

READY FOR A RESTART

With a contentious presidential election season finally coming to a close, law firms in Indonesia have a lot more certainty about how the next few years will look like from a policy and regulatory perspective. Four managing partners talk about how the year has gone so far, and the strategies they are putting in place for the future.

BY RANAJIT DAM

What are some of the notable trends that you have witnessed so far this year in terms of the quality and quantity of work your work has been doing?

Ary Zulfikar, AZP Legal Consultants: In the last four years, the government has focused on infrastructure projects like toll roads, mass rapid transit, light rail transit, airports, harbours, housing and more. The challenge is for the government, as well as private companies, to find funding for these projects. Our firm has participated in some financing deals for infrastructure projects, such as assisting the government in the issuance of bonds and/or sukuk. We have also participated in toll-road construction projects operated by state-owned enterprises by assisting in structuring the financial scheme.

We believe infrastructure has a significant role in maintaining the sustainability of the Indonesian economy, but on the other hand, it requires huge investments. Accordingly, as capital markets lawyers, we have been advising clients in obtaining such funds, either through equity or debt financing.

Luky Walalangi, Walalangi & Partners: We have seen an increasing number of urban development projects in 2019, where we mostly represented investor in mid- or high-level residential condominium projects. Fintech transactions seem less active compared to 2018.

Arie Armand, AYMP Atelier of Law: There has been a gradual increase in the number of clients in areas like fintech, infrastructure projects and fundraising both through capital market transactions as well as private placement (including

fundraising for fintech and start-up companies conducted by prominent venture capital funds and family offices). There has been a drop-in mining-related work; we still see some mining work, but not of the size and sophistication seen five years ago.

Veronica Situmorang, Situmorang & Partners Lawyers: In this digital age, the trend is towards digital business – either in traditional businesses adding more robust digital platforms, or fully online businesses. We have helped to establish several fintech businesses in both the peer-to-peer lending and e-wallet sectors. We have been seeing relatively less infrastructure-related work as a number of projects were slowed or put on hold pending the results of the election. However, now that Jokowi has been confirmed as the president of Indonesia for another five-year term, we should see some of those projects restarting and new ones being launched.

What developments in the market have had the most impact on your work?

Zulfikar: The current global economic slowdown is for sure having an impact on the Indonesian economy. Some industries have been facing difficulties in having sufficient funds to run their business, or enough liquidity to support their business. We saw in the news recently that one of the largest textile manufacturers in Indonesia defaulted on its debt repayment, even after another company in the same group issued bonds worth \$300 million. In fact, the company's bonds had a demand of more \$1 billion. How could that happen? Were there any issues found during the due diligence process that were ignored by all parties involved in the issuance process? Or did the company itself keep material information from the public? As a result, Indonesia's corporate bond market is facing new challenges; S&P, the debt rating agency, recently cut the credit rating of bond issued by the company and its subsidiary.

This will make capital market transactions more challenging, specifically, especially in terms of reduced investor confidence in the due diligence carried out by the advisor for the benefit of the issuer.



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Walalangi: There were not many regulatory changes impacting our work up to the second quarter of 2019. However, we expect to see more positive developments and progress in infrastructure projects and consumer goods after the inauguration of Jokowi as the president of Indonesia for a second term starting in October.

Armand: Some of our banking and financial institution clients are collaborating with fintech companies – they want to create synergy with

those fintech companies instead of competing with them. Due to the tech boom, some of our private equity clients are also creating additional investment arms to invest in tech and start-up companies - they need to do so as most investment agreements between LPs and GPs only allow investment only in “real” sectors.

Situmorang: The simplification of company establishment and licensing through the One Single Submission (OSS) system was implemented in June

2018. The foreign investment company establishment process used to be very complicated, requiring interaction with several ministries, each with long processing times and uneven service standards. As a result, the process was expensive and time-consuming. Now almost all ministries have handed over this authority to the OSS, which has streamlined the process significantly. Even though the system is still a work in progress and occasionally has trouble, it is much easier, faster and simpler.

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Established in 2004, Ary Zulfikar & Partners, known as AZP Legal Consultants (AZP), specialized in M&A, banking & finance, shariah transactions, capital market, commercial legal dispute and also provides advisory services and assistances to its clients consisting of various groups and organizations, foreign and local investors, as well as individual in solving their legal issues effectively and efficiently

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This puppet represents the character Kresna (Krishna) from the Hindu epic, the Mahabharata performed in the Javanese 'wayang kulit' or leather shadow puppet theatre tradition. He is part god being the incarnation of Wisnu (Visnu). His black face indicates his noble line and the slim, pointed nose and narrow stance reflect his refined character. His forward-looking gaze indicates assertiveness.



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What have been the biggest challenges that Indonesian firms like yours have faced in the past 12 months?

Zulfikar: In the last 12 months, we saw a lot of work-related to debt restructuring, equity financing and asset resolution. As a result, we needed to have a good team working with the financial advisor, appraiser, accountant and lawyer to structure a proper integrated solution for the client to help them achieve their goals. We are also required to provide advice related not only to legal risks,

but also the advice on which transaction would cost less using a different approach.

