore the Defendant is acquitted of all charges;
b. The actions conducted by the Defendant was proven but does not constitute a criminal act, and therefore the Defendant is declared free of all charges;
c. The crimes committed by the Defendant are proven, resulting in a decision to convict the Defendant based on the criminal charges.

Pretrial

Pretrial matters, different to the standard proceedings as depicted above, are motions heard by a Court on procedural matters as depicted below:[38]

Matter	Applicant
Lawfulness of arrests	The implicated Defendant or their families or representatives
Lawfulness of prosecution or investigation terminations	Investigators, public prosecutors or concerned third parties
Compensation or rehabilitation, or both, for individuals implicated in a criminal case that is terminated at the investigation or prosecution stage	The respective suspect or third parties with relevant interests

A pretrial application is filed with the head of a District Court, who will then appoint a single judge to adjudicate the pretrial proceedings. The appointed judge will determine the date of the first pretrial proceeding within three days of receiving the pretrial petition.[39]

During the pretrial proceedings the single judge will consider arguments from the applicant and relevant officials.[40]

The appointed judge must make a decision within seven days of the first pretrial proceeding.[41]

In the event that a single judge does not render a decision, and the criminal case related to the pretrial case has commenced examinations in the principal proceedings, the pretrial proceeding terminate effective immediately.[42]

A pretrial decision cannot be appealed except for pretrial decisions over the lawfulness of investigation or prosecution terminations, which are permitted to be reexamined and decided by the Court of Appeal.[43]

[34] Art. 182 (2), Criminal Procedure Law
[35] Art. 182 (3), Criminal Procedure Law
[36] Art. 182 (8), Criminal Procedure Law
[37] Art. 191, Criminal Procedure Law
[38] Art. 77, 79, 80, and 81, Criminal Procedure Law
[39] Art. 78 (2), and 82 (1) (a), Criminal Procedure Law
[40] Art. 82 (1) (b), Criminal Procedure Law
[41] Art. 82 (1) (c), Criminal Procedure Law
[42] Art. 82 (1) (d), Criminal Procedure Law
[43] Art. 83, Criminal Procedure Law

Further Legal Actions

In the event that the Prosecutor or the Defendant is not satisfied with a District Court decision (normal proceedings), the law affords an opportunity to take further legal action.

Appeal

Both the Defendant and the Prosecutor to a criminal case can appeal a District Court decision to the Court of Appeal, except if the decision acquits the Defendant of all charges.[44]

The appeal petition must be filed with the Court of Appeal no later than seven days from the date of the decision.[45]

Provided that the Court of Appeal has not yet commenced case proceedings, the Prosecutor and the Defendant or vice versa, may submit an appeal brief (*memori banding*) or a rebuttal against the appeal brief (*kontra memori banding*).[46]

An appeal may be withdrawn by the applicant provided that it is yet to be decided by the Court of Appeal. If an appeal is withdrawn, it cannot be resubmitted.[47]

The examination at the Court of Appeal must be adjudicated by a minimum of three judges who will reexamine official reports[48] from the District Court.[49]

In its decision, the Court of Appeal may decide to reaffirm, alter, or reverse the District Court's decision.[50]

Cassation

The Supreme Court retains jurisdiction to adjudicate cassation petitions for criminal case decisions, provided that the decision did not acquit the defendant.[51] Cassation petitions, as discussed in Part one of this ILD series, are lodged by Defendants or Prosecutors that are not satisfied with the Court of Appeal decision (See ILD No. 324).

Case Review

In the event that the cassation decision is still perceived as unsatisfactory by the Defendant, the discontented party may lodge a case review petition with the Supreme Court.[52] Case reviews were covered in last week's ILD (See ILD No. 324).

