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International Arbitration 2025

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Indonesia: Law and Practice & Trends and Developments

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ABNR Counsellors at Law

INDONESIA

Law and Practice

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Contents

ABNR Counsellors at Law was founded in 1967 and is Indonesia's longest-established law firm. It pioneered the development of international commercial law in the country following the reopening of the economy to foreign investment after a period of isolationism in the early 1960s. With over 100 partners and lawyers (including two foreign counsel), ABNR is the largest independent, full-service law firm in Indonesia, and one of the country's top three law firms by number of fee earners, giving it the scale needed to simultaneously handle large and complex transnational deals across a range of practice areas. It also has global reach as the exclusive Lex Mundi member firm for Indonesia since 1991; Lex Mundi is the world's leading network of independent law firms, with members in more than 100 countries.

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1. General

1.1 Prevalence of Arbitration

International arbitration is increasingly being chosen as a method to resolve disputes in Indonesia, but the total number of disputes for which arbitration is chosen still lags behind the number submitted to the general courts in Indonesia. One of the reasons for this is a measure of unfamiliarity with arbitration as a dispute resolution mechanism; another is the local infrastructure for conducting arbitral procedures, which is still in an early stage of development.

However, arbitration is becoming more broadly accepted, and the total number of commercial arbitrations registered with the Indonesian National Board of Arbitration (*Badan Arbitrase Nasional Indonesia*, or BANI), as the most prominent arbitration body in Indonesia, is gradually rising every year. By 2024, BANI had overseen more than 1,000 arbitration cases.

When arbitration is chosen, it is generally believed that the positive drivers are:

- the appointment of the arbitrators by the parties;
- the confidentiality of the proceedings;
- the final and binding nature of the award;
- the flexibility of the procedure;
- the professionalism and expertise of the arbitral tribunals; and
- the comparative unattractiveness of cross-border dispute resolution through the courts.

In its elucidation, Law No 30 of 1999 on Arbitration and Alternative Dispute Resolution (the "Arbitration Law") identifies a number of other general principles that distinguish arbitration from the administration of justice through state courts, which it seeks to secure with this law. These include:

- the speedy nature of arbitration due to an absence of procedural and administrative restrictions;
- the ability to select arbitrators with specific expertise with regard to the matter in dispute; and
- the possibility of selecting a legal regime best suited to the parties for the purposes of the issue in dispute.

Foreign contract parties will often choose arbitration, as judgments of foreign courts are not enforceable in Indonesia but foreign arbitral awards are, if certain conditions are met.

A positive trend affecting arbitration in Indonesia is the modernisation of arbitral procedures, with the increasing use of electronic filing and other information technology. A further positive trend is the increasing number of Indonesian professionals available to act as arbitrators. Moreover, increased foreign direct investment in Southeast Asia has led to growth in the demand for dispute resolution services in the region, and Indonesia has had its share in that growth.

1.2 Key Industries

Commercial arbitration is increasingly used in the infrastructure development, construction, technology and communications, mining and natural resources,

and joint venture sectors. Other sectors have already incorporated arbitration clauses into their respective agreements, such as trading, banking, finance, mergers and acquisitions, and intellectual property rights. Some Indonesian state-owned companies prefer the use of the BANI Arbitration Rules and Procedures over foreign institutional arbitration.

Technology and communications are areas in which arbitration is regarded as attractive because of the likelihood of confidentiality being protected.

1.3 Arbitration Institutions

There are now many well-known arbitration institutions in Indonesia, including:

- the Indonesian National Board of Arbitration (BANI);
- Alternative Dispute Resolution Institutions in the Financial Services Sector (*Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan,* or LAPS SJK);
- the National Sharia Arbitration Board (*Badan Arbitrase Syariah Nasional*, or Basyarnas); and
- the Arbitration Board of Indonesian Sports (*Badan Arbitrase Olahraga Indonesia*, or BAORI).

In terms of volume and caseload of international matters, BANI is a leader in the field. However, many cross-border contracts still choose international arbitration, providing for the application of arbitration rules drawn up by international arbitration institutions such as the International Chamber of Commerce, the Singapore International Arbitration Centre, the Hong Kong International Arbitration Centre and the London International Court of Arbitration.

In many cases, the institution will not decide on the dispute; rather, its role is to assist with the conduct of the procedure in general. This often involves the appointment of the tribunal, including selecting arbitrators where a party fails to do so or where the parties are unable to agree. Often, the institution's function will encompass the administration of the proceedings, including:

- reviewing the draft of the award;
- hearing challenges to arbitrators;
- taking deposits on account of the arbitration costs;
- fixing the arbitrators' fees;
- reminding parties and tribunals of deadlines; and
- arranging hearing facilities.

All these functions, and many more, are set out in the arbitration rules unique to each institution.

BANI has recently announced major updates to its Arbitration Rules. The 2025 BANI Arbitration Rules (the "2025 BANI Rules") now provide for the option of emergency arbitration, allowing parties to seek urgent interim measures before the arbitration tribunal is formed. Moreover, the rules introduce new provisions for arbitration proceedings with multiple parties or agreements and the involvement of third parties, and list an additional ground for arbitrator replacement.

1.4 National Courts

There are no courts in Indonesia that are designated to hear disputes related to international arbitrations and/or domestic arbitration, such as an international commercial court or a designated high court. However, for the purpose of the registration and enforcement of foreign arbitral awards, the Central Jakarta District Court is mandated to issue an execution writ or exequatur to that end.

2. Governing Legislation

2.1 Governing Law

The Arbitration Law is the statute that governs arbitration and other forms of alternative dispute resolution, such as mediation and expert determination. The Arbitration Law has replaced the provisions on arbitration contained in the Civil Procedure Code, which was inherited from the pre-independence period.

The Arbitration Law is not based on the UNCITRAL Model Law on International Commercial Arbitration ("Model Law") and deviates from it on several points, including the following:

- Indonesian is the default language;
- the arbitral tribunal is to complete its "examination of disputes" within 180 days of its constitution; and

- the grounds for annulment of Indonesian awards are limited to fraud, forgery or the concealment of material documents.

Some of these points will be discussed in further detail in this chapter. Generally, the role of the courts is relatively limited compared to the role granted to the courts in the Model Law.

The Supreme Court recently enacted Supreme Court Regulation No 3 of 2023 on the Procedure for the Appointment of Arbitrators by the Court, Rights to Challenge Arbitrators, and Examination of Applications for Enforcement and Annulment of Arbitral Awards ("Supreme Court Reg No 3/2023"). The Regulation introduces key updates to the Arbitration Law, including arbitrator immunity, the procedures for challenging arbitrators and the timeline for issuing exequatur after award registration.

