A Test of Many Wills:
PT Asuransi Jiwa Manulife Indonesia

Written by

Charles A. Barrett

President
Charles A. Barrett Consulting Services Inc.
and
Adjunct Faculty Member
Carleton University
(Canada)

And

Mario M. Koetin

Associate Professor
Trisakti University International Business School
(Indonesia)

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Executive Summary

This case concerns the well-documented experiences of the Indonesian affiliate of Manulife Financial, a Canadian life insurance company, during the early years of the current decade. Manulife's forerunner, The Manufacturers Life Insurance Company, had operations in Asia, including Sumatra, from about the turn of the twentieth century. The group's current operations in Indonesia began in 1985, however, through a joint venture called PT Asuransi Jiwa Dharmala.

In 2000 Manulife Financial attempted to buy out the interest of its Indonesian partner, the Dharmala Group, a second-generation, family-controlled Indonesian conglomerate that began as a trading company and more recently expanded into financial services. The group was very highly leveraged and had found itself in considerable difficulty following the Asian financial crisis. By 2000 its major non-bank arm, Dharmala Sakti Sejahtera, was bankrupt.

The result of Manulife's buy-out attempt was a protracted legal battle and test of wills that became exceptionally nasty by the normal standards of resolving business disputes, whether through litigation or negotiation. As events unfolded, a Manulife Asuransi Jiwa Dharmala company executive was jailed, and the Manulife affiliate itself petitioned into bankruptcy and temporarily closed. The credibility of both the Indonesian legal system in general and its process for restructuring financial institutions in particular were called into question in many developed economies. On the other hand, Canada and Manulife were accused by Indonesian observers of abusing their powers.

The case provides a number of lessons learned that are of relevance to the APEC process, including the inherent complexity of resolving complex commercial disputes; the importance of developing effective, transparent rules-based legal frameworks; the need for investors to understand the environment in which they choose to do business; the power of public scrutiny as a force for change; and the payoff from professional crisis management. Although the situation has largely been resolved in Manulife's favor, the legal battles are still not over. But despite this, Manulife Asuransi Jiwa Dharmala continues to operate profitably and successfully in Indonesia.

Background

Manulife Financial Corporation which was based in Toronto was Canada's largest publicly traded life insurance company and a significant global financial services provider. According to the company's latest *Annual Report*, Manulife Financial had over Canadian $400 billion under management at the end of 2006, almost $65 billion in deposits and premiums, and over $31 billion in capital. Profits for the year were just under $4 billion, a 21% increase from 2005 and the 13th successive year of record profits.[1] Manulife was assigned top credit worthiness scores by Canadian and global rating agencies.

Manulife Financial began as The Manufacturers Life Insurance Company in 1887, with the then Canadian Prime Minister Sir John A. Macdonald as its first president. The global orientation of the company's operations was established early, with the issuance of a policy in Bermuda in 1883, and the beginning of operations in Asia in 1897. As far as present day Indonesia is concerned, the business was written in Sumatra as early as 1903.[2] Despite this

[1] Manulife Financial *2006 Annual Report.* All figures in Canadian dollars.

[2] See http://www.manulife.com/corporate/corporate2.nsf/Public/history.html, consulted 31 January 2008.

long-standing tradition of operations in the Asia-Pacific, Manulife Financial became a major global financial institution only recently, when its acquisition of John Hancock Financial Services Inc. in the United States catapulted the company into the premier league of life insurance firms. This merger made Manulife Financial the second largest life insurer in North America and the fifth largest in the world.

The Manufacturers Life Insurance Company was incorporated as a stock company. As was the case with other major Canadian life insurers, Manulife was converted into a mutual company, owned by its policy holders, beginning in the late 1950s. It operated as such for many years, until it again became a publicly-traded share company in 1999. The other major Canadian mutual life insurance companies (Sun Life, Canada Life, and the Mutual Life Assurance Company of Canada, later known as "Clarica") also demutualized at around the same time.

As noted Manulife had been operating in Asia even before the beginning of the twentieth century, first in China (including Hong Kong, China), followed by the Philippines and Indonesia. Today, the group also has significant operations in Japan, and Viet Nam, both dating from 1999. The Japan operation is a joint venture, while that in Viet Nam is the first 100% foreign owned life insurer in the Socialist Republic of Viet Nam. The company has recently reentered the China market, where the Manufacturers Insurance Company first conducted business in 1897. Manulife-Sincochem Life Insurance Company was granted the first branch joint venture license in 2002.

