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## Halal Labelling in Indonesia: A Survey

Between March and September 2016, UPH CITI conducted a survey about Indonesia's Halal labelling. The survey aims to look at public understanding about Halal labelling. There were 521 respondents participated online and offline in the survey. The survey consists of 17 questions, and started with basic question about Halal labelling and went further into the respondent's perception about Halal labelling. This report provides the summary of the survey, and a brief explanation of the result.

The survey was distributed primarily in the greater Jakarta area. Around 63% of the respondents are female and around 37% of them are male. More than three-quarters of the respondents are below 30 years old, around 15% of the respondents are between 31 and 40 years old and the rest are older. As regards to educational background, more than half of the respondents have completed high school, nearly 25% have completed undergraduate study, and the rest have higher educational background. In addition, almost 40% of the respondents are Moslem while the rest are Non-Moslem.

From this survey, we find several key points which are:

1. **Almost all of the respondents are aware of the existence of Halal labelling.** Only 10% of the respondents answered that they are not aware of the existence of Halal labelling.
2. **Halal labelling is mostly associated with food, drugs and cosmetics.** We provided the respondents with a list of category of products and asked them to choose which category of products that they think currently have Halal label. The results can be found in Table 1 below.
3. **Majorities of the respondents feel that food should have Halal label, while around half of them feel that drugs and cosmetics should also have Halal label.** We asked the respondents opinion on which categories of products that they think should have Halal label. The answers can be found in Table 2 below.

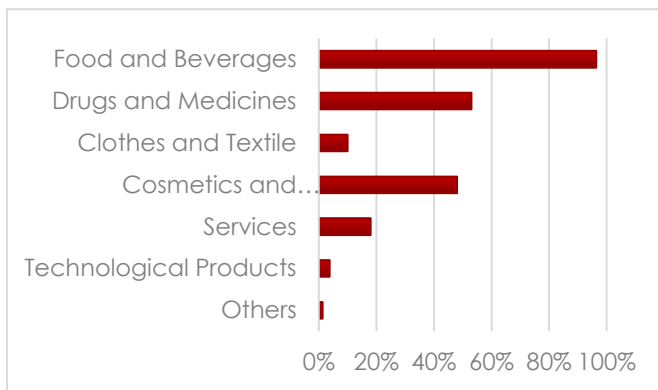


Table 1. Respondent's perception on categories of products that **already** have Halal labelling

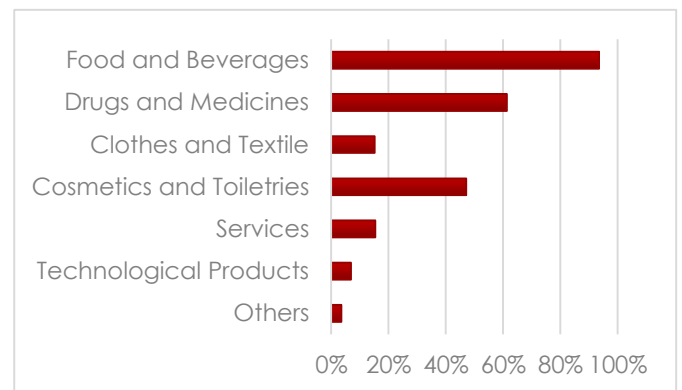


Table 2. Respondent's opinion on categories of products that **should** have Halal labelling

4. **Half of the respondents take into account the 'halal-ness' of a product when they are shopping. Interestingly, around 72% of the respondents will buy the product if they are sure that a product is Halal, even if the product carries no Halal label.** This is an interesting finding, because apparently almost three-quarters of the respondents assess 'halal-ness' of a product based on their perception instead of Halal labelling or Halal sticker attached on a product. The result is shown in Chart 1.
5. **Six out of ten respondents convinced that a product is Halal by looking at the ingredients list.** We asked the respondents their primary method of assessing 'halal-ness' of a product. Almost 60% of the respondents answered ingredients list is the best method, while 42% of the respondents answered distinctive halal label and 37% answered the physical display of the product. The result is shown in Chart 2.

