Reforming Indonesia's Arbitration Law: Going Beyond the Academic Manuscript

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Introduction

Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution ("**Arbitration Law**") is currently listed in the Indonesian National Legislation Program (*Prolegnas*) 2025 – 2029 for amendment. In the 2024 Academic Manuscript on the proposed amendment to the Arbitration Law, published by the Ministry of Law ("**Academic Manuscript**"), the National Law Development Agency (*Badan Pembinaan Hukum Nasional* or "**BPHN**") sets out several proposed amendments to the Arbitration Law. These proposals aim to enhance legal certainty, strengthen investor confidence, and ensure Indonesia's arbitration framework remains responsive to the evolving needs of global commerce.

In this article, we first outline six key amendments proposed under the Academic Manuscript, namely:

1. aligning the definition of "international arbitral awards" with the definition under the UNCITRAL Model Law on International Commercial Arbitration ("**Model Law**");
2. delineating the scope and boundaries of the definition of public policy;
3. incorporating online dispute resolution ("**ODR**") mechanisms;
4. incorporating mechanisms tailored for micro, small, and medium enterprises ("**MSMEs**");
5. clarifying that foreign nationals may serve as arbitrators; and
6. narrowing the corrections that may be made to an arbitral award.

We then discuss further areas of reform that we as practitioners have identified as necessary to position Indonesia as a more arbitration-friendly jurisdiction. These are:

1. the disclosure of assets for enforcement purposes;
2. the enforceability of interim measures;
3. support for emergency arbitration;
4. court assistance in arbitral proceedings;
5. staying of parallel litigation proceedings; and
6. joining a third party to the arbitration.

Key Amendments under the Academic Manuscript

1. Definition of International Arbitral Awards

BPHN proposes aligning the definition of an "international arbitral award" under Article 1(9) of the Arbitration Law with the definition under the Model Law, as the definitions currently diverge from each other.

Currently, following the Constitutional Court Decision No. 100/PUU-XXII/2024 dated 3 January 2025, Article 1(9) of the Arbitration Law defines an "international arbitral award" as an award rendered by an arbitral institution or arbitrator outside the jurisdiction of Indonesia, or an award that is treated as international under Indonesian law.

By contrast, Article 1(3) of the Model Law provides that an arbitration is "international" if:

1. the parties to the arbitration agreement have their places of business in different states;
2. the place of arbitration, the place of contract performance, or the place most closely connected to the subject matter of the dispute is outside the state where the parties have their place of business; or
3. the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

As the Explanatory Note to the Model Law ("**Explanatory Note**") observes, this approach is based on "substantive grounds rather than territorial borders, which are inappropriate in view of the limited importance of the place of arbitration in international cases".

The Academic Manuscript proposes adopting criteria consistent with Article 1(3) of the Model Law, determining internationality by reference to the parties' different places of business, the location of the arbitral seat or place of performance, or the parties' express agreement that the subject matter relates to more than one country. Such alignment would resolve longstanding ambiguities, including those illustrated by the Supreme Court decision in *PT Pertamina EP v. PT Lirik Petroleum* (No. 904 K/PDT.SUS/2009), where the characterisation of an International Chamber of Commerce award rendered in Jakarta provoked significant legal uncertainty.

2. Delineating Scope of Public Policy

BPHN acknowledges that the broad definition of public policy has often been used as a 'sword' to frustrate the enforcement of international arbitral awards, when in fact it should serve as a 'shield' to safeguard the fundamental principles of Indonesia's legal system and societal values. To address this, BPHN proposes that the concept of public policy be given clear boundaries and scope. Violations of public policy should be limited to circumstances such as arbitral awards rendered through fraud or corruption, or awards that contravene fundamental rules of due process in the arbitral proceedings.

3. Incorporating ODR Mechanisms

BPHN proposes that the Arbitration Law should also incorporate the use of ODR mechanisms, in line with evolving developments and needs. This would establish a dispute resolution body capable of mediating cross-border conflicts in a cost-effective, simple, and accessible manner for all parties by leveraging information technology.