For its part, the Dharmala Group, Manulife's erstwhile partner in Indonesia, was founded in 1954 by Soehargo Gondokusomo as a trading company, subsequently diversifying into several business lines. Gondokusomo's son, Suyanto Gondokusomo, took the company into financial services and was responsible for the joint venture with Manulife. By the mid-1990s the Dharmala group had become Indonesia's tenth largest private sector group, with about 20,000 employees. But the group was highly leveraged and was therefore adversely affected by the Asian financial crisis of 1997-1998.[3] Significantly, however, unlike some other Indonesian enterprises the Dharmala Group was unable to avoid forced restructuring through the courts.

Manulife JV Operations in Indonesia

As part of an overall strategy to enter into new, high growth-potential markets Manulife formed a joint venture in Indonesia in 1985 known as PT Asuransi Jiwa Dharmala Manulife. The partners were PT Dharmala Sakti Sejahtera, a unit of the Dharmala Group, and the International Finance Corporation, the private sector arm of the World Bank.

For Manulife the initial investment in Indonesia was part of a long-term global growth strategy. For the Dharmala Group the motivation was to support its desire to diversify beyond its business roots as a trading company. Manulife brought its expertise to the Indonesian life insurance market, which was small in 1985 but had high potential. The Dharmala Group brought local knowledge to the partnership, as it was among the leading Indonesian private companies.

The joint venture was successful from the beginning and the business had grown steadily. Manulife's operations in Indonesia are well-established with 2006 total premium income

[3] See David K. Linnan, "A Meditation on Three Mythologies," *S C Journal of International Law and Business* (Volt 1 No 3, Fall 2003), pp 4-5.

exceeding US$ 250 million, and with assets of over US$ 60 billion investments under management.[4] The senior management is split between expatriate and Indonesian executives.

It is significant to note that the Indonesian Manulife joint venture affiliate had operated successfully and profitably, despite a serious challenge from its local partner—the focus of this case—that led to a prolonged and bitter legal dispute at the beginning of the 21st century. The various episodes of that dispute resulted in, among other things, a local Manulife executive being jailed, and the company being petitioned into bankruptcy (despite being profitable) and forced to close temporarily. As the story unfolded over an 18-month period the conflict became progressively nastier. As was typical in such situations, stakeholders understood the dispute from quite different perspectives.

Although the legal disputes have continued, this high drama is now largely in the past. Manulife today is quite bullish about Indonesia. To quote the Manulife website:

> Manulife Financial is the majority stakeholder of PT Asuransi Jiwa Manulife Indonesia, a joint venture that began operating in Indonesia in 1985. Headquartered in Jakarta, Manulife Indonesia operates its business through a network of 112 branches in 33 cities throughout Indonesia. Manulife runs its business with the support of almost 5,000 staff and full-time agents, who serve more than 950,000 customers.
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> Manulife Indonesia was ranked one of the “excellent life insurance companies” in Indonesia by Info Bank magazine, and it is also the only life insurance company in Indonesia to win the “Corporate Social Responsibility Award 2005” in a service industry category.[5, 6]

Challenging Times 2001-2002

Despite the current successes, Manulife's experience in Indonesia had been anything but smooth sailing, due to differences between the company and its local partner. In mid-2000 the Jakarta Commercial Court, which was created in 1999 specifically to facilitate business restructurings, declared Manulife’s minority partner, PT Dharmala Sakti Sejahtera, bankrupt. This was a delayed outcome of the economic downturn, brought about by the slow moving processes of the Indonesian Bank Restructuring Agency (IBRA). Later in the same year Manulife, which had to date held 51% of the shares of the joint venture, bought for US$ 17 million an additional 40% interest in PT Asuransi Jiwa Dharmala Manulife through a public auction process, initiated by the receiver of PT Dharmala Sakti. Manulife was the only bidder for the shares previously held by the affiliate of the Dharmala Group.

