

INDONESIA

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS ‡

- | | |
|--|---|
| 1. Law | ● |
| a. Framework | ● |
| b. Adherence to international treaties | ● |
| c. Limited court intervention | ● |
| d. Arbitrator immunity from civil liability | ● |
| 2. Judiciary | ● |
| 3. Legal expertise | ● |
| 4. Rights of representation | ● |
| 5. Accessibility and safety | ● |
| 6. Ethics | ● |
| Evolution of above compared to previous year | ☰ |
| 7. Tech friendliness | ● |
| 8. Compatibility with the Delos Rules | ● |

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Key places of arbitration in the jurisdiction?	Jakarta.
Civil law / Common law environment?	Indonesia's legal system is based on civil law, inherited from the Dutch, who ruled Indonesia until 1945. As in most, if not all, civil law jurisdictions, the courts do not strictly follow precedent, but rely primarily upon written codes and/or laws.
Confidentiality of arbitrations?	Although it is generally considered that arbitration should be confidential, Law No. 30 of 1999 (the "Arbitration Law") does not expressly provide for a very high degree of confidentiality. It requires only that the hearings be closed to the public. Thus, if the parties wish to address the confidentiality of their arbitration with more clarity, or to provide for a higher degree of confidentiality, they should include relevant language in their agreement to arbitrate.
Requirement to retain (local) counsel?	There is no requirement to engage local counsel, although if the matter is governed by Indonesian law it would be advisable to do so.
Ability to present party employee witness testimony?	The general rule under Indonesian law is that an employee or a family member of a party is not considered as a 'witness' but as part of such party. This does not prevent any such person from appearing as a witness in arbitration, but the relationship will be taken into consideration by the tribunal in evaluating the veracity of the testimony.
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	There is nothing to prevent doing so.
Availability of interest as a remedy?	Interest on a debt may be awarded only if the parties have agreed for interest to apply to an unpaid indebtedness. There is no such requirement of a party agreement to impose interest on late or unsatisfied awards. If the parties did not specify the amount of the interest rate, the statutory (simple) interest rate is 6%. Parties may agree upon a higher rate, but it cannot be an unreasonable one.
Ability to claim for reasonable costs incurred for the arbitration?	Generally, the administrative costs of an arbitration proceeding in Indonesia shall be borne by the losing party, but the award may rule otherwise. While the parties' legal costs, and those of their expert and other witnesses, can theoretically only be shifted if the parties have so agreed in their agreement to arbitrate or otherwise, and while tribunals normally follow what the parties agree, tribunals are free to award damages and costs as they deem appropriate without creating a ground for annulment or enforcement.
Restrictions regarding contingency	Contingency fees and third-party funding are generally not utilised

fee arrangements and/or third-party funding?	in Indonesia, but there is no prohibition against either.
Party to the New York Convention?	Indonesia has been a party to the New York Convention since 1981.
Party to the ICSID Convention?	Indonesia has been a party to the ICSID Convention since 1968.
Compatibility with the Delos Rules?	The Arbitration Law permits the parties to agree to follow any rules they may mutually agree upon. Thus if they designate the Delos Rules those will apply; based on our review, there are no contradictions with the relevant mandatory provisions of the Indonesia Law.
Default time limitation period for the civil actions (including contractual)?	<p>The general limitation period for all legal claims is 30 years (Article 1967, Indonesian Civil Code). Exceptions apply (Articles 1968 to 197, the Indonesian Civil Code), notably for claims relating to services and supplies, where the limitation period is three years, and insurance claims, where the limitation period is five years.</p> <p>A limitation period starts to run when the claim first arises. The limitation period is suspended when a reminder, summons, and/or any legal claim is submitted in the required form by an official authorised to do so on behalf of the claiming party (Article 1979, Indonesian Civil Code).</p>
Other key points to note?	<p>Under the Arbitration Law, only people over 35 with over 15 years of experience in their field, and not a court or government official, may act as arbitrators.</p> <p>Where Parties have agreed in writing to arbitrate their disputes, the Indonesian courts have no jurisdiction over such disputes. The only involvement of the courts is with enforcement of final and binding awards, and the appointment of arbitrators, in cases where no other appointing authority has been designated by the parties or in rules chosen by the parties. Although the Arbitration Law gives arbitral tribunals the power to issue interlocutory or interim relief, such relief will not be enforced by the courts.</p> <p>The Arbitration Law provides that the Parties are free to hold their arbitration pursuant to whatever procedural rules or under whatever arbitral institution they may agree. Failing agreement, the Arbitration Law includes some procedural rules of its own. If the parties have not agreed upon a different language, the arbitral proceedings will be conducted in Indonesian.</p>
World Bank, Enforcing Contracts: <i>Doing Business</i> score for 2020, if available?	49.1
World Justice Project, Rule of Law Index: <i>Civil Justice</i> score for 2020, if available?	0.46

