

# Enforcement of Foreign Judgments

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Interim and Precautionary Measures [Indonesia]

2020



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## I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES

1. **Is it possible to apply for an interim measure in order to ensure the effective enforcement of a court decision?**

**Answer:** Yes, it is possible. Interim and precautionary measures are commonly known as *gugatan asesor* (additional claim) in Indonesia. The purposes of the additional claim are (i) to supplement the main claim to further enhance the protection of the plaintiff's rights; and (ii) to ensure the effective enforcement of a court decision.

2. **Is it mandatory to pay court fees for this type of application?**

**Answer:** Yes, however the fees do vary for each application.

3. **What is the ordinary/average length of time for this kind of procedure?**

**Answer:** The average length of time for each interim and precautionary measures vary for each procedure.

## II. TYPES OF INTERIM AND PRECAUTIONARY MEASURES

1. **For which types of interim measures are the parties allowed to apply? (e.g., injunction, freezing orders, caveat, restraining order, etc)**

**Answer:** Theoretically, there are only two forms of additional claim under the *Het Herziene Indonesisch Reglement*, "HIR", i.e. the *gugatan provisi* (provisional claim) and *gugatan penyitaan* (seizure claim) as follows:

1. Provisional Claim (Article 180 Paragraph (1) HIR)
  - a. Freezing provision (the defendant's adverse activities);
  - b. Provisional/interim injunctions to prevent the defendant from putting assets out of the creditors' reach;
  - c. Provision on the restriction of selling/transferring the object within the possession of the debtor;
  - d. Other requests for provisions which ensures the effective enforcement of a court decision.
2. Seizure Claim (Article 226 and 227 HIR)
  - a. *Sita Jaminan* (*conservatoir beslag*), for assets owned by the defendant(s);
  - b. *Sita Revindikasi* (*revindicatoir beslag*), for movable assets owned by the plaintiff but the assets are possessed by the defendant(s);
  - c. *Sita Harta Bersama* (*marital beslag*), for marital assets.

### III. PROCEDURE

#### 1. Competent Court

##### a) Which court has jurisdiction to grant these interim and precautionary measures?

**Answer:** The relevant District Court. Moreover, if the plaintiff submit a request for the execution of an interim and precautionary measures to the Head of the District Court, such request and the case file shall be forwarded to the High Court along with the consideration from the Head of the District Court.

#### 2. When can the application for interim and precautionary measures be submitted?

##### Is it possible to apply for it at the time the underlying lawsuit is filed? If YES: Are there any special requirements when so doing?

**Answer:** Yes, it is possible. In practice, the most effective and efficient time to apply for an interim and precautionary measures is when the underlying lawsuit is being filed at the relevant district court. In practice, specifically for seizure claim, there are 2 (two) common methods: (i) the plaintiff inserts a detailed petition for interim measures within the lawsuit as a part of the main claim, not as a separate document (usually written at the *petitum* (petition) part of the main claim); or (ii) the plaintiff inserts a summarized petition for interim measures within the lawsuit as a part of the main claim, but in parallel or at any time after the registration of lawsuit, the plaintiff submits a separate petition for interim measures with more detailed information or elaboration.

#### 3. Is it possible to apply for interim precautionary measures before filing the underlying lawsuit? If YES: Are there any special requirements when so doing? (e.g., deadline to submit the lawsuit)

**Answer:** No, it is not possible. The provisional and seizure claim is an accessory or dependent on the main claim. Therefore, an application for interim and precautionary measures could not be submitted before filing the underlying lawsuit.

#### 4. Is it possible to apply for interim precautionary measures after filing the main claim? If YES: Are there any special requirements when so doing?

**Answer:** Yes, however it is only possible for the seizure claim (*sita jaminan*). Article 227 paragraph (1) of HIR provides that a petition for seizure can be submitted at any time during the examination of the case and before the issuance of final and

binding judgment. The foregoing is affirmed by the Supreme Court through Supreme Court Judgment Number 371 K/Pdt/1984.

## 5. Criteria used by the court for granting these measures

**What requirements must be fulfilled in order to apply for an interim measure? (e.g. *periculum in mora*, *fumus boni iuris*, security, etc)**

**Answer:** Pursuant to HIR, the court has wide discretion on whether or not to grant an interim measure. However, the plaintiff must have grounds for suspicion that the defendant is likely to embezzle or abscond assets for the purpose of hiding them from the plaintiff. The requirements for the provisional and seizure claim differed in the sense that, the provisional claim requires a simple proof convincing the presiding judge that the defendant's activities will bring more losses for the plaintiff, while the seizure claim must specifically dictate the defendant's assets to be placed under seizure. Additionally, application for an interim measure is also available to defendants who have issued counterclaims against the plaintiff.

The request must be submitted together with the claim or specifically for petition for seizure, at any time before the judgment. Under Indonesian civil procedural law, there is no requirement to notify the defendant before the submission of an interim measure request. This also means that the interim measure request cannot be submitted before the main claim has been submitted.

## 6. Procedure

**a) Which are the main steps of the procedure after filing the interim measure application? (e.g. holding a hearing, presenting evidence, etc.)**

**Answer:** After filing the interim measure application, the plaintiff and defendant must wait as the presiding judge(s) review the application and claims as well as responses (also counterplea and rejoinder (if any)). Afterwards, the presiding judge(s) will deliver a *putusan sela* (interlocutory decision) which will either refuse the application, or to issue the interim measure (after acquiring the approval of the relevant Chairman of the High Court.

