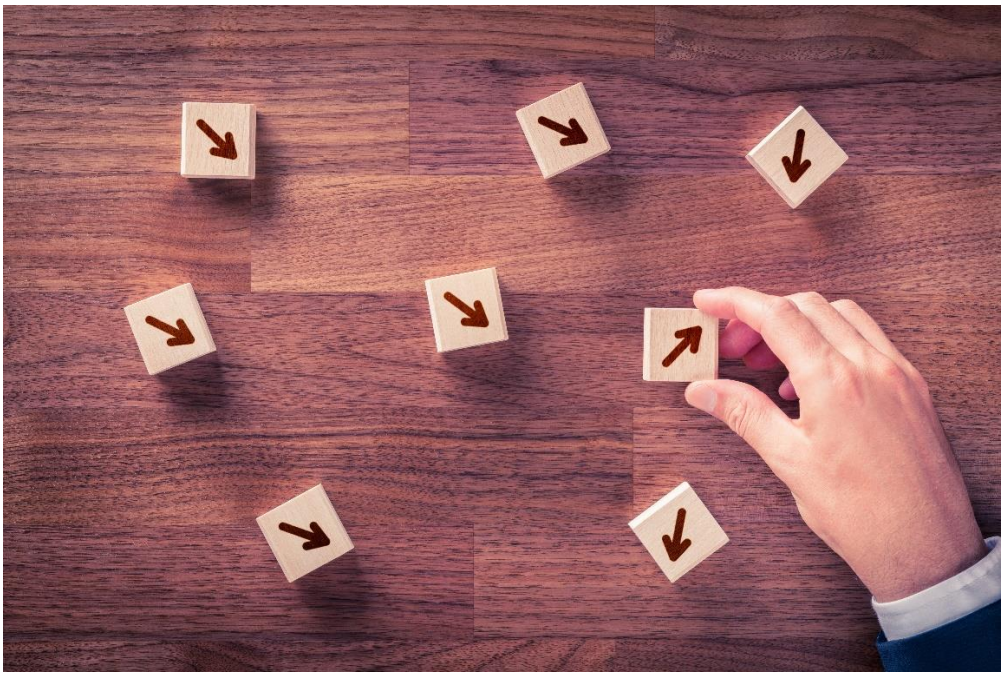
A New Dawn for Arbitration in Indonesia under Supreme Court Regulation No 3 of 2023

December 2023 | Indonesia



Introduction

Despite ongoing demands for the revision of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution ("**Arbitration Law**"), which has remained effective for 24 years, no amendments have been made so far. This has sparked concerns among legal practitioners and academics, who worry that this outdated law might discourage users, especially international parties, from choosing to arbitrate in Indonesia. Two recent surveys underscore the pivotal role of domestic arbitration laws in attracting users and positioning Indonesia as a preferred seat for arbitration (namely the 2021 International Arbitration Survey: Adapting Arbitration to a Changing World by Queen Mary University of London and the Singapore International Dispute Resolution Academy, International Dispute Resolution Survey: 2022 Final Report). A 'modern' arbitration law is also deemed essential for recognition as a 'safe' seat under the CIArb London Centenary Principles 2015.

Against this backdrop, the Supreme Court recently announced a new era for both domestic and international arbitration by enacting Supreme Court Regulation No. 3/2023 on the Procedure for the Appointment of Arbitrators by the Court, Challenge Rights, Examination of Enforcement Applications, and Arbitral Award Annulment ("**Regulation**").

This article will highlight key features of the Regulation, detailing the changes that will reshape Indonesia as the next emerging dispute resolution hub across the continent.

Contribution Note: *This article was written with contributions from Kukuh Dwi Herlangga (Associate) and Albertus Aldio Primadi (Associate).*

New Definition of Public Order

Previously, under Supreme Court Regulation No. 1 of 1990 on the Execution Procedures for Foreign Arbitral Awards ("**1990 Regulation**"), public order is deemed to be violated if an arbitral award "*evidently contradicts the fundamental principles of the entire legal system and society in Indonesia*". In comparison, the Regulation now defines public order as *"everything that constitutes the very foundation essential for the functioning of the legal system, economic system, and socio-cultural system of the Indonesian community and nation".*

The Regulation introduces a nuanced perspective, broadening the definition of public policy and emphasising its role in the effective operation of Indonesia's legal, economic, and socio-cultural systems. This inclusive framework offers a detailed approach to interpreting and applying public policy in enforcing arbitral awards. In contrast to the 1990 Regulation, which focuses on evident contradictions, the Regulation takes a holistic view, recognising the intricate interplay of elements crucial for Indonesia's societal and legal structures. This comprehensive perspective on the Regulation establishes a robust foundation for ensuring the integrity of the arbitral enforcement process. However, the impact of this revised definition on judges' approaches to interpreting 'public order', especially in the context of foreign arbitral awards, remains to be seen.

