

## INDONESIA LEGAL COUNTRY PROFILE

### LEGAL SYSTEM OVERVIEW

Indonesia possesses a civil law system influenced by customary law. The hierarchy of laws was defined in 2000 by the People's Consultative Assembly as the following: the constitution, statutory law, government regulation, presidential decree, regional regulation, and traditional laws. The House of Representatives not only holds legislative power, but also the authority for the state budget and represents the people in supervising and checking executive power. The Regional Representative Council's, or Senate, authority is confined to preparing bills and recommendations, but without voting rights, largely relating to the regional functions of Indonesia and the management of economic resources.<sup>1</sup> The congregation of both houses has the power to amend the constitution and impeach the executive.

Judicial independence is enshrined in Article 24 of the Constitution. The judicial branch of government is formed by the Supreme Court and the Constitutional Court, with the former being the highest court of appeal in regard to criminal, civil, commercial, religious, and military courts. For civil, commercial and criminal law, secular courts are largely predominant, Muslims may opt for Sharia courts to rule on matters of personal status.<sup>2</sup> Nevertheless, in Aceh province, Sharia law applies in full, including its extension to criminal law. Although *de jure* independent, in reality the judiciary is open political intervention, particularly the Constitutional Court which has one third of its judges nominated and appointed by the President. Corruption is also rife within the judiciary, particularly bribery; anti-corruption legislation is poorly enforced. Indeed, in both 2013 and 2017 a Constitutional Court judge was arrested for corruption, with the former being found guilty and handed a life sentence.<sup>3</sup>

The Indonesian Civil Code 1847 has a broad scope and governs a range of topics including personal status law, assets, contracts, nullification, as well as obligations and monetary loans.<sup>4</sup> Commercial and business life is regulated by the Commercial Code 1847 as well as the more recent Limited Liability Companies Act 40/2007, which defines business entities and the rules applying to them.<sup>5</sup> Indonesia also has a swathe of labour relation laws, such as the Industrial Relations Law, Union Law, Work Safety Law and Social Security Law. However, the Act Concerning Manpower 13/2003 is the comprehensive law on employee-employer relations.<sup>6</sup> The Penal Code 1982 is the primary criminal law, with the exception of Aceh, and includes basic anti-corruption measures. The Law on Eradicating Criminal Acts of Corruption criminalises major corrupt practices, but not facilitation payments.<sup>7</sup>

Indonesia is party to numerous international treaties, including the Geneva Conventions, Framework Convention on Climate Change and its subsequent additions, the International Covenant on Civil and Political Rights as well as the New York Convention 1958. Indonesia is also a member of the Association of Southeast Asian Nations, Organisation of Islamic Cooperation, World Trade Organisation and the Islamic Development Bank.

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<sup>1</sup> <http://www.nyulawglobal.org/globalex/Indonesia1.html#sourcesoflaw>.

<sup>2</sup> <http://www.nyulawglobal.org/globalex/Indonesia1.html#judiciary>.

<sup>3</sup> <http://www.business-anti-corruption.com/country-profiles/indonesia>.

<sup>4</sup> <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=category&docid=3ffbd0804&skip=0&category=LEGAL&coi=IDN&querysi=civil&searchin=fulltext&sort=date>.

<sup>5</sup> <https://www.scribd.com/doc/98386130/KUHD-English>; <http://irmadevita.com/wp-content/uploads/2008/04/company-law-uu-40-2007.pdf>.

<sup>6</sup> [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=64764&p\\_country=IDN&p\\_count=574&p\\_classification=01.02&p\\_classcount=2](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=64764&p_country=IDN&p_count=574&p_classification=01.02&p_classcount=2).

<sup>7</sup> [http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/indonesia\\_Corruption%20Eradication%20Law\\_1999\\_en.pdf](http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/indonesia_Corruption%20Eradication%20Law_1999_en.pdf); <http://www.business-anti-corruption.com/country-profiles/indonesia>.