**b) Is it possible for the Court to order an interim measure without hearing the other party? (*in audita parte debitoris*). If YES, under what circumstances can the parties apply for it?**

**Answer:** No. In principle, the judges must hear both sides, plaintiff and defendant, before rendering any interim measures.

**c) What are the main steps of the procedure in this case?**

**Answer:** See question 6 (a).

**7. Opposition of the defendant**

**a) Is it possible for the defendant to oppose interim and precautionary measures?**

**Answer:** Yes. The defendant could file an appeal against the interlocutory decision to the relevant High Court.

**b) Is it possible for the defendant to ask the court for the substitution of the interim measure for a guarantee?**

**Answer:** Specifically for measures concerning provisional measures and immediate judgment (meaning that the district court judgment can be enforced regardless of any appeal, cassation and/or civil case review process), yes, it is possible. The Supreme Court had issued Circular Letter No. 3 of 2000 on Immediate Judgment and Provisional Judgment. In essence, the Supreme Court asked all district court judges to consider whether there is any guarantee which has the same value as the executed objects/assets in order to avoid any damages to the losing party if in the future, the district court judgment is overturned or vacated.

**8. Appeal**

**a) Are appeals allowed from the court decision ordering the measures or rejecting the defendant's opposition to them?**

**Answer:** Yes. In theory, an appeal against interim orders must be brought together with the appeal of the final judgment. However, pursuant to Article 7 (1) Law No. 20 of 1947 on Appeal Court, the appeal must be requested within 14 days from the issuance date of the interim orders, or within 14 days from the notification date of the interim orders if the claimant did not appear when the interim orders were issued.

**b) Is it possible to enforce the interim measure once an appeal is filed?**

**Answer:** Yes, it is possible. Unless the appeal is granted, the defendant is discharged from the interim measures.

#### **IV. EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES.**

- 1. Is it possible to enforce the interim measure when the other party obstructs it?**

**Answer:** Yes. If a defendant and/or any other third party obstructs the enforcement of the interim and precautionary measure, they may be liable to the violation of Article 212 and 216 Paragraph (1) of the Indonesian Penal Code and may be subject to imprisonment or fines.

- 2. Is it possible to modify a previous interim measure?**

**Answer:** Modifying previously stated interim measure is only allowed before the defendant submitted its first response against the plaintiff's claim. Afterwards, modifying an interim measure is only possible if there is an approval from the defendant.

- 3. When is it possible to raise an interim measure?**

**Answer:** Interim measure in the form of seizure claim could be raised at any time of the court proceedings, as long as it is before the judgment.

- 4. Are there any rules concerning the costs (e.g., lawyers' fees, etc.) related to the application?**

**Answer:** Yes. There is a specific rule concerning the costs related to the application of the interim and precautionary measure (in the form of court fees) as regulated under the stipulation of the District Court Chairman, and it may vary from one jurisdiction to another. As for lawyers' fee, since it is not mandatory for any parties to retain lawyers, the court tends to view that lawyers' fee cannot be compensated or claimed by the disputing parties.

#### **V. ARBITRATION**

- 1. Is it possible to apply for an interim measure in order to assure the effective enforcement of an arbitration award in your country? If YES: what is the enforcement procedure?**

**Answer:** No, it is not possible. Interim measures must be submitted before a judgment/award has been issued.



**2. Are the arbitrators, entitled to order an interim measure?**

**Answer:** Yes, the arbitrators are entitled to order an interim measure as provided under Article 32 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. However, in practice, such entitlement is (i) rarely invoked by the arbitrators; and (ii) deemed to be unenforceable since the authority to enforce an interim measure is solely vested to Indonesian courts.

**VI. FOREIGN PROCEDURE & ARBITRATION**

**1. Is it possible to apply for an interim measure before your country's courts in order to assure the effective enforcement of a foreign court decision or arbitration award? If YES: how is this procedure executed?**

**Answer:** No. Judgments rendered by a foreign court cannot be enforced by Indonesian Courts within the territory of Indonesia. Therefore, foreign cases must be re-claimed or re-litigated in the competent Indonesian Courts. In such case, the foreign court judgment may serve as evidence. However, this will be subject to (i) judges' assessment on the weight and/or value of such foreign court judgment; and (ii) certain restrictions as regulated by the relevant Indonesian regulations.

In case of the enforcement of foreign arbitral award, Central Jakarta District Court and the Supreme Court in practice may only enforce foreign final award—not interim award—as can be seen in the landmark case *Astro Nusantara International BV et al. vs. PT Ayunda Prima Mitra et al.* (Central Jakarta District Court Decree DAFT.No. 125/2011 Eks dated 28 October 2009 in conjunction with Supreme Court Judgment No. 877 K/Pdt.Sus/2012 dated 26 March 2013).

**Submitted by**

	<b>Contact 1</b>	<b>Contact 2</b>	<b>Contact 3 (optional)</b>
<b>Contact Name:</b>	Robie A Haris	Handika Tjen	
<b>Firm Name:</b>	Armand Yapsunto Muharamsyah and Partners	Armand Yapsunto Muharamsyah and Partners	
<b>Email:</b>	robie@aymp.law	handika@aymp.law	
<b>Phone #:</b>	-	-	
<b>Website:</b>	<a href="http://www.aymp.law">www.aymp.law</a>	<a href="http://www.aymp.law">www.aymp.law</a>	