



**Asia-Pacific  
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Session 5

## **Enforcing Contracts in Indonesia**

Submitted by: Ricardo Simanjuntak & Partners

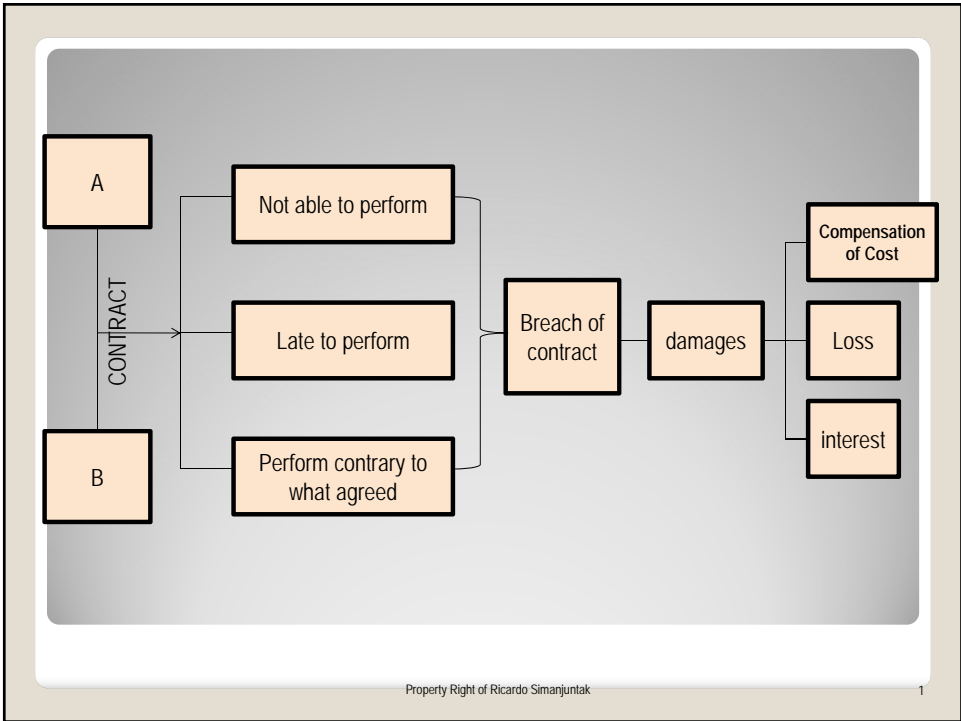


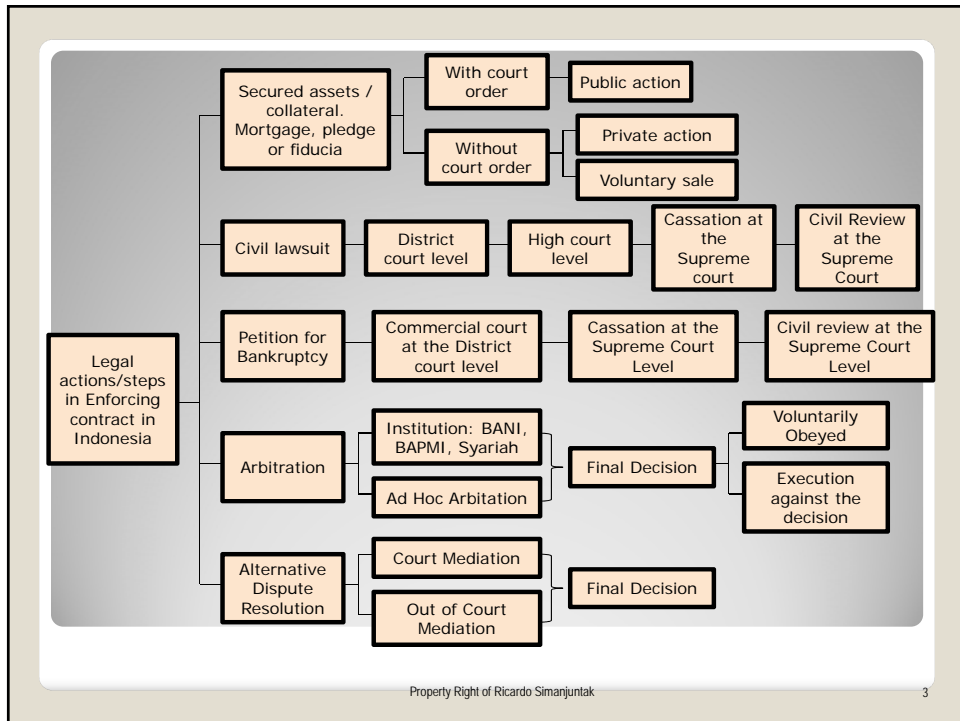
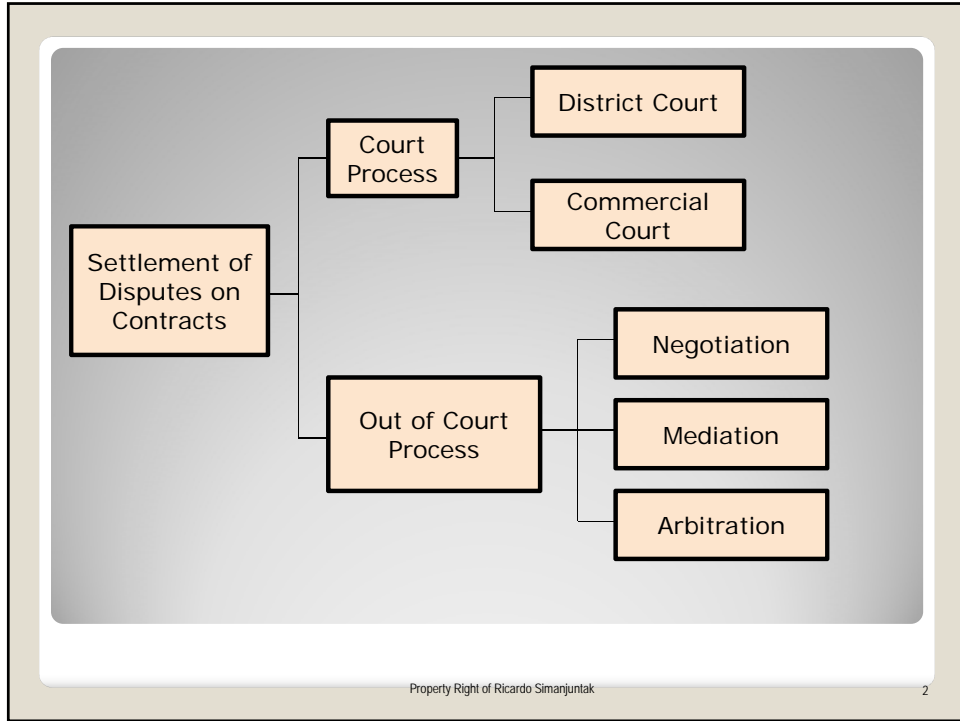
**APEC Ease of Doing Business 2014 Stocktake  
Workshop  
Beijing, China  
15-16 August 2014**

**ENFORCING CONTRACTS IN INDONESIA**  
(Presented in the APEC Ease of Doing Business 2014 Stocktake Workshop)

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Beijing Hotel, China  
15-16 August 2014





**Enforcing Contract Methodology with the Assumptions:**

- 1.The dispute concerns a Lawful transaction between seller and buyer (in Indonesia) worth USD 7,000,- (200% of the Indonesian income per capita, @USD 3,500).
- 2.After seller delivers the goods to Buyer, Buyer does not pay for the goods with the reason that the goods were not of adequate quality.
- 3.Seller sues Buyer to recover the payment, Buyer opposes seller's claim, and the claim is disputed on merits.
- 4.Seller attaches buyer's movable goods prior to obtaining a judgment because seller fears that buyer may become insolvent during the lawsuit.
- 5.Each party calls expert witness to give their opinion on the quality of goods.
- 6.The judge decides the case in favor of the seller. The judge decides that the goods are of adequate quality and that buyer must pay the agreed price.
- 7.Buyer does not appeal the judgment and the judgment becomes final
- 8.Seller takes all required steps for prompt enforcement of the judgment (the money is successfully collected through a public sale of the buyer's movable assets).