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	Arbitration in Indonesia is governed by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (“The Arbitration Law”), which came into force on 12 August 1999.
UNCITRAL Model Law? If so, any key changes thereto?	The Arbitration Law is not based upon the UNCITRAL Model Law, but has many similarities with it.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	N/A. The courts do not get involved in matters where the parties have agreed to arbitrate their disputes. They may only enforce awards, refuse the enforcement, or annul awards on very limited grounds.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Although the Arbitration Law gives arbitral tribunals the power to issue interlocutory or interim relief, such relief will not be enforced by the courts. Nor will the courts issue any interim orders in aid of an arbitration; they will only enforce final and binding awards. In practice, most parties comply with interim orders so as not to prejudice the tribunal. If they do not, the tribunal must deal with that in the award itself.
Courts’ attitude towards the competence-competence principle?	<p>There is no explicit provision providing for <i>kompentenz-kompentenz</i>, but it should be implicit from Articles 3 and 11 of the Arbitration Law that only the arbitral tribunal has the jurisdiction to determine its own jurisdiction, as well as whether a matter is capable of being arbitrated or not.</p> <p>There is no specific reference to severability. However, Article 10 of the Arbitration Law states that the agreement to arbitrate shall survive even if the main contract expires or is declared void. This will not apply, however, if the contract is determined to be void <i>ab initio</i>, as in that case the arbitration clause will be deemed not to have been agreed upon at all.</p>
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Yes, although as a ruling is not a final award, it would not be enforceable.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Article 70 of the Arbitration Law provides three limited grounds for annulment: false or forged letters submitted in the hearings; disclosure of decisive documents, intentionally concealed by a party, after the award is issued; and where an award was rendered as a result of fraud committed by one of the parties to the dispute. A court may also refuse to enforce an award on grounds of inarbitrability if the dispute is not of a commercial nature, if it does not fall within the full legal competence of the parties to the dispute, or if it can be established that the Parties did not agree to arbitrate such dispute.
Do annulment proceedings typically suspend enforcement?	Suspension is discretionary. It has to be requested as part of seeking the annulment of the award.

proceedings?	
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	The Arbitration Law does not refer to awards annulled in the place of arbitration and, to the knowledge of the authors of this chapter, the issue as to whether such awards may still be enforced in Indonesia has not arisen.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such order affect the recognition or enforceability of an ensuing award in the jurisdiction?	In accordance with Article 31 and 37 of the Arbitration Law, upon a written agreement, the disputing parties are free to determine the arbitration proceedings, including the venue and the procedural law to be applied in the proceedings. If the parties have not agreed on the arbitration proceedings, then the arbitral tribunal shall determine accordingly. There are no particular legal consequences attendant to the place of arbitration within Indonesia. Although the matter has not as yet been addressed by the courts, presumably there is no impediment to virtual hearings, and in fact the Law anticipates that the norm for arbitrations is on documents only and hearings will only be held if at least one party wishes it.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	Public bodies, including the government itself, are not treated any differently than private parties, and there have been a number of instances where awards have been issued against state-owned companies and enforced the same as any others. The only difference is that any award against the government itself can only be enforced by the Supreme Court.
Is the validity of blockchain based evidence recognized?	<p>There is no reference to blockchain evidence as yet in Indonesian law. However, Law No. 11 of 2008 (Information and Electronic Transactions Law, "IET Law") regulates the legal basis and legal force for an electronic document to be accepted as evidence before the court.</p> <p>Article 5(1) IET Law stipulates that electronic information, electronic documents, and/or the print-outs of electronic documents or information are considered valid legal evidence. Electronic documents must comply with the material and formal requirements of Articles 5(4), 6, 15, and 16 IET Law. The material requirements require that the information and documents are guaranteed by their originality, integrity, and availability. The formal requirements require that the information and documents need not be in writing by law.</p> <p>Some laws have specific requirements for electronic communications. For example, the Arbitration Law provides that if the agreement for resolution of disputes by arbitration is contained in an exchange of correspondence (including letters, telexes, telegrams, faxes, e-mail, or any other form of communication), the agreement for resolution must be accompanied by a record of receipt of such correspondence by the parties (Article 4(3)).</p>

<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognized as valid?</p>	<p>The agreement to arbitrate must be in writing. If it can be established that a blockchain agreement is a writing, presumably it would be recognised as valid. Awards need to be signed by the tribunal and indicate where they were issued. If the blockchain does not meet those requirements presumably the award would not be enforceable. But it has not as yet been tested here.</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>See answers above.</p>
<p>Other key points to note?</p>	<p>The Arbitration Law provides that only disputes of a commercial nature and those that are within the authority of the parties themselves to resolve may be arbitrated. Articles 3 and 11 make it clear that where the parties have agreed to arbitrate their disputes, the courts do not have and may not take jurisdiction over such matters. The only role of the court is that of annulment and/or enforcement of final and binding arbitral awards (or the appointment of arbitrators if a party does not do so and the parties have not chosen any specific rules or otherwise designated a different appointing authority). Although agreements in general are not required to be in writing to be valid and binding under Indonesian law, Article 1(3) of the Arbitration Law requires arbitration agreements to be in writing. Such agreement may be made either before or after a dispute has arisen. In the latter case, the contents of such written agreement must be more comprehensive, and even the arbitrators need to be named.</p> <p>The enforcement process for domestic and international awards differs slightly. Awards are defined as domestic, regardless of the nationality of the parties or other factors, where the arbitration is held in Indonesia. Awards are defined as international if they are rendered outside Indonesia. Regardless of whether the award is domestic or international, the award must first be registered with the court by the arbitrators or their duly authorised representatives. Note, therefore, that as a practical matter arbitrators issuing awards likely to be enforced in Indonesia should include in, or separately from, the award a power of attorney to the parties, or either of them, to effect registration of the award. Domestic awards must be registered, within 30 days of rendering, with the District Court having jurisdiction over the respondent. Foreign-rendered, or international, awards must be registered with the District Court of Central Jakarta. There is no time limit for registration of international awards. Registration of an international award will require submission of a certificate from the Indonesian diplomatic representative in the country in which the award is rendered to the effect that that country and Indonesia are both signatories to the New York Convention. (Indonesia has been a signatory since 1981.)</p>