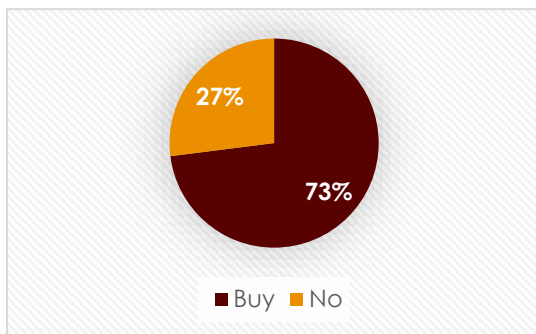


Chart 1. Percentage of respondents that will buy a product if they are sure it is Halal, even without Halal label

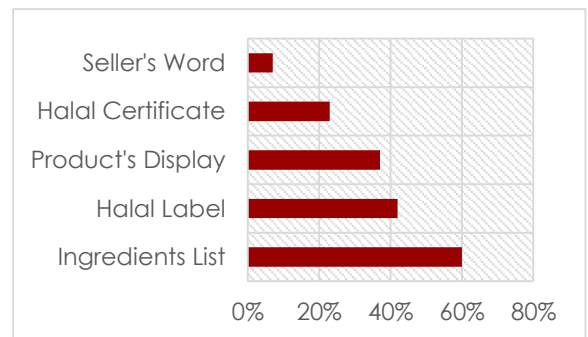


Chart 2. What assures respondents that a product is Halal

6. **More than half of the respondents think that Halal products are better than non-Halal products.** Around 53% of the respondents think that Halal products are better, while around 47% of the respondents think otherwise. There are different reasons chosen by respondents as reflected in below charts.

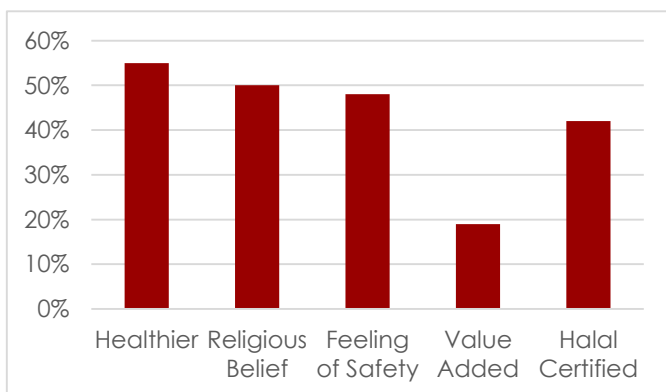


Chart 3. Reasons why Halal products are better according to respondents

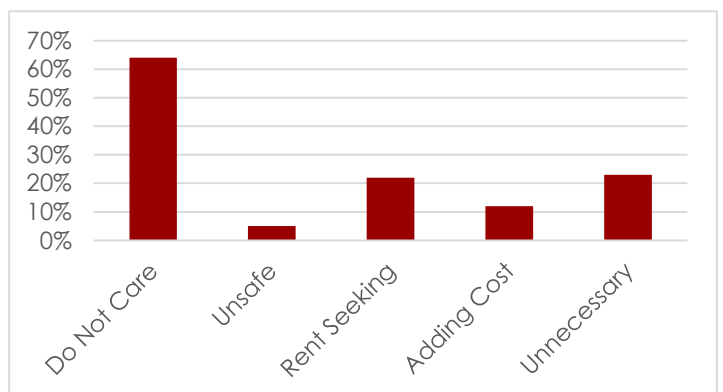


Chart 4. Reasons why Halal products are not better according to respondents



7. **Majorities of respondents feel that Halal labelling provide necessary information for consumers. But, the respondents also believe that they should have the right to choose between Halal and non-Halal products.** When asked whether information provided by Halal label is necessary, almost 85% of the respondents answered information provided by Halal label is necessary. However, around 70% of the respondents believe that they should have a choice to choose Halal or non-Halal products.
8. **More than 60% of the respondents are not aware of Indonesian 2014 Halal Labelling Law.** However, almost 70% the respondents feel that it is important for Indonesia to have mandatory Halal Labelling Law for all products.

## Indonesia's New BIT Reform: A Boon or A Bane?

Nadya Andyrasari Mulya\*

In 2014, the Dutch Embassy in Jakarta released an announcement that Indonesia was “terminating” its bilateral investment treaty with the Netherlands. In fact, the announcement wrote that Indonesia intended to “terminate all sixty-seven of its BITs,” and was unsurprisingly met with a wave of concern from foreign investors and states alike. Although a BIT termination does not immediately strip foreign investors of investment protection, given the survival or sunset clauses in the BITs that allow the application of BITs for a certain period even after its termination date, foreign investors still retain their right to panic, and likewise Indonesia would need to consider how to retain current and attract new foreign investors in the absence of BIT.

