

# BANI arbitration center on arbitration rules and procedures: A summary of the key changes

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Last year, Badan Arbitrase Nasional Indonesia (BANI Arbitration Center) (BANI) published its updated rules and procedures (2018 BANI rules and procedures). This marks the third time BANI has updated its rules and procedures since BANI was established in 1977. The 2018 BANI rules and procedures will apply to all BANI administered arbitrations and arbitrations adopting the BANI rules and procedures starting from 1 January 2018 onwards.

In comparison to BANI's previous rules and procedures, the 2018 BANI rules and procedures contain an addition of four new articles and 11 new sub-articles. These updates aim to codify common practices in BANI arbitration. BANI also adopted some of the innovations seen internationally.

We summarise the key changes that can be found in the 2018 BANI rules and procedures below:

## Exchange of pleadings

### Request for arbitration and statement of claim

The 2018 BANI rules and procedures provide that the arbitral procedure commences with the filing of the request of arbitration. The 2018 BANI rules and procedures state that the request for arbitration should contain (i) the names and addresses of the parties; (ii) the arbitration clause or the arbitration agreement; (iii) information regarding facts of the dispute and the legal basis of arbitration; (iv) detail of the dispute; and (v) prayer for relief and/or claim amount. This reflects the existing practice in BANI arbitration.

The 2018 BANI rules and procedures contain a definition of Statement of Claim for the first time, which is defined as "*the request of the claimant concerning the claim requested in the arbitration.*"

It is common practice in BANI arbitration for the claimant to submit the request for arbitration and the statement of claim together in one document. This is not the usual approach for other institutions. The 2018 BANI rules and procedures provide that the statement of claim may be submitted separately from the request for arbitration, provided that it is to be submitted by no

later than 14 days from the date of establishment of the Tribunal or within the prescribed time determined by the Tribunal.

### **Statement of defense**

Where the claimant submits the statement of claim after the establishment of the Tribunal, the statement of defense shall be submitted by the respondent within 14 days from the receipt of the statement of claim. The chairman of BANI is also authorized to extend the submission of statement of defense, until the first hearing date by a request from the respondent.

### **Response to counterclaim**

In the event that the Respondent has submitted a counterclaim, the claimant may submit a response to counterclaim within 30 days or such other time limit, as the Tribunal may deem appropriate.

### **Amendment of statement of claim and counterclaim**

Either party may amend his statement of claim or counterclaim unless the Tribunal considers it inappropriate to allow such amendment, having regard to the delay in making it, prejudice to the other party, or any other circumstances. While not in line with international practice, this is a common practice in BANI arbitration.

## **Appointment of the Tribunal**

### **Nomination of arbitration**

The claimant may nominate an arbitrator within 30 days from the date within which the request for arbitration is filed. This time limit can be extended for up to 14 days if the claimant submits a request to the chairman of BANI explaining his grounds for the extension of time.

### **Appointed arbitration**

The arbitrator appointed by both parties is subject to the consideration and approval by the Board of BANI management (Dewan Pengurus).

### **Postponement of arbitration process in the event of an arbitrator challenge**

The Tribunal has the authority to postpone the arbitration process in the event a challenge of arbitrator is filed to the relevant District Court by a party.

The 2018 BANI rules and procedures do not provide for the Tribunal's authority to postpone or adjourn the arbitration proceedings when a challenge of arbitrator is first made to BANI. However, it is common practice that the Tribunal can do so on a request from the party.

## **The arbitration proceedings**

### **Consolidation**

Under the 2018 BANI rules and procedures, a party may now apply to BANI to consolidate two or more arbitrations into a single arbitration where:

- a) The parties agree to consolidation and the dispute arises from the same legal relationship;
- b) The request for an arbitration is made under a number of agreements, whereby the parties are the same and the choice of arbitration institution is BANI; or

- c) The request for an arbitration is made under a number of agreements, where one of the parties is the same and the choice of arbitration institution is BANI.

An application for consolidation may be made together with the submission of the request for arbitration.

It should be noted that there are no changes to the multiple parties and joinder provisions in the 2018 BANI rules and procedures. These are contained in Article 11(5) of the 2018 BANI rules and procedures and Article 30 of Law No. 30 of 1999.

### **Deletion of arbitration**

The 2018 BANI rules and procedures empower the of Board of BANI management (Dewan Pengurus) to delete the request for arbitration, if within the prescribed timeline the administrative fee and arbitration costs have not been paid.

### **Reopening the arbitration proceedings**

The Tribunal may decide to reopen the proceedings on its own motion or upon application of a party at any time before the award is rendered, if it considers it necessary owing to exceptional circumstances.

There is no further explanation under the 2018 BANI rules and procedures as to what exceptional circumstances may entail. It remains to be seen how a Tribunal is likely to approach this new rule in the future.

### **Exemption from acting as witness or expert**

A party cannot seek to make the chairman, vice chairman, the secretary general, officers, employees, or any arbitrator act as witness or expert in any legal proceedings in connection with any BANI arbitration governed by the 2018 BANI rules and procedures. The Tribunal cannot seek to make any BANI arbitrator act as witness or expert in any legal proceedings in connection with any BANI arbitration governed by the 2018 BANI rules and procedures.

### **Exclusion of liability**

BANI, including the Board of BANI management, the secretariat, including the Board of BANI's representatives and BANI's arbitrators, shall not be held liable to any person for any negligence, act, or omission in connection with any arbitration governed by the 2018 BANI rules and procedures.

### **Tribunal's authority to determine specific procedures in the arbitration process**

The 2018 BANI rules and procedures provide that the Tribunal has authority to determine specific procedure(s) in the arbitration process if such procedure(s) have not already been regulated. This, of course, is in line with international arbitration practice and is now codified in the BANI rules and procedures.

## **The award, decisions, and costs**

### **Correction to the award**

The Tribunal may, on its own initiative, correct any administrative errors in the award. In the 2018 BANI rules and procedures administrative errors are defined as typographical errors or arithmetic errors.

## Decision by Board of BANI management

All decisions made by the Board of BANI management on all matters pertaining to the arbitration process are final and binding.

While many international institutions have added additional provisions over the years (e.g., covering, emergency arbitrators and expedited arbitration) BANI has evidently resolved to take a relatively cautious approach in this revision. No doubt it considers this more appropriate for the Indonesia's particular circumstances.

If you would like to have a complete comparison of the rules and procedures please email us at [Jakarta.LAE@dnfp.com](mailto:Jakarta.LAE@dnfp.com).

For further information on this topic or on our arbitration practice, please contact our team at [Jakarta.LAE@dnfp.com](mailto:Jakarta.LAE@dnfp.com).

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