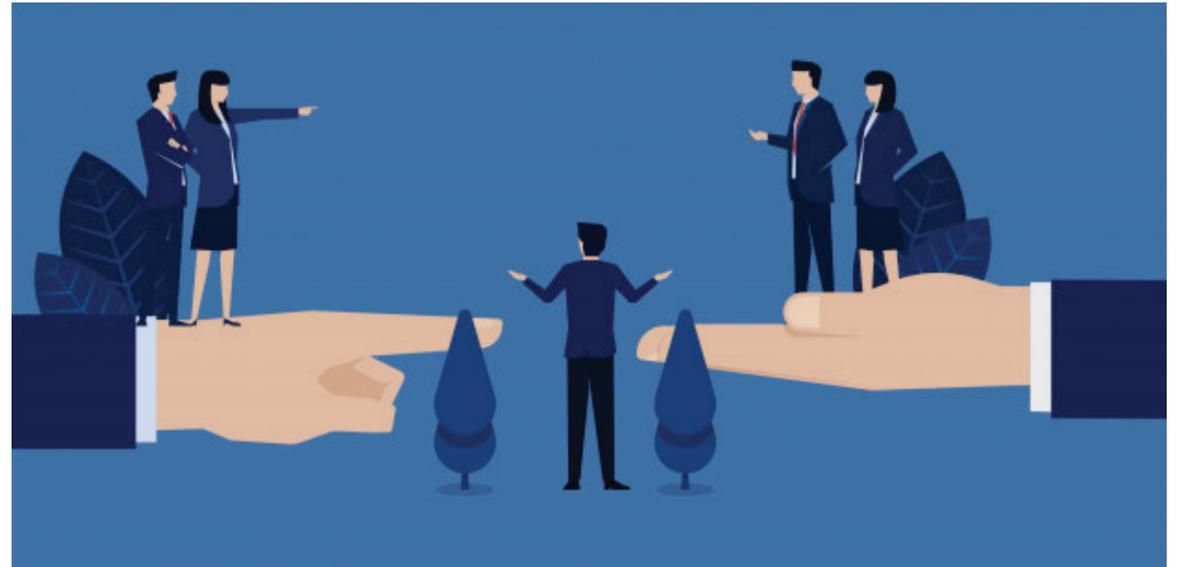


How is Indonesia an Effective Seat for Arbitration?

Indonesia has long recognized Arbitration and Alternative Dispute Resolution. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (“**Indonesian ADR Law**”) has been in force since 12 August 1999 and as long served as basis for the practice of ADR in Indonesia.



Indonesian ADR Law has turned 21 years old this year, without any amendments throughout the years. However, despite no modern arbitration legal framework, Indonesia has demonstrated that it is sufficient to resolve the progressing cross border dispute.

Under Art. 1 (1) of Indonesian ADR Law, “Arbitration shall mean a mechanism of settling civil disputes outside the general courts based upon an arbitration agreement entered into in writing by the disputing Parties.”

There are several factors that establish Indonesia as an attractive and effective seat for arbitration, including:

Enforceability

In cases where the key assets concerned are located in Indonesia, or the governing law of the contract points to Indonesia, it is worth having Indonesia as the seat for arbitration. Under the prevailing Indonesian ADR Law, if the seat is in Indonesia, the arbitral awards will be legally treated as Indonesian national awards. The national arbitral award is readily enforceable, upon registration in the relevant court. Contrary to international arbitral awards, there is a strict deadline for filing an application for setting aside of national arbitral awards in Indonesia. The deadline for such is 30 days from the date the award is registered in the court. The Indonesian statutory grounds for setting aside and refusal of enforcement of national awards are more certain and restrictive than those for international awards.



Parties' freedom of contract

The parties' freedom of contract is greatly respected. Under the prevailing Indonesian ADR law, foreign arbitral institutions are allowed to administer international arbitration cases seated in Indonesia. The parties also have the freedom to apply foreign law and use a foreign counsel or arbitrator for their arbitration case. If wanted by the parties, the arbitral tribunal has the power to use English or other languages in the arbitration proceedings.

Pro-arbitration stance

There has been a shift in the attitude and views of Indonesian courts toward arbitration following the change of businesses preference in the methods for settling their disputes. Despite the inevitability of litigation, circumstances stemming from COVID-19 have influenced a change of attitude towards litigation in recent times. The appetite for litigation has gone down drastically. In recent times, the decisions of Indonesian courts in arbitration-related matters have consistently reflected a pro-arbitration stance. In 2019, Indonesia's Supreme Court issued a Guidelines for judges handling cases of enforcement of arbitral awards in Indonesia, which was applauded as a directive for all courts in Indonesia to strictly comply with the standardized procedural rule of enforcement of arbitral awards and make efforts to create Indonesia's image as an arbitration-friendly jurisdiction.

Procedural timeframe

One of the advantages under Indonesian ADR Law is the procedural timeframe. Indonesian ADR Law provides that the examination of the case must be concluded within 180 days from the appointment of the arbitrator or the formation of arbitration panel. Furthermore, Indonesian ADR Law requires for the award to be registered to the court within 30 days upon the issuance of the award.

Any petition for annulment of an arbitration award must be submitted within 30 days as of the date of submission and registration of the award. The Court shall decide on the annulment petition within 30 days as of the date of receipt of the petition.

Low-cost

Generally, arbitration as dispute resolution forum is expensive compared to other means of other alternative dispute resolution or litigation. One of the most notable arbitration institutions in Indonesia impose the fee structure based upon a percentage of the quantum of the claim, which already include the arbitrators fees. However, the cost of arbitration proceeding Indonesia is still relatively cheap compared to several jurisdictions.

In recent times, arbitration-hearing venues and facilities are flourishing. The overall infrastructure for arbitration has grown tremendously in recent years due to growing demand for arbitration and surging awareness by the general public on the importance of arbitration. In addition, Indonesia has professional transcribers and translators and other support services needed for an effective arbitration hearing.

In line with such trend, ad-hoc arbitration has also experienced a surge in demand. This may be attributed to the ongoing COVID-19 pandemic, which led to a demand for dispute resolution forums with more control and flexibility of the process. The cost effectiveness of ad-hoc arbitration has also contributed to its increasing popularity, especially in these times when the disputing parties are often faced with financial difficulties.

Third-party funding

Third-party funding is legally permitted. Indonesia does not have any regulatory framework on third-party funding for litigation or arbitration proceedings; it is, in principle, permitted. Disputing parties are responsible for paying their own fees for litigation or arbitration in Indonesia. There are no disclosure obligations or restrictions on how parties finance their litigation or arbitration proceedings. Clients and advocates are free to agree on the arrangement or type of fees.¹ There are also no regulations that prohibit a third party from paying the costs of another party's case. The appointed judges or arbitrators are typically not in the position to question the source of the parties' funds.

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¹Law No. 18 Year 2003 regarding Advocates (the Advocates Law) and the Code of Ethics for Indonesian advocates