JURISDICTION DETAILED ANALYSIS

1. Legal framework

Arbitration in Indonesia is regulated under Law No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolution, also known as the Arbitration Law. Prior to its enactment, arbitration was governed by a handful of clauses in a mid-19th Century Dutch-originated code of civil procedure, known as the “RV”. The Arbitration Law is not based on the United Nations Commission of International Trade Law (UNCITRAL) Model Law, although it does contain a number of similar provisions. One early draft was based upon the Model Law but the Arbitration Law, as eventually promulgated, is the result of many drafts and revisions by a number of different sources, and includes incorporation of a number of principles from the previous legislation. As a result, there is considerable similarity in principle between the Arbitration Law and the RV. Some practitioners have suggested that Law No. 30 of 1999 be amended to comply even more closely with the UNCITRAL Model Law, but there has been no such amendment considered by the Indonesian Parliament as yet.

There are a number of differences between the texts of the Model Law and that of the Arbitration Law. Perhaps the primary one is that the Arbitration Law applies to all arbitrations held within the territory of the archipelago of Indonesia and there is no distinction between “domestic” and “international” with regard to the nationality of the parties or the location of their project or dispute. The only effective difference between a *domestic* arbitration, defined in the Arbitration Law as one held in Indonesia, and an *international* one, defined as one held outside of Indonesia (or one which, under the provisions of Indonesian law (of which there are none so stating as yet) is deemed to be International) is the procedure and venue for enforcement of the award.

Some of the other differences from the Model Law include:

- **Reference to Arbitration:** the Arbitration Law does not specifically require a court to refer to arbitration a dispute brought before it where there is an agreement to arbitrate. It only states that the courts do not have jurisdiction to hear such case.
- **Arbitrability:** the Arbitration Law provides that “Only disputes of a commercial nature, or those concerning rights which, under the law and regulations, fall within the full legal authority of the disputing parties, may be settled through arbitration” (Article 5).
- **Jurisdiction:** the Arbitration Law does not specify that the arbitrators are competent to rule on their own jurisdiction (*kompetenz-kompetenz*), although this should be implicit from Articles 3 and 11, which divest the court of jurisdiction where the parties have agreed to arbitrate.
- **Language:** unless the parties otherwise agree, the Arbitration Law (Article 28) provides that the language will be Indonesian, regardless of the language of the underlying documents.
- **Arbitrators:** criteria for arbitrators are stated in the Arbitration Law (Article 12). These criteria are very inclusive and a person independent of the parties who is over 35 years of age with 15 years of experience in his/her field may serve as an arbitrator, except court or government officials.
- **Hearings:** the Arbitration Law states that the case is decided on documents unless the parties or the arbitrators wish to have hearings, whereas the Model Law requires hearings unless the parties agree otherwise.
- **Awards:** the Arbitration Law (Article 54) provides a list of requirements that apply to awards, including that they must be reasoned.
- **Time-limit for Award:** the Arbitration Law (Article 57) provides that the award must be rendered no later than 30 days after the conclusion of the hearings. If the parties agree to waive or revise this

time limit, their agreement will prevail. In circumstances where the parties agree on institutional rules that are completely silent on the time limit, it should be assumed that the statutory limit will prevail. If the Tribunal requires a time extension to render the award, it may request the parties' consent due to the matter prior to the expiration of the determined time limit. However, if the Tribunal fails to meet the time limit provided, its members may be held liable over damages for delay under Article 20 of the Arbitration Law.

- **Corrections:** under the Arbitration Law (Article 58), only the parties may request typographical errors and similar to be corrected, unlike the UNCITRAL Model Law which provides both that parties may so request and that the tribunal may so correct on its own initiative, and parties have only 14 days from the rendering of the award to so request, as compared to 30 days under the UNCITRAL Model Law.
- **Annulment:** the grounds for annulment of awards under the Arbitration Law (Article 70) are far more limited than those set out in the Model Law, as the former provides for annulment of an award only in cases involving fraud, forgery or deliberately concealed material documents.
- **Enforcement:** the grounds for refusing enforcement of an international arbitration award under the Arbitration Law (Article 66) are different from those set out in the Model Law – limited to the violation of public order or the failure to obtain an order of Exequatur from the Chief Judge of the District Court of Central Jakarta – and puts the burden of proof on the award creditor rather than the award debtor. Although the New York Convention applies to the enforcement of international awards, the local courts do not always completely follow it, particularly when it is not reflected in the Arbitration Law.

