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Affidavit of Prahasto W. Pamungkas SH LL.M MCIArb FCIL
Multilingual Sworn Translator (Indonesian – Dutch, English & French)
Fellow of the Chartered Institute of Linguists

No. 011/I-E/PWP/X/08/2008

I, the undersigned,

Prahasto W. Pamungkas SH LL.M MCIArb FCIL of Jalan Kencana II/28 Cilandak Barat, Jakarta Selatan 12430, Indonesia, do hereby truly say and affirm as follows:

1. I am an Advocate, fully admitted to the Indonesian Bar, concurrently a Multilingual Sworn Translator of the Indonesian – Dutch, English and French languages, practising within the jurisdiction of the Republic of Indonesia by virtue of Decrees of the Governor of Metropolitan Jakarta, and internationally accredited as a Fellow of the Chartered Institute of Linguists of the Saxon House at Southwark Street, London, an international organisation of linguistic experts and professionals registered in England as a company limited by guarantee.
2. The document attached hereto is the official Indonesian-into-English translation of the Supreme Court Regulation No. 01 of the Year 2008 concerning Court-Annexed Mediation.
3. I made the translation at the request of the Indonesian Mediation Centre (Pusat Mediasi Nasional) of Kompleks Wijaya Graha Puri, Bloc F 64 – 65, Jalan Wijaya II. Kebayoran Baru, Jakarta 12160, Indonesia.
4. I made the official translation to the best of my ability with due observance of my official oaths and the Code of Professional Conduct of the Chartered Institute of Linguists.

In witness whereof, the said translation, which was made and finalised on the date and day mentioned below shall, as long as remains undercover of this Affidavit, bearing my official seal and signature, be reliable before any judicature and thereout.

Jakarta, Wednesday, 27th August 2008

Prahasto W. Pamungkas SH LL.M MCIArb FCIL

Multilingual Sworn Translator & Fellow of the Chartered Institute of Linguists
Governor Decrees' Numbers: 5226/1998; 2228; 1840/2002; and 2125/2002
Chartered Institute of Linguists Fellowship Number: 021311

[Coat of Arms of the Republic of Indonesia]

**CHIEF JUSTICE OF THE SUPREME COURT OF
THE REPUBLIC OF INDONESIA**

REGULATION OF THE SUPREME COURT OF
THE REPUBLIC OF INDONESIA

NUMBER 01 OF THE YEAR 2008

REGARDING

PROCEDURES OF COURT-ANNEXED MEDIATION

THE SUPREME COURT OF THE REPUBLIC OF INDONESIA

Considering:

- a. whereas mediation constitutes one of the faster and cheaper processes and can give disputants greater access to satisfactory settlement of disputes and justice;
- b. whereas integrating mediation into the process of civil procedure in courts can be one of effective instruments to overcome cases backlog problems in the court and to strengthen and maximise the function of the court in settling disputes in addition to the court process which is of adjudicatory nature;
- c. whereas the prevailing civil procedure, either Article 130 of the Reviewed Inland Regulation or Article 154 of the Outer-Region Regulation, encourages disputants to undergo amicable settlement procedure that can be intensified by integrating mediation process in the courts of the first instance;
- d. whereas, while awaiting the passing of the relevant legislation and taking into account of the authority of the Supreme Court in regulating the court procedures that have not been sufficiently regulated by the relevant legislation, then for the sake of certainty,



order and expeditiousness in the processes of reconciling disputing parties to civil lawsuits, it is deemed necessary to adopt a Supreme Court Regulation;

- e. whereas, having evaluated the implementation of Court-Annexed Mediation Procedures under the Supreme Court Regulation Number 2 of the Year 2003 several problems originated from the aforesaid Supreme Court Regulation are found and, as such, the aforesaid Supreme Court Regulation No. 2 of the Year 2003 needs to be revised with the purpose of making the Court-Annexed Mediation Procedures more efficient.

