



**‘New opportunities and challenges in international practice:
globalisation & professional ethics’**

14 June 2021

Mandarin Oriental Hotel, Jakarta & Zoom

Introduction

The Bar Issues Commission (BIC) of the International Bar Association (IBA) awarded funding to the BIC international Trade in Legal Services Committee (BIC ITILS) for a conference on 14 June 2021 in Jakarta, Indonesia, in cooperation with PERADI, the Indonesian bar member of the IBA.

The conference – entitled ‘New opportunities and challenges in international practice: globalisation & professional ethics’ - was itself a follow-on from a series of globalisation conferences held in Africa, Asia and South America over the past few years, run by BIC ITILS with the help of IBA funding.

The conference had a hybrid nature, allowing attendance either in person or on-line, with 287 registered participants in all, 42 in person and 245 on-line. The IBA speakers came from abroad, from countries across the world, and their slots were timed to suit their time zone best, which explains the otherwise rather random order of the topics.

The IBA logo and presence were signalled continually and in a very prominent manner – for instance, with our logo in a prominent place on the programme. And the IBA’s International Principles on the Conduct of the Legal Profession formed one of the session topics.

The sessions - at the choice of PERADI - were somewhat different to our usual globalisation series. Part were the same, and part dealt with professional ethics, as follows (given in the order in which the topics appeared in the programme):

- Raising capital in international markets: the role of the local legal advisor
- Lawyers and technology
- Professional ethics in Indonesia and in other countries
- IBA Principles on professional ethics
- Arbitration of international commercial disputes
- Instruments on international trade in legal services and their applicability in Asia

The substantive content is summarised in the pages that follow.

The one issue which arose for consideration at future hybrid events is how to manage the interchange between people in the room and those (including speakers) online. There was some interchange during this conference, but it was clumsier than when people are all in the room together, and so thought should be given as to whether this can be improved for the future.

The conference programme is attached below.

Before beginning the substantive sessions, there was a brief welcome speech by **Johannes C. Sahetapy-Engel, S.H., M.H.**, a member of PERADI’s board.

Raising Capital in International Markets: the Role of the Local Legal Advisor

The session took the form of an informal dialogue between a foreign (i.e. non-Indonesian) lawyer with a domestic (i.e. Indonesian) lawyer. The focus was on how lawyers assist in bringing foreign capital to Indonesian domestic companies, which need to raise funds to maintain operations, grow their product lines, or open new locations.

First, some technical terms were explained, such as 'capital markets', 'securities', 'bonds' and 'stocks'. Questions were then posed by **Javier Negri**, a BIC ITILS member, and answered by **Maria Sagrado**, the local speaker, regarding the most relevant legal aspects of international capital market transactions. At the request of PERADI, there was a focus on start-up corporations.

Lawyers and Technology

Steven Richman, Bar Issues Commission Officer, addressed technology in terms of client costs, social media, artificial intelligence and remote work from a US. perspective. Discussion of client costs revolved around whether the lawyer bears the cost of technology as an overhead or whether the lawyer can, in certain circumstances, pass it on to the client, such as in the case of due diligence procedures. Knowledge of essential technology is now an aspect of legal competence under U.S. ethical rules.

Rahmat Soemadipradja, the local speaker, offered the Indonesian perspective, which was that Indonesian ethics rules need to address technology.

Steven Richman also discussed social media concerns from an ethical standpoint.

Other issues covered included artificial intelligence and its uses in contemporary practice, and remote work and its technological impact.

Rahmat Soemadipradja focused more on the impact of technology on law firm management, and the transition to digital in law firms from a generational perspective. Presently in Indonesia, technology is broadly used for meetings, and digital databases store regulations, case decisions and corporate data. Regarding artificial intelligence, Indonesia is seeing technology-based legal services emerge, to answer simple legal questions or to develop artificial intelligence capable of drafting and analysing agreements.

From the American perspective, prediction studies and due diligence programmes are being used more.