2. The agreement to arbitrate

The crux of the Arbitration Law is to ensure that where parties have agreed to arbitrate their disputes, the Indonesian courts do not have and may not take jurisdiction over such matters. This right is limited to commercial disputes, being those that the parties have the authority to resolve themselves, thereby giving them the right to delegate that authority to an arbitral tribunal and divest the courts of jurisdiction there over. The only role of the courts then becomes that of the annulment or enforcement of final and binding arbitral awards, and the appointment of arbitrators where a party fails to do so, or the two party appointed arbitrators cannot agree upon the chair and the parties have not chosen any specific rules or otherwise designated a different appointing authority.

Although agreements in general are not required to be in writing to be valid and binding under Indonesian law, Article 1(3) of the Arbitration Law requires the agreement to arbitrate to be in writing. In addition, it must comply with the other requirements for the validity of contracts under Article 1320 of the Indonesian Civil Code, namely: (i) free consent of the parties to be bound, (ii) competence/authority of the parties to contract, (iii) clearly defined subject matter/rights and obligations and (iv) a lawful purpose.

The Arbitration Law recognises agreements to arbitrate made before a dispute arises, most commonly in an arbitration clause in a contract, and also agreements to arbitrate made after a dispute has already arisen. The latter case is covered by Article 9 of the Arbitration Law, which sets out the components that must be included to render such agreement valid and binding. These include, *inter alia*, clear identification of the subject matter of the dispute and relief requested and also identification of the arbitrators and a statement of their willingness so to serve.

Incorporation by reference is not recognized in Indonesia unless it can be shown that the party contesting actually read and agreed to the arbitration clause in the document sought to be incorporated. This is based upon the freedom of contract principles embodied in Articles 1320 *ff* of the Indonesian Civil Code (also based upon pre-Independence Dutch law).

While there is no specific reference to severability, *per se*, of the agreement to arbitrate, Article 10 of the Arbitration Law states that the agreement to arbitrate shall survive even if the main contract expires or is declared void. The arbitration clause will not, however, survive a court declaration under the Civil Code that the underlying contract is void *ab initio*, in which case the arbitration clause will be deemed never to have been agreed upon at all.

Although an agreement, including an agreement to arbitrate, binds only the parties who have concluded it, Article 30 of the Arbitration Law provides that a third party who is not a party to the arbitration agreement may be allowed to participate in the arbitration proceedings if he or she has a relevant interest in the proceedings, upon the consent of all of the parties and arbitrator(s). However, there is no mechanism to force the joinder of a non-consenting third party. Therefore, not unexpectedly, this provision is unlikely to be invoked.

As mentioned above, the Arbitration Law (Article 5) provides that only disputes of a commercial nature and those that are within the authority of the parties themselves to resolve may be arbitrated. The rationale for this is that parties to commercial transactions always have the ability, and the right, to resolve by themselves any disputes that might arise between or among them. Accordingly, they also have the authority to delegate that right to others, most commonly to an arbitrator or arbitral tribunal. By agreeing to arbitrate the parties divest the court of jurisdiction over any such disputes. This is, of course, not possible where some nature of state participation or confirmation is sought or needed (such as for adoption, divorce, or when it involves any criminal matter). This right and limitation is implicit in all arbitration systems and explicit in Indonesia's Arbitration Law.

3. Intervention of domestic courts

Articles 3 and 11 of the Arbitration Law make it clear that where the parties have agreed to arbitrate their disputes, the courts do not have and may not take jurisdiction over such matters. The only role of the court is that of annulment and/or enforcement of final and binding arbitral awards.

Aside from that, Article 14 allows a party to request the court to appoint a sole arbitrator if the parties cannot agree upon one, and in the case of three arbitrators, Article 15 allows a party to request the court to appoint the chair of the arbitral tribunal if the two appointed arbitrators are unable to agree on one. This is only effective, of course where the parties have not chosen specific rules to govern the procedure, nor otherwise designated a different appointing authority, and thus is rarely, if ever, applied in practice.

Article 32 of the Arbitration Law gives the tribunal the power to issue a provisional award or order other interlocutory relief. However, such interim orders will not be enforced by the courts as only final and binding awards and court judgements may be enforced. Thus, there is no effective recourse if the subject party does not comply with the tribunal's order. Nor will the Indonesian courts issue any injunctions or other interim orders in aid of an arbitration, regardless of where the arbitration is held. Even injunctions issued by courts of another jurisdiction will not be enforced by the Indonesian courts. Judgements of foreign courts are not enforceable in Indonesia at all (Article 463 of the Dutch-era Code of Civil Procedure, known as the RV, still in force). Even for court cases, the case would have to be heard again in the Indonesian courts, with the foreign judgement utilised as *prima facie* evidence of what it holds. Thus, the courts are not permitted to interfere in arbitrations in Indonesia in any manner, negative or positive, other than to annul and/or enforce the eventual final and binding award, including attachment of assets.

4. Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

As mentioned above, if arbitration has been designated by the parties as a dispute resolution method, then the courts shall not have any jurisdiction over the case. But they will only decline jurisdiction if an application is made by a party to do so. This applies irrespective of whether the seat of the arbitration is within or outside of the jurisdiction.