DB, The Data are collected through :

- 1.Study of the Codes of Civil Procedures:
- 1.Other Court regulations:
- 1.And also questioners

(DB) THE ENFORCING CONTRACTS INDICATORS MEASURE :

**A. Procedures to enforce a contract through the courts;**

1.	Steps to file and serve the case	8 Procedures
2.	Steps for Trial and Judgment	20 Procedures
3.	Steps to enforce the judgment	12 Procedures
		<u>TOTAL:40 PROCEDURES</u>

**B. Time Required to Complete Procedures (Calendar days)**

1.	Time to file and serve the case	98 days
2.	Time for trial and obtaining the judgement	220 days
3.	Time to enforce the judgment	<u>180 days</u>
		<u>TOTAL : 498 DAYS</u>

**C. Cost required to complete procedures (%of claim)**

1.	Average attorney Fees	111.3%
2.	Court Cost	3.1%
3.	Enforcement Cost	<u>25 %</u>
		<u>TOTAL: 139,4 %</u>

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**DETAILS OF METODOLOGY TIME FRAME OF ENFORCING CONTRACTS (DB)**

**FILING AND SERVICE ( 8 Procedures and takes 98 days)**

1. Plaintiff requests payment. Plaintiff or his lawyer asks defendant orally or in writing to comply with the contract. X
  - . Plaintiff's filing of summons and complaint: Plaintiff files his summons and complaint with the court orally or in writing. X
  - . Plaintiff's payment of the court fees: Plaintiff pays court duties, stamp duties, or any other type of court fee. ✓
2. Registration of court case: The court administration registers the lawsuit or court case. This includes assigning a reference number to the lawsuit or court case. ✓
  - . Assignment of court case to a judge: The court case is assigned to a specific judge through a random procedure, automated system, ruling of an administrative judge, court officer, etc. ✓
3. Court scrutiny of summons and complaint: A judge examines Plaintiff's summons and complaint for formal requirements. X
4. Delivery of summons and complaint to person authorised to perform service of process on Defendant. The judge or a court officer delivers the summons to a summoning office, officer, or authorised person (including Plaintiff), for service of process on defendant. ✓
5. First attempt at physical delivery: a first attempt to physically deliver summons and complaint to defendant is successful in the majority of cases. X
  - . Application for pre-judgment attachment: Plaintiff submits an application in writing for the attachment of defendant's property prior to judgement.(See assumption 5) X
  - . Decision on pre-judgment attachment: The Judge decides whether to grant Plaintiff's request for pre-judgment attachment of Defendant's property and notifies Plaintiff and Defendant of the decision. This step may include requesting that Plaintiff submit guarantees or bonds to secure defendant. X
6. Pre-judgment attachment. Defendant's property is attached prior to judgment. Attachment is either physical or achieved by registering, marking, debiting or separating assets. (See assumption 5) ?
7. Custody of assets attached prior to judgment: Defendant's attached assets are put under enforcement officer's or (private) bailiff's care (see assumption 5) X
8. Hearing on pre-judgment attachment: a hearing takes place to resolve the question of whether Defendant's assets can be attached prior to judgment. This process may include the submission of separate summons and petitions (see assumption 5). X

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**TRIAL AND JUDGMENT (20 Procedures and takes 220 days)**

Defendant's filing of preliminary exemptions. Defendant presents preliminary exemptions to the court. Preliminary exemptions differ from answers on the merits of the claim. Examples of preliminary exemption are statute of limitations, jurisdiction

Plaintiff's answer to preliminary exemptions: Plaintiff responds to the preliminary exemptions raised by Defendant

9. Judge's resolution on preliminary exemption: judge decides on preliminary exemptions separately from the merits  case.

10. Defendant's filing of defense or answer to Plaintiff's claim. Defendant files a written pleading which includes his defense or answer on the merits of the case. Defendant's written answer may  not include witness statements, experts statements, the documents Defendant relies on as evidence and the legal authority.

11. Deadline for plaintiff to answer Defendant's defense or answer: Judge sets the deadline by which Plaintiff will be allowed to answer Defendant's defense or answer.

12. Plaintiff's written response to Defendant's defense or answer: Plaintiff responds to Defendant's  or answer with a written pleading. Plaintiff's answer may or may not include a witness statements or expert (witness) statements.

13. Filing of pleadings: Plaintiff and Defendant file written pleadings and submissions with the court and transmit copies of the written pleadings or submissions to one another. The pleadings may or may not include witness statements or expert (witness) statements.

14. Adjournments: Court  procedure is delayed because one or both parties request and obtain an adjournment to submit written pleadings.