Civil Procedure

Indonesia has yet to enact its own civil procedure law. As a consequence, the Dutch colonial civil procedural law *Herziene Indonesische Reglement* ("**HIR**") still applies today based on Article 6 (1) of Emergency Law No. 1 of 1951 on Temporary Measures for Organizing Civil Judiciary Power and Procedures as affirmed by Supreme Court Decision No. 271K/Sip/1956 of 4 December 1957.[53]

Civil Petition

A civil lawsuit may be filed with a District Court located in:

1. Domicile of the defendant. Should there be more than one defendant, the plaintiff may choose one of the defendants' domiciles when filing its lawsuit; [54]
2. Domicile of the plaintiff(s), if the defendant(s) domicile is unknown; [55]
3. Location of the object in dispute; [56] or
4. A specific District Court stated in a contract made between the Plaintiff and the Defendant.[57]

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[44] Art. 67, Criminal Procedure Law
[45] Art. 233 (2), Criminal Procedure Law
[46] Art. 237, Criminal Procedure Law
[47] Art. 235 (1), Criminal Procedure Law
[48] Includes official report of the investigation and court proceedings of the District Court
[49] Art. 238 (1), Criminal Procedure Law
[50] Art. 241 (1), Criminal Procedure Law

[51] Art. 88, and 244, Criminal Procedure Law. For further elaboration on cassation, see: ILD No. 324
[52] Art. 132 (1), Administrative Court Law. For information on case review, see: ILD No. 324
[53] See: http://pn-sleman.go.id/index.php/51-acara-perdata/acara-perdata/137-umum
[54] Art. 118 (1) and (2), HIR
[55] Art. 118 (2) and (3), HIR
[56] Art. 118 (2) and (3), HIR

After registering a lawsuit with the proper District Court, the head of the District Court will determine the date, time, and place of the first hearing. The disputing parties will be summoned to appear before the District Court, through a document called a "*Relaas Panggilan"* (Subpoena). [58] Note that neither the HIR nor related civil procedural regulations specify the timeline for the District Court to send out a subpoena from the date of the registration of a law suit.

In practice under normal conditions, if the disputing parties' domicile is under one District Court's jurisdiction, it will take at least two weeks for the first hearing to take place. However if the disputing parties domiciles are not in the same District Court jurisdiction, the subpoena will be sent through a different District Court, thus requiring an additional two weeks at a minimum. More time is also required if the one of the parties is domiciled in a different province.

In instances where one of the disputing parties is located outside Indonesian territory, the Court will provide a three month period to set the date for the first hearing.

Mediation

If the disputing parties are present on the first trial date, the appointed panel of Judges will not immediately try the case, instead they will first revert the trial to undergo a mediation process.

Mediation procedures are regulated under Article 130 of the HIR, as further regulated by Supreme Court Regulation No. 1 of 2008 on Mediation Procedure in Courts ("**Mediation Regulation**").

A mediation process between disputing parties is only available to cases tried at Religious Affairs Courts and District Courts. Not undergoing a mediation stage will result in the case decision being void by law.[59]

However, it is noteworthy that cases tried in the Special Jurisdiction Courts, which physically take place in District Courts chambers, do not have to undergo mediation as provided by the Mediation Regulation, this includes:[60]

a. Cases handled by Commercial Courts, Industrial Relations Courts,
b. Objections to decisions made by the Consumer Disputes Settlement Agency (*Badan Penyelesaian Sengketa Konsumen*) and the Business Competition Supervisory Competition Agency (*Komisi Pengawas Persaingan Usaha*);

The disputing parties both have the right to jointly select the following persons as their mediator:[61]

a. Judges, whether they be the judges adjudicating their case or other judges of the same District Court;
b. Advocates or law academics;
c. Non-legal professions of relevance to the respective case; and
d. A combination of any of the above.

Persons eligible to act as a mediator may be decided by the disputing parties or the panel of judges.

In practice, if the disputing parties request the panel of judges to decide the mediator, usually a District Court judge will be assigned.