5. How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

The Arbitration Law does not regulate matters related to the issuance of anti-suit injunctions (or foreign anti-suit injunctions) to prevent opposing parties from commencing or continuing court proceedings. The law, however, recognizes certain procedural orders for various purposes. Article 32 of the Arbitration Law provides that, at the request of one of the parties, a tribunal may make a provisional award or other interlocutory decision on how to organize the examination of the dispute, including passing a procedural order for security attachment, deposit of goods to third parties, and sale of perishable goods. Such provisional awards or other interlocutory decisions, however, as mentioned above, will not be enforced by the courts as only final and binding awards are enforceable. In addition, the Indonesian courts issue any injunctions or other interim orders in aid of an arbitration, regardless of where the arbitration is held.

6. On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

Courts are not permitted to interfere in arbitrations in Indonesia in any manner, negative or positive, other than to annul and/or enforce the eventual final and binding award (see answer above). Clearly, then, they will not seek to make any orders relating to arbitrations held outside of Indonesia either.

7. The conduct of the proceedings

Article 34 of the Arbitration Law recognises the parties' right to hold their arbitration before any institution or pursuant to any rules they may mutually agree. Only to the extent that the parties have not designated different rules will the procedural guidelines set out in the Arbitration Law be applicable. These latter guidelines are skeletal, but sufficient for an arbitration procedure to be conducted. However, parties do invariably opt for either *ad hoc* arbitration with rules designated, almost always UNCITRAL, or institutional arbitration, normally either ICC, SIAC, HKIAC, or one of the institutions in Indonesia itself. Although the primary arbitral institution in Indonesia is BANI, there are also a growing number of industry-specific institutions as well.

8. Representation

The Arbitration Law does not regulate who may represent a party in an arbitration, so it is left up to the parties to choose their own counsel or even to represent themselves, although the latter is very rarely, if ever, done. In addition, there is no requirement to engage local counsel, although if the matter is governed by Indonesian law, it would be advisable to do so, and the institutional rules of certain local institutions make it mandatory to do so.

9. How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?

If the parties have agreed to an appointing authority other than the court, either in their agreement or in the rules they have chosen, that appointing authority and its challenge procedures will prevail and the courts will not interfere or control the independence and impartiality of the tribunal.

If the parties have not agreed on an appointing authority, then based on Article 22-25 of the Arbitration Law, the parties may apply to the courts (specifically: the Chairman of the relevant District Court) for recusal of an arbitrator appointed by the courts.

10. On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of ad hoc arbitration)?

In accordance with Article 13 of the Arbitration Law, if the parties have not reached a mutual agreement regarding the appointment of the arbitrator(s), and have not designated a different Appointing Authority, then they may submit an application to the Chairman of the District Court to appoint an arbitrator(s).

11. Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

Although the Arbitration Law gives arbitral tribunals the power to issue interlocutory or interim relief, such relief will not be enforced by the courts. In addition, the courts will not issue any interim orders in aid of an arbitration. Articles 3 and 11 make it clear that where the parties have agreed in writing to arbitrate, the courts do not have and may not take jurisdiction over any dispute between or among them.

12. Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

Yes, in Chapter IV of the Arbitration Law.

Article 12 of the Arbitration Law sets out the qualifications for those who may be appointed as arbitrators. These include only that the arbitrator must be mentally competent, over 35 years of age and have at least 15 years of experience in their field, and must not be a court or government official. There is no citizenship or residency requirement.

13. Does it provide for the confidentiality of arbitration proceedings?

In accordance with Article 27 of the Arbitration Law, all hearings of the arbitration are closed to the public. Although this means that the hearings are private, and not necessarily confidential, the elucidation of that provision also states that the award and the dispute are not to be disclosed to the public. Parties wishing a broader degree of confidentiality will need to provide for this in their agreement to arbitrate. Note, however, that awards must be registered with the court to be enforceable and once an award is so registered, it can no longer be fully confidential.

14. Does it regulate the length of arbitration proceedings?

Article 48 of the Arbitration Law imposes a time limit of 180 days from the constitution of the tribunal for completion of hearings, and Article 57 imposes a time limit of 30 days from close of conclusion of hearings for issuance of the award. However, these time limits may be waived by the parties and such waivers are invariably found in the agreement to arbitrate. It is incumbent upon the tribunal to ensure that the parties agree at least to an extension of time for the issuance of the award if they anticipate it will take more than the 30 days. If the tribunal fails to do so, Article 20 provides that the arbitrators may be ordered to pay compensation to the parties for any costs and losses occasioned by the delay. However, it is not clear who could issue such order, since the courts would not ordinarily have jurisdiction, unless of course the issue were to arise in conjunction with an action to annul an award for failure to meet such time limit. Otherwise the arbitrators are immune from liability. Article 21 of the Arbitration Law states: *"The arbitrator or arbitration tribunal may not be held legally responsible for any action taken during the proceedings to carry out the function of arbitrator or arbitration tribunal unless it is proved that there was bad faith in the action"*.

15. Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

The Arbitration Law does not prevent the parties/the tribunal from holding a hearing or meeting elsewhere than at the seat of the arbitration. Article 31 of the Arbitration Law provides that the time frame and venue of the arbitration, and place of the hearings, if different, shall be agreed upon by the parties. If the parties have not, or cannot, so agree, it will be left to the tribunal to decide.