Taking into account of:

1. Article 24 of the 1945 Constitution;
2. The Reviewed Inland Regulation (HIR), State Gazette of the Year 1941 Number 44 and the Regulation of Civil Procedure for Regions Outside Java and Madura (RBg), State Gazette of the Year 1927 Number 227;
3. Law No. 4 of the Year 2004 regarding the Judicial Authority, State Gazette of the Year 2004 Number 8;
4. Law Number 14 of the Year 1985 concerning the Supreme Court, State Gazette Number 73 of the Year 1985 as amended by Law Number 5 of the Year 2004 regarding the Amendment to Law Number 14 of the Year 1985 concerning the Supreme Court, State Gazette of the Year 2004 Number 9 and Supplement to the State Gazette of the Year 2004 Number 4359;
5. Law Number 2 of the Year 1986 concerning General Court, State Gazette Number 20 of the Year 1986 as amended by Law No. 8 of the Year 2004 regarding the Amendment to Law Number 2 of the Year 1986 concerning General Court, State Gazette Number 34 of the Year 2004;
6. Law Number 25 of the Year 2000 concerning National Development Programme, State Gazette Number 206 of the Year 2000;



7. Law Number 7 of the Year 1989 concerning Religious Court, State Gazette of the Year 1989 Number 73, as amended by Law Number 3 of the Year 2006, State Gazette of the Year 2006 Number 22, Supplement to the State Gazette Number 4611.

DECIDES:

THE REGULATION OF THE SUPREME COURT OF THE REPUBLIC OF INDONESIA CONCERNING COURT-ANNEXED-MEDIATION PROCEDURES

CHAPTER I

General Provisions

Article 1

In this Supreme Court Regulation, the following definitions shall have the following meanings:

1. Supreme Court Regulation means the Supreme Court Regulation regarding the Court-Annexed Mediation Procedures;
2. Consent Judgement means a document containing an agreement on amicable settlement and the court judgment affirming the agreement on amicable settlement, which is not subject to any ordinary or extraordinary appeal;
3. Judge means a sole judge or a chamber of judges appointed by the Chairman of the Court of First Instance to examine and adjudicate a civil case;
4. Caucus means a meeting between the mediator and one of the Parties not attended by the other party;
5. Agreement on amicable settlement means a document containing terms and conditions mutually agreed upon and covenanted by the disputing parties to settle their disputes and which is resulted from the amicable process with the facilitation of one mediator or more under this Regulation.
6. Mediator means a neutral party assisting the parties in the negotiation process aiming at seeking various possibilities of dispute resolution without using any decisive passage or forcing a resolution;



7. Mediation means a method of dispute resolution through the process of negotiation between the parties facilitated by a Mediator;
8. Parties mean one or more legal subjects, who are not the solicitors, who are in dispute and bring their disputes to the court for determination;
9. Mediation procedure means the stages of mediation process as regulated by this Supreme Court Regulation;
10. Summary of case means a document drawn up by each party containing the position of the case and/or proposal for dispute settlement.
11. Mediator Certificate means a document stating that someone has passed a mediation training or education issued by an entity accredited to the Supreme Court;
12. Closed mediation process means mediation meetings attended only by the parties or their solicitors and the mediator or other parties as approved by the parties and the dynamics of such meetings may not be communicated to the public unless with the consent of the parties;
13. The Court means the Court of First Instance within the jurisdiction of the general court and religious court;
14. The High Court means the Appellate Court within the jurisdiction of the general court and religious court.

Article 2

The Scope and Applicable Extent of the Supreme Court Regulation

- (1) This Supreme Court Regulation applies only to the court-annexed mediation.
- (2) Each judge, mediator and the parties is/are obliged to follow the procedure of dispute settlement through mediation as regulated in this Supreme Court Regulation.
- (3) Any deviation of the mediation procedures laid down in this Supreme Court Regulation constitutes a breach of Article 130 HIR and/or Article 154 RBg making the judgment null and void by operation of law.
- (4) The Judge is obliged to mention that attempt for amicable settlement through mediation has been made with respect to the case by mentioning the name of the mediator in the case concerned in the legal reasoning of the case.



