Recognition and Support for Arbitration under Indonesian Law

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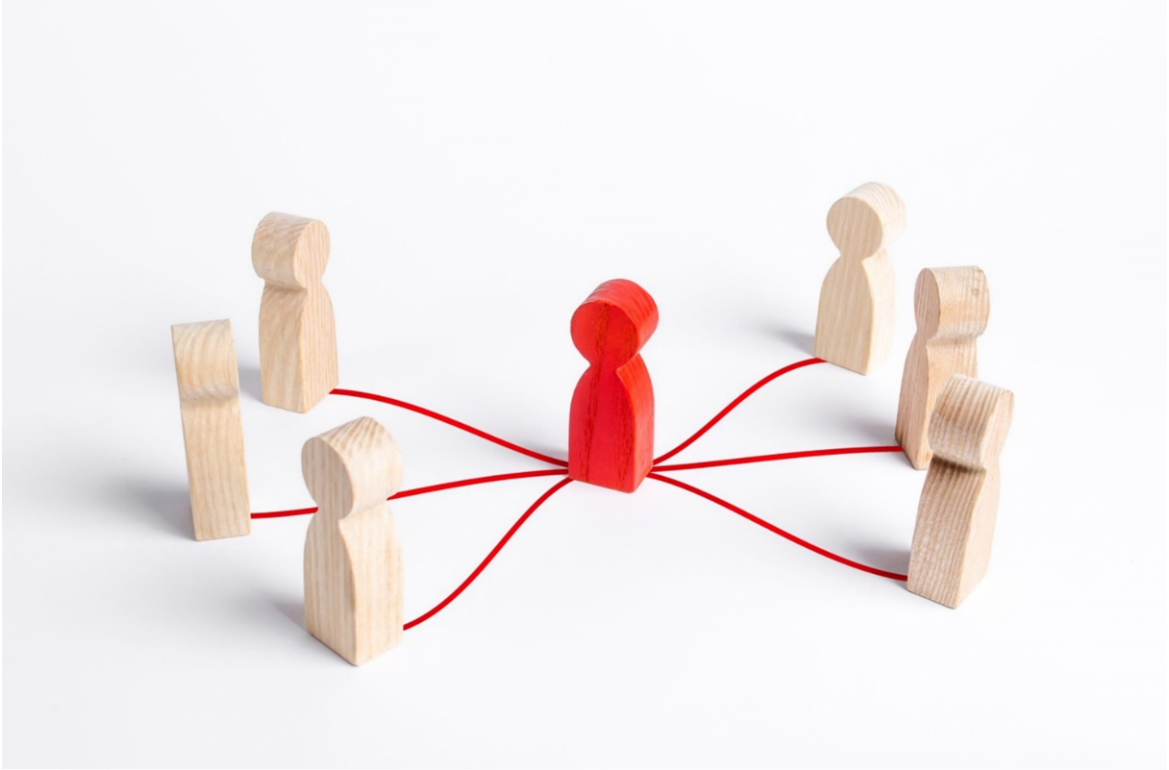

Introduction

Alternative dispute resolution ("**ADR**") has been long recognised and practiced in Indonesia. The promulgation of the Indonesian Arbitration Law has encouraged the business community to increase the use of arbitration over other dispute resolution options. The legislative framework and the growing trend towards arbitration as an ADR option has resulted in the development of reliable and professional arbitration firms in Indonesia. Recent developments concerning the importance of ADR, particularly to ensure the existence of solid procedure to assist the debt restructuring process, was clearly mentioned by the Chairman of the Indonesian Supreme Court in his keynote speech in the webinar on the international dialogue in commemoration of the 75th anniversary of the Indonesian Supreme Court held on 27 August 2020.

In this article, we examine the framework of arbitration in Indonesia with reference to the:

1. applicable legislation;
2. timeframe for arbitration;
3. involvement of the courts;
4. types of disputes that may be resolved by arbitration; and
5. arbitration institutions within Indonesia.

Applicable Legislation

Since the mid-nineteenth century, Indonesia has acknowledged ADR as a means to resolve business related disputes. These ADR methods were regulated under several provisions of the Dutch code of civil procedure or other regulations (*Reglement op de Rechtsvordering*, also known as "**RV**") which were implemented in Indonesia. Some of those regulations were still in force until the enactment of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution ("**Law No. 30/1999**").

Prior to the enactment of Law No. 30/1999, Indonesia had already ratified important conventions related to arbitration. Indonesia is a signatory to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**"), which was ratified in 1981. Indonesia is also a signatory to the International Centre for the Settlement of Investment Disputes ("**ICSID**") Convention and ratified it in 1968. Many essential provisions under those conventions were incorporated into Law No. 30/1999.

Timeframe for Arbitration in Indonesia

Law No. 30/1999 was formed with the consideration that arbitration has advantages compared to litigation, such as the avoidance of any delays which are caused by procedural and administrative matters. Thus, arbitration is expected to settle the case more quickly.