It has not been tested yet whether a hearing or meeting could be held remotely over a party's objections.

16. Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

Yes, by the arbitrators, no by the courts. Pursuant to Article 32 of the Arbitration Law, arbitrators can only issue interim measures at the request of one of the parties to regulate the manner of running the examination of the dispute.

17. Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

Based on Article 46 of the Arbitration Law, the arbitrator(s) is authorized to request additional documents or evidence deemed necessary in the examination (although such an order cannot be enforced).

The general rule under Indonesian law is that an employee or family member of a party is not considered as a 'witness' but as part of such party. This does not prevent any such person from appearing as a witness in an arbitration, but any relationship with the party or parties will be taken into consideration by the tribunal in evaluating the veracity of the testimony.

Article 37(3) of the Arbitration Law provides: "*examination of witnesses and expert witnesses before the arbitrator or arbitration tribunal shall be carried out in accordance with the provisions of the Code of Civil Procedure.*" All witnesses are required to take an oath that they will only speak the truth and nothing but the truth. Further, Article 1909 of the Indonesian Civil Code stipulates that those who are family related (in a straight line descent) or by marriage with either party, may not testify as a witness, nor may anyone considered insane. This last restriction is generally considered superseded where the parties have chosen other procedural rules to govern the arbitral proceedings that would hold otherwise.

18. Does it make it mandatory to hold a hearing?

Article 36 of the Arbitration Law provides that the arbitral hearings of the dispute shall be done by written documents. However, oral hearings may be held if so desired by the parties or if deemed necessary by the arbitrator or arbitration tribunal. As a practical matter, most arbitrations do involve at least one oral hearing. Generally, if one party wishes to be heard, the tribunal will agree.

19. Does it prescribe principles governing the awarding of interest?

In keeping with general principles of Indonesian law, interest on a debt may be awarded only if the parties have agreed for such interest to apply to an unpaid indebtedness. There is no prohibition against imposing interest on late or unsatisfied awards.

20. Does it prescribe principles governing the allocation of arbitration costs?

The costs of arbitration are covered in Articles 76 and 77 of the Arbitration Law. Generally, the administrative costs of an arbitration proceeding shall be borne by the losing party, but where a claim is only partially granted, these costs shall be charged to the parties equally. While the parties' legal costs, and those of their expert and other witnesses, can theoretically only be shifted if the parties have so agreed in their agreement to arbitrate or otherwise, and while tribunals normally follow what the parties agree, tribunals are free to award damages and costs as they deem appropriate without creating a ground for annulment or enforcement.

21. Liability

22. Do arbitrators benefit from immunity from civil liability?

Article 21 of the Arbitration Law provides that the arbitrator(s) may not be held legally responsible for any action taken during the proceedings in carrying out their function as arbitrator(s) unless bad faith can be

proven. The only possible liability otherwise would be under Article 20, as mentioned above, in the event the tribunal were to take more than 30 days after close of hearings to issue their award where the parties had not agreed to a waiver or extension of such time limit.

23. Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

Not in the ordinary course of proceedings.

24. Language of the arbitration

Pursuant to Article 28 of the Arbitration Law, the language of the arbitration will be Indonesian unless all the parties agree to a different language, which is still subject to the consent of the tribunal. BANI tribunals can and did disregard the parties' agreements as to language, as such actions are not a ground for annulment or for contesting enforcement. The prejudiced party has to, therefore, find its own way to get all the exchanges translated. Parties should take note of this and be sure to provide a different language in the agreement to arbitrate if they do not wish to submit all documents and argue in Indonesian.¹

25. Interest

In keeping with general principles of Indonesian law, interest on a debt may be awarded only if the Parties have agreed for such interest to apply to an unpaid indebtedness. There is no such requirement of a party agreement to impose interest on late or unsatisfied awards. Pursuant to the State Gazette No. 22 of 1948 and Article 1250 of the Indonesian Civil Code, if the parties did not specify the amount of the interest rate, the statutory (simple) interest rate is 6%. Parties may agree upon a higher rate, but it cannot be an unreasonable one.

26. The award

27. Can parties waive the requirement for an award to provide reasons?

Article 54(1)(f) of the Arbitration Law provides that an award must contain "the considerations and conclusions of the arbitrator or arbitration tribunal concerning the dispute as a whole". This may not be waived, whereas other reasoning can be.

28. Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

Yes, to the extent agreed by the Parties expressly and in writing.

29. What typical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

Article 54 of the Arbitration Law contains specific requirements for arbitral awards. An arbitral award, wherever rendered, must contain:

- (a) the heading: '*Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa*' (For the sake of Justice based on belief in One Almighty God);
- (b) the full name and addresses of the disputing parties;
- (c) a brief description of the matter in dispute;
- (d) the respective position of each of the parties;
- (e) the full names and addresses of the arbitrators;

¹ Note that BANI, the primary local arbitral institution, normally insists that hearings are held, and often documents submitted, in Indonesian, or at best two languages, even where the parties have agreed upon a different language. BANI does not recognize party autonomy and thus, will not comply with anything the parties jointly agree to if it contradicts its own rules or policies.