Article 3

Costs Associated with the Summons Served upon the Parties

- (1) The costs associated with the summons to be served upon the parties to attend the mediation process must firstly be imposed upon the plaintiff who must place an advance payment of the case fee.
- (2) If the parties succeed in reaching agreement, the costs associated with the summons served upon the parties as referred to in paragraph (1) shall be jointly borne by the parties or in accordance with their mutual agreement thereupon.
- (3) If the parties fail to reach the agreement, then the costs associated with the summons served upon the parties in the mediation process shall be imposed upon the party who is condemned by the judge to pay the case fee.

Article 4

Types of Cases Mediated

Except for cases that must be brought to the commercial court, industrial relationship tribunal, objection to the decision of the Tribunal for Consumers' Disputes Resolution, and appeal to the decision of the Commission for Supervision of Business Competition, all civil cases brought before the Court of First Instance must first be settled amicably with the facilitation of a mediator.

Article 5

Mediator Certificate

- (1) Except for the circumstances as meant by Article 9 paragraph (3) and Article 11 paragraph (6) each person exercising the mediator function shall in principle possess a mediator certificate awarded to him after participating in the training organised by an entity accredited to the Supreme Court of the Republic of Indonesia.



- (2) If within the jurisdiction of a Court, there is no judge, advocate, legal academician nor non-legal profession who possesses mediator certificate, the judge of the Court concerned shall have the authority to exercise the mediator function.
- (3) In order to obtain accreditation, an entity must satisfy the following requirements:
 - a. the entity must submit an application to the Chief Justice of the Republic of Indonesia;
 - b. the entity must possess instructors or trainers possessing certificates evidencing their participation in the education or training of mediation and education or training for instructors for education or training of mediation;
 - c. the entity must have organised at least two mediation trainings for non-certificated court-annexed mediator;
 - d. the entity must have a court-annexed mediation educative or training curriculum ratified by the Supreme Court of the Republic of Indonesia.

Article 6

Nature of the Mediation Process

The mediation process is in principle closed in nature unless otherwise desired by the parties.

CHAPTER II

Pre-Mediation Stages

Article 7

- (1) On the day of the first hearing attended by both Parties, the Judge shall obligate the Parties in dispute to firstly undergo mediation.
- (2) The absence of the defendant does not hinder the mediation process.
- (3) The Judge shall, through the solicitors or directly communicating with the parties, encourage the parties to directly or actively participate in the mediation process.
- (4) The solicitors of the parties are under obligation to encourage the parties to directly or actively participate in the mediation process.



- (5) The Judge is obliged to adjourn the hearing in order to give the parties the chance to undergo mediation.
- (3) The Judge is obliged to give explanation to the parties about the mediation procedure under this Supreme Court Regulation.

Article 8

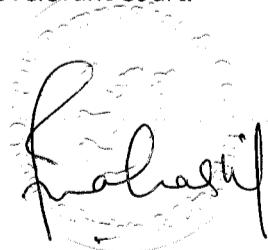
The Rights of the Parties to Choose Mediators

- (1) The parties have the right to choose mediators from the following choices:
 - a. Judge not entrusted with the task to examine the case in the relevant court;
 - b. Advocate or legal academician;
 - c. Non-legal professional practitioner deemed by the parties as possessing expertise or experience in the substance of the lawsuit;
 - d. Examining Judge;
 - e. Combination of mediators referred to in points a and d, or combination of b and d, or combination of c and d.
- (2) If in the mediation process there is more than one mediator, the distribution of mediators' duties shall be determined and mutually agreed upon by the mediators themselves.

Article 9

Mediators List

- (1) For the parties' ease of choosing their mediator, the Chairman of the Court shall provide a list of mediators containing at least 5 (five) names of mediators and accompanied by the mediators' educational background or experience.
- (2) The Chairman of the Court shall place the names of judges having mediator certificates in the list of mediators.
- (3) If within the jurisdiction of the relevant Court there is no certificated mediator, all judges of the relevant Court can be placed in the list of mediators.
- (4) Non-judge certificated mediator can submit a request to the Chairman of the Court in order for his/her name to be placed in the list of mediators within the relevant Court.



