



Hearing at the District Court during the COVID-19 Spread

The COVID-19 spread in Indonesia has caused several institutions in Indonesia to make certain adjustments, including in to hearings in district courts.

On 23 March 2020, the Supreme Court issued Circular Letter No.1 of 2020 on Guidance for the Implementation of Work during the Prevention of the Spread of Corona Virus Disease 2019 (COVID-19) within the Supreme Court and the other Courts, as was later amended by Circular Letter No.2 of 2020 dated 3 April 2020 and further amended by Circular Letter No.3 of 2020 dated 20 April 2020 ("**SEMA 1-2020**").

In principle, SEMA 1-2020 provides the basis for Indonesian judges and court civil servants to "Work From Home (WFH)", and to use *e-Court* and *e-Litigation*. Under SEMA-1 2020, the Chairman of the Court is also authorized to apply "working in shifts" for the court's employee/judges, and ensure that the court's activities apply the social distancing measures and the use of the necessary protection equipment (such as face masks and gloves).

The Work From Home policy may result in some judges not being present at the district court to lead the hearings. Therefore, under SEMA 1-2020, in principle:

- (i) hearings of criminal cases, military criminal cases and *jinayat* (Islamic criminal cases) should continue, specifically cases in which the defendant (culprit) is being detained and the detention cannot be extended;
- (ii) judges have the authority to postpone hearings of criminal cases, military criminal cases and *jinayat* (Islamic criminal cases) in which the culprit (defendant) is being detained but his/her detention can be extended until the prevention of COVID-19 measures are lifted;
- (iii) in trials of cases for which the timeframe is limited by law, judges may postpone the trial even if it will exceed the timeframe under the prevailing law, by asking the Court Registrar to state in the Minutes of Hearing the extraordinary event under SEMA 1-2020;
- (iv) In cases in which hearings must be held:
 - a. judges may at their own discretion, decide to postpone the hearings or limit the audience;

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- b. judges may also impose a “safe distance” between the audience (social distancing);
- c. judges may order body temperature checks and prohibit physical contact among the parties;
- d. judges and parties attending hearings may use face masks and medical hand gloves;
- e. parties may also use the e-litigation application to register civil, religious and state administrative cases.

According to the latest amendment to SEMA 1-2020, the Supreme Court’s order to judges and court civil servants to Work From Home will remain in effect until 13 May 2020.

In practice, the civil courts are applying various methods to prevent the spread of COVID-19, including, for example, adjourning hearings for more than 3 weeks (normally, courts will only adjourn hearings for 1 - 2 weeks), and allowing parties to file their submissions (eg Response, Counter-Plea or Rejoinder) by email.

Criminal Proceedings

While adjourning a civil case may be more straightforward (especially in a normal civil case trial when there are no actual legal consequences to prolonging proceedings), adjourning proceedings in a criminal case may not be so straightforward and even raise some concerns. This is especially true if the defendant (culprit) is being detained. How long a defendant may be detained for is limited under the Penal Procedural Law. Therefore, it is not easy for a District Court to postpone hearings “merely” because of the COVID-19 issue.

To anticipate this issue, the Directorate General of Courts of the Supreme Court, the Attorney General for General Criminal Acts and the Directorate General of Penitentiaries of the Ministry of Law and Human Rights (“**MOLHR**”) signed a Memorandum of Agreement between the Supreme Court, the Attorney General and MOLHR dated 13 April 2020 on Hearings through Teleconference. (“**Joint MOU**”). The Joint MOU provides a legal basis for district attorneys and court judges to hold hearings by teleconference. This way, defendants who are being detained in a penitentiary do not have to “physically” attend hearings, as they can attend the hearings session by video teleconference the facilities for which are provided by the penitentiary.

The Joint MOU remain in effect until the Indonesian Government lifts the emergency declared due to the COVID-19 pandemic.

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