2.2 Changes to National Law

No statutory amendments with a significant impact on Indonesian arbitration practices have been introduced in the past year, and no further major reforms are underway or expected.

3. The Arbitration Agreement

3.1 Enforceability

The Arbitration Law requires an arbitration agreement to be made in writing and signed by the parties. It may be in the form of:

- an arbitration clause contained in a written agreement made before the dispute arises; or
- an agreement entered into especially by the parties after the dispute arises.

If an arbitration agreement is made before the dispute arises, the Arbitration Law requires that it should state that all disputes that arise or may arise from a legal relationship between the parties must be settled by means of arbitration. If an arbitration agreement is made after the dispute arises, it must include at least:

- the subject matter of the dispute;
- the names and addresses of the parties;
- the names and residential addresses of the members of the arbitral tribunal;
- the place where the arbitral tribunal will render the award;
- the name of the secretary to the arbitral tribunal;
- the time period within which the arbitration is to be completed;
- a statement from the members of the arbitral tribunal accepting their appointment; and
- a statement from the disputing parties that they will bear all costs of the arbitration.

The Arbitration Law does not require the seat of the arbitration – the legal concept tying the arbitration to a legal jurisdiction – to be mentioned in the arbitration agreement. However, if the place where the arbitral tribunal will render the award is Jakarta, it is safe to assume that the Arbitration Law will govern the arbitration, and that the Indonesian courts will have control in relation to the arbitration and the powers that are elsewhere granted to the courts of the seat of arbitration.

An arbitration agreement can be contained in an exchange of correspondence that provides a record of its content, and any dispatch by telex, telegram, facsimile, email or other means of telecommunication must be accompanied by an acknowledgment of receipt. The Arbitration Law does not deal with optional arbitration clauses that give one or more of the parties the ability to decide after a dispute has arisen whether to arbitrate or litigate that dispute.

3.2 Arbitrability

Matters that may not be referred to arbitration are those in which, according to Indonesian law, no amicable settlement is possible (eg, criminal matters, bankruptcy, adoption). The general approach to determine whether or not a dispute is arbitrable is found in Article 5 (1) of the Arbitration Law, which states that a dispute can be settled by means of arbitration if it is of a commercial nature and "falls within the full legal authority of the disputing parties". The latter requirement appears to give arbitrators the authority to examine whether particular parties (eg, government-owned entities) have the requisite power to submit disputes to arbitration. As regards the meaning of disputes of a "commercial nature", the elucidation to Article 66

of the Arbitration Law states that these include commerce, banking, finance, investment, industry and intellectual property disputes.

Arbitration is not limited to dispute settlement. Under the Arbitration Law, parties may petition arbitrators to help settle an equivocal contract provision, or provide for the amendment of a contract due to changing conditions. The Arbitration Law allows parties to ask for a binding opinion from the arbitrators. This opinion is not open to appeal.

3.3 National Courts' Approach

The national courts nowadays generally enforce arbitration agreements, although several court decisions have disregarded the arbitration clause, with the plaintiff having filed the lawsuit under a tort claim. Articles 3 and 11 of the Arbitration Law conclusively eliminate the national courts' competence to hear any dispute that has been referred to arbitration, and rule that the courts must reject – and may not be involved in – disputes that should have been settled by means of arbitration.

In a recent case, the Central Jakarta District Court rendered a controversial ruling by annulling an execution writ of recognised CIETAC arbitral award previously granted under Decision No 200/Pdt.Sus-Arb/2023/PN Jkt.Pst dated 24 April 2025 (*PT Mahkota Sentosa Utama v China Light Industry, et al*), concerning *PT Mahkota Sentosa Utama v China Light Industry International Engineering Co. Ltd and the China International Economic and Trade Arbitration Commission*. This is controversial because Article 20 (1) of Supreme Court Reg No 3/2023 stipulates that there is no legal recourse to challenge the decision to recognise the arbitral award. It should be noted that this case is not yet final and binding.

The court determined that the annulment was partially warranted on the basis that the arbitration agreement was drafted solely in Chinese and English. This is deemed to be in contravention of Indonesian law, which mandates that agreements involving Indonesian parties must be prepared in the Indonesian language or in bilingual documents. The court deemed this consideration relevant to the evaluation of the agreement's validity under Indonesian law.

3.4 Validity

The Arbitration Law recognises the separability principle: an arbitral clause can be considered valid even if the rest of the contract in which it is contained is wholly or partly invalid. The arbitration clause is therefore separate from the agreement in which it is set out. If there is no express law chosen for the arbitration agreement, the law with which that agreement has its closest connection is either the law of the underlying contract or the law of the seat of the arbitration.

4. The Arbitral Tribunal

4.1 Limits on Selection

The Arbitration Law contains no limitation on the parties' autonomy to select arbitrators, but lists requirements for a valid appointment as an arbitrator. An arbitrator must:

- be legally capable to perform legal actions;
- be at least 35 years old;
- not have any family relationship by blood or marriage up to the second degree with any of the disputing parties;
- not have any financial or other interest in the award; and
- have a minimum of 15 years' experience and active proficiency in the field concerned.

The Arbitration Law also prohibits judges, prosecutors, court clerks and other court officials from being appointed as arbitrators. There is no restriction with regard to nationality.

There is no clear rule in the Arbitration Law requiring an uneven number of arbitrators. The Arbitration Law says that if parties each appoint an arbitrator, such arbitrators have the authority (ie, not the obligation) to appoint a third arbitrator. If they fail to do so, one of the parties can (but need not) apply for the appointment of a third arbitrator by the court.

4.2 Default Procedures

Under the Arbitration Law, the parties have the freedom to choose the national or international arbitration institution to which they wish to submit their disputes. The rules of that institution will apply unless otherwise

decided (Article 34, Arbitration Law). The parties may agree on a particular set of rules on arbitrator selection, provided that the rules are not contradictory to the Arbitration Law nor to the appointment rules of the national or international arbitration institution they have selected. If the chosen method for selecting arbitrators fails or the parties do not choose a selection method, the chair of the district court will have authority to appoint the members of the arbitral tribunal.

Specifically for ad hoc arbitration, the Arbitration Law provides that the parties may seek the assistance of the chair of the district court to appoint the members of the arbitral tribunal if they fail to do so themselves.

However, if the parties agree to specific institutional arbitration rules or set out their own rules, these will apply as the default procedure, provided they do not contradict the Arbitration Law.

The Arbitration Law provides that the tasks of the arbitrators end when:

- an award has been issued;
- the deadlines determined in the arbitration agreement have been exceeded; or
- the parties have agreed to withdraw their dispute from arbitration.

The law specifies that the death of one of the parties does not in itself affect the arbitration procedure, although the term of office of arbitrators will automatically be extended by 60 days in such an event.