- (5) Having verified and ensured the validity of the certificate, the Chairman of the Court places the name of the applicant in the list of mediators.
- (6) The Chairman of the Court evaluates and renews the list of mediators annually.
- (7) The Chairman of the Court has the authority to remove the name of a mediator from the list of mediators on objective grounds, inter alia, because of relocation, permanent impediment, and inactivity after being assigned and breach of code of ethics and professional conduct.

Article 10


Mediator's Fee

- (1) The use of judge-mediator is free of charge.
- (2) Non-judge mediator's fee shall be jointly borne by the parties or as otherwise mutually agreed by the parties.

Article 11

Deadline for Choosing (a) Mediator(s)

- (1) If after the parties appear on the day of the first hearing, the Judge shall oblige the parties to negotiate to choose the mediator and to negotiate the associated fee possibly incurred from the choosing of non-judge mediators on the same day or not longer than the 2 (two) following working days.
- (2) The parties shall forthwith inform the president of the chamber of their chosen mediator(s).
- (3) The president of the chamber shall forthwith inform the chosen mediator to commence the duties.
- (4) If, after the lapse of the time period as referred to in paragraph (1), the parties fail to reach an agreement on the desired mediator(s), then the parties are under obligation to notify the president of the chamber of their failure in choosing their mediator(s).
- (5) Having received the notification from the parties of their failure in choosing their mediator(s), the president of the chamber shall appoint a judge of the relevant Court, who is not entrusted with the task to examine the case, who possesses mediator certificate to exercise the mediator function.



- (6) If, within the same Court there is no judge, who is not entrusted with the task to examine the case, who possesses mediator certificate then the examining judge assigned by the president of the chamber shall exercise the mediator function, no matter whether he is certificated or not.

Article 12

Undergoing Mediation Process in Good Faith

- (1) The parties are under obligation to undergo the mediation process in good faith.
(2) One party can declare his withdrawal from the mediation process if the other party undergoes the mediation process in bad faith.

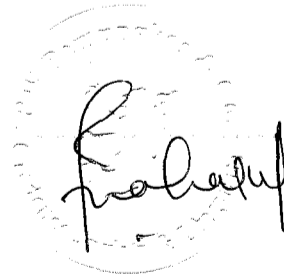
CHAPTER III

STAGES OF MEDIATION PROCESS

Article 13

Submission of the Summary of the Case and the Duration of the Mediation Process

- (1) Within a period of not longer than 5 (five) days after the parties have appointed the agreed mediator. The parties can exchange the summary of the case with each other and submit it to the mediator.
(2) Within a period of time not longer than 5 (five) working days after the parties have failed choosing the mediator, each party may submit the summary of the case to the appointed mediator.
(3) The mediation process shall last for 40 (forty) working days as of the date on which parties have chosen the mediator or as of the date on which the president of the chamber has appointed the mediator as stipulated in Article 11 paragraph (5).
(4) On the grounds of the parties' mutual agreement, the timeframe of mediation process can be extended up to a period of not longer than 14 (fourteen) working days as meant by paragraph (3),



- (5) The timeframe of the mediation process does not count the timeframe of the case examination.
- (6) Whenever necessary and on the grounds of the parties' mutual agreement, the mediation process can be done by way of using distance communication devices.

Article 14

The Mediator's Authority to Declare that the Mediation has Failed

- (1) The mediator is under obligation to declare the failure of the mediation process if one of the parties or all parties or their respective solicitor(s) has/have been absent twice consecutively in the mediation meeting in accordance with the schedule of mediation meetings as mutually agreed or has/have been absent twice consecutively in the mediation meetings without reason regardless of the proper summonses.
- (2) If, during the course of mediation, the mediator becomes aware that in the dispute being mediated, any asset or property or interest, which is blatantly associated with any third party not mentioned in the statement of case so that the third party having such interest cannot become a party to the mediation process, then the mediator may notify the parties and the examining judge that the case concerned is not to be mediated on the grounds of incompleteness of parties (*plurium litis consortium*).

Article 15

Mediators' Duties

- (1) The mediator is under obligation to prepare the proposal for the schedule of mediation meetings to be submitted to the parties for discussion and mutual agreement.
- (2) The mediator is under obligation to encourage the parties to directly participate in the mediation process.
- (3) Whenever deemed necessary, the mediator may hold caucuses.
- (4) The mediator is under obligation to encourage the parties to trace and find their own interests and seek various alternatives of the best resolution for the parties' sake.