Court appointment of independent expert. Judge appoints, either at the parties' request or at his own initiative, an independent expert to decide whether the quality of the goods Plaintiff delivered to Defendant is adequate (see assumption 6-b of this case)

Delivery of expert report by court-appointed expert: The independent expert appointed by the court delivers his or her expert report to the court (see assumption 6-b of this case)

15. Pre-trial conference on procedure. The judge meets with the parties to discuss procedural issues (for example which applications and motions parties intend to file, which documents parties intend to rely on, what will be presented as evidence the oral hearing or trial, etc)

g of the date for mediation hearing: The judge sets a date for a mediation hearing, sometimes also called a pre-trial conference, and notifies the parties of the hearing date.

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16. Mediation hearing: The judge during this informal meeting with the parties encourages them to settle the case. The Judge acts as mediator if the case cannot be settled, the judge may draft a pre-trial conference report, after which the case may be allocated to another judge.

List of (expert) witnesses: The parties file a list of (expert) witnesses with the court (see assumption 6-a)

17. Adjournments: Court proceedings are delayed because one or both parties request and obtain an adjournment to prepare for the oral hearing or trial.

18. Oral hearing (prevalent in civil law): The parties argue the merits of the case at an oral hearing before the judge. Witnesses and a court-appointed independent expert may be heard and questioned at the oral hearing.

19. Order for submission of final arguments: The judge sets the deadline for the submission of final factual and legal arguments.

Final arguments: The parties present their final factual and legal arguments to the court either by oral presentation or by a written submission.

20. Judgment date: The judge sets a date for delivery of the judgment.

21. Notification of judgment in court. The parties are notified of the judgment at a court hearing.

22. Writing of judgment: The judge produces a written copy of the judgment.

23. Registration of judgment: The court office registers the judgment after receiving a written copy of the judgment.

24. Court notification of availability of the written judgment: The court notifies the parties that the written judgment is available at the courthouse.

25. Plaintiff's receipt of a copy of written judgment: plaintiff receives a copy of the written judgment.

26. Notification of defendant of judgment. Plaintiff of court formally notifies the Defendant of the judgment. The appeal period starts to run the day the Defendant is formally notified of the judgment.

27. Appeal period: By law. Defendant has the opportunity to appeal the judgment during a period specified in the law. Defendant decides not to appeal. Judgment becomes final the day the appeal period ends.

28. Reimbursement by defendant of Plaintiff's court fees. The judgment obliges Defendant to reimburse Plaintiff for the court fees Plaintiff has advanced. Because the Defendant has lost the case.

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#### ENFORCEMENT OF JUDGMENT (12 Procedures and takes 180 days)

29. Plaintiff's approaching of court enforcement officer or (private) bailiff to enforce the judgment: To enforce the judgment, Plaintiff approaches a court enforcement officer such as a court bailiff or sheriff, or private bailiff. ✓
30. Plaintiff's request for enforcement order: Plaintiff applies to the court to obtain the enforcement order ('seal' on judgment) ✓
30. Plaintiff's advancement of enforcement fees. Plaintiff pays the fees related to the enforcement of the judgment. ✓
31. Attachment of enforcement order to judgment. The judge attaches the enforcement order ('seal') to the judgment. ?
31. Delivery of enforcement order: The court's enforcement order is delivered to a court enforcement officer or a (private) bailiff. ✓
32. Request to Defendant to comply voluntarily with judgment. Plaintiff, a court enforcement officer or (private) bailiff requests Defendant to voluntarily comply with the judgment, giving Defendant a last chance to comply voluntarily with the judgment. ✓
33. Plaintiff's identification of defendant's assets for attachment. Plaintiff identifies Defendant's assets for attachment. ✓
34. Attachment. Defendant's movable goods are attached (physically or by registering, marking or separating assets) ?
35. Report on execution of attachment: A court enforcement officer of private process server delivers a report on the attachment of Defendant's movable goods to the judge. ✓
36. Enforcement disputes before court: The enforcement of the judgment is delayed because Defendant opposes aspects of the enforcement process before the judge. ?
37. Call for public auction: The judge calls a public auction by, for example, advertising or publication in the newspapers. ?
38. Sale through public auction: The Defendant's movable property is sold at public auction. X
38. Direct sale: Defendant's property is sold but not through a public auction (assumption 9 is added here). ✓
39. Reimbursement of Plaintiff's enforcement fees: Defendant reimburses Plaintiff's enforcement fees which Plaintiff had advanced previously. ?
40. Payment: Court orders that the proceeds of the public auction of the direct sale be delivered to Plaintiff. ✓

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#### The Data for this Presentation are based from:

1. Study of the Codes of Civil Procedures:
  - *The Indonesian Civil Law of Procedure (HIR)*
2. Other Court regulations:
  - *The Supreme Court Regulation No.2/2008*  
(*Mediation process in the district Court*)
  - *Government Regulation No 1/2013*  
(*Details of Tariff for non tax government's income within the Ministry of Finance*)
  - *Supreme Court Circular Letter No.2/2014*  
(*The Completion of cases in the District Court level...*)
  - *The Finance Minister Decision no 106/PMK.06/2013*  
(*The Guideline of the Auction Process*)
  - *The Finance Minister Decision no. 35/KMK.01/2014*  
(*The Standard Operating Procedure of best service of the Ministry of Finance*)
  - *The Central Jakarta District Court Standard Operational Procedure*  
(*28 ) October 2013*)
  - *The Decision of the Chairman of The Central Jakarta District Court No.W.10-UI/2299/Pdt-02.II.2012.0*  
([www://: PN-jakartapusat.go.id](http://www://: PN-jakartapusat.go.id))
3. Without analysing the questioners

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**The Fitness of The Procedures of Methodology of Contract Enforcement against the Indonesian Civil Law of Procedures and other regulations:**

**I. Filing and Service:**  
 From 8 (+5 bullets) Procedures :  
 2 Procedures are fit to the law and regulations.  
 1 Procedures is in Question of its relevance  
 5 Procedures are not fit to the law and regulations.  
 3 Bullets are not fit to the law and regulations.  
 1 Bullet is in question of its relevance to the law and regulations  
 1 Bullet is fit to the law and regulations.

**II. TRIAL AND JUDGMENT:**  
 From 20 (+7 bullets) Procedures:  
 8 Procedures are fit to the law and regulations.  
 4 Procedures are not fit to the law and regulations  
 8 Procedures are in Questions of their relevance  
 6 Bullets are in questions of their relevance to the law and regulations.  
 1 Bullet is relevance to the law and regulations.

**III. ENFORCEMENT AND JUDGMENT**  
 From 12 (+ 3 bullets) Procedures:  
 7 Procedures are fit to the law and regulations.  
 4 Procedures are not fit to the law and regulations  
 1 Procedure is in question of its relevance.  
 2 Bullets are fit to the law and regulations  
 1 Bullet is in question of its relevance to the law and regulations.

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➤ From the registration date to the summon for the first hearing around 18 to 20 days.

➤ The hearing can be adjourned, normally three times. If defendant does not appear (mostly, one week for every postponed hearing).

➤ If, the defendant does not appear until three times of summons, the court will decide the case without the presence of the defendant.

➤ At the first hearing the judge will postpone the hearing and mandatorily gives both party for a mediation for maximum 40 days (plus 14 days extra).

➤ If in the mediation process the party settled that disputes, the case will stop and court issues the court settlement judgment.

The flowchart shows the following steps and durations:

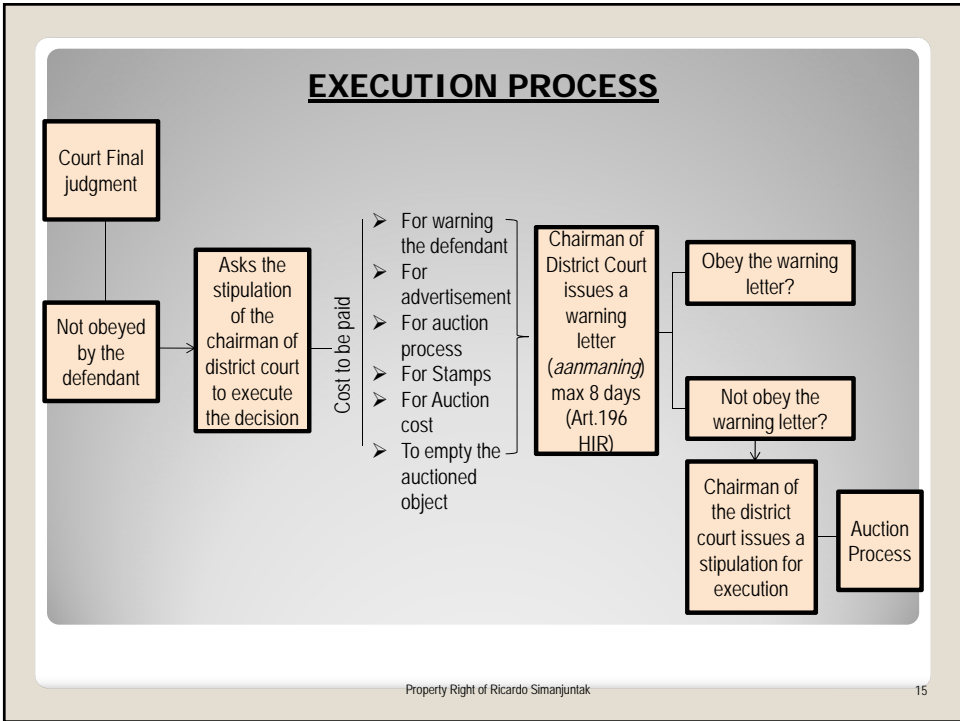
- Read the case** (1-2 weeks)
- Response from defendant (replik)** (1-2 weeks)
- Contra response from plaintiff (duplik)** (1-2 weeks)
- Evidence (bukti)** (1-2 weeks)
- Expert witness** (1-2 weeks)
- conclusion** (1-2 weeks)
- decision** (1-2 weeks)

