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Newsletter

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Indonesia: A Reshaping of the Arbitration Landscape is Underway

Dyah Paramita
Partner
dyah.p@morihamada.com

Muhammad Ghiffari
Associate
ghiffari.m@morihamada.com

Jessenia Salim
Associate
jessenia.s@morihamada.com

Introduction

Indonesia's courts and arbitral institutions have entered a period of meaningful reform that signals a decisive break from the country's long-standing reputation as arbitration-unfriendly. Two developments in the first half of 2025—the Constitutional Court's decision in Case No. 100/PUU-XXII/2024 ("**CC Decision 100/2024**") and the promulgation of the Badan Arbitrase Nasional Indonesia ("**BANI**") 2025 Arbitration Rules ("**2025 BANI Rules**")—underscore a broader trend toward harmonizing Indonesian practice with international standards. These changes, while promising, also expose gaps in the twenty-five-year-old Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution ("**Indonesian Arbitration Law**"), a statute that is increasingly out of step with modern arbitral norms.

This newsletter highlights (i) how CC Decision 100/2024 alters the definition of an "international arbitral award" and may affect award enforcement, and (ii) the principal innovations and potential pitfalls introduced by the 2025 BANI Rules, including emergency arbitration, multi-contract and multi-party procedures, and stricter foreign-counsel requirements. We also frame these developments against recent Supreme Court jurisprudence that is steadily curtailing judicial interference with arbitral proceedings.

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I. A Judiciary in Transition: From Interventionist to Arbitration-Supportive

Over the past decade, the Supreme Court of Indonesia has issued a series of decisions that collectively align domestic practice with the foundational pillars of the New York Convention—competence-competence, finality of awards, and limited judicial review. Among the most noteworthy holdings are:

- Only the courts at the seat of arbitration may annul an international arbitral award (Supreme Court Decisions Nos. 631 K/Pdt.Sus/2012, 288 B/Pdt.Sus-Arbt/2014, 674 B/Pdt.Sus-Arbt/2014, 219 B/Pdt.Sus-Arbt/2016, and 169 K/Pdt.Sus-Arbt/2017).
- Where parties have agreed to arbitrate, Indonesian courts must decline jurisdiction (Nos. 154 K/Pdt/2018 and 1333 B/Pdt.Sus-Arbt/2024).
- Courts lack authority to re-examine issues already determined by an arbitral tribunal (Nos. 1203 B/Pdt.Sus-Arbt/2022 and 918 B/Pdt.Sus-Arbt/2023).
- Once a district court issues an exequatur recognizing an international award, no appeal lies; appeals are permitted only where the exequatur is refused (Nos. 101 PK/Pdt.Sus-Arbt/2017 and 795 K/Pdt.Sus-Arbt/2017).
- A district court's refusal to annul a domestic award is not appealable (Supreme Court Jurisprudence No. 1/Yur/Arbt/2018).
- No civil review is available against a Supreme Court decision rendered on appeal in an arbitral matter (Jurisprudence No. 2/Yur/Arbt/2018).

These holdings have tempered Indonesia's historical interventionism, but they coexist with statutory language that predates—and sometimes conflicts with—current best practices. Constitutional Court oversight has therefore become an important corrective mechanism.

II. CC Decision 100/2024: Redefining "International Arbitral Award"

Article 1(9) of the Indonesian Arbitration Law had defined an "international arbitral award" as (i) an award rendered outside the territory of the Republic of Indonesia, or (ii) an award "deemed" to be international under Indonesian law, thereby leaving wide discretion to local courts. CC Decision 100/2024 excised the phrase "deemed as," removing that discretion and anchoring the definition to an objective criterion: the physical place where the award is rendered or particulars set out under an inexistent regulation.

While the ruling eliminates ambiguity in domestic proceedings, it stops short of incorporating the broader conflict-of-laws test favored in many jurisdictions, under which an award may be treated as international if it involves foreign parties or transnational commercial relationships even when seated locally. Consequently, awards emanating from tribunals seated in Indonesia

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but involving multi-jurisdictional elements could still be classified as "domestic," with its own pros and cons. Parties negotiating Indonesian-seated arbitrations should therefore continue to draft and consider their arbitration clause meticulously and carefully.