The transaction did not close smoothly, however. There was immediately a dispute as to who actually owned the shares, with Roman Gold Holdings Ltd, based in the British Virgin Islands, emerging with a counter claim that they were the legitimate owner of the same

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[4] Based on 2006 annual report of PT Asuransi Jiwa Manulife Indonesia, with figures converted at the exchange rate prevailing in March 2008. Manulife Indonesia with figures converted to dollar.

[5] http://www.manulife.com.hk/manulife_public/asia/indonesia.html, 29 August 2007.

[6] Corporate Social Responsibility (CSR) is taken very seriously by Manulife at the corporate level, In Indonesia, CSR is channeled through the Manulife Care Foundation, which was established in 1998. Its major activities are in the education, forestry and health care. For more information see the PT Asuransi Jiwa Manulife Indonesia annual report.

shares and that the Manulife shares were forgeries.[7] There were no records in PT Asuransi Jiwa Dharmala Manulife's share registry of Roman Gold Holdings, nor were there any indications that Suyanto Gondokusumo had assigned these shares.[8] In fact Roman Gold Holdings turned out to be a shell company established by Suyanto Gondokusumo. Its Jakarta office was a noodle vendor's shop in Chinatown

This link was only established after a protracted battle ensued, involving both the civil courts and the criminal justice system in Indonesia, which subsequently ruled in Manulife's favor. But the process was a long and complex one with many twists and turns, fraught with drama, and closely followed by the global business media. Manulife VP Adi Purnomo Wijaya was jailed for allegedly forging share certificates. The money that Manulife paid for the shares was confiscated as evidence. PT Asuransi Jiwa, Manulife Indonesia's president, an expatriate, received threats and his spouse was mugged in a Jakarta suburb, in an incident that might have been connected.

There were very visible interventions by Canadian officials beginning with the Trade Commissioner in Jakarta but ultimately extending to the most senior levels of the Canadian government. The jailed vice-president of PT Asuransi Jiwa Manulife Indonesia was only released following intercession by Canadian Prime Minister Jean Chrétien to Indonesian President Abdurrahman Wahid. There were allegations of corruption involving senior police officers.

PT Asuransi Jiwa Manulife Indonesia brought legal action against the Dharmala Group in Hong Kong, China; and Singapore claiming that Roman Gold Assets Ltd was a front for the Gondokusumo family created for the purpose of holding on to its 40% stake. An important development in this regard was the 18 May 2002 ruling in Singapore that froze the assets of the Gondokusumo family in the island republic. Since wealthy Indonesian business people often kept assets in Singapore, and sometimes resided there, the safety of doing so was called into question.

But that was not the end of the story, as PT Asuransi Jiwa Manulife Indonesia itself was petitioned into bankruptcy by its former shareholder PT Dharmala Sakti Sejahter. In 2002 the Jakarta Commercial Court declared PT Asuransi Jiwa Manulife Indonesia bankrupt because it did not pay a dividend in 1999, and thus had an unpaid debt to Dharmala, which still owned 40% of the company at the time. This ruling was made despite the fact that the shareholders had expressly agreed in 2000 not to pay a dividend. The court took note of the fact that the original terms of the joint venture agreement evidently did contemplate a dividend, should the company generate profits.

The story unfolded as follows: The court had appointed a receiver to the Dharmala Group, who launched a petition claiming that PT Asuransi Jiwa Manulife Indonesia was indebted to the company's estate. As a result the court also appointed a receiver for PT Asuransi Jiwa Manulife Indonesia. Manulife alleged that the actions of the receiver were biased and were intended to force a closure of the company, which was the fourth largest life insurer in Indonesia with over 400,000 policy holders.

PT Asuransi Jiwa Manulife Indonesia did close briefly in mid-2002 due to pressure from the receiver. Following the bankruptcy ruling made on 13 June 2002, the receiver took out full page advertisements in the local business press advising policy holders to submit their claims immediately, and some local hospitals refused to accept PT Asuransi Jiwa Manulife

[7] http://origin.www.cbc.ca/money/story/2001/05/21/manulife010521.html, consulted 1 February 2008.

[8] http://www.Asiaweek_com A Deal Is Not A Deal 16-2-2001.htm, consulted 31 January 2008.

Indonesia health coverage.[9] The receiver also ordered the company to cease operations, despite the fact that the courts had said that normal operations could continue. To assure the safety of its employees, who were threatened with arrest, the company closed its doors, resuming operations on Thursday, 27 June 2002.

