

# Improving the Ease of Doing Business in Indonesia: Problems Related to Contract Enforcement in The Court

**Yunani Abiyoso**

Lecture at Faculty of Law, Universitas Indonesia, Indonesia

Email: y.abiyoso@gmail.com

**Abstract:** Under the administration of President Joko Widodo, one of the government's priorities in the economic sector is to improve the ranking of the ease-of-doing business index, with the overall aim is to increase foreign investment. This index is a method established by the World Bank to measure the level of easiness of investment in a country. The measurements are conducted by a method consisting of 10 main indicators including two indicators directly related to the judicial process: enforcing contracts and resolving insolvency. On overall measurement, Indonesia currently ranks 91 (from the target of ranking 40) and ranks 166 regarding the enforcing contract indicator. This indicates and gives an impression that the process of enforcing contracts through the courts in Indonesia is still ineffective and inefficient. Consequently, it may contribute to reduced investment, slow growth, and difficult business environment. Through legal normative research, this paper will discuss the problems faced in the process of contract enforcement in the Indonesian courts in the context and scope of the ease-of-doing business index. This paper will also discuss initiatives taken by the Supreme Court to overcome the problems.

**Keyword:** ease-of-doing business, enforcing contracts, court

## 1. Introduction

The problem of law enforcement in Indonesia has always been a topic of never-ending discussion. More specifically when discussing issues that occur in the judicial process. Some of these problems include the slow process of handling cases, the difficulty of accessing the courts and the poor quality and integrity of the judicial apparatus -including corruption issue, which leads to the low quality of the judicial process itself. Those issues are recognized by the Supreme Court as the basis for making changes and improvements to improve public trust to courts. [1]

Several publications have concluded that there is a relation between law enforcement process and development, especially on economic sector. The corruption that occurs, including in law enforcement processes, has made the investment and business costs higher. [2] Furthermore, in civil justice - particularly about contract disputes, the slower process will increase the risk of contract cancellation, reduced capital investment, lower access to capital and lack of people interest to doing business. [3]

Some financial institutions such as the World Bank, the International Monetary Fund as well as the Asian Development Bank, in some reports estimate Indonesia's economic growth ranging from 5.5% to 6% per annum. This figure is lower than the economic growth index of other Southeast Asian countries such as the Philippines, Vietnam, and even Cambodia which ranges from 6% to 6.9%. One of the things that influenced the economic growth is law enforcement, including the problem of corruption, even though law enforcement agencies have tried to make changes to improve the situation



Regarding that, the World Bank routinely measures the level of ease of doing business in countries all over the world. World Bank, by a certain method of survey, examines the aspects that affect the growth of the business environment in a country and measurement an index or an average score of a country. The Ease of Doing Business Report released by the World Bank in 2017 states Indonesia is ranked 91 out of 190 countries. Although there is an increase from 2016 at rank 106, still Indonesia's rank is lower than other Southeast Asian countries such as Singapore (rank 2), Malaysia (rank 23), Thailand (rank 46), Brunei Darussalam (rank 72), and Vietnam (rank 82). [4]

The Doing Business Report has several quantitative indicators. Indonesia's worst score is the enforcing contract process or business dispute settlement in court. In 2017 Indonesia get ranked 166 in that sector. Indonesia is just better than Cambodia (rank 178) and Myanmar (rank 188) among Southeast Asian nations. The report shows that Indonesia has serious problems in law enforcement process in court, especially business dispute cases.

**Table 1 Indonesia Doing Business 2017 Rank [5]**

No.	Indicator	Rank in 2017
1.	Starting Business	151
2.	Dealing with Construction Permits	116
3.	Registering Property	118
4.	Getting Electricity	49
5.	Paying Taxes	104
6.	Getting Credits	62
7.	Protecting Minority Investors	70
8.	Trading Across Borders	108
9.	Enforcing Contracts	166
10.	Resolving Insolvency	76
11.	Overall	91

The Government and other state institutions are responding seriously to the Report, since Joko Widodo's administration is very serious about any efforts to boost economic growth, including improving the ranking of the ease of doing business index. In 2016, the Government issued several policy packages, one of which is called the Economic Policy Package XII which targets a rating upgrade of up to 40. The Supreme Court and courts are involved in the Policy Package, which issued several new rules to improve the business dispute settlement process in court.

As the government and courts have attempted to make changes, why is the index of contract enforcement still low? Does the new policy or rules enacted not answer the real issue? Regarding those questions, this paper will discuss the problems faced in the process of contract enforcement in the Indonesian courts in the context and scope of the ease-of-doing business index.