Walalangi: The instability of the political situation in the second quarter of 2019 resulted in many foreign investors taking a “wait and see” approach. However, at the same time, that period allowed us to visit our clients and focus on various legal articles in international publications.

Armand: The new and continuously improved Online Single Submission (OSS) system is making the licensing

process progressively centralised under one system, but it remains technically vague due to the constant improvements to the OSS system. One of the problems encountered (but this may have already been improved or fixed) was that by law, a license is required for the client’s business activity and such license is issued solely by OSS. However, the OSS system does not have the ability yet to issue such license via the OSS. The only way to overcome this issue is to regularly consult with the OSS institution, which

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Situmorang & Partners specializes in M&A, Banking Finance, Capital Markets, Commercial Litigation and Family Law, as well as providing wide range of legal advisory services for your business needs

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“Clients expect a much quicker turnaround compared to a few years. To meet this demand, our firm is very seriously investing in internal IT infrastructure, so that we can provide the best services to our client in terms of both quality and speed.” — Luky Walalangi, Walalangi & Partners

welcomes a limited number of visitors per day – 300 visitors per day until June 2019, and 200 visitors starting July 2019.

The first quarter of 2019 saw many clients holding back on investment projects, capital markets transactions (IPOs and rights issues) and M&A deals due to the 2019 presidential election. Most of the investors were in “wait and see” mode waiting for the outcome. The situation improved after it there was certainty on who the next president would be. Our firm saw a significant increase in

new assignments and projects, as shown by an increase of around 45 percent in the second quarter in our firm revenue compared to the first quarter.

Situmorang: Our firm, being a boutique business law firm, has faced challenges at both ends of the market. In terms of larger corporate work, as more and more international partnerships are set up between foreign and Indonesian law firms, there is a lot more competition when it comes to bidding for larger engagements. At the other end

of the market, in terms of work related to startups and small firms, there is an increasing number of online-only legal services companies offering services.

As a conventional legal firm, we are keen to give the best quality of services to our client, which cannot be compared with the digital services on offer. However, we cannot and should not ignore the use of technologies that will allow us to provide more efficient services to our clients. These same technologies can also help level the playing

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Devising creative solutions that nonetheless adhere firmly to the framework of the law.

Walalangi & Partners (W&P) offers in-the-know guidance, reliable counsel, and a trustworthy representation for its international and domestic clients. Led by Luky I. Walalangi and Miriam Andreta, W&P consists of experienced and talented 25 lawyers, each with specializing in a particular skill set to ensure that clients are supported by the right expertise for their legal needs in Indonesia. The firm is associated with Nishimura & Asahi, the largest law firm in Japan, in reflection of W&P's high-quality standards.

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field with our larger competitors, as with the assistance of these technologies, fewer lawyers can do more work more efficiently.

We have planned to face the challenges at both ends of the market. Our firm is a co-founder of a start-up online legal service provider for simpler, routine processes. We are also investing heavily in other legal technology that can help streamline our project-based work for our larger clients.

What are some of the key trends you’ve witnessed in how your relationships with clients have evolved in the past few years?

Zulfikar: We shouldn’t just wait for clients to ask us for advice. What the clients need is for us to be proactive in rendering our services, especially in monitoring the market and updating them on any issues related to laws and regulations which may affect the client’s interest. Through this, we assist the client in compliance aspects. For example, we are seeing the rise of fintech and digital transactions. We need to be aware of the legal consequences for clients who wish to enter the fintech space. Providing legal information in advance will provide a clear understanding for the client, so that they can comply with prevailing rules and regulations.

Walalangi: Clients expect a much quicker turnaround compared to a few years. To meet this demand, our firm is very seriously investing in internal IT infrastructure, so that we can provide the best services to our client in terms of both quality and speed.

Armand: More clients are expecting lawyers to understand the transaction from a business or industry perspective,

and thus provide a compatible legal solution, even in including in new fields such as fintech. Even in this sector, the developments and changes are way faster than the regulations being promulgated, therefore, lawyers are expected to be able to provide flexible and adaptive legal solutions and advices.

Quicker responses are both demanded and appreciated by clients, and we are looking into how the advances in technology can help us in this regard.

Situmorang: With greater use of legal technology, the traditional role of lawyers as interpreters of laws and precedents has changed and should change. The real value that lawyers can bring, both now and in the future, lies in the areas of strategic advice and risk assessment. To do this, lawyers have to understand the business context in which their clients operate – not just to understand the law but to understand the “how” and “why” a particular client may take one decision over another. It is not good enough to just take orders and generate documents. We, therefore, spend a lot more time communicating with our clients regularly to help them assess issues, avoid problems and capitalise on opportunities rather than just waiting for their instructions.

All our clients can easily access the laws and regulations online, as well as commentary on those laws and regulations from various sources of widely varying credibility. While great strides are being made in Indonesia to rationalise the regulatory environment, there are still many complexities. Some laws and regulations are very modern, whereas others are outdated and in some cases contradictory. Our clients need us to help interpret what they understand the regulations to be, rather than the old style of

telling them what the regulations are. On many occasions, this can involve risk assessments on what the written laws say and how they have been interpreted in practice.