- (f) the considerations and conclusions of the arbitrator or arbitration tribunal concerning the dispute as a whole (*in other words, it must be reasoned*);
- (g) the opinion of each arbitrator in the event that there is any difference of opinion within the arbitration tribunal (*if one arbitrator fails to sign, the reason for this must be stated*);
- (h) the order of the award;
- (i) the place and date of the award;
- (j) the signature(s) of the arbitrator or arbitration tribunal; and
- (k) a time limitation within which the award must be implemented.²

The above requirements are mandatory, and not waivable. As explained below, the place of its issuance is also relevant, and may have substantial consequences.

30. Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

Article 60 of the Arbitration Law clearly states that the award is final and binding upon the parties. This clearly means that there can be no amendment or appeal procedure for awards (subject to the limited availability of a request to the tribunal for correction for administrative or typographical errors), which coincides with the restriction on court involvement of Articles 3 and 11, mentioned above. Pursuant to Article 58 of the Arbitration Law, administrative revisions can be requested by the parties to be corrected within 14 days after the receipt of the award.

31. What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Pursuant to Article 1(9) of the Arbitration Law, awards are defined as *domestic* if they have been rendered within the archipelago of Indonesia, regardless of the nationality of the parties, location of the project and other factors, and defined as *international* if rendered elsewhere. This distinction affects primarily the enforcement process, which differs slightly between the two, primarily on administrative elements.

Regardless of whether the award is domestic or international, the award must first be registered with the court, by the arbitrators or their duly authorised representatives. Therefore, in practice, arbitrators issuing awards likely to be enforced in Indonesia should include in and/or separately, with the award, a power of attorney to the parties, or either of them, to effect registration of the award. Domestic awards must be registered within 30 days of rendering with the District Court having jurisdiction over the respondent, while international awards are registered with the District Court of Central Jakarta. There is no time limit for registration of international awards. Registration is mandatory – if a court is requested to register an award, it is required to do so. However, in order for a foreign award to be executed, it must comply with the administrative requirements as stipulated in Article 66 of the Arbitration Law. Awards must be in the Indonesian language, or, if the original is in another language, must be accompanied by a translation into Indonesian prepared by a licensed "sworn" translator.³ For enforcement purposes, the court will refer to the Indonesian version, so any translation should be carefully vetted before registration.

Registration of an international award must also be accompanied by (i) the original or a certified copy of the document containing the parties' agreement to arbitrate and (ii) a certificate from the Indonesian diplomatic representative in the country in which the award is rendered to the effect that that country and Indonesia are both signatories to the New York Convention.

² The time limitation is determined by the Tribunal. The moment in which the time limit starts to run should be expressed in the award.

³ A licensed sworn translator is a translator who has passed the qualification exam and has been sworn in by the relevant authorities, usually the Governor of DKI Jakarta.

All awards must be registered to be enforceable. Application for an Exequatur Order for an international award is made to the District Court of Central Jakarta, unless the state is a party, in which case the Exequatur Order can only be issued by the Supreme Court.

It should be noted that the New York Convention defences to the recognition and enforcement of awards over and above the grounds for annulment at Article 70 of the Arbitration Law are not usually recognized by the courts.

A decision by the applicable court to issue the Exequatur Order is not subject to appeal, whereas a decision to refuse to issue such an order can be appealed to the Supreme Court except where the state is a party, in which case there is no appeal against the Supreme Court's action in either issuing or refusing to issue the Exequatur. The Supreme Court is the highest court. A decision of that court may be resubmitted to the Supreme Court for Judicial Review and that is the last resort. As to annulment proceedings, both an order to annul and a decision not to annul may be appealed to the Supreme Court.

32. Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

If a party applies to annul an award, it will be up to the court's own reasoning whether to order suspension of enforcement or not. Normally, they will do so.

33. When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

The Arbitration Law makes no reference to awards annulled in the place of arbitration nor its impact on enforcement in Indonesia. To the knowledge of the authors of this chapter, the issue as to whether such awards may still be enforced in Indonesia has not arisen. The authors believe it unlikely that should such a situation arise, the Indonesian courts would follow the example of the French courts and enforce anyway, over proof of such annulment presented by the losing party. At the same time, it is debatable that the Code of Civil Procedure prohibition against enforcement of foreign court judgments, referred to above, might be used to persuade a court to disregard such annulment, if the grounds relied upon for annulment did not coincide with those set out in the Arbitration Law.

34. Are foreign awards readily enforceable in practice?

Once the Exequatur Order is issued (see our answer to Question 5.6 above in this regard), the issuing court will send it to the District Court having jurisdiction over the losing party for execution over the identifiable assets of such party. As domestic awards are registered with the latter court, a sometimes lengthy step is eliminated when the arbitration is held in Indonesia (and the award is thereby defined as domestic). Note that the party seeking such execution must be able to identify the assets to be executed against, including their location and, where a bank account, the account number, in order to allow the court bailiff to locate and attach such assets. The courts will not assist the parties in searching for assets and they would not do so for court cases either. There are private investigation firms that are usually quite successful in locating assets, so the parties normally can provide sufficient details.

Execution may take some time, depending upon the nature and location of the assets, but the process is reliable if a bit lengthy, despite uninformed writings to the contrary.