To answer the ‘what ifs’ that arose immediately after the Dutch Embassy’s announcement, the Indonesian government promptly clarified that its actual intention is not to terminate, but rather to simply “let its BITs expire so as to negotiate new and better treaties.” The clarification seemed to give significant reassurance at face value, if not for the caveat on the phrase “to negotiate new and better treaties” or more specifically, whether such treaties would in fact be made. Are they being made?

At the crux of it, Indonesia essentially wants to strike a balance between investor protection and national sovereignty. To date, Indonesia is involved in at least 6 arbitration cases, including a billion-dollar lawsuit by the UK-listed international mining company Churchill Mining Plc. This backdrop is worthy to note as it provides significant context for why Indonesia appears to be very determined to carry out its intention –having discontinued more than 20 of its BITs as of early 2016– and for why the government’s proposals for the new Indonesian model treaty, addressed hereinafter, are the way they are.

The first proposal (I herewith refer to the paper Indonesia’s Perspective on Review of International Investment Agreements by Mr. Abdulkadir Jailani) for the new investment treaty is to narrow down the definition of investments protected under the new treaty. Portfolio investments, or investments made with the expectation of earning a return, will allegedly be entirely excluded from the definition of protected investments. The new investment treaty will instead adhere strictly to the “Salini Test,” which requires an investment to have 1) a contribution of money or assets; 2) a certain duration; 3) an element of risk; and 4) a contribution to the economic development of the host state, in order to fall into the definition of a protected investment. The fourth point, in particular, seems to indicate that aside from national sovereignty, Indonesia also plans to prioritize its national development through the new treaty.

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The second proposal is to reformulate BIT provisions that are too broad and vague, namely the fair and equitable treatment, national treatment and the most favoured nation principle. As regards the fair and equitable treatment, the Indonesian government is concerned that its “over-extensive” application has led to a number of uncertainties and legal risks, primarily because international tribunals tend to interpret the treatment in favour of foreign investors rather than the host states. The national treatment, on the other hand, is regarded by the government as too liberal for extend its application to pre-establishment phase, meaning that it applies not only to pre-existing foreign investors but also potential investors seeking to invest in Indonesia. Similarly, the most favoured nation principle is likewise seen as too liberal for allowing foreign investors to invoke provisions from other more favourable treaties other than the BIT with Indonesia.



One of the most controversial aspects of the review, however, is the prohibition of indirect expropriation and its possible exclusion in the new investment treaty. The Indonesian government's rationale behind this is that states should maintain their right to regulate even if it diminishes the economic value of an investment. As a consequence, Indonesia would essentially be able to preserve greater regulatory power and thus, its national sovereignty, consistent with the ultimate goal of the entire BIT reform.

The last proposal for the new treaty is to limit the application of the investor-State dispute settlement (“ISDS”) mechanism, namely international arbitration. On the outset, it makes perfect sense; prevent arbitration by limiting the option to arbitrate. The Indonesian government has expressed that it wishes to impose a procedural limitation that would require foreign investors to obtain a separate express consent of the host State before they are able to go to arbitration. This procedural limitation is interesting to say the least. Aside from the direct hindrance this would be for the investor seeking arbitration, it would also mean that an international tribunal overseas may very well have jurisdiction over a certain dispute but would never get to know, much less arbitrate it, unless the host State agrees, or essentially “allows” the tribunal to do so.

At the crux of it, Indonesia essentially wants to strike a balance between investor protection and national sovereignty

There are other immediate concerns that arise from the proposals above. For one, these proposals have the potential to essentially scare off foreign investors. With the reduction of the level of investment protection, foreign investors would evidently lose their confidence. Even if they do decide to invest, the loss of confidence in their investment may cause foreign investors to dismiss the new investment treaty and instead resort to other more favourable treaties from the plethora of multilateral agreements that Indonesia is party to. Aside from the sticky situation of treaty shopping that Indonesia may essentially enable, the government would have to consider what it plans to do with the multilateral agreements that still provide liberal investment protection and arbitration mechanism.

In short, the clarification by the Indonesian government that it was undertaking the reform to create better treaties may be true, but perhaps only from Indonesia's perspective. The Indonesian government itself has acknowledged that the review still highly needs constructive input and suggestions from all affected stakeholders, and it may be most crucial for the government to stick to its words now, in order to prevent backlash from concerned investors.