## 2. Methodology

This writing is based on normative legal research, which reviewed both primary and secondary law materials, that is regulation, report, book, or other articles. Some of the regulations reviewed include the Supreme Court Regulation Number 2 of 2015 on Procedures for Small Claims Settlement Procedures, Supreme Court Circular Letter Number 2 of 2014 on Court Settlement in Court and Chief Justice Decree Number 214 of 2014 on Case Handling in the Supreme Court. These rules are series of policies enacted by the Supreme Court, which is basically to improve the process of handling cases. Review also conducted on the World Bank's Report of Doing Business 2017 Indonesia Profile Report. This report contains analysis of the improvements and regulations in Indonesia which affect the 10 areas of ease of doing business, that is: starting a business, dealing with construction permits, registering property, getting electricity, paying taxes, getting credits, protecting minority investors, trading across borders, enforcing contracts, and resolving insolvency.

## 3. Findings

The World Bank's Report on Doing Business is conducted through certain survey methods that have been implemented since 2001 to date every year to 190 sample countries. The survey essentially assesses the implementation of regulations that support the development of the business environment, especially on small and medium scale businesses. This report has benefits for many parties where the government can see the business entities' responses to the existing regulation and at the same time can be the foundation for change. As for business entities and the public, this report can be a guide to see and feel the changes that the government strives to improve the business environment. Therefore, the respondents of the survey are regulators and business entities. As mentioned earlier, this survey assesses the 10 areas of ease-of-doing business in which Indonesia is not performing well in enforcing contracts indicator. This indicator measures the time and cost for resolving a standardized commercial dispute through a local first-instance court. This measurement shows that courts are an essential institution for business entities. Efficient and transparent courts encourage business relationships because business entities know that they can rely on the courts if a dispute arises.

The World Bank measured the enforcing contracts indicator based on business dispute case study that involves the breach of a sales contract between 2 domestic business entities. The case study assumes that the dispute is on the quality of goods, the value of dispute is around 80 million rupiahs and the dispute is filed to the local court that has the jurisdiction of a commercial dispute. The 2017 Reports shows that both on Jakarta and Surabaya courts need 460 days (15 months) and 510 days (17 months) to resolve the case since registration phase until enforcement of a judgment. [5]. Analyzing the case study, such case can be settled under the Supreme Court Regulation on Small Claims Settlement Procedures. This regulation has several distinctive features differ from usual civil case procedure: type of case is business disputes valuable no more than 200 million rupiahs (2.5 times income per capita), the parties are domiciled in the same regional jurisdiction, the parties must attend the trial directly but can be accompanied by lawyer and the trial is without any claim of provision, exception, intervention. Under this procedure, the process of case settlement is very simplified and can be quickly completed, thus the case should have been settled in 25 days since the first trial. Recent small claims case at Jakarta District Court had been settled for 22 days. [6]

Although if the case is not resolved under the small claims procedure, the process should not be that long. The court of first instance is bound by the provisions issued by the Supreme Court Circular Letter that the case settlement process at first instance court must be completed within 5 months. The enforcing contracts indicator is also measuring the quality of judicial process index, which measures whether each country has adopted a series of good practices in its court system, including areas: court

structure and proceedings, case management, court automation, and alternative dispute resolution. The score on the quality of judicial processes index is the sum of the scores on these 4 sub-components where Indonesian courts gain score 8 of 18. The 2017 Doing Business Report appreciates the existence of small claims court in Indonesia, which is, in fact, it just a special procedure implemented by the jurisdiction of the general courts. It also appreciates the existence of alternative dispute resolution through court mediation and arbitration. However, the Report declares the absence of a special court adjudicating a commercial case. [5] Although under the Bankruptcy Law, a Commercial Court is established, while its jurisdiction is limited only to bankruptcy cases. The Commercial Court in Indonesia does not examine the case of general trade, which is still being examined under general civil procedure by the District Court.

In court automation area, Indonesian court only gains score 0.5 of 6. The Report shows fact that there is no way initial complaint can be filed electronically through dedicated platform within the court, there is no possibility for the plaintiff to carry out service electronically for filed claims and there is no way court fee can be paid electronically within the court. The only good thing that gives the 0.5 score is the existence of judgment database. The system which is managed by the Supreme Court consists of more than 2.3 million judgments including small claims and civil case judgments.

#### 4. Conclusion

The perceptions showed by the public and especially by the business entities in Doing Business Report indicate that public satisfaction with the business dispute settlement process in court still not quite good. The public still considers that dispute settlement in court is a long and ineffective process. However, in the presence of a small claims procedure, public now can choose simpler yet quicker procedure to resolve business dispute based on the procedure. A business dispute that is quickly completed will increase the growth of the business itself.

Changes that have been performed by the court based on the Supreme Court's policy are considered not enough to meet public expectations. In the digital and internet era today, public prefers activities and transactions that can be done electronically. The existing court's case information system is potentially developed into an integrated case registration system with a payment gateway. This can greatly improve the efficiency and effectiveness of the dispute settlement process. Every change will not immediately be felt by the public, therefore both the government and the Supreme Court should further intensify the socialization of those changes. Moreover, the government may propose to parliament a bill on commercial courts which expands the jurisdiction of the existing commercial courts.

#### 5. References

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