What are some of the strategies you’ve put in place for business growth in the near term?

Zulfikar: The key to success for our business is knowing the needs of our clients and helping them fulfil their goals. If our client wants to enter the financial business, we must know the direction the financial industry policy is taking, and the current regulations within such industry. We can thus provide advice that is appropriate for the interests of the client. Identifying the risks under the prevailing rules and regulations will help the client in mitigating them.

In some cases, companies do not know whether their business activities carried out so far have complied with the applicable laws and regulations. Therefore, our strategy is to provide in-house legal training on the current regulations as they related to the clients’ business activities.

Walalangi: Our strategy is to always focus on the client’s commercial needs, and to attract and retain top talent within the firm. For the latter, our firm tries to be among the best in the market when it comes to providing support to its lawyers.

Armand: We are proud of our professional but friendly approach to clients, speedy response times, and expertise in new legal fields. Over the next few years, we hope to continue to provide excellent services and maintain good relationship with existing clients; increase marketing of the firm; continue to excel in the expertise that we are known for, such as

Suspension of Payment Termination

Under Indonesian Law no. 37 Year 2004, suspension of payment (PKPU) as court procedure allow and can be used as a way for debtor to avoid and protect itself from bankruptcy and force to have the debt restructured in order for the debtor can still carry on doing its business.

PKPU is divided into 2 stages Temporary PKPU and Permanent PKPU. Temporary PKPU last for 45 days from the date of the PKPU judgment recited. During the period, debtor can proposed for restructuring scheme in the form of composition plan, which may not happen due to the involvement of many creditors which have to be verified in short period of time. In order to give more time for the debtor to provide or revise the composition plan, the debtor can propose for time extension in the form of Permanent PKPU, which can last for maximum 270 days. During the whole PKPU period, debtor cannot be forced to pay its debt and stay period will apply.

For the composition plan or Permanent PKPU to be granted, it has to be approved by the secured and unsecured creditors through voting mechanism with approval vote of more than half of each type of creditors who are present at



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the meeting as long as the creditors represent at least two-thirds of the total outstanding receivables payable to respective secured and unsecured creditors who are present at the meeting.

One or more creditors can request for termination of PKPU as stipulated in Article 255 paragraph 1, if the debtor:

- acts in bad faith in the management of the assets;
- attempts to prejudice its creditor;
- taking management or ownership of the assets without authorization;

- fails to carry out the obligations required by the court or actions requested by the administrator in the interest of the debtor's assets';
- condition makes the continuation of the PKPU infeasible; or
- cannot be expected to fulfill its obligations to creditors on time.

Petition for termination of PKPU must be examined within 10 days after the filing and the decision must be issued within 10 days as from the examination is completed. If the court decides to terminate PKPU then the debtor will be declared bankrupt. In bankruptcy stage, secured creditors can execute the security object and will be given only 2 months after the insolvency condition commenced to sell the object.

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banking and finance, M&A, infrastructure and capital markets. We will also adapt to the recent demand for legal services in newly developed practice areas like technology, fintech, green energy as well as crowdfunding which has a social impact (like microfinancing).

Situmorang: We need to remain flexible and agile and seek to provide additional value to our clients. We cannot afford to just be reactive and continue to do things in the same way even as the world rapidly changes. For our firm, this will mean investing more in technology infrastructure, and most importantly people.

What are your predictions for the next few years for the Indonesia legal market?

Zulfikar: First, there are still opportunities for legal consultants to participate in infrastructure projects which involve the role of the private sector. Second, the development of inclusive financial services, especially the development of fintech will dominate the financial

industry. Legal consultants will have an important role in preparing legal documentation related to financial technology as one of the instruments for the utilisation of public funds for financing any business entity. Third, in relation to the implications of the law on data privacy, legal consultants will also have an opportunity to assist companies in data protection compliance.

Walalangi: With the completion of the presidential election, which sees Joko Widodo as the president for the next five years, we believe the Indonesia legal market will steadily grow and we expect more consistency, particularly concerning real estate, infrastructure and consumers' goods.

Armand: There will be continuous growth in the fintech sector due to the ongoing developments and the market's welcoming attitude towards it, as well as the infrastructure sector due to the re-election of Jokowi. He has a track record of focusing on the development of infrastructure in Indonesia like toll

roads, airport, mass public transportation, and ports.

Situmorang: As in Western countries, there will be greater pressure on larger firms from smaller, more agile firms using technology and new service offerings.

There will be a continuing increase in the legal skills of Indonesian lawyers as many younger Indonesian lawyers undertake at least some of their education and training internationally. With this greater level of skills, these lawyers can not only service international clients who come to do business in Indonesia but also to help Indonesia develop itself as a major centre for businesses to set up and service the ASEAN market as it becomes more integrated.

Now that President Jokowi has been confirmed, Indonesia will continue to be a very good target market for both international and domestic businesses. For lawyers with the right skill set, there will be a lot of work for them to do to help realise the ambitions of the current government. 