The Mediation Regulation does not provide the exact number of mediators that must mediate a dispute. In practice, usually only one mediator is sufficient to mediate a dispute.

Each District Court, according to a book issued by the Supreme Court on frequently asked questions regarding the Mediation Regulation,[62] must have at least have five certified mediators.

[57] Art. 118 (4), HIR
[58] Art. 121, HIR
[59] Art. 2 (1) *juncto* 1 (13), and Art. 2 (2) and (3), Mediation Regulation

[60] Art. 4, Mediation Regulation
[61] Art. 8 (1), Mediation Regulation
[62] Supreme Court, Japan International Cooperation Agency and Indonesian Institute for Conflict Transformation, "Buku

The disputing parties must come to an agreement on who will act as their mediator within two business days of the first hearing. If a consensus is not reached, the parties must notify the Presiding Judge, in which case a mediator will be appointed by the Presiding Judge.[63]

A mediation process may take as long as 40 business days after the mediator(s) has been determined, and may be extended for another fourteen business days if both parties agree to an extension.[64]

If the disputing parties are unable to agree on a solution within the mediation period, the case will be tried by the appointed panel of judges.[65]

The mediation process may also terminate before the 40 day mediation period if: 1) one of the disputing parties refuses to attend two consecutive mediation meetings; or 2) the mediator(s) forms the view that the case involves third parties that are not present during the mediation process.[66]

Lawsuit, Answer, Reply, Rejoinder

If the mediation process fails to settle the dispute, the case will be tried and the Plaintiff's suit will be read. In response, the Defendant will submit an answer to the suit, incorporating legal arguments such as: the District Court does not have jurisdiction (*kompetensi relatif / absolut*), error in making the Defendant a party to the dispute (*error in persona*), validity of the Power of Attorney, and the like.[67]

In turn the Plaintiff will rebut the Defendant's answers by lodging a document called a reply (*replik*). Finally, the Defendant will lodge a rejoinder (*duplik*) against the Plaintiff's reply. Note that under the European Continental System, legal arguments between the disputing parties are served by the exchange of documents, different to the adversarial system of common law legal jurisdictions.

Counterclaim

A counterclaim (*rekopensi*) is essentially a lawsuit filed against the Plaintiff as part of the same case hearing to the same panel of judges. A counterclaim must be incorporated into the Defendant's reply, and cannot be put forward at any other time during proceedings.[68]

Evidence

In a civil case, the following items are admissible as evidence in a District Court: letters, witness statements, presuppositions and confessions from both disputing parties, and oaths.[69] Similar to the Criminal Procedure Law which is complemented by Law No.11 of 2008 on Electronic Transactions and Information, digital and electronic data or information may also be admitted as evidence in civil cases.

Once all evidence and testimonies have been presented and heard by the Court, all parties are provided the option to submit a final document called a conclusion (*kesimpulan*). This document is a recap of all written arguments made between the disputing parties and what was revealed by the parties in the cross examination and evidence presented. This document can be considered an attempt to convince the panel of judges to decide in favor of a party. Note that a conclusion is not mandatory under the HIR but has become common practice in Indonesian courts.

Decision

Upon reading all the arguments, examining evidence, and hearing witnesses testimonies (if any), the panel of judges must come to a decision. The decision must consider every legal aspect relevant to the suit.

Tanya dan Jawab Peraturan Mahkamah Agung RI No. 01 Tahun 2008 tentang Pelaksanaan Mediasi di Pengadilan," 2008, p. 5

[63] Art. 11 (1),(4) and (5), Mediation Regulation
[64] Art. 13 (3) and (4), Mediation Regulation
[65] Art. 18 (1) and (2), Mediation Regulation
[66] Art. 14, Mediation Regulation
[67] Art. 131, HIR
[68] Art. 132b, HIR
[69] Art. 164, HIR

A decision as provided under the HIR, is prohibited from granting more than what is requested by the plaintiff.[70]