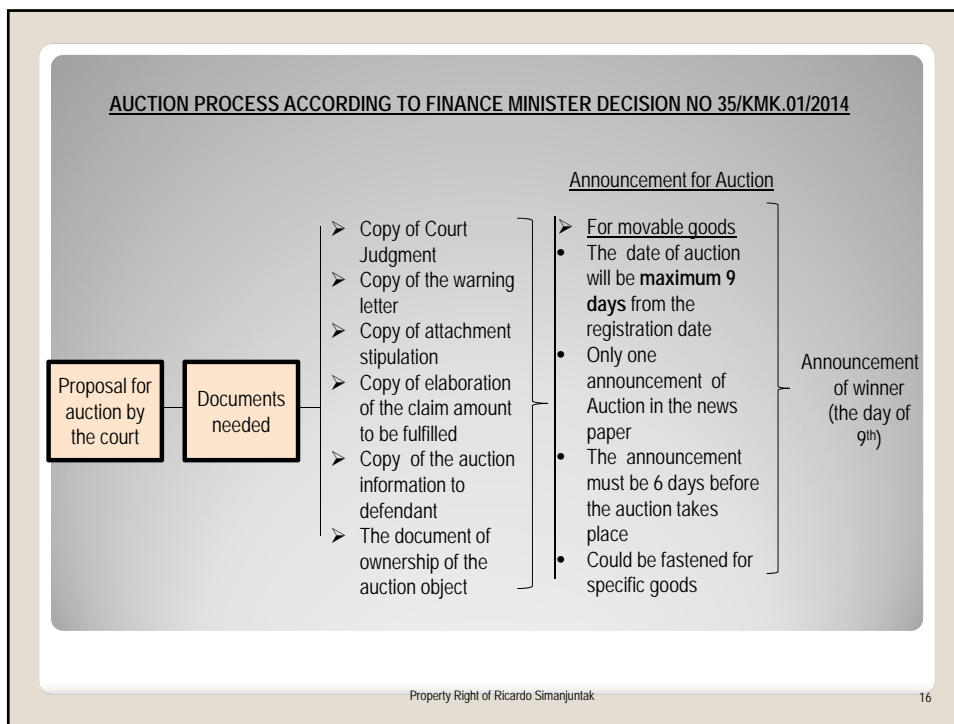
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**TIME NEEDED BY THE DISTRICT COURT TO DECIDE A DISPUTE IS, ACORDING TO THE SUPREME COURT CIRCULAR LETTER NO.2 YEAR 2013 **MAXIMUM 5 MONTHS** (INCLUDING THE MINUTING OF THE DECISION)**

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**THE COST OF REGISTERING CIVIL LAW SUIT AT THE DISTRICT COURT**

**A. Permanent Cost:**

1.	The income from non tax	Rp. 30,000,-
2.	Paper	Rp. 5,000,-
3.	Stamps (2 pieces)	Rp. 12,000,-
4.	Cost of process	Rp. 75,000,- +

**B. Non Permanent Cost**

1.	The cost for summoning the Plaintiff 2x Rp.100,000,-	Rp.200,000,-
2.	The cost for Summoning the Defendant 4x Rp.100,000,-	Rp. 400,000,-
3.	the Cost for informing the decision to parties	<u>Rp.200,000,-</u>
	<b>Total</b>	<b>Rp.922,000,-</b>