Indonesian legislation does not state where international law is positioned within Indonesia's legal hierarchy and commentators have criticised Indonesia for its failure to comply for with international treaties, including those focused on human rights and international trade.<sup>8</sup>

## BUSINESS OVERVIEW

As real GDP is expected to grow, inflation, which has been relatively unstable over the past ten years, is forecast to remain steady at around 3.5% annually through to 2022.<sup>9</sup> Indonesia also has a relatively diverse domestic and export economy formed of service, industry and agriculture sectors. The country also has a positive trade balance and a strong banking sector, whilst sovereign bonds are rated as 'investment grade' by the Big Three rating agencies.<sup>10</sup>

There can be major obstacles to doing business in Indonesia. Indonesia has a Negative Investment List which restricts foreign investment in certain sectors, particularly those concerning energy and natural resources. Indonesian infrastructure is also inconsistent across the archipelago and has major shortcomings, which leads to high logistical costs.<sup>11</sup> Despite President Widodo's efforts to reduce corruption, it remains a regular feature of business life and corruption in customs, public service, public procurement and the tax administration act as a major deterrent to business and investment. A lack of government transparency furthers these challenges.<sup>12</sup> As such, Indonesia is ranked 72 of 190 in the World Bank's Ease of Doing Business Index.<sup>13</sup>

Nevertheless, firms with a long-term strategy can greatly benefit from the Indonesian market. Indonesia provides much opportunity for consumer product companies, as domestic consumption is the backbone of the economy. The Indonesian government also has plans to greatly improve its infrastructure in order to allow the expansion of its energy sector. Roads, ports, railways and airports are planned to be built across the archipelago whilst there are extensive plans to extend electricity networks telecommunication and internet coverage throughout the country. As such, numerous opportunities exist across these sectors both in specialist services and high-tech products.<sup>14</sup> The palm oil sector is also booming, despite a recent EU ban on palm oil as a biofuel, as global output is set to rise by around 10% in 2018, led by Indonesia which produces over half the global supply. The renewable energy sector is also set to grow exponentially, as the government has targeted to increase renewable energy use by 17% by 2025.<sup>15</sup>

## COUNTRY OVERVIEW

The Republic of Indonesia is an archipelago nation located in south-eastern Asia, located between the Indian and Pacific Oceans, and has land borders with Malaysia, Papua New Guinea and Timor-Leste. Indonesia's population stands at 260.58 million people, making it the fourth most populous country on earth. There is a major population concentration focused on Java, including 10.32 million inhabitants in the metropole of the capital, Jakarta. Over 700 languages are spoken across Indonesia, but Bahasa Indonesia is the only official language, although Dutch and English are also widely spoken. The state is

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<sup>8</sup> <http://law.emory.edu/eilr/content/volume-28/issue-1/recent-developments/international-law-indonesian-legal-system.html#section-6f8b794f3246b0c1e1780bb4d4d5dc53>.

<sup>9</sup> <http://www.imf.org/external/datamapper/PCPIEPCH@WEO/IDN>.

<sup>10</sup> <http://www.coface.com/Economic-Studies-and-Country-Risks/Indonesia>.

<sup>11</sup> <https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?year=2017&dliid=269817#wrapper>.

<sup>12</sup> <https://www.gov.uk/government/publications/overseas-business-risk-indonesia/overseas-business-risk-indonesia#bribery-and-corruption>; <https://www.business-anti-corruption.com/country-profiles/indonesia>.

<sup>13</sup> <http://www.doingbusiness.org/data/exploreeconomies/indonesia>.

<sup>14</sup> <https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?year=2017&dliid=269817#wrapper>.

<sup>15</sup> <https://www.gov.uk/government/publications/exporting-to-indonesia/exporting-to-indonesia#challenges-doing-business-in-indonesia>.