Imposition of Deadlines on the Courts

Time management for the courts is a pivotal focus under the Regulation, a departure from previous legal instruments that left many procedural aspects unregulated. This legislative update introduces specific timelines, addressing the previous uncertainty surrounding the duration of arbitration proceedings. Among others, the Regulation now mandates:

1. A 14-day deadline for the district court to appoint an arbitrator upon receiving a request from either party.

2. A 14-day deadline for the district court to rule on challenges against a court-appointed arbitrator upon receipt of such challenge from either party.

3. A 3-day deadline for court bailiffs to register a domestic arbitral award and a 14-day deadline for a foreign arbitral award.

4. A 14-day deadline for the court to issue an exequatur for the enforcement of a foreign arbitral award upon application.

5. A 30-day deadline for the court to rule on the recognition and enforcement of a foreign arbitral award upon registration.

These imposed timelines underscore the Supreme Court's commitment to streamlining arbitration processes, ensuring efficiency, and providing parties with clear expectations regarding the commencement and duration of arbitration proceedings.

Enhanced Procedural Clarity

The Regulation introduces crucial provisions containing technical guidance in commencing arbitration, particularly in its interaction with the court. This newfound clarity is expected to discourage guerilla tactics by parties attempting to derail arbitration and empower them with a clear understanding of their right to present their case before the court. Key improvements include:

1. When entertaining a request to appoint an arbitrator or addressing challenges to a court-appointed arbitrator, the courts, under the Regulation, will weigh the views of both parties as well as the arbitrators (if applicable).

2. The respondent's response does not factor into the court's consideration when issuing an executory order for enforcing a domestic arbitral award or granting an exequatur for enforcing a foreign arbitral award.

3. In cases where a domestic arbitral award is simultaneously submitted for annulment and execution, the execution process is halted until the annulment process concludes.

4. The annulment proceedings for a domestic arbitral award under the Regulation follow a specific court session order: the reading of the application, the responses to the annulment application, interim decisions (if any), evidentiary stage, and concluding with a session for reading the final decision.

Procedural Guidance on Security Seizures

The Arbitration Law vests tribunals with the power to order security seizures. However, this provision lacked clarity in terms of the execution and enforcement mechanisms for such orders, leading to potential procedural ambiguities.

Article 29 of the Regulation specifically addresses this issue. It stipulates that, in instances where a tribunal orders a security seizure as part of arbitration proceedings, the next critical step is for the tribunal to formally register this order with the relevant court. This registration is a pivotal act that transitions the responsibility for execution from the hands of the arbitral tribunal to the court. Once the court is involved, it takes over the practical aspects of executing the seizure order. The Regulation also mandates the court to inform the arbitrator or the arbitral institution of the minutes of the execution of the security seizure within two days upon the execution of the order.

Conclusion

The Regulation introduces a transformative chapter in the Indonesian arbitration landscape, addressing longstanding concerns with outdated laws. The nuanced definition of public order, imposition of court deadlines, enhanced procedural clarity, and procedural guidance on security seizures collectively propel Indonesia towards a more efficient, transparent, and globally competitive arbitration scenery. These strategic changes not only modernise legal frameworks but also position Indonesia as an attractive hub for both domestic and international dispute resolution, instilling confidence in the integrity and efficiency of its arbitration processes.

Visit *Arbitration Asia* for insights from our thought leaders across Asia concerning arbitration and other alternative dispute resolution mechanisms, ranging from legal and case law developments to market updates and many more.

Contacts

Eri Hertiawan
Partner, Indonesia

T +62 21 2555 7883
eri.hertiawan@ahp.id

Simon Barrie Sasmoyo
Partner, Indonesia

T +62 21 2555 7838
simon.sasmoyo@ahp.id

Please feel free to contact the editorial team of *Arbitration Asia* at arbitrationasia@rajahtannasia.com, and follow us on LinkedIn here.