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**THE COST OF EXECUTION PAID THROUGH THE DISTRICT COURT:**

**A. The cost for Warning (Demand) from the Court to one Defendant:**

1.	preparing the letter	Rp. 5,000,-
2.	stamps (2 pieces)	Rp. 12,000,-
3.	the cost of process	Rp. 75,000,-
4.	the cost for summon 3 x Rp.200,000,-	<u>Rp.200,000,-</u>
	<b>Total</b>	<b>Rp. 692,000,-</b>

(note: additional cost for another defendant is Rp. 600,000,-)

**B. The Cost of Auction Process:**

1.	The income from non Tax	Rp. 25,000,-
2.	Preparing letter	Rp. 5,000,-
3.	Stamp	Rp. 6,000,-
4.	Cost of Advertisement	Rp. 3,000,000,-
5.	cost of informing defendant 3x 100,000,-	Rp. 300,000,-
6.	The Cost for Auction	<u>Rp. 3,000,000,-</u>
	<b>Total</b>	<b>Rp. 6,336,000,-</b>

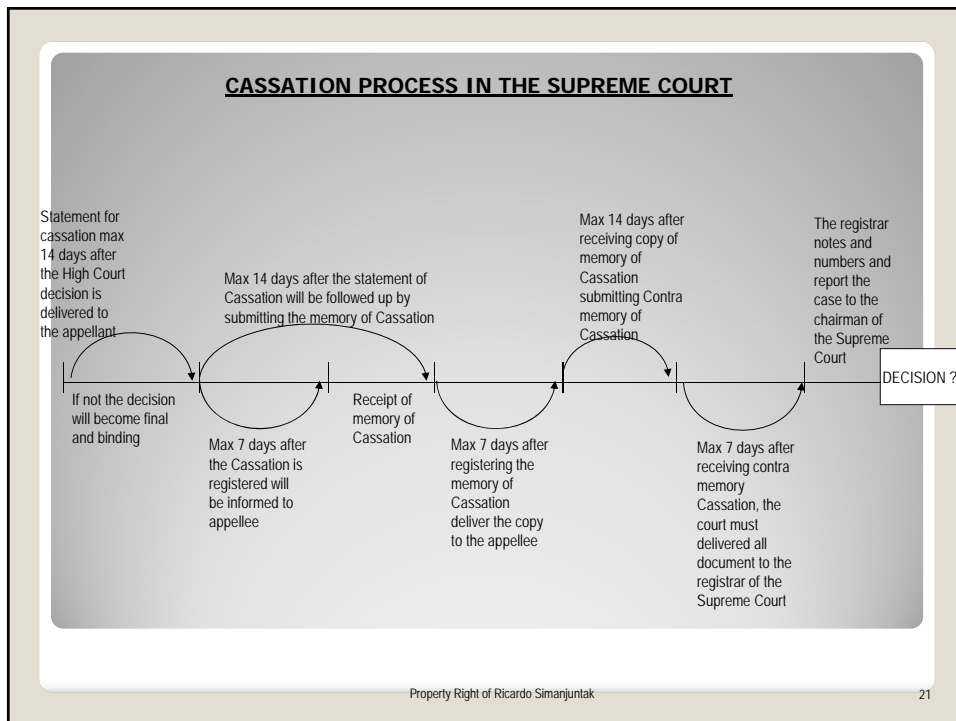
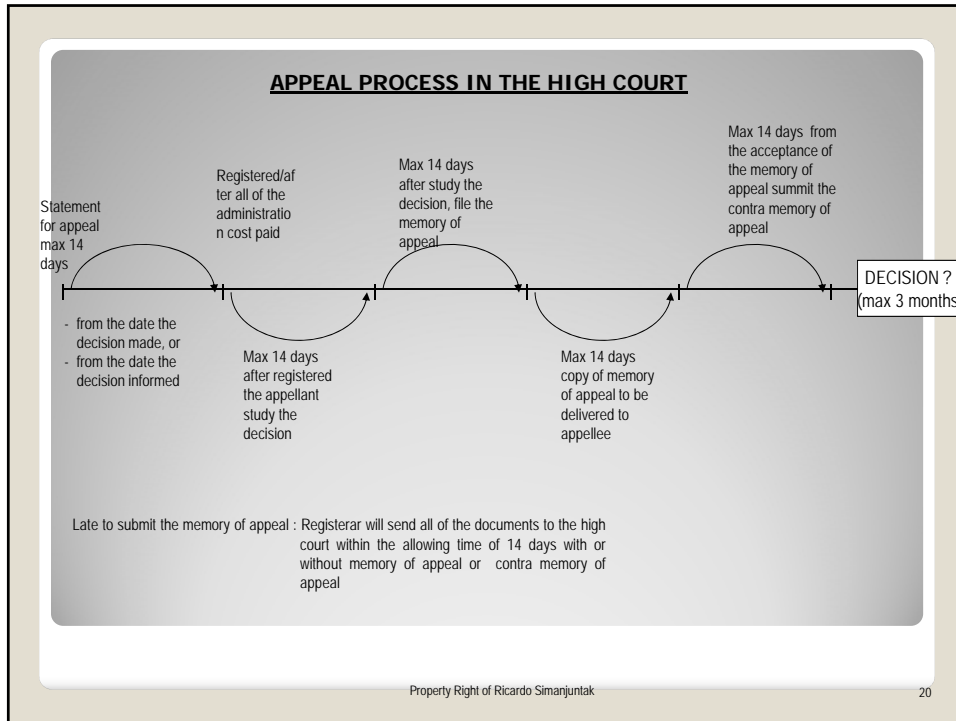
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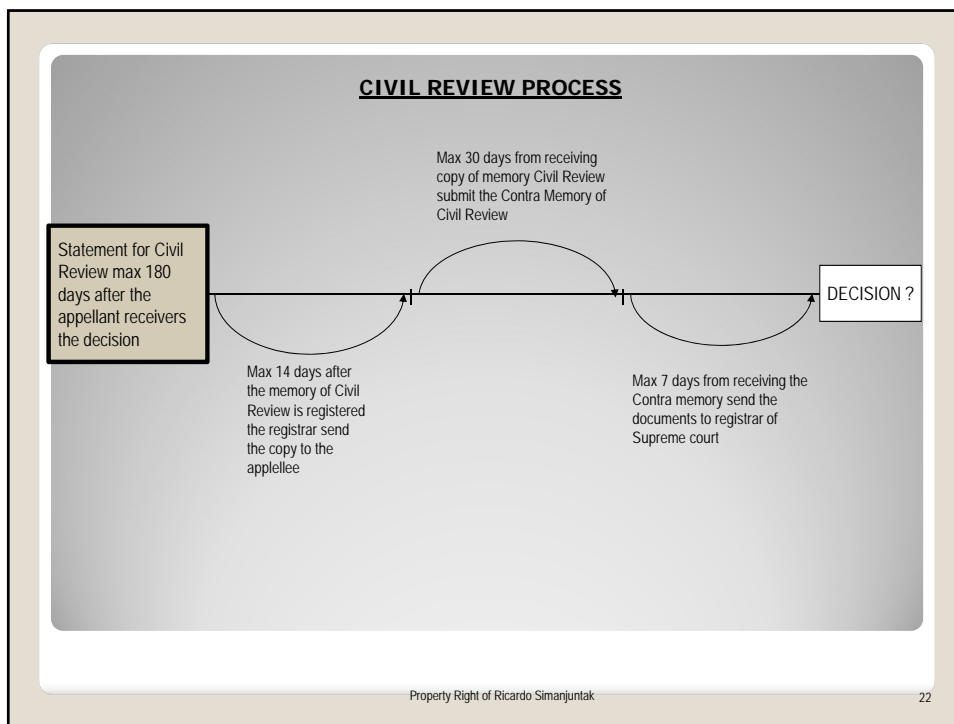
**THE COST OF THE AUCTION**

The Cost of the Auction for Movable goods  
 (According to Government Regulation No. 1/2013) ..... = 3% from the Price of Auction

**THE COST OF LAWYER ?**

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### SMALL CLAIM COURT

UNDER PREPARATION TO IMPLEMENT IN INDONESIA

1. Through Supreme Court Regulations : a. The amount will be between 150,000,- to 200,000,  
 b. The place will be at the District Court level  
 c. The Judge will be by a single judge  
 d. The time to decide will be 1 month  
 e. The decision will be final and binding  
 e. The case will be a breach of contract dispute

STATUS : FINAL STAGE FOR THE SUPREME COURT TO ISSUE THE REGULATION

2. The Draft of the Indonesian Civil Law of Procedure:
  - a. The amount will be between Rp.50,000 to Rp.100,000,-
  - b. The place will be at the District court level
  - c. The Judge will be a single judge
  - d. The time to decide will be
  - e. The decision will be final and binding
  - f. He case will only be for Breach of Contract case

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