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Dispute Resolution

## Supreme Court and Ministry of Foreign Affairs signs MoU Giving Additional Guidance on Judicial Assistance in Overseas Civil Matters

On 20 February 2018, the Supreme Court along with Ministry of Foreign Affairs (Kementerian Luar Negeri / “MoFA”) signed Memorandum of Understanding No. PRJ/HI/102/02/2018/01, No. 01/NK/MA/2/2018 (the “MoU”) which renews the prior existing MoU concerning Judicial Assistance in Civil Matters dated 19 February 2013. The renewal of such MoU is important due to the increasing number of requests from Indonesian courts to send court documents in civil matters (i.e, court summons, notice of decision) to foreign courts and *vice versa*. Points from the MoU that are worth noting are as follows:

- I) Supreme Court Document Verification  
The new MoU provides that because a recipient country may have its own requirements for judicial assistance in civil matters, the documents from the court of first instance shall be first examined and verified by the Supreme Court Registrar before being forwarded to MoFA. Incomplete documents will be returned to the court of first instance.
- II) Standardized Documents  
Document requests and court summons from the Court of First Instance shall follow the format as prescribed in the Cooperation Agreement between Supreme Court and MoFA. The requests are already bilingual (English-Indonesian), therefore the parties only need to fill in the information as prescribed in the standard document. It is also important to note that some recipient countries require official translations for additional documents sent along with the request (i.e, lawsuit, judicial decision).
- III) Time Limit  
During the MoU signing on 20 February 2018, the Head of Supreme Court, Hatta Ali, stated that prior to the new MoU it took two to three months to summon a party domiciled abroad<sup>1</sup> and that it was difficult for the parties to know the status of the request. The new MoU and Cooperation Agreement between Supreme Court and MoFA is silent regarding the maximum time limit for judicial assistance in civil matter requests to foreign courts. However, the establishment of MoFA’s Rogatory Online Monitoring website (“**Rom Website**”) may help the parties track the process of court summons or document requests.
- IV) Fees Shall Be Borne by the Disputing Parties  
Contrary to the previous practice where the disputing parties only paid the fee to send documents from the court to MoFA, the latest MoU requires the disputing parties to pay the fees without the aid of state finances. The disputing parties are required to pay all fees to process the document- from sending letters to overseas parties and the return of documents from overseas to the Indonesian court.

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### **AHP Commentary:**

Although the new MoU provides clear guidelines regarding the mechanism to send court summons and document requests, parties to a dispute should still be aware of remaining loopholes.

Prior to the MoU, parties were required to attach official English translations of the documents, whereas the new MoU requires use of a standardized letter for the parties in bilingual form. However, it is important to note that recipient countries often have their own regulations regarding the format of judicial assistance requests. Therefore, parties to a dispute need to consider not only the Indonesian regulations, but also the regulations of the recipient country in order to ensure document delivery. For example, the Netherlands requires documents to include an official English translation, whereas Japan requires the letter and documents to include the Japanese language translation. Further, Switzerland requires the document to be translated to one of the Swiss official languages such as French, German, Italian or Romansh, depending on the domicile of the citizen or legal entity.

In some recipient countries, failure to translate the documents would cause the documents to be denied and returned to the requesting country. In 2014, Japan returned several letter and document requests to MoFA because they were not translated into Japanese. Accordingly, a disputing party should undertake an analysis of the requirements of the receiving country or seek our assistance in determining the requirements of the recipient country.

Another loophole concerns the uncertainty regarding the time limit of judicial assistance in civil matters. According to Supreme Court Circular Letter No. 2 of 2014, ongoing court proceedings in the first instance should be decided by the judges within five months. Thus, uncertainty concerning the time limit may prolong the ongoing court proceedings. However, with the help of Rom Website technology, parties will be updated in real time regarding the status of the document request.

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1. Aida Mardatillah, "MA Dan Kemenlu Perbarui Pengiriman Surat Rogatori, Ini Poin Perubahannya", Hukumonline.Com, last modified 2018, accessed March 15, 2018, <http://www.hukumonline.com/berita/baca/lt5a8d20a579352/ma-dan-kemenlu-perbarui-pengiriman-surat-rogoratori--ini-poin-perubahannya>.

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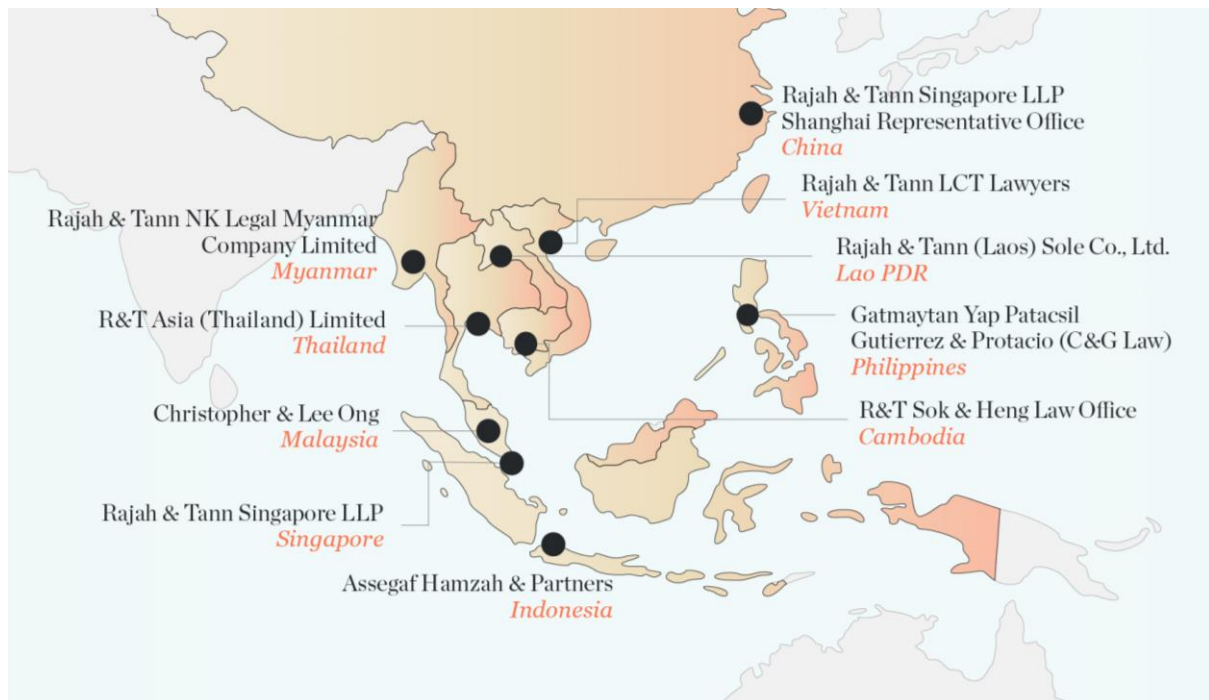
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