4.3 Court Intervention

During the appointment process, the court can intervene in the selection of arbitrators if:

- one of the events described in Article 13 of the Arbitration Law occurs (see **4.2 Default Procedures**); or
- a recusal filed by one party is objected to by the other party or parties, or the member of the arbitral tribunal concerned fails to step down.

Thereafter, the court can only address the issue of the jurisdiction and competence of an arbitral tribunal within the framework of enforcement of the award through a writ of execution (exequatur).

4.4 Challenge and Removal of Arbitrators

Section III of the Arbitration Law and Articles 4–5 of Supreme Court Reg No 3/2023 stipulate the provisions governing the challenge or removal of arbitrators, and contain the requirements for a challenge or removal of members of an arbitral tribunal by the parties or by the chair of the district court.

A request to recuse members of an arbitral tribunal can be filed with the relevant district court if:

- there is sufficient cause or authentic evidence that raises doubt as to whether the arbitrator will perform the task independently, neutrally and impartially when rendering an award; or
- it is proven that the arbitrator has a family, work or financial relationship with one or more of the parties or their legal counsel.

4.5 Arbitrator Requirements

Under the Arbitration Law, each member of the arbitral tribunal must be independent, neutral and impartial, as outlined in **4.1 Limits on Selection**, but there are no specific references to the requirement for independence, impartiality and/or disclosure of a potential conflict. BANI has adopted a similar requirement, yet it also does not have specific references.

If the appointment of arbitrators is complete, then an arbitrator cannot be released from their duties other than with the agreement of the disputing parties. If the parties agree, then the arbitrator is released. If they disagree, the issue of the release can be submitted to the district court chair for final decision.

5. Jurisdiction

5.1 Challenges to Jurisdiction

An arbitral tribunal is authorised to rule on a party's challenge to the tribunal's jurisdiction (the competence-competence principle). The principle is generally accepted even though the Arbitration Law does not specifically confirm it. The applicability of this principle can be inferred from Articles 3 and 11 of the

Arbitration Law. Article 3 requires the courts to refer disputes arising out of a contract (that has an arbitration clause) to arbitration instead of assuming jurisdiction, and Article 11 states that parties to a written arbitration agreement are no longer entitled to initiate litigation proceedings in court.

Several Indonesian arbitration institutions incorporate this principle specifically into their arbitration rules, such as Article 17 of the 2025 BANI Rules.

5.2 Circumstances for Court Intervention

The Arbitration Law does not allow the courts to address the issue of the jurisdiction of an arbitral tribunal. It does set out the limited involvement of the courts, such as:

- the appointment, discharge and recusal of an arbitrator;
- the registration and issuance of exequatur for an arbitral award; and
- the annulment of an arbitral award.

However, as this is limited, the courts tend to be reluctant to intervene in questions relating to the jurisdiction of arbitral tribunals.

There have been cases in which the courts have assumed jurisdiction where the claim was argued to represent a tort rather than a breach of contract subject to an arbitration clause – see **5.5 Breach of Arbitration Agreement**.

5.3 Timing of Challenge

The Arbitration Law does not provide any mechanism to challenge the jurisdiction of an arbitral tribunal before the courts. Therefore, unless there is ambiguity in the arbitration clause that may trigger the courts' jurisdiction, a challenge to the jurisdiction of an arbitral tribunal may only be heard by the arbitral tribunal itself.

5.4 Standard of Judicial Review for Jurisdiction/Admissibility

Admissibility and/or jurisdiction issues will first be addressed by the arbitral tribunal at the beginning of the arbitration proceeding, before examination of the substance of the dispute. Such issues may also be subject to court review during the enforcement stage. In either case, the standard should be de novo: the Indonesian courts would not apply restraint in their review, particularly not where it concerns due process and equality issues such as the right to be heard. However, this view is yet to be confirmed by an Indonesian court – see **3.2 Arbitrability**.

5.5 Breach of Arbitration Agreement

Current trends show a strong tendency of Indonesian courts to reject jurisdiction in breach of an arbitration agreement: where there is a clear and unambiguous arbitration clause, and that clause is valid and enforceable and the dispute concerns an alleged breach of contract, the courts must refer the parties to arbitration.

In practice, there have been cases where the parties have initiated court litigation based on tort in order to avoid the application of an arbitration clause. The argument typically used was that the arbitration jurisdiction was limited to matters involving breach of contract and hence could not extend to a tort-based claim. However, Article 134 of the Revised Civil Procedural Law (HIR) opens up the possibility for parties wishing to invoke an arbitration clause to challenge the court if it assumes jurisdiction over a matter covered by an arbitration agreement. Indonesian law requires that the arbitration agreement and the lack of jurisdiction must be raised in the first written pleading.

5.6 Jurisdiction Over Third Parties

Third parties that are not a party to the arbitration agreement may join the arbitration proceedings if:

- the third party has an interest in joining in the arbitration;
- the participation is agreed by the disputing parties; and
- the arbitral tribunal approves the third party's joining the arbitration.

The Arbitration Law does not limit this condition to domestic parties; it should be applicable to both foreign and domestic third parties.

In principle, a third party (ie, any person or entity that has not signed an arbitration agreement) is not bound

to join the arbitration. An exception would be where the rights under an agreement have been assigned to a third party. If that agreement contained an arbitration clause, that third party would, as an assignee, be bound to the arbitration clause.

6. Preliminary and Interim Relief

6.1 Types of Relief

The Arbitration Law recognises that the availability of interim relief pending a final award is an important feature of arbitration, including orders to prohibit actions that could cause imminent harm or to preserve assets to satisfy an award. Pursuant to Article 32 of the Arbitration Law, an arbitral tribunal is permitted to award preliminary or interim relief. Types of relief that can be awarded include:

- a security attachment;
- a deposit of goods with third parties; and
- the sale of perishable goods.

Similar relief is often provided for in varying levels of detail in the rules of arbitration institutions.

6.2 Role of Courts

The courts do not play a role in ordering preliminary or interim relief in arbitration proceedings. Arbitral tribunals do not have the authority to grant or lift attachments in the same manner and with the same binding force as the Indonesian courts.

Although an arbitral tribunal is granted the power to render relief within the parameters of an arbitral procedure, in practice complications arise when the claimant party attempts to enforce the relief granted by the arbitral tribunal. Indonesian law does not regulate court implementation of preliminary or interim relief awarded in arbitration proceedings. It generally adopts the position that only a final and binding decision awarded in arbitration proceedings can be enforced.

The Arbitration Law does not contain any reference to the use of emergency arbitrators. However, if the parties have agreed on specific rules for the arbitration – either institutional or ad hoc – that allow the use of emergency arbitrators, the court should recognise the validity of an arbitral award rendered by an emergency arbitrator.