III. The 2025 BANI Rules: Modernization and Missed Opportunities

Through the 2025 BANI Rules, BANI seeks to align with leading global institutions while preserving features tailored to Indonesian practice.

International and Domestic Jurisdiction. Rule 1(1) b now expressly empowers BANI to administer both domestic and international commercial disputes. This clarification should reduce previous uncertainty over BANI's competence in cross-border cases.

Appointing Authority. Rules 1(1) e codify Chair of BANI's ability to act as appointing authority in both its own and ad hoc proceedings, offering parties a neutral mechanism when appointments become deadlocked.

Arbitrability of Tort-Like Claims. Rule 2(1) confirms that non-contractual claims, such as unlawful acts (*perbuatan melawan hukum*)—analogous to tort—are arbitrable if the arbitration clause so provides. This clarification aims to curtail a common defensive tactic in Indonesian litigation: arguing that non-contractual claims fall outside arbitral jurisdiction. However, this provision in the English version of the 2025 BANI rules does not tally with the Indonesian version.

Stricter Foreign-Counsel Requirement. Rule 5(2) adopts a more restrictive posture toward foreign counsel, allowing their participation only if they are accompanied by Indonesian-licensed lawyers, irrespective of the governing law or the seat. The rule reverses the more liberal previous regime, under which the presence of local counsel was mandatory only when Indonesian law governed substantive issues.

Multi-Party, Multi-Contract Proceedings. Rules 9 allow a single request for arbitration to encompass multiple parties or multiple contracts where a sufficient nexus exists and every contract refers disputes to BANI. Joinder of third parties with a "legitimate interest" is also permissible, subject to unanimous party consent and tribunal approval. These provisions bring BANI in line with other prominent arbitral institution rules, potentially reducing parallel proceedings.

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Emergency Arbitration. Perhaps the headline innovation, Rule 17(5) introduces an emergency arbitration mechanism. A party may seek urgent interim or conservatory measures before the tribunal is constituted, with the Chair of BANI appointing an emergency arbitrator who must issue a decision within 14(+7) days of appointment. Although the 4-to-9-week outer timeline still lags behind the other international arbitral institutions, the availability of emergency relief is a significant step forward. Whether Indonesian courts will enforce such provisional awards remains untested.

IV. Practical Implications for Stakeholders

Parties already engaged in Indonesian-related transactions—or contemplating them—should recalibrate their dispute-resolution strategies in light of these reforms.

- **Contract Drafting**. When commercial logic dictates an Indonesian seat, counsel should draft arbitration clauses that anticipate the narrowed definition of an "international" award and the level of complexity of the potential dispute. Where enforceability abroad is paramount, designating a foreign seat may still be advisable.
- **Counsel Selection**. Multinational parties must now budget for the mandatory inclusion of Indonesian counsel in BANI-administered disputes. Early coordination between international and local teams is critical to ensure consistent advocacy and compliance with professional-licensing rules.
- **Interim Relief Strategy**. Parties seeking urgent measures should weigh the relative speed, reliability and enforceability of the emergency arbitration procedure under the 2025 BANI Rule or court measures in other jurisdictions where assets are located.
- **Enforcement Planning**. Although CC Decision 100/2024 reduces definitional ambiguity, awards rendered in Indonesia may still face challenges. Parties should map the enforcement landscape at the outset, particularly if Indonesian assets constitute the primary target.

V. Looking Ahead

CC Decision 100/2024 and the 2025 BANI Rules constitute meaningful progress, yet they also underscore the pressing need to update the Indonesian Arbitration Law comprehensively. Until legislative reform materializes, parties must navigate to a hybrid terrain in which modern jurisprudence coexists with outdated statutory provisions. Experienced counsel with deep familiarity in both domains remains indispensable.

If you have questions regarding these developments or how they may impact your contractual arrangements, enforcement strategy, or ongoing disputes, please contact the authors or any member of our international arbitration team.

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