The conclusion from the presentation was that technology is now an essential part of legal practice.

Professional ethics in Indonesia and in other countries

The speakers were **Kimitoshi Yabuki**, the chair of the Bar Issues Commission, and **Dr Adardam Achyar, S.H., M.H.**, the local speaker.

Kimitoshi Yabuki introduced the two-tiered Japanese system, whereby lawyers' ethics are governed both by law and by bar rules. He focused on three essential principles: independence, confidentiality and conflict of interest.

On independence, he said that it is important that lawyers are independent both from government interference and from outside interference, such as unlawful demands from clients. He stressed that lawyers must not assist a client in unlawful conduct.

On confidentiality, he cited the extent of a lawyer's right and duty, and listed the exemptions: if the client gives informed consent to the information being disclosed, for instance, or if it is of overriding public interest, such as to prevent serious bodily injury.

On conflicts of interest, he stressed the need for lawyers to be loyal to clients and their interests. There are certain situations in which a lawyer cannot act, even with client consent e.g. where the lawyer is already acting for an opposing party. In other situations, a lawyer can act provided that client's consent has been given e.g. if the interests of the client conflict with the economic interests of the lawyer.

Dr Adardam Achyar, S.H., M.H. spoke about PERADI's ethical rules, particularly enforcement, including sanctions for violations.

After the speeches, several questions were raised, such as relationships with the government, licensing of lawyers and the authority of any sanctions.

IBA Principles on professional ethics

Jonathan Goldsmith, Chair of BIC ITILS, spoke about the IBA International Principles on the Conduct of the Legal Profession, which were originally adopted in May 2011, and then revised in October 2018. They contain 10 principles, whose aim is to establish 'a generally accepted framework to serve as a basis on which codes of conduct may be established by the appropriate authorities for lawyers in any part of the world'. They are not intended to have any direct regulatory impact, such as to 'replace or limit a lawyer's obligation under applicable laws or rules of professional conduct' or to 'be used as criteria for imposing liability, sanctions, or disciplinary measures of any kind'.

Jonathan Goldsmith listed the topics covered by the principles as follows:

- 1) Independence
- 2) Honesty, integrity and fairness
- 3) Conflicts of interest

- 4) Confidentiality/professional secrecy
- 5) Clients' interest
- 6) Lawyers' undertaking
- 7) Clients' freedom
- 8) Property of clients and third parties
- 9) Competence
- 10) Fees

He spoke in particular about the revisions which took place in 2018. These covered the inclusion for the first time of the need for a lawyer to take account both of diversity and inclusion in a lawyer's practice, and of access to justice for citizens. Finally, he spoke of changes to the commentary of the principle covering confidentiality, given the disquiet raised by decision-makers regarding the use of confidentiality by some lawyers when a client is involved in activities which are either illegal or may run contrary to the tenets of public policy. The latter was an issue raised more and more in public discussions.

He explained where the principles can be found on the IBA website, and the languages into which it had been translated, encouraging local lawyers to translate the text also into their own language.

Arbitration of International Commercial Disputes

The speakers were **Thierry Ngoga**, a member of BIC ITILS, and **Andi Y. Kadir**, the local speaker.

The session covered a brief overview of the arbitration framework in Indonesia. There was a discussion of the restrictions on the choice of counsel (legal representation) in international arbitration, and the implication of doing so for positioning Indonesia as a "Safe Arbitration Seat".

Using available statistical data in Asia for international arbitration (from the ICC, ICSID, SIAC-Singapore and various current arbitration surveys), there was a discussion of what lawyers and policy makers have done in various jurisdictions, particularly in Asia, or what they should be doing, to ensure that arbitration is shared properly between local lawyers and the rest of the world, as a way to rise to the challenge posed by the globalisation of legal services.