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Article 16

Experts' Involvement

- (1) Upon the parties' or their respective solicitors' mutual agreement, the mediator may invite one or more experts in certain field to give explanation or consideration that is helpful in settling the discrepancies among the parties.
- (2) The parties must firstly reach agreement on the binding force or non-binding force of the explanation or assessment of the expert.
- (3) All costs associated with the expert(s) in the mediation process shall be borne by the parties as mutually agreed.

Article 17

Reaching Agreement

- (1) If the mediation results in the amicable settlement, the parties shall, with the assistance of the mediator, be under obligation to formulate the reached agreement in writing and to be signed by the parties and the mediator.
- (2) If the parties are represented by their respective solicitor(s), the parties are under obligation to declare in writing their approval of the agreement so-reached.
- (3) Before the parties sign the agreement, the mediator shall examine the substance of the amicable agreement in order to prevent any agreement contradictory to the law or unenforceable or containing bad faith.
- (4) The parties are under obligation to reappear before the Judge on the pre-determined date of hearing to notify of their amicable agreement.
- (5) The parties may submit the amicable agreement to the Judge for affirmation in the form of consent judgment.
- (6) If the parties do not desire that the amicable settlement shall be made in the form of consent judgment, then the amicable agreement must contain a clause on the revocation of the statement of case or a clause stating that the case has been ended.



A handwritten signature in black ink, appearing to read 'Prahasto', is written over a faint circular stamp. The stamp contains text that is mostly illegible but appears to be a professional or institutional seal.

Article 18

Agreement Not Reached

- (1) If, after the lapse of the period of maximum 40 (forty) working days as referred to in Article 13 paragraph (3), the parties have failed to reach an agreement or because of the causes as referred to in Article 15, the mediator is under obligation to declare in writing that the mediation process has failed and to notify the Judge of such failure.
- (2) Immediately upon receipt of the notification, the Judge shall continue examining the case in accordance with the prevailing procedural law.
- (3) In every stage of case examination, the examining judge remains authorised to encourage or have the effort to reach the amicable settlement before the pronouncement of the judgment.
- (4) Efforts at reaching the amicable settlement as referred to in paragraph (3) shall last for a period of not longer than 14 (fourteen) working days as of the date on which the parties notify the examining judge of their willingness to enter into amicable settlement.

Article 19

Independence of Mediation from Litigation

- (1) If the parties have failed to reach an agreement, statements and acknowledgements of the parties made during the course of mediation process cannot be used as means of evidence in and during the course of the case examination or the examination of other cases.
- (2) Notes taken by the mediator must be destroyed.
- (3) The mediator may not be heard as witness during the course of examination of the case concerned.
- (4) The mediator cannot be charged with any penal law or private law obligations over the contents of the amicable agreement resulted from the mediation process.



CHAPTER IV

Venue of Mediation

Article 20

- (1) Mediation can be held in one of the rooms of the Court of First Instance or other places as mutually agreed by the parties.
- (2) Judge-mediators may not hold mediation outside of the premises of the court.
- (3) Mediation held in one of the rooms of the Court of First Instance is free of charge.
- (4) If the parties have opted to have the mediation held in other places, any costs associated therewith shall be borne by the parties as mutually agreed.

CHAPTER V

AMICABLE SETTLEMENT AT THE APPELLATE LEVEL, CASSATION LEVEL AND REVIEW LEVEL

- (1) The parties, upon their own mutual agreement, can take efforts at reaching amicable settlement for their cases which are pending at the appellate level, cassation level and review level as long as the case has not been adjudged.
- (2) The agreement of the parties to take the route of amicable settlement must be informed in writing to the Chairman of the Court of First Instance examining the case.
- (3) The Chairman of the Court of First Instance examining the case shall forthwith inform the Chairman of the competent Appellate Court or the Chief Justice of the Supreme Court of the intention of the parties to take the route of amicable settlement.
- (4) If the case concerned is being examined at the appellate level, cassation level and review level, the panel of judges at the appellate level, cassation level and review level are under obligation to suspend the examination of the case concerned for a period of not longer than 14 (fourteen) working days commencing as of the date of receipt of the notification of the parties' intention to take the route of amicable settlement.
- (5) If the dossiers or the appellate memorandum, cassation memorandum and review memorandum have not been sent, the Chairman of the Court of First Instance is under obligation to suspend the sending of the dossiers or the appellate memorandum, cassation



memorandum and review memorandum to give the parties the chance of taking the route of amicable settlement.

