

## PB Djarum vs KPAI: A Melodramatic Vague Conflict

*On 29 July 2019, the Indonesian Child Protection Commission (KPAI) issued a letter No. 1017/19/KPAI/VII/2019 dated 29 July 2019 regarding Discontinue Badminton Audition by Djarum Foundation saying that to carry out its duty to oversee protection and for the sake of children's rights, specifically protection of children from the dangers of smoking and exploitation, KPAI asked Djarum Foundation Leaders to discontinue the Badminton Djarum Foundation auditions activities which will be held in several cities from July to November 2019 for the sake of protecting children from all forms of exploitation of the tobacco industry.*

As a follow up to the letter, a meeting was then held on 4 September 2019 in which KPAI announced that there would be “Zero Tolerance” for Djarum and therefore Djarum Foundation Leaders must immediately discontinue the Badminton Djarum Foundation auditions. In response to such meeting, PB Djarum, on a press conference on 8 September 2019 announced that they had decided to halt the annual badminton general auditions.

The conflict then escalated into a major dispute between those who supported PB Djarum and those who favored KPAI. PB Djarum itself is a badminton club formed long before skyscrapers become ubiquitous in Jakarta. PB Djarum was formed back in 1969 in Kudus, Central Java. Starting in 2006, PB Djarum started open auditions for youngsters who want to excel in badminton, arguably Indonesia's strongest ambassador to the world. Since then thousands of young potential athletes from all around Indonesia have sought prestigious badminton scholarships from Djarum Foundation, the owner of PB Djarum.



To date, as a part of Djarum Foundation, PB Djarum has produced world-class players who have won various national and international competitions from the Sudirman Cup to the Olympics, such as Liem Swie King, Muhammad Ahsan and Kevin Sanjaya Sukomaljito.

Following the dispute (or we would call the debacle), on 12 September 2019, facilitated by the Youth and Sports Ministry, a meeting was held between PB Djarum and KPAI which reached the resolution that the auditions would continue in the last three cities, i.e Surakarta and Kudus in Central Java and Surabaya in East Java under a new name, from the “2019 PB Djarum Badminton Scholarship General Audition” became “Badminton Scholarship General Audition”. KPAI on the other hand also agreed to withdraw its 29 July letter.

Many people considered that the meeting and resolutions adopted were a win-win solution to the escalated conflict between PB Djarum and KPAI. However, PB Djarum gave no promise but to have further internal discussion to decide what to do about their 2020 auditions. Seeing this as an “ad-hoc” solution to the debacle, we want to point out that it was not enough as it reflects uncertainties.

The battle of wills between PB Djarum and KPAI is a melodramatic battle. Badminton has been one of the most effective way to unite Indonesian, to boost Indonesian pride and, as we mentioned above, the lighthouse messenger to introduce Indonesia to the world. The absence of certainty from PB Djarum regarding the continuation of badminton auditions in 2020 and onwards should be taken seriously by the government considering the fact that PB Djarum plays a very significant role in supporting Indonesian badminton development which indeed the Indonesian Badminton Association (PBSI) has confirmed through its Secretary-General Achmad Budiharto during a press interview on 11 September 2019 that PBSI does not have the capacity to run a development program from early childhood the way PB Djarum has been doing. The role and participation of the private sector like Djarum Foundation through PB Djarum is much needed, as the capacity of government is limited.

We, the Entertainment, Media and Sports Law Practice Group of Dentons HPRP, present our attempt of an analysis of PB Djarum – KPAI conflict. Our view is that it is important to understand the issues and to set clear boundaries from the legal perspective to prevent similar disputes or misunderstandings from arising in the future.

### ***On Limitation Promotion of Tobacco Related Product***

Article 36 paragraph (1) of Government Regulation Number 109 of 2012 considering Control of Materials that Contain Addictive Substances in Tobacco Products in the Interests of Health (“GR 109/2012”) stipulates that every person who manufactures and/or imports tobacco products that sponsors an institution and/or individual activity can only be done with the following conditions:

- a) It does not use the trademark names and logos of tobacco products, including the brand image of tobacco products; and
- b) It does not aim to promote Tobacco Products.

Specifically for Badminton competitions, Article 23.4.5 of the General Competition Regulations issued by the Badminton World Federation specifies that advertising of tobacco related companies and products is prohibited.

Now, it is important to raise a critical question: *PB Djarum a tobacco related company that sold tobacco products, were the auditions to seek youth with badminton potential held by PB Djarum a form of promotion of tobacco products using trademark names, logos and brand image of tobacco products?*

Many of us know, PB Djarum is part of the Djarum Foundation, that so far has been focusing in developing scholarships for youngsters with badminton talent. As a foundation, Djarum Foundation is subject to Law No. 16 of 2001 as amended by Law No. 28 of 2004 regarding Foundations (“Foundations Law”). The Foundations law defines foundations as separate statutory bodies consisting of separated assets allocated by donors and/or founders to achieve certain objectives in social, religious and humanitarian fields, which have no members. In short, foundation is a non-profit oriented entity. The Foundation Law also regulates that it is prohibited to distribute or transfer the assets of a foundations whether in the form of money, goods, or other properties procured by the foundation distributed directly or indirectly, either in the form of salary, wage, or honorarium, or in other forms that maybe valued as money to the governing, executive and supervisory boards. What is more important, upon the dissolution of the foundation, the assets may not be returned to the founders. It is clearly the intent of the Foundation Law that a foundation is expressly separate and distinct from the assets of its founders.