In light of Articles 3 and 11 of the Arbitration Law, both of which stipulate that the national courts must refrain from examining disputes the parties have agreed to refer to arbitration, the national court should not be able to intervene once an emergency arbitrator has been appointed in accordance with the applicable institutional or ad hoc arbitration rules.

6.3 Security for Costs

Under the Arbitration Law, there are no specific provisions on security for costs. In principle, the parties to a dispute could contractually agree to grant authority to the arbitrators to resolve this matter.

7. Procedure

7.1 Governing Rules

The parties to a dispute that has been submitted to arbitration have the following options:

- to draw up their own procedural rules or adopt the UNCITRAL rules or other rules for ad hoc arbitration;
- to use the rules of a national or international arbitration institution; or
- to use the default rules contained in the Arbitration Law, which will in any event apply if neither of the preceding options has been chosen.

7.2 Procedural Steps

Pursuant to the Arbitration Law, the following default procedural steps are prescribed.

When a dispute arises, the respondent must be notified in writing via mail, telex, facsimile or email. The notification must include:

- the names and addresses of the disputing parties;
- evidence of the agreed arbitration clause;
- the disputed issues;
- the basis for a claim and the claim amount;
- the agreed dispute settlement procedure; and
- the agreed or chosen number of arbitrators.

Written submission must be presented to the arbitral tribunal for the purpose of examining the dispute. Oral submissions may be made if agreed by the parties and considered necessary by the arbitrators.

At least one hearing must be held. If deemed necessary by either party or the arbitral tribunal, the parties must appear at further hearings.

The arbitrators must make an effort to settle the dispute amicably prior to examination of the dispute. If such conciliation is in fact reached, then this must be set out in a deed, which is final and binding upon both parties and instructs them to abide by its provisions. The arbitration hearings commence if a settlement cannot be reached.

The examination of witnesses and experts typically follows the Indonesian Civil Procedural Law. The arbitrators can decide to summon witnesses either at their own initiative or at the request of the parties. The cost of witnesses must be borne by the claimant. The arbitrators may also hear expert witnesses. The testimony of the expert witnesses must be in writing.

In contrast to the UNCITRAL Model Law, the arbitration proceedings must be completed within 180 days after the panel of arbitrators has been established; the Arbitration Law states that arbitration procedures may not extend beyond 180 days. This term can be extended by the arbitrators at the substantiated request of one of the parties, as a result of interim measures, or if the proper resolution of the dispute so requires, as determined by the arbitral tribunal. It is possible and common to waive this provision in an arbitration clause.

The award must follow the requirements set out in Article 54 (1) of the Arbitration Law (for further explanation, see **10. The Award**), and must be pronounced within 30 days of the examination being completed.

7.3 Powers and Duties of Arbitrators

The arbitrators, acting as an arbitral tribunal, have the authority to:

- determine the tribunal's own jurisdiction;
- determine the rights and obligations of the disputing parties;
- render an interlocutory decision at the request of one of the disputing parties;
- conduct site visits if considered necessary;
- determine the seat of arbitration, unless already agreed by the parties; and
- hear witnesses or experts.

The arbitrators have the duty to:

- adjudicate the claims based on applicable law or the principles of fairness and appropriateness (ex aequo et bono), unless the parties have agreed to reject these principles;
- complete the examination of the case within 180 days of the establishment of the panel of arbitrators, unless an extension is agreed by the parties; and
- decide on the arbitration costs (arbitrators' fees, transportation costs and other relevant costs, costs to summon witnesses or experts that may be necessary for the examination of the dispute, and administration costs).

7.4 Legal Representatives

No particular qualification is required for a legal representative appearing before arbitration proceedings in Indonesia. In fact, there is no obligation to be admitted to any bar association in order to act as counsel in such proceedings. Moreover, there is no obligation for the parties to be represented at all. Foreign legal representatives require no specific qualification to act as their client's representative.

If a legal representative is an Indonesian legal counsel/advocate, the requirements under Law No 18 of 2003 (the "Advocates Law") will apply. For capital market arbitration in BAPMI, the legal representatives that can appear must be members of the Association of Capital Market Legal Consultants (*Himpunan Konsultan Hukum Pasar Modal*, or HKHPM).

8. Evidence

8.1 Collection and Submission of Evidence

As Indonesia is a civil law country, under Indonesian procedural law a party must present its own evidence to substantiate its claim; hence, the common law concept of discovery is generally not recognised. Under the Arbitration Law, arbitrators do have the power to request parties to provide additional information in writing, documents or other evidence necessary. However, arbitrators have no executorial authority to compel the parties to provide the requested documents.

8.2 Rules of Evidence

The Arbitration Law adopts a combination of rules of evidence provided under the provisions of the Arbitration Law and the Indonesian Civil Code. The approach taken to implement such a combination is the principle of lex specialis derogit lex generalis; therefore, if the provisions in the Arbitration Law stipulate a specific subject matter, this would override the law governing general matters (for example, the Indonesian Civil Code). The Arbitration Law also adopts the civil procedural law or HIR.

A party may submit any of the following evidence recognised under the Indonesian Civil Code and HIR:

- documents/written evidence;
- witness statements;
- presumptions/indications (*vermoedens*);
- confessions or admissions; and
- oaths.

In order to ensure that the evidence is admissible, there are specific requirements for each type of evidence. The International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration are often referred to as guidance in cross-border arbitrations seated in Indonesia.

8.3 Powers of Compulsion

With the absolute competence of arbitration and pursuant to the limitation on court involvement in arbitration, there are no powers of compulsion or court assistance for arbitrators to order the production of a document or require the attendance of witnesses. The arbitral tribunal should rely on the powers vested in it pursuant to the arbitration agreement, the Arbitration Law and the institutional arbitration rules, where applicable.

9. Confidentiality

9.1 Extent of Confidentiality

The examination of a dispute by arbitrators takes place in a closed proceeding, and registration details, documents, submissions and hearings can only be disclosed to third parties with the consent of the disputing parties or if legally required by law. Indonesian law is silent on whether information in arbitration proceedings may be disclosed in subsequent arbitration proceedings. The Arbitration Law does not expressly state that the award is confidential.

Most of the rules adopted by arbitration institutions have their own provisions on confidentiality. The BANI Rules, for instance, specify that all matters relating to the arbitration must be kept in strict confidence between the parties, the arbitrators and BANI itself.

