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Court

Batavia Air Bankruptcy: A Hit for Consumer Protection

Batavia Air declared bankrupt by Jakarta Commercial Court, through decision No. 77/ Pailit/2012/ PN.Niaga.Jkt.Pst dated 30th January 2013. This came out quite as a shock that obviously hit national airline industry and consumers. In its decision, the court states that Batavia Air has overdue-debt to the International Lease Finance Corporation (IFLC) amounting to US$ 4.68 million that should have been paid Batavia Air no later than 13th December 2012.

According to a commercial-flight expert, an unpaid debt by Batavia Air itself for leasing Airbus A330 and they failed to win flight tender held by government for hajj/pilgrim. Hence, Batavia Air couldn't generate more profit and the management seems losing strategy to maintain the company.

From Batavia bankruptcy case, consumers, as concurrent creditor, are becoming the most aggrieved party. In terms of indemnity and refer to Bankruptcy Law No. 32/2004, consumers is placed under privileged creditor (usually the Tax agency); separatist creditor (usually bank); and preferential creditor (employee and other third parties). Consumers will only get their ticket refund after the bankrupt-company indemnify those three above-mentioned creditors in case if there is still any fund left and or properties for consumers purpose.

It is necessary to have breakthrough policy for the sake of consumer protection, especially from bankruptcy cases in airline industry. For a short-term need, the Ministry of Transportation, as airline industry regulator, should regulates level of airline company healthiness; in par with the one from the banking industry. For long-term need, it is necessary to revise Bankruptcy Law No. 32/2004 and synchronize it to Consumers Law No. 8/1999 and other related-regulations for consumer protection.

Photos: *www.sxc.hu*

Legislation

Urgency of Commissaries Judge in Procedural Law Bill

A drug bust with high profile celebrity by the police and a political party elite arrest by the Corruption Eradication Commission (KPK) were getting public attention on the last few days of the week. Stir of controversies are part of the debacle itself; along with conspiracy theories about the operation by both legal enforcement agencies.

It would be a good moment to point the urgency to revise the Indonesian Procedural Bill (KUHAP), especially the material on commissary judge. The concept is that the commissary judge position is expected to reach the utmost objective truth, to defend the human right and to prevent innocent people become sentenced. The commissary judge will have the authority to examine, even to the physical detail whether the defendants received any form of abuse or misgivings.

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Legal Discourse

Legal Discourses: Out of Court Settlement in Criminal Law

Discourse on out-of-court settlement are sticking up in traffic-offense involving Coordinating Minister for Economic Affairs son, Rasyid Rajasa. In the perspective of criminal law, it would not be justified because the crime allegedly committed by Rasyid Rajasa isn't a plaint, but rather an ordinary accident. The possibility for out-of-court settlement for an accident is case of common; despite legal proceedings to follow the accident aftermath is the professional duty of law-enforcement officers.

However, beyond the issues of criminal procedural law, a discourse on out-of-court settlement is recently quite growing. Last year, Law No. 11/2012 on Juvenile Justice System provides the possibility to use a restorative justice approach for criminal cases involving children. Long before that Law, in 1978, in a case known as the case of "Mrs. Elda", the Court recognized the settlement of a criminal case through "peace mechanism".

Ratio decidendi of similar case used by the Supreme Court in 2006 while adjudicating Adiguna Sutowo in the case No. 107 PK/Pid/2006. Furthermore, in case No. 1644 K/Pid/1988, Supreme Court respected an "*Adat* leader" decision for the offender of the norms of *adat* law. Even more through the Police Chief's Circular Letter No: Pol. B/3022/XII/2009/SDEOPS on the Cases-Handling through Alternative Dispute Resolution, "peace mechanism" might be applicable to several criminal cases.

Photos: *www.sxc.hu*

Executive

Presidential Instruction 2/2013: Not Overcome the Disturbances but Create a New Conflict

While all eyes are on the discussion of National Security Bill (RUU Kamnas), President Susilo Bambang Yudhoyono issued a Presidential Instruction (Inpres) No. 2/2013 about Handling of Security Disturbances, on Monday January 28th 2013. Origin of the issuance of the Presidential Instruction is to enhance effectiveness of conflict resolution, especially conflict that was going in local area.

However, the issuance of the Presidential Instruction is by no means to solve the issues itself. Many asked, e.g. what are the urgencies to issue a Presidential Instruction if the duty and authority for each actors mentioned in it who's already had their own regulation (National Police with Law No. 2/2002, Indonesian Military with Law No. 34/2004, and Regional Government with Law No. 32/2004, etc?) And what about the recently enacted Law No. 7/2012 about Handling of Social Conflict, which up until now still waiting for the issuance of four government regulation (PP) as mandates from the Law?

The Presidential Instruction gave more regional leader tighter grip of any conflict rises in their regions; it gave the authorities to call for military intervention to suppress unrest; if any. Fact is, along 2009-2012 there had been 250 social unrests, caused by local election dispute among supporters. Thus, the Presidential Instruction meant an enormous authority was given to regional leader; disregarding the fact that one could also be an actor (read: incumbent) in future local election. We assume that the new Presidential Instruction is an effort from the President to reinterpret the 'national security' term; using his executive power given by the constitution to gave access to the military to intervene for any unrest. Such authority is prone to abuse and what gives actually for the President to give such power to local leader?

Supreme Court

Judges Implementing Constitutional Court Decision of Child Outside of Wedlock Rights

On February 17, 2012 Constitutional Court (Mahkamah Konstitusi) make their ruling No. 46/PUU-VII/2010 on Article 43 paragraph (1) Law no. 1 of 1974 on Marriage. In their ruling MK stated that the article was conditionally unconstitutional and it has to be interpreted that a child relation to someone he or she claimed as their father is considered a legal one if proved by science and technology, and/or any other evidence under the law that the person is indeed their biological father.

In lieu to the ruling, the Supreme Court ordered all judges in Indonesia to implement it in their decision. Stated also by the Supreme Court Public Relation Ridwan Mansyur that out of wedlock children are entitled for support from their biological father.

This particular step from the Supreme Court should be appreciated since it exemplify a good relation between institutions and bring legal harmonization to provide a maximum sense of justice.