The following points were also highlighted:

- (1) consideration needs to be given to the dispute resolution clause during negotiation and drafting of the contract, and particularly its implication for the appointment of counsel and arbitrators when a dispute arises;
- (2) negative perceptions about a particular country in business reports or competitive indexes need to be dealt with; and

- (3) there is a role for Indonesian lawyers and the government (the Attorney General) in bringing about change, so that Indonesia features on the map of international arbitration and rises to the challenge of the globalisation of legal services.

The session concluded by highlighting that the economic expansion of the ASEAN region needs to take account of arbitration mechanisms, especially to ensure a future equitable share of the arbitration cake in a globalised world. Looking at the available data in Asia, and particularly Indonesia, it can be seen that change is possible, it is happening. The role of the legal practitioners gathered in the session is to contribute to ensuring that it happens more quickly than in the past.

Instruments on International Trade in Legal Services and their Applicability in Asia

This was presented by **Alison Hook**, immediate past Chair of BIC ITILS, and **Riza Buditomo**, the local speaker. The two made a joint presentation, which covered the following key themes from both an international and Indonesian perspective:

- the challenge and opportunities of globalisation and international trade – especially the new opportunities opening up with new Free Trade Agreements (FTAs)
- how the GATS and FTAs deal with legal services
- how international trade in legal services is dealt with in Indonesia and elsewhere
- any specific professional ethics considerations to bear in mind, especially in relation to cooperation between local and international lawyers in providing legal services.

There were a few questions asked by online participants. One asked what the rules might be in relation to cooperation between law firms and accountancy firms, which suggested some interest in how they could work together in the context of the new FTAs in which Indonesia is involved.

Another participant asked for practical tips on working with international firms/winning international business.

There was not much time for interaction with the audience, as the session started late and then overran due to the amount of ground to cover. But a good number of participants remained online throughout the session.

GENERAL INFORMATION



IBA

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of more than 55,000 individual lawyers and more than 190 bar associations and law societies, spanning all continents. For more information, see <http://www.ibanet.org/>

PERADI

Perhimpunan Advokat Indonesia or Indonesia Advocates Association (PERADI) is the organisation for all advocates in Indonesia. PERADI was established on December 21, 2004 after the promulgation of Law No. 18 of 2003 regarding Advocates. For more information, see: <http://www.peradi.or.id/>

ELF

The European Lawyers Foundation (ELF) is an organisation that undertakes projects that relate to the exercise of the profession of lawyers, the development of the law and practice pertaining to the rule of law and administration of justice and substantive developments in the law itself, both at a European and international level. For more information, see <http://elf-fae.eu/>

NEW OPPORTUNITIES AND CHALLENGES IN INTERNATIONAL PRACTICE: GLOBALISATION

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PROFESSIONAL ETHICS

14 JUNE 2021

MANDARIN ORIENTAL HOTEL, JAKARTA

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ZOOM

PROGRAMME

08:00-09:00	Registration	14:15-15:00	Arbitration of international commercial disputes Thierry Ngoga, Rwanda Andi Y. Kadir, S.H., LL.M.
09:00-09:15	Welcome Johannes C. Sahetapy-Engel, S.H., M.H.		
09:15-10:00	Raising capital in international markets: the role of the local legal advisor Juan Javier Negri, Argentina Maria Sagrado, S.H., MKn, LL.M	15:00-15:45	Instruments on international trade in legal services and their applicability in Asia Alison Hook, United Kingdom Riza Buditomo, A.M.Ak., S.H.
10:00-10:45	Lawyers and technology Steven M. Richman, United States of America Rahmat Soemadipradja, S.H., LL.M	15 :45	Conclusions
10:45-11:30	Keynote Speaker Prof. Dr. Otto Hasibuan, S.H., M.M		
11:30-11:45	-coffee break-		
11:45-12:30	Professional ethics in Indonesia and in other countries Kimitoshi Yabuki, Japan Dr Adardam Achyar, S.H., M.H.		
12:30-13:00	IBA Principles on professional ethics Jonathan Goldsmith, Belgium		
13:00- 14:15	-lunch-		