

BANI Regulation in Highlights: Opportunities and Challenges

Prepared by:

Sartono (Managing Partner), Leonardo Richo Sidabutar (Senior Associate) and Eduardo Kayona Maturbongs (Associate)

At the beginning of 2025, the Indonesian National Arbitration Board (“**BANI**”) officially published the latest Arbitration Rules and Procedures that will be the main guideline in every dispute resolution in the BANI forum. This rule not only replaces the previous regulation but also introduces a number of important updates that respond to various questions and discourses.

One of the most outstanding breakthroughs is the introduction of an emergency arbitration mechanism—a progressive step that brings the national arbitration system one step closer to international practice. This article briefly reviews some of the key changes in BANI Rule 2025 and what are the implications for legal practitioners and parties involved in business disputes.

Affirming the Authority of BANI in PMH (Torts) Cases

One commendable aspect is the clarity of BANI’s stance in handling non-contractual disputes, such as Unlawful Act/*Perbuatan Melawan Hukum* (“**PMH**”) or tort cases. While there had previously been some uncertainty over whether BANI was competent to issue awards in PMH matters, Article 2 paragraph (1) of BANI Regulation 2025 now makes it explicit: BANI has the authority to handle non-contractual cases, provided the parties have agreed to choose BANI as their dispute resolution forum.

This development is a welcome clarification, offering greater certainty to disputing parties that BANI is indeed empowered to adjudicate tort cases.

The Expansion of the Limitation of Legal Counsel’s Right of Audience Before BANI

The BANI Regulation 2022 (the previous provision) only states that a foreign legal advisor must be accompanied by an Indonesian legal advisor in an arbitration case concerning a dispute subject to Indonesian law. However, Article 5 paragraph (2) of

BANI Regulation 2025 has expanded this limitation whereby foreign counsel must be accompanied by the Indonesian counsel in all cases.

The New Consolidation Concept

Referring to BANI Regulation 2022, 2 (two) or more arbitration petitions may be combined under a party’s application with the approval of the BANI chairman. Nonetheless, there are only 3 (three) circumstances where combining petitions is possible, under the BANI regulation 2022, which are:

- The Parties have agreed to the consolidation and the arbitration dispute arises from the same legal relationship;
- The petitions for arbitration are based on agreements with the same parties, and the chosen dispute resolution is BANI; or
- The arbitration petition is based upon several agreements in which one of the parties is the same and has chosen BANI as the dispute resolution forum.

Article 9 paragraph (1) of BANI Regulation 2025 provides that basically, a request for arbitration can be filed against many parties (including parties outside the agreement) if **connectivity** between the involved parties can be proven. For example, when A has an agency agreement with B, but A without the knowledge of party B enters into another agency agreement with C. Then, B chose to sue A and C (even though C has no direct relationship with B) through an application for arbitration.

Meanwhile, for disputes arising from or relating to 1 (one) or more agreements, if there is a connection between the agreements and all agreements choose BANI or BANI procedures as a dispute resolution forum, Article 9 paragraph (2) of BANI Regulation 2025 provides legitimacy for the submission of a request for arbitration in these circumstances. For instances, X agrees to purchase a building owned by Y, with one of the provisions being that the building will be rented to Z. Therefore, in such a case if a dispute arises between X, Y, and Z, all parties may be able to involved in the BANI arbitration proceedings, even though X does not have a direct contractual relationship with Z.

In addition, Article 9 paragraph (3) of BANI Regulation 2025 also provides an opportunity for third parties outside the agreement to join the arbitration proceeding if: (i) there is an element of related interest; and (ii) its participation is agreed upon by the disputing parties and by the arbitrator or arbitral tribunal.

New Legal Basis on the Arbitrator Replacement

Another noteworthy novelty is the introduction of the term “negligence of action” as the basis for replacing the arbitrator. Article 13 paragraph (3) states that arbitrators who fail to perform their duties effectively, whether de jure or de facto, can be replaced at the discretion of the Chairman of BANI. The right to have an arbitrator replaced due to his/her negligence can be exercised in the form of a denial/rejection of the arbitrator (right of renunciation). In this regards, it would be preferable to have further guidance or regulation outlining the parameters or criteria under which an arbitrator can be deemed negligent, either de jure or de facto.

Emergency Arbitration

One of the new breakthroughs provided in BANI Regulation 2025 is emergency arbitration. This practice can actually be found in international arbitration as previously applied by the Singapore International Arbitration Center. In short, emergency arbitration is a mechanism designed for parties who inquire an urgent determination before the official arbitration hearing is executed.

Procedurally, the process is as simple as:

- An application is filed with the BANI secretariat;
- The BANI Chairman appoints an emergency arbitrator within 2 (two) days;
- The first hearing is held no later than 3 (three) days thereafter; and
- The award is issued within 14 (fourteen) days, with a possible extension of 7 (seven) days.

As cited in Appendix I Article 6 of BANI Regulation 2025, an emergency arbitrator's award is a provisional or interim award or decision made in writing. This is an embodiment of the arbitrator's authority as set out by Article 32 paragraph (1) of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution.

Nevertheless, it is worth exploring in greater depth how the implementation and application of emergency arbitration in practice, especially how BANI ensures that emergency arbitration awards are enforceable against the disputing parties, including through judicial mechanisms if a party fails to voluntarily comply with the award.

Closing

The 2025 BANI Regulation represents a welcome and forward-looking development in the landscape of Indonesian arbitration. Through the expansion of its authority, procedural updates, and the adoption of international best practices, BANI reaffirms its commitment to remaining relevant and responsive to the evolving needs of arbitration users.

- o0o -

The article above was prepared by Dentons HPRP's lawyers

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions or matters. For more information, please contact us at dentons.hprp@dentons.com.

No part of this publication may be reproduced by any process whatsoever without prior written permission from Hanafiah Ponggawa & Partners.