10. The Award

10.1 Legal Requirements

Article 54 paragraph (1) of the Arbitration Law requires that an arbitral award must contain at least the following:

- the statement "
- *Berdasarkan Keadilan yang Berdasarkan Ketuhanan Yang Maha Esa*" (for the sake of justice based on the almighty God), written at the top of the award;
- the full names and addresses of the parties;
- a brief description of the dispute;
- the positions of the respective parties;
- the full names and addresses of the arbitrators;
- the considerations and conclusions of the tribunal concerning the dispute;
- the opinion of each of the respective arbitrators if there is a difference of opinion within the tribunal;
- the dictum of the award;
- the place and date of the award; and

- the signatures of the members of the tribunal (the failure of an arbitrator to sign an award because of illness or death, if noted in the award itself, will not affect the enforceability of the award, under Article 54 (2) of the Arbitration Law).

The Arbitration Law does not expressly deal with the matter of a member of the arbitral tribunal issuing a dissenting opinion.

In addition, the Arbitration Law provides that the award must specify the time within which the award must be implemented. The award must be delivered orally within 30 days of the arbitration being closed.

A request for registration of a domestic award must be made within 30 days after the date of the award, on penalty of the award being unenforceable. There is no limit on the registration period for a foreign arbitral award – see **12.2 Enforcement Procedure**.

10.2 Types of Remedies

The arbitral tribunal's final award is usually an order for the payment of a sum of money or an order to engage in or refrain from a certain conduct. However, Indonesian law does not contain any statutory limitations on the type of remedies an arbitral tribunal can award. As such, arbitrators can:

- render declaratory relief;
- order a party to pay damages;
- issue injunctions; and
- award costs.

The award may provide that interest is payable on the amount awarded, at a rate and for a duration determined by the arbitral tribunal, which has broad discretion.

10.3 Recovering Interest and Legal Costs

Unless agreed otherwise by the parties in the arbitration clause, legal costs incurred by the parties are borne by the parties respectively but may be ordered to be totally or partially paid by the losing party. The costs of the arbitration are usually determined by the arbitral tribunal. Costs include:

- the arbitrators' fees;
- lodging and other expenses incurred by the arbitrators;
- witness or expert witness expenses; and
- administration, hearing and other costs payable to an arbitration institution, if any.

11. Review of an Award

11.1 Grounds for Appeal

An arbitral award is final and binding on the parties and cannot be appealed. The only available recourse is to file a request for annulment (setting aside) of the award. This avenue is only applicable to domestic awards.

Grounds for Annulment

The Arbitration Law allows parties to apply for an annulment – whole or partial – of an arbitral award on one or more of the following grounds:

- letters or documents that were submitted in the hearings are acknowledged to be false or counterfeit, or are declared to be forgeries, after the award is rendered;
- after the award is rendered, documents that are decisive in nature and were deliberately concealed by the opposing party are discovered; or
- the award is rendered as a result of fraud committed by a party.

In the recent Supreme Court Decision No 470 B/Pdt. Sus-Arbt/2022 between PT Sumsel Energi Gemilang and PT PLN of 14 April 2022, the Supreme Court elaborated on the notion of the concealment of documents. In summary, the documents in question must:

- contain decisive information;
- first be requested to be examined in the arbitration proceeding but the holding party refused to produce them; and
- be in the possession of the other party and cannot be accessed by the applicant.

The grounds for annulment of an award under Article 70 of the Arbitration Law are more restrictive than those of the UNCITRAL Model Law. The request for annulment must be submitted to the chair of the dis-

trict court where the losing party resides. The court must issue its decision within 30 days. If the request for annulment is granted, it must specify the consequences of the annulment.

No Grounds for Annulment

The Arbitration Law does not provide any other grounds for annulment. An annulment of an arbitral award is, for instance, not possible on the following grounds, all of which are recognised grounds in several other jurisdictions:

- the arbitral tribunal having exceeded the mandate established by the arbitration agreement;
- the arbitral tribunal having been improperly composed;
- the arbitrators having lacked the proper expertise;
- the award including matters that were not requested; or
- the award being in excess of what was claimed.

Foreign arbitral awards are not subject to annulment. In practice, losing parties have sought to challenge a request for enforcement in Indonesia before the Central Jakarta District Court (CJDC). The grounds used were those of refusal of enforcement of an arbitral award as provided under Article 66 of the Arbitration Law – mainly for breach of public policy. This practice is not regulated under the Arbitration Law; see **12.2 Enforcement Procedure**.

Correction of an Award

Correction of an award by the arbitral tribunal is not provided for in the Arbitration Law. The rules of procedure chosen by the parties or determined as applicable by the arbitrators in the absence of such agreement will govern any correction or interpretation of an arbitral award.

11.2 Excluding/Expanding the Scope of Appeal

Exclusion and expansion of the scope of appeal, or annulment in the context of the Arbitration Law, are not regulated under Indonesian law. Arbitration agreements sometimes provide for a waiver of the right to challenge an arbitration award, but the validity of such waiver has not been ruled on by the Indonesian courts.

11.3 Standard of Judicial Review

In the context of an annulment, the review will analyse the facts against the ground(s) brought forward in the application. Indonesian law does not clearly define the standard of review that would be relevant in determining whether an award must be annulled, but it is safe to assume that the standard is de novo. For elaboration on annulment, see **11.1 Grounds for Appeal**.

12. Enforcement of an Award

12.1 New York Convention

Indonesia has ratified the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), with the contracting state reciprocity reservation and the commercial nature of the dispute reservation.

Indonesia has also ratified the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention), and has complied with several awards issued pursuant to that treaty.

12.2 Enforcement Procedure

International and Domestic Arbitration

An international arbitration award is defined by the Arbitration Law as an award handed down by an arbitration institution or individual arbitrator outside the jurisdiction of the Republic of Indonesia, or an award by an arbitration institution or individual arbitrator which, under the provisions of the laws of the Republic of Indonesia, is deemed an international arbitral award. According to the Indonesian Supreme Court, an arbitration award under ICC Rules issued in Jakarta is deemed an international arbitration award (Supreme Court Case No 904K/Pdt.Sus/2009).

The enforcement procedure for international arbitration is different to that for domestic arbitration only in that there is no time limit within which to file an application, and the CJDC is the only court authorised to deal with enforcement applications. However, if the dispute involves Indonesia as a state, the application must be filed with the Supreme Court, even though the adjudication will be assigned to the CJDC.

Conditions for Enforcement

In order to seek enforcement in Indonesia, the enforcing party must observe Article 66 of the Arbitration Law, which requires fulfilment of the following:

- the award was rendered by an arbitrator or arbitral tribunal in a state that has a bilateral or multilateral convention on the recognition and enforcement of arbitral awards with Indonesia (the reciprocity principle);
- the subject matter of the dispute falls within the scope of commercial law (the commerciality principle);
- the execution of the award would not violate public policy; and
- an exequatur (writ of execution) has been obtained from the chair of the CJDC.

There are three relevant steps to enforcing a foreign arbitral award in Indonesia:

- registration;
- obtaining an exequatur; and
- execution (*eksekusi*).

