

LETTERS ROGATORY AND SUMMONS DELIVERY OF FOREIGN COURT FOR DEFENDANT DOMICILE IN INDONESIA

Joint paper of:

*Nathan Koneru, J.D., LL.M. (United States of America Licensed Lawyer); and
Rima Baskoro, S.H., ACI Arb. (Peradi Licensed Lawyer – Republic of Indonesia)*

I. Opening Statement

Free trade era brings a lot of hopes and chance for business in spreading their goods and services. As we living in an imperfect world, no matter how perfect our business system or procedure is, still at some moment there will be un-maximum execution in fields. This inadequate execution often cause losses for sufferer/plaintiff that makes them has legal rights to sue their opposite party which might be some of them domicile in Indonesia. It means such Defendant domicile in Indonesia will have to attend court hearing outside Indonesia.

Since there is no standardization based on international law instrument with regards to bilateral court summons yet, it raises question for foreign country to summons Indonesian defendant (both person or company) to inform them to attend their court hearing. This vacuum of regulation leave the sender and receiver of Letter Rogatory in confusion since there are no standards of formally fulfill or not regarding the delivery process.

This joint paper aims to bring a trigger and attention to International world that it is urgent for us to have an International Law Instrument regarding the standard law

procedure of bilateral court summons. This is important so it brings certainty for all justice seeker and legal practitioner for the sake of case examination smooth process. Since if the parties does not receive the court summons will cause long term effect for the case.

II. US Regulation on Delivery of Letter Rogatorys (Summons) of Foreign Court

In all civil cases originating in an American court, the end game for a Plaintiff (otherwise known as a Claimant) is usually the same: to be able to lawfully enforce a court's judgment for money against a Defendant. In order to reach this end result, we first have to take a step back to the inception of a civil case and ask this question: "Does this court have jurisdiction over the Defendant?" As it specifically relates to this article, one of the fundamental steps in establishing jurisdiction is serving the Defendant with process. In most cases involving U.S. citizens and/or U.S. companies, service of process is generally straight forward and easily obtained. In some cases; however, a Plaintiff may want to name a foreign person or entity located overseas as a defendant in the lawsuit. Serving a foreign defendant is not as straightforward as it often involves

competing foreign laws or multinational treaties. Several countries, including the U.S., are signatories to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, more commonly called the Hague Service Convention (Hague Convention). The Hague Convention is a multinational treaty which provides a uniform procedure for signatories of the treaty in connection with serving foreign defendants. This begs the question, how do you serve a foreign defendant located in a country which is not a signatory to the Hague Convention? After all, proper service of process is a necessary requirement to secure jurisdiction over a foreign defendant. This article will explore the procedures for service of process between the United States and Indonesia.

If the Defendant is located in a country that is not a signatory to the Hague Convention, such as Indonesia, then Letter Rogatorys are the customary means of obtaining judicial assistance from foreign courts. More simply, Letter Rogatorys are requests from courts in one country to the courts of another country requesting the performance of an act such as service of process. As a general rule, parties must go through the formal channels of Letter Rogatorys to effect proper service and proper jurisdiction in order to obtain an enforceable judgment recognized by a foreign court.

Letter Rogatorys may sound simple, but, in practice, they require careful attention to detail and can be time-consuming and costly. Letter Rogatorys are customarily

transmitted by way of diplomatic channels, which may take a year or more. Additionally, the current fee for Letter Rogatorys through the U.S. Department of State is \$2,275, not including any fees that may be required for copying, translating, mailing and/or retaining a private process server to handle service. See 22 CFR 22.1 Schedule of Fees.

If the Plaintiff effects service of process outside of Letter Rogatorys or without the aid of a foreign court, then service of process will likely be ineffective and the foreign court is unlikely to recognize jurisdiction necessary to enforce a judgment. However, going through informal channels may still prove to be effective, such as contacting a local attorney in the foreign jurisdiction. By pursuing informal channels of service, the time and cost involved may be dramatically reduced by transmitting a copy of the request through that attorney. By way of anecdotal experience, the co-author's (Nathan Koneru) firm which is located in Houston, Texas, USA had two defective products lawsuits against a multinational French tyre company and its Indonesian tyre manufacturing partner. The lawsuits had been at a standstill for over five years because the firm could not get the Indonesian manufacturer properly served with process via Letter Rogatorys. The process required the firm to get an order from a Texas judge authorizing service by Letter Rogatorys. After obtaining the Texas judge's authorization, the firm then had to mail the letter to the U.S. Department of State. The U.S. Department of State was then responsible for mailing the letter to the

Indonesian Ministry of Foreign Affairs (MoFA). Upon receipt of the letter, the MoFA was responsible for serving the Letter Rogatory upon the Defendant Indonesian manufacturer. However, after several years and thousands of dollars, the Letter Rogatory was never served upon the Defendant as a result of the inefficiencies of bureaucracy and the Hague Convention.