The announcement of the shutdown and subsequent re-opening was managed as part of a well-conceived public relations campaign designed to maintain the public's confidence in PT Asuransi Jiwa Manulife Indonesia and to undermine the credibility of the Dharmala Group. The Indonesian Supreme Court overturned the Jakarta Commercial Court's decision to petition PT Asuransi Jiwa Manulife Indonesia into bankruptcy. However the ruling was based on a technicality and did not address the fundamental question of the validity of forcing a profitable going concern into bankruptcy on the basis of the contention that an undeclared dividend could be construed as a debt.

Subsequent discussions with policy holders nonetheless confirmed that because of assurances from the Manulife management, there was no detrimental loss of trust in the company. There was excellent communication throughout between Manulife management and its field insurance agents, and between the field insurance agents and their clients. The openness was reinforced by the well-publicized fact that insurance claims continued to be honored throughout the dispute. For the most part, the Indonesian public relied on their direct communication with company representatives and did not concern themselves with the technicalities of proceedings at the Jakarta Commercial Court, which did not receive as much attention as one might have expected.

As its dispute with the Dharmala Group deepened, Manulife defended its interests vigorously and won both the legal and global public relations battles by being strategic as well as tenacious in its approach. Management designed and professionally executed a strategy that involved using all means of legal recourse available, together with effective public communications and strong advocacy including high level diplomatic intervention. The company by-passed what it saw as a badly-flawed Indonesian legal system by initiating successful legal action in Singapore.

In contrast, the strategy of the Dharmala Group seemed to have evolved from one which was initially focused on preserving the value of its assets, to one aimed at inflicting maximum damage to PT Asuransi Jiwa Manulife Indonesia. Thus matters of "face" might well have played a significant role in determining behavior as the case evolved. In this regard it is significant that in the late 1990s the Dharmala Group found itself being forced to liquidate assets by the courts, whereas other Indonesian financial groups seemed to have been more successful in avoiding such forced restructurings following the Asian financial crisis.

Aftermath

The case was widely viewed internationally as an abuse of litigation, and was something of a black mark on the Indonesian investment climate.[10] The international business press reported the case extensively and concluded that corruption was rampant within the Indonesian court system. This view was reinforced by an admission by the Minister of Justice and Human Rights that the judges who ruled against PT Asuransi Jiwa Manulife Indonesia had been

[9] *Asia Times*, 28 June 2002.

[10] Indeed there is evidence that lack of foreign investment continues to limit Indonesia's efforts at economic recovery.

involved in bribery. Subsequently, the United Nations decided to send a "special rapporteur" to Indonesia to examine the legal system.

In fact the situation in which the case unfolded was highly complex. The International Monetary Fund (IMF) had strongly urged Indonesia to revamp its bankruptcy laws in the aftermath of the Asian financial crisis in order to provide creditors with greater leverage. Indeed the Fund made this reform a key condition of on-going support during the period following the crisis. But the resulting legislation appeared to have given even greater powers to debtors than might reasonably be warranted.[11] In short, Indonesia went almost overnight from a system in which the rights of creditors in business restructurings were very limited to one in which they were considerable, and arguably excessive. At the same time Indonesia was attempting to move from a regime in which disputes were resolved informally, based on established connections, to a rules-based approach.

The Jakarta Commercial Court itself was created with international assistance, in order to correct a serious shortcoming from a lack of effective processes for adjudicating commercial disputes. At the outset in 1999, there were great efforts to ensure the independence of its judiciary, but this might not have worked out in practice. In addition there appeared to be issues of capacity and competence in both the judiciary and the legislative arms of government.

Two points stood out regarding the Indonesian judicial process, according to local observers interviewed in the preparation of this case. Additional capacity building was needed for the Jakarta Commercial Court, as it was unclear whether the fundamental issues of law were well understood by the relevant parties. On the other hand, the Dharmala Group might have understood what was at stake very well, and had been in a position to influence the outcome of the process.

But despite the challenge to its credibility as a result of this case, on balance observers in Indonesia saw the creation of the Jakarta Commercial Court as having strengthened governance. The court had increased the attention given to large companies so that their reorganization did not bring down innocent clients and consumers that had given such businesses their trust. In 2004, for example, a publicly listed property company, PT Bukit Sentul, was brought before the Jakarta Commercial Court for neglecting to fulfill its contract to build houses already paid for by many middle income families. The result of the restructuring process allowed a new investor to come in, take over the management of the business and assume its debt. This allowed the business to continue under a new name (PT Sentul City) and to fulfill its original obligations.