4. Arbitration for MSMEs

With MSME businesses being major contributors to Indonesia's economy, BPHN recognises the need for dispute resolution mechanisms tailored to the specific conditions and requirements of MSMEs in Indonesia. BPHN recommends implementing clearer provisions under the Arbitration Law, ensuring that arbitration for MSMEs is (i) conducted with a sole arbitrator; (ii) based solely on electronically accessed documents; and (iii) utilises procedures that are fast and cost-efficient.

5. Foreign Arbitrators

In light of Indonesia's growing foreign trade activities and significant inflows of direct investment, BPHN emphasises the need for a clear legal basis regarding the appointment of foreign arbitrators. Currently, Article 12(1) of the Arbitration Law sets out the qualifications for arbitrators without expressly addressing nationality. The absence of an express statement permitting foreign nationals to serve as arbitrators has created practical difficulties, including requirements for foreign workers to fulfil employment and immigration visa prerequisites.

In line with Article 11(1) of the Model Law, which provides that "[n]o person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties", the amendment should explicitly affirm that the appointment of arbitrators is not restricted by nationality.

6. Correction of Arbitral Awards

Article 58 of the current Arbitration Law permits parties to request, within 14 days of receiving the award, corrections of administrative errors "and/or to add or reduce claims in the award" (*menambah atau mengurangi sesuatu tuntutan putusan*). This latter language creates uncertainty regarding the extent to which arbitral awards may be revisited, and fundamentally undermines the principle of finality, which provides that arbitral awards are "final and have binding legal force" (*bersifat final dan mempunyai kekuatan hukum tetap dan mengikat para pihak*).

In contrast, Article 33 of the Model Law limits post-award corrections strictly to "errors in computation, any clerical or typographical errors or any errors of similar nature" and provides a separate, narrow mechanism for additional awards as to claims presented but omitted from the original award. BPHN proposes that the revised Arbitration Law must similarly confine corrections to administrative errors, such as typographical mistakes or errors in the transcription of names and addresses, that do not alter the substance of the award.

Proposed Additional Provisions

We appreciate the government's initiative in strengthening Indonesia's arbitration framework through the Academic Manuscript. As we note that the amendment process is still ongoing, we believe that further refinements are necessary. Drawing from our practical experience, we hope that the amendment will also resolve several other critical issues that remain unaddressed. These issues are essential to ensure that Indonesia's arbitration framework is not only aligned with international standards, but also equipped to address the practical challenges encountered in modern cross-border disputes.

1. Asset Disclosure for Enforcement

The effectiveness of arbitration as a dispute resolution mechanism ultimately depends on the successful enforcement of arbitral awards. Under Indonesia's prevailing legal framework, the enforcement of arbitral awards – whether domestic or international – follows the execution procedures prescribed under Indonesian civil procedural law. A significant practical challenge in this process is that the burden of identifying and providing information regarding the award debtor's assets rests entirely on the award creditor. This requirement frequently becomes a substantial impediment to enforcement, particularly where the award creditor is unable to ascertain the location or existence of executable assets, resulting in significant delays in execution proceedings.

By comparison, some common law jurisdictions provide post-award mechanisms designed to facilitate asset discovery. Once an arbitral award has been recognised and an enforcement order has been obtained, the award creditor may apply for a court order requiring the award debtor to attend court for examination and disclose information concerning the debtor's assets. Failure to comply with such disclosure obligations typically constitute contempt of court and expose the debtor to sanctions including fines, sequestration or attachment of assets, and, in serious cases, imprisonment.

No equivalent mechanism currently exists under Indonesia's Arbitration Law. As a result, the enforcement of arbitral award is often dependent on the award creditor's independent ability to locate executable assets. To strengthen Indonesia's arbitration framework and enhance enforcement certainty, consideration should be given to introducing court-ordered asset disclosure procedures, together with effective sanctions for non-compliance. Such reforms would improve the practical enforceability of arbitral awards in Indonesia.