Article 22

- (1) Efforts at reaching amicable settlement as referred to in Article 21 paragraph (1) shall last for a period of not longer than 14 (fourteen) working days as of the date on which the written notification of the intention of the parties has been received by the Chairman of the Court of First Instance.
- (2) Efforts at reaching amicable settlement as referred to in Article 21 shall be done in the court examining the case at first instance or other places as mutually agreed by the parties.
- (3) If the parties wish to have (a) mediator(s), the Chairman of the Court of First Instance concerned shall appoint one judge or more to become the mediator(s).
- (4) The mediator as referred to in paragraph (3) may not be the judge being member of the panel of judges examining the case concerned at the Court of First Instance, unless there are no other judges in the said Court of First Instance.
- (5) The parties, through the Chairman of the Court of First Instance, may submit their amicable agreement in writing to the panel of judges of the appellate level, cassation level or review level for affirmation in the form of consent judgment.
- (6) The consent judgment shall be signed by the panel of judges of the appellate level, cassation level or review level within a period of not longer than 30 (thirty) working days as of the date of its recordation in the principal register of cases.
- (7) In cases of occurrences as referred to in Article 21 paragraph (5) of this Supreme Court Regulation, if the parties have reached an amicable agreement that has been scrutinised by the Chairman of the Court of First Instance or a judge appointed by the Chairman of the Court of First Instance, and the parties wish to have the amicable settlement be affirmed in the form of consent judgement, the dossiers and the amicable agreement shall be sent to the Court of Appellate Level or the Supreme Court.



CHAPTER VI

Agreement Reached Outside the Court

Article 23

- (1) The parties, with the assistance of a certificated mediator, having been successfully settled the dispute outside of the court can bring the amicable agreement to the competent court to obtain the consent judgement by instituting a legal action.
- (2) The submission of the legal action as referred to in paragraph (1) shall be accompanied by the amicable agreement and other documents evidencing the legal relationship between the parties and the object of dispute.
- (3) The Judge, in the presence of the parties, will only affirm the amicable agreement in the form of consent judgement if the amicable agreement has satisfied the following requirements:
 - a. the amicable agreement is in conformity with the parties' will;
 - b. the amicable agreement does not contravene the law;
 - c. the amicable agreement brings no detriment to any third party;
 - d. the amicable agreement is enforceable;
 - e. the amicable agreement is entered into in good faith.

CHAPTER VII

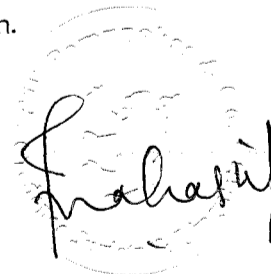
Code of Conduct of Mediators and Incentives

Article 24

- (1) Each mediator in exercising his function shall abide by the code of conduct of mediators.
- (2) The Supreme Court shall stipulate the code of conduct of mediators.

Article 25

- (1) The Supreme Court provides facilities needed for the mediation process and incentives for judges who are successful in performing their mediator function.



- (2) The Supreme Court issues a Supreme Court Regulation concerning the criteria of success of the judges and incentives for judges who are successful in performing their mediator function.

CHAPTER VIII
Closing Provision

Article 26

By the promulgation of this Regulation, the Supreme Court Regulation Number 2 of the Year 2003 concerning Court-Annexed Mediation Procedures is declared void.

Article 27

This Supreme Court Regulation shall take effect as of the date of its promulgation.

Promulgated in Jakarta
On 31 July 2008

CHIEF JUSTICE OF THE SUPREME COURT

[signed across the seal of the Supreme Court]

BAGIR MANAN



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