Differing Perspectives

As was inevitable in such cases, stakeholders from the investing and host economies saw the matter quite differently. Canadian stakeholders perceived these events as an attempt by a faction of the Indonesian business community to hang on to its depreciated assets at all costs in the wake of its business failure in the aftermath of the Asian financial crisis. They believed they were dealing with private and public officials whose actions would harm not only PT Asuransi Jiwa Manulife Indonesia, but also Indonesia's reputation among the global business community and ultimately the success of its economic recovery.

[11] Indeed, in another recent case in 2004 the Indonesian subsidiary of the UK-based insurer Prudential was forced into bankruptcy on the basis of a commission claim by a local agent.

As early as 2000, for example, Canadian firms were being advised to exercise caution when buying assets from the IBRA and the Indonesian Ministry of Finance.[12] But by the time the crisis reached its peak the tone had become much tougher, and there was talk of economic retaliation. In between the start and the height of the crisis, Canadian officials, up to and including the Prime Minister himself, were very visible and supportive of Manulife. Their interventions focused not only on the interests of Manulife as a Canadian-based company, and its Indonesian affiliate, but also on the consequences of the actions of the Dharmala Group and the Indonesian legal infrastructure for the economy's investment climate. The Canadians encouraged this theme to be taken up by other developed economies, as well as by the major International Financial Institutions. The International Monetary Fund (IMF), for example, commented on the urgent need for Indonesia to continue to reform its bankruptcy laws and strengthen its legal institutions.

The Indonesian reaction was different, even among government officials who understood that legal and institutional reforms were needed. Manulife and the Canadian government were accused of being high-handed and of interfering in Indonesian affairs. Their criticisms of the lack of transparency and the effectiveness of local processes were deemed inappropriate, as were the tacit threats to undermine Indonesia's efforts to secure foreign capital. At least some observers have pointed out the irony that while the global community was pressing Indonesia to reform its legal processes, in fact there was reluctance by non-Indonesians to allow due process to unfold. Despite the rhetoric in favor of rule by law, there was limited trust in the legal system or the judiciary. Of course the counterview was that the process was seriously flawed and captive of special interests.[13]

Finally, some in the Indonesian private sector questioned the appropriateness of the original choice of the Dharmala Group as Manulife's business partner. The Gondokusumos were viewed as outsiders by some in the Chinese-Indonesian ethnic business community. Moreover, their ethical practices were questioned.[14]

Members of the indigenous business community indicated to the authors that they were well aware of the shortcomings of the legal system in Indonesia. In particular, they believed that the bureaucracy and the courts could not be relied upon fully to uphold the law. In their view the design of the legislation and accompanying regulations were often not the main problem. Rather, the issues stemmed from inconsistencies in the interpretation and implementation of rules by both enforcement officials and the judiciary.

The commonly-held viewpoint was that the problem was an ethical one. This general feeling was not necessarily substantiated by hard evidence related to specific cases (such as the Manulife-Dharmala Group dispute). Nonetheless the viewpoint was widespread and the perceptions were based on what were commonly believed to be prevalent practices.

Observers of the local scene noted that many regulations were actually written based upon good governance practices in western economies, often developed by, or in close consultation with, experts from those economies. But there had been a gap between what had been written and what was practiced.

Unfortunately given local cultural considerations, what was the normal practice was not altogether transparent. Deviations between actual and prescribed conduct could not always be untangled to the extent that allowed truth to be revealed. Because this applied to the

[12] "Be wary of buying Indonesian Assets," *Straits Times,* 2 December 2000.

[13] See David K. Linnan, "A Meditation on Three Mythologies," *S.C. Journal of International Law and Business* (Volt 1 No 3, Fall 2003).

[14] *Ibid.*

whole system of social and business relationships in Indonesia, it was seen by local observers as one of the fundamental causes of Indonesia's sovereign credit rating remaining at a below-investment grade level since the financial crisis of 1997-1998.