To preserve this advantage, Law No. 30/1999 has prescribed a timeframe for the arbitration process – it must conclude within 180 days after the formation of the arbitral tribunal. Such timeframe may be waived upon agreement of all parties depending on the complexity of the case and the discretion of the arbitral tribunal.

Involvement of the Courts in Arbitration

Under Law No. 30/1999, the courts have no jurisdiction to examine a matter which involves an arbitration agreement. This clearly establishes that the sanctity of the arbitration agreement shall be honoured not only by the parties, but also by the courts.

Despite the lack of jurisdiction, Law No. 30/1999 provides that the courts may still play a role in arbitration in the following ways:

1. Appointment of arbitrator

    - The Chief of the District Court may appoint an arbitrator if the parties fail to agree on the choice of arbitrator or have not made provision for such appointment.

    - He or she may also appoint an arbitrator where the parties fail to agree upon the appointment of a sole arbitrator, or where the two party-appointed arbitrators which have been authorised to appoint the presiding arbitrator have failed to make such appointment.

2. Annulment of domestic arbitral awards

    - Under Art. 70 of Law No. 30/1999, an application to annul may be made if any of the following conditions are alleged to exist: (a) letters or documents submitted in the hearings are

acknowledged to be false or forged or are declared to be forgeries after the award has been rendered; (b) after the award has been rendered, documents are found which are decisive in nature and which were deliberately concealed by the opposing party; or (c) the award was rendered as a result of fraud committed by one of the parties in the examination of the dispute.

- This application shall be submitted to and examined by the District Court. However, in deciding this application for annulment, the District Court does not have the authority to re-examine the substantive merits of the arbitration, but is limited to examining reasons for the annulment.

- Although theoretically speaking there are reasons to annul an arbitration award, statistically speaking the percentage is insignificant when compared with over 1,000 arbitration cases that had been registered to be examined in the Indonesia National Board of Arbitration (*Badan Arbitrase Nasional Indonesia*, or "**BANI**").

3. Enforcement of domestic and foreign arbitral awards

    - The courts play a dominant role in enforcing both domestic and foreign arbitral awards, as both types of awards must be registered with the District Court prior to enforcement.

Wide Spectrum of Commercial-Related Disputes Can be Resolved through Arbitration

Law No. 30/1999 provides that only commercial-related disputes can be resolved through arbitration. Under the law, a commercial-related dispute is a dispute which, among others, falls under the areas of trading practices, banking practices, financial practices, investment practices, industry practices and intellectual property practices.

In line with the above, many sector-specific laws also refer to arbitration as an ADR method that parties can avail themselves of. For example, Law No. 9 of 1999 on Consumer Protection Law and Law No. 2 of 2004 on Industrial Relation Dispute Settlement respectively enable the dispute arising thereof to be settled through arbitration.

Indonesian arbitration is also supported by the establishment of arbitration institutions that are industry specific. Other than the commonly used BANI, there are also other industry-specific arbitration institutions that have been registered to the Financial Services Authority (*Otoritas Jasa Keuangan*) such as:

1. the Indonesian Insurance Arbitration and Mediation Agency (*Badan Mediasi Arbitrase Indonesia*, or "**BMAI**") for the insurance sector;

2. the Indonesian Alternative Dispute Resolution Institution (*Lembaga Alternatif Penyelesaian Sengeta Perbankan Indonesia*, or "**LAPSI**") for the banking sector; and

3. the Indonesian Capital Market Arbitration Board (*Badan Arbitrase Pasar Modal Indonesia* or "**BAPMI**") for the investment sector.

There are other arbitration institutions which are not listed with the Financial Services Authority, which include:

1. the National Shariah Arbitration Board (*Badan Arbitrase Syariah Nasional*, or "**BASYARNAS**") which specifically resolves the disputes arising out of shariah transactions; and

2. the Indonesian Centre of Arbitration and Alternative Dispute Resolution for Construction (*Badan Arbitrase dan Alternatif penyelesaian Sengketa Konstruksi Indonesia*, or "**BADAPSKI**") for construction-related disputes.

The establishment of various arbitration institutions for specific industries clearly indicates that Indonesia has recognised the major role that arbitration can and does play in dispute resolution. Such extensive government support for arbitration establishes a positive trend towards providing both domestic and international players with a wider range of dispute resolution options.

Concluding Remarks

The comprehensive legislative framework and the support of the business community, legal scholars, and practitioners have encouraged the inclusion of arbitration clauses in more contracts across a wide variety of industries. While the courts have no jurisdiction to examine a case that has an arbitration agreement, they have played a major role in supporting the development of arbitration in Indonesia.

Some of the key features of Indonesian arbitration law that cause parties to lean towards arbitration instead of litigation is the relatively short timeframe and the enforceability of the arbitral award in multiple jurisdictions. The provisions in Indonesian arbitration law also provide flexibility as the conduct of proceedings can largely be agreed upon between the parties, enabling them to align the proceedings with current needs and business practice.

Collectively, these advantages, together with the role of the court in enforcing arbitration agreements and awards and the support of arbitration practitioners and the community, are driving the development of arbitration in Indonesia to grow along with the dynamic needs of commercial practices.

For further queries, please feel free to contact our team below.

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