Registration

Registration of a foreign arbitral award is effected by the arbitral tribunal or its attorney at the CJDC. The application must be accompanied by the following documents:

- the original or a certified true copy of the award and a sworn Indonesian translation;
- the original or a certified true copy of the arbitration clause or agreement and a sworn Indonesian translation; and
- a confirmation from the Indonesian embassy in the country where the award was issued that said country is bound by the New York Convention or another international agreement on recognition and enforcement of arbitration, to ensure that the reciprocity requirement is fulfilled.

All documents produced or signed outside Indonesia must first be apostilled or consularised by the Indonesian Embassy where they were produced or signed, by virtue of Articles 68 and 70 of the Regulation of the Ministry of Foreign Affairs No 09/A/KP/XII/2006/01 on General Guidelines on the Procedure for International Relations and Co-operation.

A power of attorney from the arbitral tribunal is required if the award is registered by an attorney. The Arbitration Law assumes that arbitrators themselves register the award. Obviously, this will be difficult to achieve in practice because, as discussed in **4.2 Default Procedures**, the function of the arbitrators ends after an award has been issued. For this reason, parties often request in their claim that the arbitrators grant a power of attorney at the time of issuance of the award, allowing an attorney to register the award. The power of attorney must be notarised and apostilled or consularised by the Indonesian Consulate or Embassy having jurisdiction over the place of signing by the arbitrators or arbitration institution (for an institutional arbitration). The examination in this phase is limited to whether it has fulfilled all administrative requirements. The CJDC will then issue a deed of registration once the documents are found to be complete.

The Exequatur

An exequatur application follows once the award is successfully registered. Unlike registration, which is effected on behalf of the arbitral tribunal, the exequatur is requested by the party seeking to enforce the award. The examination will determine whether the award fulfils the reciprocity, commerciality and public policy requirements.

The Arbitration Law does not provide a mechanism for how the respondent party may intervene in the enforcement request. The nature of the request is unilateral.

Once an exequatur has been issued, the foreign arbitral award can be enforced in Indonesia. The decision to grant an exequatur cannot be appealed. However, if the application for an exequatur is rejected, that rejection can be appealed before the Supreme Court. The appeal must be adjudicated within 90 days of the date of filing.

Nevertheless, in recent case court practice, it appears that the decision to grant an exequatur can be overturned; please see **3.3 National Courts' Approach** for further details.

Attachment of Assets

The execution phase may involve the assistance of the district court that has jurisdiction over the losing party or its assets. The CJDC is the authorised district court mandated to grant the attachment orders requested under a foreign arbitration award by the Arbitration Law. However, in the implementation of a foreign arbitral award, if the assets to be executed upon are located in a court jurisdiction other than the CJDC, the latter will delegate its authority to the local court jurisdiction where those assets are located (Article 69 of the Arbitration Law).

If an attachment of assets is required for enforcement, a request for attachment must first be submitted to the court with jurisdiction over the location of the assets. For this purpose, the request for attachment must be specific with regard to the assets, their nature and location.

The relevant court will later issue an *aanmaning* (warning letter) to the defendant (the losing party) to ask for enforcement of the award. If the losing party still insists on not complying with the award, the court will further render an order to enforce the attachment (*executorial beslag*). Execution will then be carried out with the assistance of the court bailiff. Finally, the liquidation of assets can be achieved through an auction. This process will be performed in accordance with the Indonesian Civil Procedural Law.

If there is a challenge to the process of executorial attachment, such challenge will be entertained as in a civil case and will be subject to the normal appeal process in the High Court and cassation and civil review process in the Supreme Court. There is no definite time limit within which a final and binding decision on a challenge can finally be obtained.

Set-Aside Proceedings at the Seat

There is no discernible approach that the courts in Indonesia would adopt when an award is subject to ongoing set-aside proceedings at the seat of the arbitration. Enforcement procedures would not likely be suspended pending a resolution of the proceedings at the seat, unless the court was aware of such set-aside proceedings.

12.3 Approach of the Courts

The general approach is that a foreign arbitral award can be recognised and enforced only upon obtaining an exequatur from the chief of the CJDC. In line with Article 66 of the Arbitration Law, the exequatur can be granted if:

- the award is issued by an arbitrator or arbitral tribunal in a country with which Indonesia has a treaty, whether bilateral or multilateral, regarding the recognition and enforcement of international arbitral awards (reciprocity requirement);
- the subject matter of the dispute is commercial in nature; and
- it does not violate Indonesian rules of public policy.

Article 1 (9) of Supreme Court Reg No 3/2023 defines public policy as “all fundamental principles necessary for the functioning of the legal, economic, and socio-cultural systems of Indonesian society and the nation”. However, the court appears to interpret the definition of public policy to be a violation of Indonesian law, albeit inconsistently.

Prior to the enactment of the Arbitration Law, in *ED & F Mann (Sugar) Limited v Yani Haryanto* in 1990, the Supreme Court refused the enforcement of a London arbitral award in favour of Mann on the ground that the award had violated public policy because the underlying contract had violated Indonesian law pertaining to a prohibition on sugar imports. In this decision, it appears that the Supreme Court held that the violation of a positive law or a provision under Indonesian law would constitute a violation of public policy.

After the enactment of the Arbitration Law, in *Sumi Asih v Vinmar and AAA* in 2012, the CJDC observed that a violation of public policy would impede the enforcement of an international arbitral award if it affected:

- the economic interests of the public in general;
- the livelihood of the public; and
- state security.

The Supreme Court upheld the decision of the CJDC and thus holds the position that a violation of public policy is not limited to positive law or provisions under Indonesian law, but includes implications for the wider public interest.

In 2025, in *PT Mahkota Sentosa Utama v China Light Industry, et al*, the CJDC held that an arbitral award that is in contravention of a court decision certifying the restructuring of a company is deemed to be in violation of Indonesian public policy.

13. Miscellaneous

13.1 Class Action or Group Arbitration

Law No 8 of 1999 on consumer protection provides for the possibility of class action arbitration or group arbitration, particularly for issues relating to consumer protection administered by the Consumer Dispute Settlement Agency (BPSK). The specific requirements for a class action are that the group of people must be the consumers affected and that they share the same interests in the claim. However, both consumers and producers must consent for their dispute to be settled by arbitration, and must sign an arbitration agreement.

The requirements for a class action claim are further elaborated in Supreme Court Regulation No 1 of 2002 on Class Action Claims. The claim must share the same factual background and the same substantial legal basis, and there must be a similar type of claim between the representatives of the class and the class themselves.

13.2 Ethical Codes

If counsel to one of the parties is an Indonesian advocate, the Indonesian Code of Ethics for Advocates issued by the Indonesian Bar Association (PERADI) will apply.