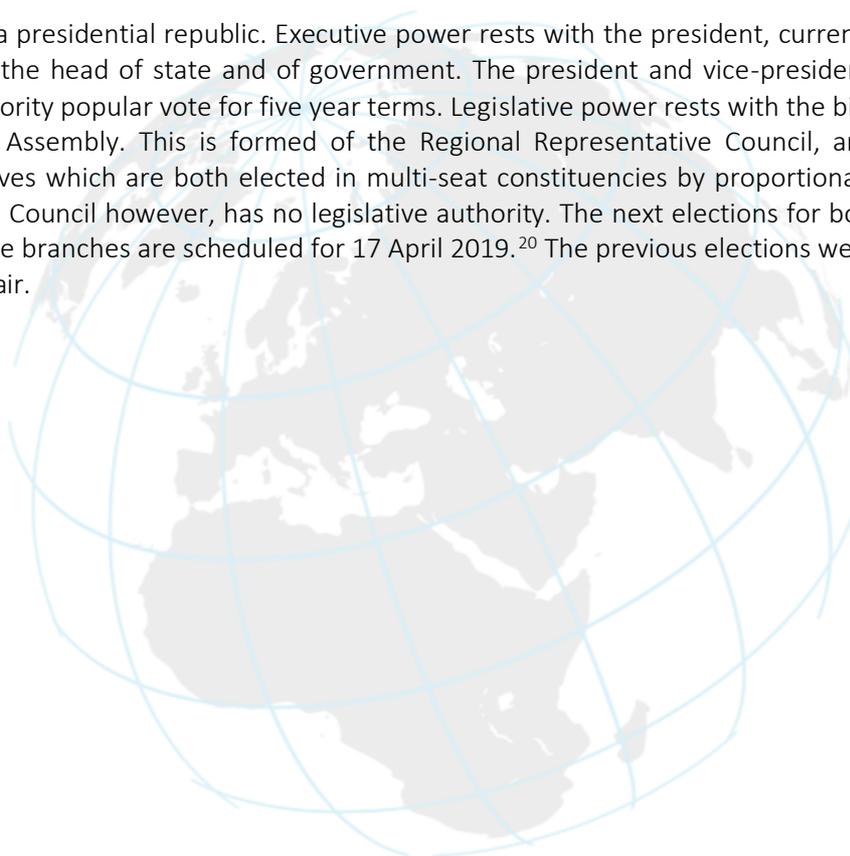
officially secular but the population is overwhelming Muslim, with the vast majority following Sunni Islam; There are also Christian and Hindu minorities.<sup>16</sup>

In terms of its political-economic outlook and business climate, Indonesia is viewed as having acceptable levels of risk. There are, however, high risks of natural disasters, such as earthquakes and volcanic activity, as well as terrorism.<sup>17</sup>

Corruption represents a major problem in Indonesia and it is widespread across the economy. Indeed, Indonesia ranks 90 of 176 in Transparency International's 2016 Corruption Index and corruption also extends to the judiciary, public services and natural resource industry.<sup>18</sup>

Indonesia's GDP currently stands at US\$1.01 trillion, making it the sixteenth largest economy globally. The economy is forecast to continue to grow in real terms at a steady pace of 5-5.5% over 2018-2022.<sup>19</sup> The official currency is the Indonesian Rupiah.

Indonesia is a presidential republic. Executive power rests with the president, currently Joko Widodo, who is both the head of state and of government. The president and vice-president are elected by absolute majority popular vote for five year terms. Legislative power rests with the bicameral People's Consultative Assembly. This is formed of the Regional Representative Council, and the House of Representatives which are both elected in multi-seat constituencies by proportional representation. The Regional Council however, has no legislative authority. The next elections for both the executive and legislative branches are scheduled for 17 April 2019.<sup>20</sup> The previous elections were generally seen as free and fair.



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<sup>16</sup> <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>.

<sup>17</sup> <https://globaledge.msu.edu/countries/indonesia/risk>; <https://www.gov.uk/foreign-travel-advice/indonesia>.

<sup>18</sup> [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016); <http://www.business-anti-corruption.com/country-profiles/indonesia>.

<sup>19</sup> <http://www.imf.org/external/datamapper/NGDPD@WEO/IDN>; [http://www.imf.org/external/datamapper/NGDP\\_RPCH@WEO/IDN](http://www.imf.org/external/datamapper/NGDP_RPCH@WEO/IDN).

<sup>20</sup> <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>.