Both exequatur and execution may also be delayed where the losing party applies unconscionable tactics such as bringing a related action in the court based on a non-commercial issue such as tort, or involving a third party who is not a party to the agreement to arbitrate, in order to circumvent the Articles 3 and 11 restrictions on the court's jurisdiction. Although as a matter of principle such tactics should not delay the enforcement, when there is a pending case on the same subject matter the courts normally will wait until it is decided. This situation occurs with some regularity, but the courts almost invariably will enforce the

awards in the end, even if they will await the outcome of the jurisdictional challenge and dismissal of such unauthorized suits.

35. Funding arrangements

36. Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

Neither the Arbitration Law, nor any other law, restricts the freedom of parties to either agree with their counsel as to the quantum or method of payment of their fees, nor whether they may utilise external/third-party funding. Contingency fee arrangements, or a variation thereof, are not common but may occasionally be applied, depending upon the agreement of the parties and their counsel. Contingency and success fees have no restriction. Based on Article 21(2) of Law No. 18 of 2003 (Advocate Law), legal fees including success fees are determined between the client and counsel based on their mutual agreement. Third-party funding is generally not utilised as of yet, and the authors are not aware of any such arrangement having been applied, although the possibility exists as there are no requirements for transparency in such regard.

37. Arbitration and technology

38. Is the validity of blockchain-based evidence recognised?

There is no reference to blockchain evidence as yet in Indonesian law. However, Law No. 11 of 2008 (Information and Electronic Transactions Law, "IET Law") regulates the legal basis and legal force for an electronic document to be accepted as evidence before the court.

Article 5(1) IET Law stipulates that electronic information, electronic documents, and/or the print-outs of electronic documents or information are considered valid legal evidence. Electronic documents must comply with the material and formal requirements of Articles 5(4), 6, 15, and 16 IET Law. The material requirements require that the information and documents are guaranteed by their originality, integrity, and availability. The formal requirements require that the information and documents need not be in writing by law.

Some laws have specific requirements for electronic communications. For example, the Arbitration Law provides that if the agreement for resolution of disputes by arbitration is contained in an exchange of correspondence (including letters, telexes, telegrams, faxes, e-mail, or any other form of communication), the agreement for resolution must be accompanied by a record of receipt of such correspondence by the parties (Article 4(3)).

39. Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

The agreement to arbitrate must be in writing. If it can be established that a blockchain agreement is a writing, presumably it would be recognised as valid. Awards need to be signed by the tribunal and indicate where they were issued. If the blockchain does not meet those requirements, presumably the award would not be enforceable. But it has not as yet been tested here.

40. Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

See answer above.

41. Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

This issue has not arisen yet to our knowledge, so we can not anticipate what a court would do.

42. Is there likely to be any significant reform of the arbitration law in the near future?

The Arbitration Law was issued a bit over 20 years prior to time of writing of this note, and it has proven for the most part to be quite flexible and certainly serves the purpose of divorcing the arbitral process almost completely from the Indonesian court system, which has fallen into unfortunate repute. A few practitioners occasionally suggest that the Arbitration Law ought to be revised, or replaced by one following the UNCITRAL Model Law, but there has been no serious effort on the part of the legislature to make any such changes. It is not an issue that will gain political capital for anyone, nor is there really any pressing necessity, so it is unlikely there will be any significant revision in the near future. In fact, there are only a few points that would benefit more than slightly from revision and these are primarily administrative rather than substantive.

43. Compatibility of the Delos Rules with local arbitration law

The Arbitration Law permits the parties to agree to follow any rules they may mutually agree upon. Thus, if they designate the Delos Rules those will apply; based on our review, there are no contradictions with the relevant mandatory provisions of the Indonesia Law.

44. Further reading

- The International Arbitration Review-Eleventh Edition-2020
- Contracts, Negotiation, and Enforcement in Indonesia -Global Guide-2020
- Chapter on Indonesia: Arbitration in Indonesia, ARBITRATION IN ASIA, A Compendium, Edited by Michael Moser, Butterworths Asia, Hong Kong (March, 2017).
- Chapter on Indonesia, ASIA ARBITRATION GUIDE, Edited by Dr. Andreas Respondek, Singapore, 5th (Extended and Revised) Edition, 2017
- Indonesia and Beyond: Investment Treaties and Arbitrations: Can the problems be solved before the system dies out? EXPERT GUIDES COMMERCIAL ARBITRATION, Euromoney Publications, September, 2017
- Enforcement of Foreign Arbitral Awards in Indonesia, ASIA BUSINESS LAW JOURNAL, Vantage Asia, Hong Kong, 2016

ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	The leading Indonesian arbitral institution is the Badan Arbitrase Nasional Indonesia (BANI Arbitration Center). No non-local institutions have offices and a case team here, except perhaps APCAM.
Main arbitration hearing facilities for in-person hearings?	Normally held in a hotel of the parties' choice, or occasionally in the offices of one party. Only one institution has its own hearing rooms and those are not available for hearings administered by other institutions.
Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?	There are no "main" hearing facilities. So the "reprographics" have to be arranged by the parties or the arbitrators, or in some cases the institution.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Sadly lacking. Usually brought in from Singapore.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	There are a number, but none of general use.
Other leading arbitral bodies with offices in the jurisdiction?	Only local ones, other than APCAM. Most other institutions administer from Singapore or Hong Kong, except ICSID, which administers from D.C.