In addition, in cross-border arbitrations, the IBA Guidelines on Conflicts of Interest in International Arbitration and IBA Guidelines on Party Representation in International Arbitration provide guidance to counsel, arbitrators and arbitration institutions.

For arbitrators, there are no professional standards that apply nationwide; each domestic arbitration body, such as BANI, has its own code of ethics applicable to its respective arbitrators.

BANI's ethics codes share the following requirements for arbitrators:

- to be impartial and independent;
- to keep all information obtained through arbitration proceedings confidential;
- to refrain from seeking publicity from arbitration cases adjudged;
- to adjudge cases based on the law and principles of equity and fairness; and
- a prohibition on accepting gifts or promises from the disputing parties.

13.3 Third-Party Funding

Indonesian law is silent on the issue of third-party funding for litigation or arbitration proceedings. Practitioners have discussed the benefits of third-party funding, observing that it could provide greater access to justice, create a level playing field and eliminate all or part of the costs of arbitration for corporations. However, third-party funding is currently neither permitted nor prohibited in Indonesia. In practice, arbitration with third-party funding is still uncommon in Indonesia.

13.4 Consolidation

The Arbitration Law is silent on how to consolidate separate arbitration proceedings. However, Article 9 of the 2025 BANI Rules provides that arbitration involving multiple parties can be consolidated if there is sufficient proof of the existence of a connection between the parties. Disputes arising out of or related to more than one agreement may be referred for arbitration in a single request, provided that there is a connection between the agreements and that BANI or the BANI Rules are chosen for the settlement of disputes by all agreements.

13.5 Binding of Third Parties

Pursuant to the Arbitration Law, an arbitration agreement will only bind parties that have consented to be bound by it. Accordingly, third parties cannot be bound by an arbitration agreement unless they have given their consent to be so bound.

An arbitration award will a bind third party if there is an element of interest involved, and the third party's involvement is agreed to by all disputing parties and the arbitrators (see **5.5 Jurisdiction Over Third Parties**). BANI has reportedly administered only one case in which the disputing parties and arbitrators agreed that third parties could participate in the arbitral procedure.

Trends and Developments

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ABNR Counsellors at Law

ABNR Counsellors at Law was founded in 1967 and is Indonesia's longest-established law firm. It pioneered the development of international commercial law in the country following the reopening of the economy to foreign investment after a period of isolationism in the early 1960s. With over 100 partners and lawyers (including two foreign counsel), ABNR is the largest independent, full-service law firm in Indonesia and one of the country's top three law firms by number of fee earners, giving it the scale needed to simultaneously handle large and complex transnational deals across a range of practice areas. It also has global reach as the exclusive Lex Mundi (LM) member firm for Indonesia since 1991. LM is the world's leading network of independent law firms, with members in more than 100 countries. ABNR's position as the LM member firm for Indonesia was reaffirmed for a further six-year period in 2018.

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Inconsistency in the Enforcement of International Arbitral Awards

In April 2025, the Central Jakarta District Court, as the officially assigned court for assessing the registration and recognition of international arbitral awards in Indonesia, rendered a controversial ruling. The court annulled the execution writ (exequatur) of a CIETAC arbitral award, stating that its issuance was inconsistent with Indonesian public policy. This issue is particularly contentious, as the Indonesian Arbitration Law and Supreme Court Regulation No 3 of 2023 specify that a decision recognising an arbitral award is considered final, with no available legal remedies for challenging such a decision.

In 2023, PT Mahkota Sentosa Utama filed a petition with the Central Jakarta District Court (Case No 200/Pdt.Sus-Arb/2023/PN Jkt.Pst), seeking annulment of CIETAC Arbitral Award No 0831 of 2019 dated 10 June 2019, as well as the corresponding execution writ (exequatur) No 50/Eks.Arb/2022/PN.Jkt.Pst dated 4 January 2023. The plaintiff contended that the CIETAC Arbitral Award was rendered through deception and fraud, asserting that it had not executed the Technical Consulting Service Agreement dated 24 November 2017, which includes the CIETAC Arbitration Clause. The plaintiff maintained that the individual who signed the agreement on its behalf was unknown to the company. Furthermore, the plaintiff argued that it was not properly notified of the arbitration proceedings, constituting a breach of due process and the principle of audi et alteram partem.

For the annulment of the execution writ (exequatur), the plaintiff argued that it should not have been issued by the Central Jakarta District Court as it was in contravention of Indonesian public policy. The plaintiff stated that they had entered into a settlement agreement ratified (homologated) by the Central Jakarta District Court as a result of a 2020 court-supervised debt restructuring process, which binds all the plaintiff's creditors under Indonesian law. The plaintiff contended that the issuance of the execution writ (exequatur) was inconsistent with Indonesian public policy, as it contravened the rights of Indonesian creditors who are entitled to settlement according to the settlement agreement in question.

The plaintiff acknowledged that the settlement agreement includes a provision stating any arbitral award will be paid within 18 months after settlement with the last creditor as outlined in the agreement. The plaintiff noted, however, that the defendant issued a letter of demand requesting payment of the awarded amounts within seven days from the date of the letter, showing that the defendant will enforce the award in contravention of provisions of the settlement agreement.

Additionally, the plaintiff asserted that the Technical Consulting Service Agreement was drafted only in Mandarin and English. According to the plaintiff, this does not comply with Indonesian Law on the Use of the Indonesian Language, which requires that agreements involving an Indonesian party be drafted in Indonesian or accompanied by an Indonesian translation. It is noted that the respondents, despite having been duly notified, failed to appear at the hearings.

The Central Jakarta District Court then held that the court has no jurisdiction to examine the annulment of the CIETAC Arbitral Award as the award was rendered in China and therefore the authorised court to set aside or annul the award would be a Chinese court, in accordance with Article V(1)(e) of the New York Convention, 1958. Nevertheless, the Central Jakarta District Court argued that the execution writ can be challenged pursuant to Supreme Court Circular Letter No 3 of 2018, which stipulates that legal remedies against a decree issued upon a unilateral (ex parte) application may be pursued by filing a lawsuit, objection or cassation appeal. As the application of execution writ is an ex parte application, therefore the court considers that it

The court also agreed with the plaintiff's assessment that the Technical Consulting Service Agreement appeared not to be validly made as the party who signed on the plaintiff's behalf was not the director of the plaintiff. Moreover, the court assessed that the homologation decision resulting from the court-supervised debt restructuring (PKPU) possesses binding legal force upon all creditors pursuant to Article 286 of Law No 37 of 2004 on bankruptcy. Therefore, the enforcement of an arbitral award that is inconsistent with a homologation decision constitutes a violation of the fundamental tenets of the Indonesian legal system.