# Globalization and Investment

Akhmad Ramadhan Fatah\*

The UN former Secretary-General, Kofi Annan once puts it: 'globalization is a fact of life'. Countries embrace globalisation in varying degrees. At the one end of spectrum, an autocratic country like North Korea employs insular policies that strictly limit the movement and entry of external goods/services, people, investment and idea. On the other end of the spectrum, an open economy country such as Singapore embraces openness and adopts policies that can facilitate trade and eliminate trade barriers. Many countries (such as those in the North America and Europe) seek to regulate in-between these two spectrums, full globalization and complete insulation.

A continental divide between two Latin Americas is another interesting way to see how countries embrace globalization differently. The first is a bloc of 'free-trade-friendly' Latin America countries that face the Pacific Ocean such as Chile, Colombia, Peru and Mexico. Another bloc are countries that face the Atlantic Ocean such as Argentina, Brazil, Bolivia and Venezuela that have a more protectionist stance.

The proponents of open economy see trade and investment as inter-dependent and an important catalyst to boost economic performance and growth. Investment rules are negotiated in the context of free trade agreements (investment chapter) and/or in stand-alone investment agreements. Investor state dispute settlement (ISDS) clause in the investment chapter/agreement has proven controversial as it enables foreign investors to sue state governments. This also has motivated Indonesia to renegotiate its bilateral investment treaties (BITs) which has caused much debate. Some observers expressed their concern that such action will discourage investor to come and invest in Indonesia. It is not the intention of this article to jump into the 'BITs discontinuing' debate, however it is an example that speaks volume for the need to revise the current investment rules in order to further improve the benefit of an open economy.

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As mentioned earlier, Indonesia has decided to "discontinue" many of its BIT agreements with many of their trading partners, at more than 20 as of early 2016. Although this does not mean that all trade relation benefits will stop the moment the BIT agreements were discontinued, given the sunset clause that allows foreign investor to still benefit from the agreement until a certain period starting from the discontinued date, a new model BIT must be formulated soon if it wants to retain the current investors and attract more foreign investors to invest. Indonesia seeks to review their current BIT agreements in order to tailor it to be more mutually beneficial for both the Indonesian citizens and foreign investors. Despite the current unfinished revision, there have been claims that Indonesia do not need a BIT agreement. For instance, the Director for Economic, Social, and Cultural Agreements of the Indonesian Ministry of Foreign Affairs, Mr. Abdulkadir Jailani, have claimed that BIT is not necessary for Indonesia as it does more harm than good to the country. He pointed out that Japan still invested in the country even before the Japanese-Indonesia BIT was ratified.

Brazil, in particular, during the debate on whether Indonesia should discontinue its BITs, is often an example that is referred to as a country that has zero BITs but still attracts investors. Many seemed to have claimed this without looking whether this is a causality or simply an association. Within the Global Value Chain (GVC), Brazil has been

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mainly existing in the downstream link, or in other words, they mainly contribute intermediate and input products into the GVC system, as documented within the OECD. This is justified by how large Brazil's export on natural resources has been. It has long been a central challenge for Brazil to increase the technological content of its exports in order to upgrade to a higher value activity within both primary and manufacturing production, but the strong demand for Brazil's primary and intermediate goods prohibit them to add value to their existing involvement in the GVC.



The reality is that Brazil's involvement in the GVC is low. For instance, within Brazil's trading relationship with China, Brazil exported products from their primary and manufacturing sector, primarily products with a very low level of processing or even unprocessed ones, while they import technology intensive component from China, creating a skew in their relationship. As a result, Brazil will remain to be an attractive destination for investors, but it is driven by the fact that they provide primary inputs to the world, and hence many more skewed relation will exist. In addition, the lack of BIT will prove to be vulnerable for Brazil. If China happens to find another country that can offer to facilitate the trade of primary

goods to them, such as a BIT agreement with China, then Brazil will lose out on a significant amount of export revenues, and consequently, the ability to import final goods from China.

