INDONESIA

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# Indosat divestment upheld

**By Eugene V Flynn**

In a decision released in February the Indonesian Supreme Court threw out a lawsuit challenging the 2002 privatisation of state-owned telecommunications company PT Indonesia Satellite Corporation (Indosat), the largest single privatisation in Indonesian history.

The class action suit had been filed in April 2003 by a group of 133 leading politicians, activists and religious leaders seeking to annul the sale of a 41.9 percent share in Indosat to Singapore Technologies Telemedia Pte Ltd (STT) on the grounds that the sale violated the Indonesian Constitution. The court reasoned that although STT (a subsidiary of Temasak Holdings, the investment arm of Singapore's Ministry of Finance) had a substantial stake, Indosat could not be said to be fully under 'foreign control'.

The court also pointed to existing law that limits foreign investment in strategic enterprises to a maximum of 85 percent, and cited the importance of maintaining Indonesia's reputation as a country that welcomes foreign investment. For good measure, the court questioned whether the plaintiffs actually constituted a 'class' since it was not proven they were acting for the majority of the Indonesian public.

The US$627 million transaction closed in December 2002 during the administration of President Megawati Sukarnoputri, and was seen as a milestone in Indonesia's progress toward privatisation of state-owned companies. It immediately came under fire amid allegations ranging from illegal commissions to unconstitutionality.

The list of plaintiffs in the lawsuit read like an excerpt from Who's Who in Indonesia, including among others former President Abdurrahman (Gus Dur) Wahid (who also heads Indonesia's largest Muslim organisation, Nahdlatul Ulama), Rachmawati Sukarnoputri (a younger sister of former President Megawati), three former cabinet ministers, more than a dozen retired ranking military officers, the Indosat labour union and the heads of several large Muslim organisations and political parties.

**BKPM to be split from Department of Trade**

In early March the state-owned Antara News Agency reported that the Government and the Indonesian Parliament (DPR) Working Committee on the draft Capital Investment Law have agreed to separate the Capital Investment Coordinating Board (Badan Koordinasi Penanaman Modal or BKPM) from the Department of Trade and to restore its status as an independent board whose chairman will report directly to the president. Whether or not the chairman of BKPM will sit on the cabinet is to be decided by the president.

This move would reverse a decision made just two years ago in March 2005 that saw BKPM placed under the authority of the Department of Trade (DoT). While the stated reason for placing BKPM under the DoT was to improve the investment approval process and reduce the start-up time for new businesses, the rationale for this latest realignment is to 'ensure the maximum coordination of government agencies in dealing with investment affairs'.

BKPM was established in 1973 as a 'one-stop centre' for both foreign and domestic investment, generally responsible for reviewing, approving and monitoring projects. Until 2005, it operated as an independent government agency from its formation, reporting directly to the President. The scope of its authority has come under challenge in recent years by regional governments claiming increased powers regarding local investments under Indonesia's decentralisation legislation of 1999.

BKPM's reputation has been recently sullied by a unanimous Supreme Court decision upholding a six-year jail sentence for the former chairman of BKPM, Theo Toemion, for corruption charges stemming from his misuse of some Rp. 30.15 billion (US$3.3 million) between 2003-4. Mr Toemion had also drawn attention of the unwanted kind to himself in his last days as chairman for instigating fisticuffs at a basketball game in which his child was playing.

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