The court further observed that although violations concerning the language provisions in a contract are not expressly stated in Law No 30 of 1999 or the 1958 New York Convention as grounds for refusing enforcement (exequatur), such matters may nonetheless be considered as part of the assessment of the validity of the agreement under Indonesian law. It was taken into account that the preparation of the agreement solely in a foreign language, without an Indonesian version, particularly in connection with a contract relating to a project located in Indonesia, may indicate bad faith on the part of the party drafting the agreement. The court then held that the issuance of the execution writ (exequatur) is therefore in violation of Indonesian public policy and should be annulled.

This case is particularly controversial because the court did not consider Supreme Court Regulation No 3 of 2023 on the Procedure for the Appointment of Arbitrators by the Court, Rights to Challenge Arbitrator, Examination of Applications for Enforcement and Annulment of Arbitral Awards ("Supreme Court Reg No 3/2023"). In Article 20 (1) of Supreme Court Reg No 3/2023, it is stipulated that the decision to recognise and enforce an International Arbitral Award or International Sharia Arbitral Award shall be final and not subject to any legal remedies.

This case appears to demonstrate that there is an exception to the finality of the execution writ. The court may still consider the challenge of the execution writ and steps into the jurisdiction of the tribunal which has the authority to examine the dispute, including the validity of the arbitration agreement. This may create precedents for any party who attempts to resist the enforcement of the arbitral award as this will prolong the enforcement process in Indonesia, which has been notorious for being unfriendly to arbitration.

This case highlights inconsistencies in the recognition of the finality of arbitral awards. The Central Jakarta District Court demonstrated that, despite the prohibition of legal remedies as stated in Supreme Court Regulation No 3 of 2023, challenges to an execution writ may still be considered under certain conditions. Notably, in this case the court referenced Supreme Court Circular Letter No 3 of 2018, which allows for legal remedies against decrees issued on an ex parte basis. Overall, this case could further undermine Indonesia's reputation for being unfriendly to arbitration and create more uncertainty for parties who would like to seek enforcement of international arbitral award in Indonesia.

Key Updates of the 2025 BANI Arbitration Rules

Recently, the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia or "BANI") announced major updates to its Arbitration Rules. The 2025 BANI Arbitration Rules (the "2025 Rules") now provide for the option of emergency arbitration, allowing parties to seek urgent interim measures before the arbitration tribunal is formed. Moreover, the rules introduce new provisions for arbitration proceedings with multiple parties or agreements and involvement of third parties and list an additional ground for arbitrator replacement.

Emergency arbitration

In a nutshell, emergency arbitration allows a disputing party to request urgent interim or conservatory measures prior to the constitution of the arbitral tribunal. The mechanism was developed to ensure that no disputing party can undertake actions that may result in irreparable harm to the other party before the tribunal is constituted. The procedure to apply for emergency arbitration is stipulated in Attachment I of the 2025 Rules.

Request for emergency arbitration

The request is submitted to the Secretariat of BANI, containing:

- the identity of the parties and their representation;
- the grounds for emergency arbitration;
- the emergency measures sought; and
- the grounds for the urgent interim or conservatory measures that cannot await the constitution of the arbitral tribunal.

The Chairman of BANI has the authority to authorise the commencement of an emergency arbitration

Appointment of emergency arbitrator

A sole emergency arbitrator will be appointed by the Chairman of BANI within two business days upon receipt of the request for emergency arbitration by the Secretariat of BANI. The emergency arbitrator shall not be part of the arbitral tribunal ruling on the dispute itself.

The 2025 Rules allow parties to challenge the appointed emergency arbitrator within two business days upon receipt of the notice of appointment. The Chairman of BANI has the obligation to rule on the challenge within four calendar days upon receipt of the challenge.

Proceedings

The venue of the emergency arbitration is agreed upon by the parties or else determined by BANI. The 2025 Rules allow for the emergency arbitration to be held online (ie, through telephone or video conference). The first hearing is held within three calendar days upon the appointment of the emergency arbitrator. The proceedings are to be concluded within 14 calendar days upon the appointment of the emergency arbitrator, with a possible extension of up to seven calendar days based on legitimate grounds and if deemed necessary by the emergency arbitrator.

Award

The 2025 Rules stipulate that the award is provisional in nature but still deemed final and binding. By incorporating the 2025 Rules into their arbitration clause, the parties agree to promptly execute the award and waive the right to appeal or seek other remedies for the award thereof to any relevant district court.

Cost

According to BANI's website, the cost for emergency arbitration is IDR200 million (approximately USD12,000) plus VAT (currently at an effective rate of 11%). This fee must be paid on the same day the request is submitted.

Absence of rules

In the event that certain procedural aspects of emergency arbitration are not expressly regulated by the 2025 Rules, the Chairman of BANI formulates the rules on an ad-hoc basis.

Consolidation of arbitral proceedings

The 2025 Rules streamline the requirements for consolidating proceedings between multiple parties or multiple agreements and proceedings involving third parties. The arbitration involving multiple parties can be consolidated if the parties have sufficiently proven the existence of a connection between the parties. Disputes arising out of or related to more than one agreement may be referred to arbitration in a single request, provided that (i) there is a connection between the agreements and (ii) BANI or BANI Rules are chosen for the settlement of disputes by all agreements. A third party may only participate in the proceedings if that party has a certain interest in them, and the third party's involvement is agreed upon by the parties and approved by the arbitral tribunal.

However, the 2025 Rules do not specify the parameters of "connection" and "interest" or other conditions necessary to initiate consolidated proceedings, which means that these matters will need to be determined on a case-by-case basis.

Additional grounds for arbitrator replacement

The 2025 Rules also provide that the arbitrator's default in the performance of their duty either de jure or de facto can become grounds for their replacement, subject to the decision of the Chairman of BANI. The Rules do not elaborate what circumstances would constitute an arbitrator's de jure or de facto default in the performance of their duty.

Previously, there were only three grounds for arbitrator replacement, namely (i) the inability of the arbitrator (ie, in the event of death or other inability); (ii) the resignation of the arbitrator, and (iii) the repetition of proceedings. All three are retained in the 2025 Rules.

Implication and challenges

With the introduction of the option of emergency arbitration, disputing parties now have legal recourse to apply for interim measures in urgent circumstances before a tribunal is formed. This is a major enhancement in commercial dispute resolution, especially considering that similar measures are not present within the framework of the Indonesian court system.

The biggest question is whether the emergency arbitral award can be enforced. Law No 30 of 1999 on Arbitration and Alternative Dispute Resolution does not recognise any emergency arbitration procedures. Further, the 2025 Rules explicitly state that the emergency arbitral award is provisional in nature. In *Astro Nusantara International B.V. and others v PT Ayunda Prima Mitra and others*, the Central Jakarta District Court refused the recognition and enforcement of an interim award, partly because the award was deemed not final and binding.

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