The Global Value Chain (GVC) has been deemed to be the driver that can significantly boost overall productivity, create employment opportunities, and capable of improving standard of living. The defining features of it is the export of final goods consisting of imports of complex, customized, and product-specific intermediate goods, creating an international trade environment of intermediate goods amongst nations. Breaking each production steps from different countries based on what the country is endowed with for the production has been the main principle in GVC. As a result of this principle, there will be a more rampant international trade amongst nations in order to complete the production, adding value added to an already existing input or intermediate goods, and allowing nations to specialize in a specific aspect of production. A developing nation can take the full advantage of GVC if they take the proper steps, such as opening their borders and attracting foreign investments. Specifically, if it maximize their absorption potential of the domestic economy while strengthening the GVC linkages. How much value a country added to the GVC will also determine how much the country reap the benefits of it. But the large problem from the GVC is as shown above with Brazil, is that there will exist a leading country, generally those producing the final goods, and those nations who only offer unprocessed goods will lose out from secured and competitive foreign investors to boost the economy.

If Indonesia's decision forward will be based on Brazil, as an example, we need to look at Indonesia's stance within the GVC. According to the OECD data, Indonesia has mainly exported intermediate or primary inputs given the country's large natural resources export. The majority of goods and market services are represented by a value-added created domestically, as shown within the same data, with only 21% foreign value-added. In addition, most manufactured final goods in Indonesia have mainly come from foreign value-added. The food and chemical industry in Indonesia have shown to have a higher export share in value added terms, but the manufacturing side appears to show a lower value added share, strengthening the fact that they have mostly come from abroad. This has portrayed us how the GVC contribution condition in Indonesia is similar to that of Brazil. The removal of BIT may adversely affect the countries growth towards creating a move value-added export goods. There will remain investment into the country for Indonesia's natural resources, but as it is with Brazil, the country will remain challenged to add a value-added to their production.

Whether Indonesia decides to discontinue its BIT agreements indefinitely, expecting that investment will continue into the country, or not, it will all be up to those who are reviewing the BIT, and they will need to consider many factors. This article have expressed how other nations, such as Brazil, cannot truly be defined to be successful just because foreign investment continues into the country. Indonesia's prolonged review period may result in the loss of potential foreign investors. For instance, Vietnam's increasing number of Free Trade Agreements and BITs will attract more foreign investors as it ensures a more secure investment than those without any BIT agreements.

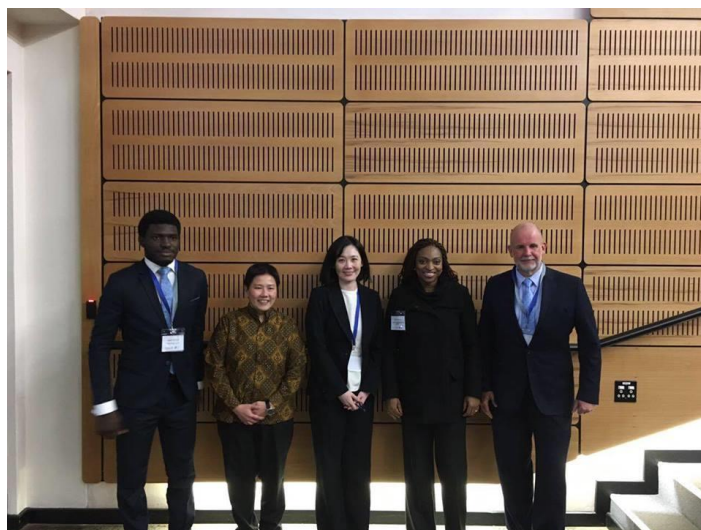


**Brown Bag Seminar on Copyright in the TPP and Digital Libraries**  
Jakarta, 2 June 2016

Center for International Trade and Investment (UPH-CITI) hosted a Brown Bag Seminar entitled, "Copyright in the Context of TPP and Its Impact on Digital Libraries". The seminar included Jhonny Antonio Pabón Cadavid, Ph.D. – Visiting Researcher of UPH CITI as the main speaker. Dr. Cadavid demonstrated his view on how the copyright provisions in the TPP can affect digital libraries. He concluded that the TPP is actually a flexible agreement, especially in relation to Technological Protection Measures and Rights Management Information.

**Halal Labelling Paper Presentation at SIEL Biennial Conference 2016**  
Johannesburg, 7-9 July 2016

Michelle Limenta, Ph.D., the director of UPH CITI, presented at the Society of International Economic Law (SIEL) Biennial Conference in Johannesburg, South Africa. Dr. Limenta was a part of a panel on the topic of "WTO Law and National Legal Orders". Within the panel, she discussed and presented a paper on "Disabling Labeling: The Indonesian Mandatory Halal Labeling Law and WTO Consistency" written by her and co-authors Bayan Edis and Oscar Fernando, a visiting researcher and a research associate at UPH CITI respectively. The paper and presentation are generously supported by the WTI – SECO Project.