Further Legal Action

If the losing disputing party is not satisfied with a District Court decision, they may file an appeal with the Court of Appeal.[71]

If the Court of Appeal decision is also unsatisfactory to the losing party, the discontented party may continue to file a cassation petition with the Supreme Court.[72]

If the cassation decision of the Supreme Court is found by the discontented party to also be unsatisfactory, they may resort to exhausting all legal venue by filing a case review petition with the Supreme Court.[73]

VERSTEK

The *verstek* decision, is a Dutch term used to indicate that a decision was made without the presence of parties to a dispute. Under the criminal justice system is it referred to as an *in absentia* decision, whereas the civil court system refers to it as a *verstek* decision. This type of decision can be rendered if either the Defendant or Plaintiff fails to appear after being properly summoned. The *verstek* procedure can be found in the District Court System, as well as the Administrative Court System.

The elaboration below is limited to *verstek* procedures at District Courts for criminal and civil cases.

Criminal Case Verstek

In principle, Defendants in criminal cases must attend every court proceeding unless otherwise provided for under prevailing laws and regulations.[74] However, traffic violations and misdemeanors are excluded from this provision.[75]

For traffic violations, the Defendant may appoint an attorney to represent them during proceedings. If the Defendant is not present, the court proceedings will continue as usual, and if the Defendant is absent during the reading of the final decision, the decision will be sent to them.[76]

There are also laws that permit cases to be examined and decided without the presence of the Defendant, such as:

a. Article 79 (1) of Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering;
b. Article 79 of Law No. 31 of 2004 on Fisheries, as amended by Law No. 45 of 2009; and
c. Article 38 (1) of Law No. 31 of 1999 on Corruption Eradication, as amended by Law No. 20 of 2001.

Civil Case Verstek

A *verstek* procedure, or what is commonly referred to as a default decision in common law systems, is applied in civil cases if one the disputing parties fails to attend court proceedings without appointing an attorney and also without providing justifiable reasons for their absence.

Plaintiff Absence

In a civil case, if the Plaintiff fails to attend the court proceedings without a justifiable reason, the panel of judges adjudicating the case may render a *verstek* decision which essentially drops the claims against the Defendant and requires the Plaintiff to pay court fees.[77]

In such cases, the *verstek* decision is final and binding, which means that it cannot be appealed to the Court of Appeal or Supreme Court.[78]

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[70] Art. 178, HIR
[71] Art. 51 (1), Court of General Jurisdiction Law
[72] For further elaboration on cassation, see: ILD No. 324
[73] For information on case review, see: ILD No. 324
[74] Art. 196 (1), HIR
[75] Art. 196 (1), and 213, Criminal Procedure Law, and Supreme Court Circular Letter No. 9 of 1985 on
[76] Art. 213, and 214 (1) and (2), Criminal Procedure Law
[77] Art. 124, HIR
[78] *Ibid*

Defendant Absence

A *verstek* decision is also rendered in a civil lawsuit if the Defendant fails to attend court proceedings without appointing an attorney despite being properly subpoenaed.[79]

Unlike a *verstek* decision in which it is the Plaintiff that is absent, this *verstek* decision may either grant or deny the Plaintiffs prayer for relief.

A *verstek* decision can be challenged by a Defendant within 14 days of receiving notification of the decision. This is done by submitting a *verzet*, a document stating the Defendant's objection to the *verstek* decision. The *verzet* will ultimately nullify the *verstek* decision and the lawsuit will continue to be tired in accordance with the normal civil procedural law.[80]

A *verstek* decision can only be implemented after 14 days from when the notification of the *verstek* decision has been sent to the disputing parties. However, if it is deemed necessary, the *verstek* decision or the Presiding Judge may decide to implement the *verstek* decision earlier than 14 days from the notification of the decision.[81]

[79] Art. 125, HIR
[80] Art. 129, HIR
[81] *Ibid*