The indigenous business community would like to see a sustained improvement in the investment climate. But such a structural change would bring with it winners and losers. It would be difficult to engineer such a fundamental change in business practice in concert so that every business would benefit equally and at the same time. If practices were to change, the rules of the game would need to shift across the board simultaneously in order to assure benefits for the whole indigenous business community. This would require exceptional leadership both from within the business community and government.

For its part, the Indonesian government also would like to see the economy's investment climate improve. But there were quite mixed opinions and feelings on the part of individual officials familiar with the Manulife case regarding what specifically would need to be altered. For example, the consistent enforcement of rules and regulations aligned with global good practice was seen as key. But some officials noted that global investors with the sophisticated lawyers and deep pockets (such as Manulife) always seemed to manage to come out on top. This in their view might be a 'fair' game in terms of a strict application of the law, but given that the players did not have the same level of sophistication, in practice the playing field was *not* level. It should be noted that the same type of criticism was sometimes leveled at the litigation process in advanced economies too.

Officials who were involved "hands on" with the Manulife case were also far from agreeing as to what should have been done to manage the process in the interests of the host economy. Senior, mid-level and working-level officials lacked unified perspectives (both legal and ethical) on how to choose the most appropriate course of action. This difficulty in finding consensus was common in the Indonesian milieu at that time, and the barriers to reaching agreement represented a structural weakness in the decision making system, which increased the systemic risk of doing business in the economy.

More recently, however, and especially under the current Indonesian government, change was in the air. It was apparent that the highest level of government was working seriously on improving the investment climate. This was having a direct impact on the ministries responsible for dealing with foreign investment matters. For example, in the Ministry of Finance, which was closely involved with the Manulife case, one measure taken was to rotate officials in the first and second echelons. New high-level appointees had been given change mandates focused on improving the reliability and transparency of public services. This was widely seen as a positive sign by observers of the local scene.

Lessons for Policy Makers and the APEC Process

This case offers many lessons for foreign investors, for host economy partners, for governments and for inter-governmental dialogue.

First and foremost, business disputes are inherently difficult to resolve, especially when they involve participants from differing economies operating under divergent cultural assumptions and legal traditions. These disparities in knowledge, approach and perception do not detract from the reality that there were, in this particular example, vastly different interests at play. The case does, however, illustrate how quickly disputes can escalate when trust and understanding are missing.

Second, the case strongly supports the benefits of developing effective, transparent, rules-based frameworks for resolving commercial disputes. But such systems do not operate in a vacuum, and there can often be unintended consequences, particularly during times of rapid structural economic and administrative changes. In the final analysis good commercial dispute resolution needs to balance formal and informal processes in a manner that is acceptable to both parties.

Third, investing companies need to have a good understanding of the systemic problems in the host economy and a realistic expectation of what to expect. For example companies investing in Indonesia need to appreciate the lack of transparency, and weak regulatory enforcement that they will encounter, and come in with a game plan that increases the chances of success.

Fourth, capacity building and bridging the culture gap should be in the minds of main stakeholders. In writing rules and regulations conforming to international standards, a national multi-stakeholder consultation process could, to a certain degree, better bridge the gap between what is expected internationally and what is prevalent locally. And further, developing a capacity building program that not only involves classroom training but in-situ or on the job monitoring and feedback, done in a respectful manner could also be of much help.

Fifth, public scrutiny is a powerful force for change. In Indonesia, as elsewhere in the Asia-Pacific region, there is a genuine desire to ensure that better governance is put in place. Change agents at the right levels within government can supplement the pressure imposed by non-government stakeholders (both global and local), as the Manulife case shows. Government will be reticent to find themselves in the spotlight by being involved in a similar dispute in the future.

Finally, the case illustrates the payoff of professional crisis management. While Manulife's behavior was perceived as high-handed by some in Indonesia, equally the behavior of the Dharmala Group was seen as reprehensible in Canada and other developed economies. Setting emotion aside, the fact was that the Manulife's strategic approach to crisis management ultimately preserved the reputation of PT Asuransi Jiwa Manulife Indonesia, paving the way for the company to resume operations.

Concluding Thoughts

Despite the intensity and the bitterness of the dispute in a real sense the case has had a happy ending, as Manulife continues to operate profitably in Indonesia to this day. The battles have not ended yet, however, with the Dharmala Group having (possibly) launched further legal actions. Stay tuned!