

Lucky Draw as an Artful Way to Attract Customers: The Legal Aspects You Should Know About

Maria Sagrado (maria.sagrado@makarim.com) &
G. Nadira Sjarif (ghaliva.sjarif@makarim.com)
Makarim & Taira S.

With an unprecedented growth in the travel industry, driven by a combination of a robust economy, rising global consumer purchasing power and digital innovation, the world has seen a growth in its global travel pool (2019 US Travel and Hospitality Outlook, Deloitte, <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/consumer-business/us-consumer-2019-us-travel-and-hospitality-outlook.pdf>). However, as the pool grows, so does the number of attractive accommodations and destinations competing for consumers. Promotion strategies are therefore required to tap into the demand and win consumers from competing businesses. One form of promotion strategy that is often offered includes holding a lucky draw with gifts including free stays, room upgrades, travel tickets, electronic goods and so forth.

In Indonesia, drawings (and lotteries) fall under, among others, Minister of Social Affairs Regulation No. 14A/HUK/2006 on Drawing Permits (**'Drawing Permit Regulation'**) under which, a 'drawing' is defined as any opportunity provided by an entity to those eligible to participate and receive gifts in the form of either money or goods if they win the drawing or other means of determining the winners purely by luck, not depending on anything done by the participants.

Currently, as part of the unwritten policy of the Minister of Social Affairs (**'MOSA'**), only free drawings are allowed in Indonesia. A free drawing is held for free and is combined with or related to other activities such as a promotion with prizes, which may be in the form of a quiz using electronic media (television, radio, the internet, and other electronic media), or a quiz in the print media (newspapers, tabloids, magazines, and other print media), exhibitions, performances, demonstrations, contests, questionnaires, riddles, sports / races in which the prizes are not associated with or determined by the results, or the prize drawings are speculative.

A free drawing requires a drawing permit and the party holding the drawing must also comply with some other requirements.

Below is a brief description of the procedure required for holding a drawing in Indonesia:

1. Apply for a drawing permit:

A drawing permit is applied for online at <https://simppsdbs.kemsos.go.id/index.php/site/index>. The applicant's person in charge must register and submit his/her details to the system and then submit the applicant's request for a free draw permit.

The online application form will require the applicant to submit some information related to the applicant and the drawing scheme, among other things:

- a. the name of the applicant company and its address;

- b. the name of the person in charge of the company and his/her position in the company;
- c. the type of goods or services which are being promoted;
- d. the mechanism and procedure for holding the drawing;
- e. the mechanism and procedure for determining the winner of the drawing;
- f. the time frame and the region in which the drawing will be held;
- g. the place and date of the drawing;
- h. the method for pulling out from the drawing;
- i. a list of the prizes with details to include the type, quantity, brand and year of production of the prizes; and
- j. the date and the procedure for announcing the results of the drawing through the mass media.

2. The drawing permit application fee and social welfare fund contribution:

A fee of IDR200,000 (~USD14) must be paid to the MOSA as the application fee. An additional IDR100,000 (~USD7) as the drawing fee must also be paid for each drawing/prize. In addition to the application and drawing fees, the applicant must also pay a contribution to the social welfare fund amounting to 10% of the total value of all the drawing prizes.

3. The issuance of the drawing permit

After MOSA has studied the application, MOSA will issue the drawing permit. The party holding the drawing must state the drawing permit number in all marketing publications.

4. The sealing of the drawing device

The party holding the drawing must seal the drawing device (eg the drawing ballot box). By regulation, the party holding the drawing must invite the MOSA to the office/place of business to check the eligible drawing ballots (the list of eligible participants that comply with the requirements for entering the drawing). This should take place before the drawing date. The sealing of the drawing ballot box must also be witnessed by a notary public who will then draft a minute of the sealing.

5. The Drawing

By regulation, the drawing must be performed in public and witnessed by a MOSA official, a notary public and the local police. The notary public who observes the drawing must draft minutes of the drawing.

6. The announcement of the drawing winners

The party holding the drawing must publish a list of the winners in the mass media within 30 (thirty) days of the date of the drawing. The winners' right to claim their prizes expires 60 (sixty) days after the date of the drawing.

7. The submission of a written report to the MOSA (copied to the Governor)

Within 30 days of the handover of the prizes to the winners, the party holding the drawing must submit a report to the MOSA (copied to the relevant Governor) on the handing over of the prizes to the winners, copies of the winners' identification documents, a list of any unclaimed prizes and evidence of the payment of the tax due. Drawing winners must pay 25% income tax.

Further, under Article 26 of MOSA Decree 73, unclaimed drawing prizes must be handed over by the party holding the drawing to the MOSA within 60 days of the date of the announcement of the winners. Administrative sanctions may be imposed for violating this provision.

All unclaimed prizes must first be converted into their equivalent monetary value. After an unclaimed prize has been converted, funds equal to the monetary value must be handed over

to the social affairs office of the relevant province. There is no set guideline on the conversion rate for unclaimed prizes.

The MOSA will allocate the funds received (unclaimed prizes) to social needs such as donations to natural disaster victims or poverty alleviation programs. Parties holding a lucky draw may not ask the social affairs office to return a prize once it has been handed over.

Therefore, if the prize is a free stay at a certain hotel, the party holding the drawing must convert the free stay into its monetary equivalent according to the average market price for the hotel's rating.

In practice, since holding a drawing in Indonesia has a number of legal requirements and is quite complex, it is common for businesses in Indonesia to hold promotions/marketing schemes that are similar to a drawing but not considered a drawing under the relevant laws and regulations. In this situation, it is important for any party intending to hold a marketing scheme/promotional activity to eliminate the element of luck in the promotion/marketing schemes.

This means that the determination of whether a participant wins a prize depends solely on the efforts and actions of the participant; it is not determined by luck.

Although holding a drawing is tightly regulated in Indonesia, there is no doubt that holding a drawing is a compelling way to attract customers. With the continued growth of the travel industry, differentiating travel products through interesting promotions and offers may just be what sets one business actor apart from its competitors and seals the deal in a customer's choice of accommodation!