**Brown Bag Seminar on Indonesia's New Model BIT**  
Jakarta, 8 August 2016



UPH CITI hosted a Brown Bag seminar entitled "Indonesia's New Model BIT, the ACIA and Commercial Arbitration: Managing Risks". The seminar featured Mr. Juniarto James Losari – Lawyer at Allen & Overy Singapore. Mr. Losari discussed the draft of Indonesia's New Model BIT its implications on different agents. Mr Losari then analysed how these protections are crucial to foreign investors in their operation and that various new IIAs continue to provide them with further refinements that can preserve the State's policy space, e.g. Trans-Pacific Partnership (TPP), the ACIA, and the EU-Vietnam FTA.





### **Workshop on Compensation and Retaliation in the WTO Dispute Settlement** Jakarta, 9-10 August 2016

Dr. Michelle Limenta, Director for UPH-CITI, conducted a two-day workshop on "Compensation & Retaliation in WTO Dispute Settlement". This workshop is a part of the EU-Indonesia TCF training programme. Drs. Ahmad Firdaus Sukmono, SH, MH. – Head for the Center for International Trade Advocacy of Indonesia's Ministry of Trade opened the workshop. The participants came from the ministry of trade, ministry of industry, ministry of foreign affairs, Indonesian Business Association (APINDO), and the Indonesian Chamber of Commerce and Industry (KADIN).

### **Workshop on Indonesia – EU Comprehensive Economic Partnership Agreement** Jakarta, 2 September 2016

Michelle Limenta, Ph.D. – Director of UPH CITI spoke at a workshop hosted by Indonesian Ministry of Foreign Affairs. Dr. Limenta shared her view about Trade Facilitation in the multilateral (WTO Trade Facilitation Agreement) and regional context (TPP, ASEAN and VietNam - EU CEPA).

The general theme of the workshop is 'Indonesia's Perspective in the Negotiation of Indonesia - EU Comprehensive Economic Partnership Agreement'. Speakers and participants came from various background such as business associations, researchers, government officials and private sector.



### **World Trade Institute Summer Academy on International Trade Regulation** Bern, 4 July – 5 August 2016

From 4 July - 5 August 2016, Oscar Fernando - Research Associate of UPH CITI was attending Summer Academy at the World Trade Institute, Switzerland. The WTI Summer Academy covers cutting-edge issues in investment and trade regulation. This opportunity is part of cooperation between UPH-CITI, the World Trade Institute, and the State Secretariat for Economic Affairs (SECO) Switzerland.





**Our goal: To be the preeminent center for thought leadership and expertise on trade and investment policy and law in Indonesia**

## Universitas Pelita Harapan - UPH

Founded in 1994 with the vision of educating a new generation of leaders for Indonesia and the wider ASEAN region, Universitas Pelita Harapan is the number one private university in Indonesia according to the QS World University Ranking 2013. UPH was the first University in Indonesia to introduce programs entirely taught in English, the first to offer a liberal arts curriculum, and the first to introduce a multi-disciplinary approach to its programs. While consistently underlining the vision of "knowledge, faith and character", UPH, in cooperation with overseas partner universities, has developed a very rich curriculum in many areas of study, ensuring that its graduates are respected globally and appreciated by modern business and industry.

## The Center for Trade and Investment - CITI

Established in September 2014, CITI's objective is to raise awareness in Indonesia of the importance of an outward-looking and liberal trade and investment policy, so as to ensure the country's continued commercial competitiveness and support its economic development goals. CITI runs a number of research, education and outreach initiatives with the generous support of the Swiss State Secretariat for Economic Affairs (SECO) and the World Trade Institute (WTI), Switzerland.

### Featured Contributor




**Nadya Andyrasari Mulya** is a final year student at the Law Faculty of Universitas Pelita Harapan. For the past three years, Nadya has been an avid mooter, participating in a wide range of moot court competitions from the International Humanitarian Law Moot to the renowned Philip C. Jessup International Law Moot. Most recently, Nadya's team seized the Runner Up title of the 2015 Foreign Direct Investment International Arbitration Moot held at King's College, London, the highest any Asian team has ever ranked.

This quarterly newsletter seeks to provide updates, insights and analysis on current developments in trade and investment law and policy in Indonesia. Constructive feedback and comments are always welcome.

**Disclaimer:** The articles are representative of the author's view, not necessarily the general view of the Center

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