About the second question, one of Djarum Foundation’s assets is the intellectual rights registered in the Mark Classification System of the Directorate General of Intellectual Rights. The logo of Djarum Foundation was registered in Class 41 for education and cultural, social and sports services.

Considering the foregoing, it is safe to draw a bold line that Djarum Foundation is a different and separate entity from PT Djarum, a well-established company that widely known as a producer of tobacco-related product. In fact, the logo of PT Djarum was registered in Class 34 for smoking related products.

Bearing the clear differentiation between PB Djarum and PT Djarum, it is important to acknowledge that GR No. 109/2012 does not apply to PB Djarum and its activities. The limitation should only apply to PT Djarum as a tobacco-related products producer. Thus, similarity in the names of the company and the foundation is logical but should not be interpreted as them being the same entity.

### ***On the Allegation of Child Exploitation***

In its official release at the beginning of the conflict, KPAI said that the badminton auditions held by PB Djarum could be considered a form of children exploitation since the event requires the players, many of whom are children, wear T-shirts with a PB Djarum logo, which is, arguably, similar to the cigarette brand produced by PT Djarum.

The terms “Child Exploitation” is found in Article 13 Paragraph (1) letter (b) Law No. 23 of 2002 concerning Child Protection which was amended several times lastly by Law No. 17 of 2016 concerning Stipulation of Government Regulation in lieu of Law No. 1 of 2016 concerning Second Amendment of Law No. 23 of 2002 concerning Child Protection (“Child Protection Law”) as follows:

“Every child under the care of his/her parents, guardians, or other persons who are responsible for the child’s care, shall be entitled to receive protection from the following:

- a) .....
- b) Exploitation of an economic or sexual nature;

The elucidation of the Child Protection Law provides a vague definition of what constitutes “economic or sexual” child exploitation. An action will be considered a form of exploitation if such action is conducted with or without the consent of a child and includes but is not limited to prostitution, forced labor or services, slavery or slavery-like practices, oppression, extortion, physical or sexual use or use of reproductive organs, or unlawful transfer or transplant of organs and / or body tissue or utilization of the energy or ability of the child by other parties to obtain material benefits.

However vague the definition on child exploitation given by the prevailing law as described above, it is early and premature to draw the conclusion that PB Djarum, in conducting an open badminton audition where the participant is required to wear T-shirt with similar logo to that of tobacco products, has committed actions that can be qualified as acts of child exploitation.

Not to mention the fact that the participants in the badminton auditions are often accompanied and supervised by their parents.

Contemplating the vague definition of child exploitation given by the applicable law as explained above and the large possibility that government institutions such as KPAI interpret the forms of child exploitation very broadly, it is important to carry out a thorough and in-depth review of the child protection law, the definition of exploitation and its contact with the business world.

### ***On Sports Funding***

Government Regulation No. 18 of 2007 concerning Sports Funding stipulates that the basic principle in sports funding is sufficiency and continuity, which is why GR 18/2007 provides the possibility for the private sector to participate in sports funding through the form of sponsorship, grants and any other forms.

The commitment of Djarum Foundation through PB Djarum in supporting Indonesian badminton development by running a development program from early childhood is one of the private sector participation in overcoming government limitation in sports funding. We however acknowledge and are aware that in executing private sector’s participation in sports funding requires an in-depth analysis particularly to ensure that such execution will not breach any prevailing laws and regulation.

Considering the foregoing, we consider it important to have clear and comprehensive regulations on sports funding in Indonesia. Members of a private sector must have a comprehensive understanding of government regulations, limitations and what is not if they wish to actively participate in supporting the development of the sports industry to ensure that sufficiency and sustainability of funding for the sports industry continues without a hitch. In short, Indonesia needs full and wholehearted participation of the private sector to promote Indonesia's national pride and International recognition through sports.

#### ***Dentons HPRP's View***

We, at Dentons HPRP view that the conflict - temporarily resolved - between PB Djarum and KPAI as a melodramatic conflict. This conflict arises between two large institutions that have a concern in developing the talents and interests of Indonesian children.

We understand that KPAI carries out the duties and functions attached to it as an entity formed to ensure the function of children supervision and protection while Djarum Foundation through PB Djarum has proven its commitment in supporting the development of Indonesian children who have talents and interests in the world of Badminton. This conflict occurred due to chaotic flow of thought in understanding the prevailing laws and regulations, which then led to decisions and policies making that, deviated far from the noble goals of both PB Djarum and KPAI.

Similar future conflicts may be avoided if each party involved, attempts to own a comprehensive view in understanding the laws and regulations which are in conjunction one to another with the goals of each organization.

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