After two failed attempts to serve the Defendant through formal channels, the firm chose to pursue service of process through informal channels by contacting a local attorney in Jakarta. In Texas, a Texas court will recognize jurisdiction and effective service of process if the service complies with the local rules of Indonesia. See Tex. R. Civ. P. 108(a)(1) (providing that service of process may be effected on a party in a foreign country if the citation and petition is served as prescribed by the foreign country's law for service in that country.). Accordingly, with the help of such local attorney in Jakarta, the firm was able to serve the Defendant with process and properly establish jurisdiction with the Texas court. As soon as the Texas court recognized proper jurisdiction, both the French tyre company and the Indonesian manufacturer immediately settled the lawsuit.

III. Indonesian Regulation On Letter Rogatory

In Indonesia there are 2 (two) legal instrument which mention about Legal Technical Assistance for Civil Case and

Letter Rogatory. Below are such legal instrument:

- ❖ Memorandum of Understanding (MoU) between the Ministry of Foreign Affairs of the Republic of Indonesia and the Supreme Court of the Republic of Indonesia Number: PRJ/HI/102/02/2018/01 Concerning the *Handling of Legal Technical Assistance in Civil Case and Cooperation Agreements between the Ministry of Foreign Affairs and the Supreme Court* (“**MoU MFA and Supreme Court No PRJ/HI/102/02/2018/01**”); and
- ❖ Memorandum of Understanding (MoU) between the Ministry of Foreign Affairs of the Republic of Indonesia and the Supreme Court of the Republic of Indonesia Number: PRJ/HI/104/02/2018/01 Concerning *Standardization of Rogatorial Letters and Submission of Judicial Documents in Civil Case*.

Based on the MoU between Ministry of Foreign Affairs of Republic of Indonesia and Supreme Court of Republic of Indonesia No PRJ / HI / 102/02/2018/01, the Letter Rogatory is a request letter from other countries to obtain legal technical assistance in the civil sector including assistance in finding or identifying people, assets, property, obtaining witness statements, documents or other evidence

As explained above, the procedure for sending Rogatory letters often takes a long time due to a layered bureaucratic process.

As a result, the examination of the Plaintiff's case on the foreign court was delayed, and the delay in the examination of the Plaintiff's case resulted in delays in legal certainty and justice obtained by the Client. In fact we all agree that justice delayed is justice denied.

To bridge the Plaintiff's needs, the foreign law firm collaborated with the local law firm in Indonesia to deliver the Rogatory Letters directly to the Defendant's address. Practically, after such Indonesian local lawyer support them in sending the Letter Rogatorys (Summons) of Foreign Court, such local lawyer must provide a sworn affidavit of service, contains on:

- The identity of such Indonesian local lawyer;
- The background story on this Letter Rogatorys (Summon) delivery request from foreign lawyers;
- The effective explanation on the process of delivery Letter Rogatorys (Summon) to Defendant domicile in Indonesia;
- The short brief on Indonesian regulations which governing the sending of Letter Rogatorys from foreign courts to Defendant domicile in Indonesia;
- Description of the person who received such Letter Rogatorys (Summon).

The affidavit of such Indonesian local lawyer must be made in sworn and in front of Indonesian Public Notary. Henceforth, this affidavit will be carried by Plaintiffs attorney as evidence that Rogatory Letters has been received by the Defendant in

Indonesia. With the receipt of Rogatory Letters by the Defendant in Indonesia, the examination of the Plaintiff's case conducted in a foreign court outside Indonesia can be carried out.

IV. Closing Statement

It is urgent for us to sign an International Law Instrument regarding the standard law procedure of bilateral court summons. This is important to bring certainty for all justice seeker and legal practitioner for the sake of case examination smooth process. Since if the parties does not receive the court summons will cause long term effect for the case. This is also to fulfill the void of laws and rules concerning the delivery of Letter Rogatorys from Foreign Court to Defendant domicile in Indonesia.

In addition, to simplify the process of Letter Rogatorys delivery, it is highly recommended that ministry of law and/or Supreme Court of every country has a Memorandum of Understanding with their foreign supreme court. By signing a Memorandum of Understanding, at least each Supreme Court have the same standard or procedures of sending the Letter Rogatorys to foreign Supreme Court. Supreme Court demand to be a golden bridge between countries to help their legal subjects in finding justice through legal system. The sender Supreme Court demand to be able to directly-contact the receiver supreme court in sending Letter Rogatorys. And at the end, such receiver Supreme Court continue to send the Letter Rogatory to their local Legal Subject. This effective method could be an important way

for each countries without put-aside their own legal jurisdiction and legal system.

In conclusion, while Letter Rogatorys may be an effective way to serve a foreign defendant, parties should evaluate the particular needs and goals of their case to determine whether a less burdensome alternative is available.