2. Interim Measures

Interim measures play a critical role in safeguarding the efficacy of arbitral proceedings and the enforceability of its outcome. As the Explanatory Note states, "the effectiveness of arbitration frequently depends upon the possibility of enforcing interim measures".

Article 32(1) of the Arbitration Law currently grants arbitrators the authority to issue interim awards or other provisional orders to ensure the orderly conduct of arbitral proceedings. These include measures such as ordering security seizures, ordering the deposit of disputed goods with a third party, or compelling the sale of perishable goods.

However, as cross-border disputes grow increasingly complex, the limited catalogue of interim measures available under the current framework is insufficient. The 2006 revisions to the Model Law, which were "considered necessary in light of the fact that such measures are increasingly relied upon in the practice of international commercial arbitration", provide a comprehensive taxonomy of interim relief. Article 17(2) of the Model Law empowers arbitral tribunals to order a party to:

1. maintain or restore the status quo pending determination of the dispute;
2. take action to prevent current or imminent harm or prejudice to the arbitral process itself;
3. preserve assets out of which a subsequent award may be satisfied; or
4. preserve evidence that may be relevant and material to the resolution of the dispute.

These categories are significantly broader than those presently available under Article 32 of the Arbitration Law. To ensure that such interim measures are not merely theoretical but can be effectively enforced, several adjustments in the Arbitration Law are necessary:

- **Definition of arbitral awards:** The law should expressly define "arbitral awards" to also include interim awards, consistent with Article 17(2) of the Model Law, which provides that an interim measure may take "the form of an award or in another form". For comparative reference, the Singapore International Arbitration Act 1994 defines "award" to include "any interim, interlocutory or partial award."

- **Provision on the enforceability of interim measures:** In line with Article 17H of the Model Law, there should be an explicit provision stating that interim measures or partial awards issued by arbitrators, with the permission of the relevant domestic courts and subject to the fulfilment of the relevant formality requirements, are enforceable in the same manner as court judgments. The Arbitration Law should also codify the grounds for refusing recognition and enforcement of interim measures, which may reference those set out in Article 17I of the Model Law.

- **Placement of finality provision:** Article 60(1) of the Arbitration Law currently provides that arbitral awards are final and binding, but this provision is located under the section on enforcement. To avoid confusion that only final awards are enforceable, this provision should be relocated to a section elsewhere, i.e. in a section addressing the legal effect of arbitral awards.

Additionally, court-ordered interim measures are equally as important to facilitate the orderly conduct of arbitral proceedings. Under the current framework, there are no provisions granting domestic courts the authority to impose such measures in support of arbitral proceedings, similar to the authority granted to arbitrators. Hence, the Arbitration Law should also provide a mechanism for domestic courts to issue interim measures for the protection of arbitral proceedings, including its enforcement procedure.

3. Emergency Arbitration

Emergency arbitration has become a crucial development in international arbitration, enabling the appointment of an emergency arbitrator before a tribunal is formally constituted to issue binding interim orders. Many leading arbitral institutions have incorporated emergency arbitration procedures into their rules, including the Indonesia National Board of Arbitration's (*Badan Arbitrase Nasional Indonesia*) Rules 2025. However, Indonesia's Arbitration Law does not currently recognise this concept, creating uncertainty regarding the legal status of emergency arbitration and whether orders issued by emergency arbitrators are enforceable within Indonesia's arbitration framework.

To ensure that interim orders issued by emergency arbitrators are enforceable, several adjustments to the Arbitration Law are necessary:

- **Definition of arbitrators:** The law should expressly define "arbitrator" to also include emergency arbitrators appointed in accordance with the arbitration rules agreed upon by the parties.

- **Provision on the enforceability of an emergency arbitral award:** As outlined in the section on Interim Measures above, there should be an explicit provision stating that an emergency arbitral award is enforceable.

4. Strengthening Court Assistance in Arbitral Proceedings

The Arbitration Law currently provides only limited avenues for court assistance in ongoing arbitral proceedings, such as the appointment of arbitrators and the handling of challenges against arbitrators appointed by the court. In line with BPHN's aims to strengthen the confidence of both domestic and foreign business actors in Indonesia's arbitration framework, lawmakers should consider expanding the role of domestic courts in supporting arbitration.

Additional measures may include court assistance in taking evidence. In accordance with the Model Law, courts may be empowered to execute requests from tribunals or parties for assistance in taking evidence. Moreover, following practices in pro-arbitration jurisdictions, domestic courts may be authorised to compel witnesses located within their territory to appear before a tribunal, provide testimony, or produce specified documents.

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5. Stay of Parallel Litigation Proceedings

With the growing number of parties initiating parallel proceedings in domestic courts despite being bound by arbitration agreements, the Arbitration Law should provide for a stay procedure to enable domestic courts to suspend litigation proceedings so that the dispute may be resolved through arbitration. This would be consistent with Article 8(1) of the Model Law, which obliges courts to "refer the parties to arbitration" where a dispute subject to an arbitration agreement is brought before them.

Under Article 3 of the current Arbitration Law, the District Court "has no authority to adjudicate disputes between parties that are bound by an arbitration agreement". In practice, however, if a party files a civil lawsuit notwithstanding an arbitration agreement, the opposing party's only recourse under Indonesia's civil procedure law is to raise a jurisdictional objection (*eksepsi kompetensi)* when submitting its statement of defence. This requires proceeding through multiple stages, including hearings on legal standing, mandatory mediation, and further court document submissions, before the objection can even be considered by the court. The court may then issue an interlocutory ruling on jurisdiction, which remains subject to appeal and cassation. As a result, the process can take months or even longer before a final and binding decision is reached, during which period the integrity of the arbitration agreement is effectively suspended.

By adopting a stay procedure, Indonesia could provide greater certainty and efficiency, ensuring that arbitration agreements are respected and disputes are resolved without unnecessary delay or duplicative litigation, with the following mechanism:

- **Timing of application:** A party bound by the arbitration agreement may submit a stay application to the chairman of the relevant District Court where the civil lawsuit is filed, provided it is done before taking any substantive step in the proceedings (i.e., filing a statement of defence). For example, the application could be lodged within 14 calendar days after receiving the lawsuit.

- **Review period:** To promote efficiency and legal certainty, the appointed judge should consider and issue a ruling on the stay application within 14 calendar days after the application is received, with parties retaining the right to challenge the ruling.

- **Duration of stay:** The court's ruling should specify the period of suspension. For example, the stay may remain in effect until the arbitration concludes. If no further steps are taken within a certain timeframe, the court may order the discontinuation of the litigation.

6. Clarification of Joinder Provision

Article 30 of the Arbitration Law provides that third parties outside an arbitration agreement may join and participate in arbitral proceedings if they have a related interest, and if their participation is agreed upon by the disputing parties and approved by the tribunal. Debate has arisen, however, over whether this provision permits joinder requests initiated by the disputing parties themselves – as is allowed under many leading institutional rules – or only by initiative of the third party. To avoid this ambiguity, lawmakers should consider clarifying the provision to expressly allow both scenarios: requests made by third parties, as well as requests initiated by the disputing parties, provided that all parties, including the third party, consent to such.

Conclusion

This planned amendment of the Arbitration Law represents a significant milestone in Indonesia's arbitration landscape to strengthen its position as a more arbitration-friendly jurisdiction. The six key reforms outlined in the Academic Manuscript provide a solid foundation, particularly in aligning definitions with international standards, clarifying the scope of public policy, and addressing practical issues such as ODR, foreign arbitrators, MSME disputes, and correction of arbitral awards.

At the same time, further refinements under the amendment remain essential to ensure the framework is fully responsive to the realities of complex cross-border disputes. These include provisions on asset disclosure for enforcement, interim measures, emergency arbitration, expanded court assistance, stay procedure, and clarification of the joinder rules, which have not been incorporated under the Academic Manuscript.

By combining the government's proposals with these additional considerations identified by practitioners, Indonesia has the opportunity to build a more robust and internationally trusted arbitration regime, one that reinforces investor confidence and supports the country's economic growth.

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