



The proliferation of arbitral institutions in Indonesia: navigating uncharted waters



A. Background

Indonesia remains an attractive destination to invest and do business in notwithstanding the associated country risks. One risk mitigation tool used by parties in their Indonesia related commercial contracts is the adoption of offshore (foreign seated) arbitration using arbitral rules of established international institutions such as the International Chamber of Commerce (ICC) or the Singapore International Arbitration Centre (SIAC), to name a few. While this is the preferred option for many international commercial parties, there are an increasing number of Indonesian counterparties, as well as sector-specific rules and regulations, which demand the adoption of onshore or domestic (Indonesia-seated) arbitration.

In that scenario, parties often compromise and select an international institution's rules to apply to the onshore arbitration. However, what happens when the compromise solution is not available?

This short note explores whether BANI should continue to be the default option, whether there are other alternatives available in country, and other important considerations for Indonesia related commercial contracts.

B. The BANI controversy and its impact on the domestic arbitration scene

BANI (*Badan Arbitrase Nasional Indonesia*) was established in 1977 by the Indonesia Chamber of Commerce and

Industry and for the longest time was the sole national arbitral institution and the default choice for parties.

However, as previously [reported](#), BANI has been dogged with controversies relating to its dispute with another similarly named institution, BANI Pembaharuan (Renewed BANI). The perceived weakening of BANI has resulted in the creation of new bodies who seek to position themselves as true alternatives to BANI, where users are – for various reasons – unable to select more established international institutions' rules for their onshore arbitrations.

Pusat Arbitrase dan Mediasi Indonesia (PAMI)

PAMI (Center for Arbitration and Mediation Indonesia) was established in September 2017 with the purpose of administering arbitrations involving disputes in the field of business, investment, and employment. In addition to administering arbitrations, PAMI also administers other forms of ADR, namely mediation, adjudication and expert determination.

PAMI has published its own set of rules of arbitration and a list of registered arbitrators which includes a few retired Indonesian Supreme Court judges. However, unlike BANI, the PAMI arbitration rules permit the appointment of a non-registered arbitrator subject to certain prescribed criteria and *ad hoc* registration process.

As of the date of publication, PAMI's list of registered arbitrations does not include any non-Indonesian arbitrators and its rules are only available in Indonesian language. This could be a reason why PAMI is not as widely known or used as BANI yet.

Indonesia International Arbitration Center (INIAC)

INIAC is the latest market entrant, having been established in April 2021. INIAC seeks to position itself as a domestic institution with an international outlook so as to attract international commercial parties needing to arbitrate in Indonesia and/or select a domestic institution. INIAC's list of arbitrators include not just Indonesians but established international arbitrators. In addition to its own rules of arbitration, INIAC also has mediation rules which parties may adopt.

It remains to be seen whether INIAC will be able to persuade potential users to adopt its rules.

Bali International Arbitration and Mediation Center (BIAMC)

BIAMC is another arbitration-related body that was established in the last few years. However, unlike PAMI or INIAC which seek to administer arbitrations and other forms of ADR using their own rules, BIAMC is not an institution which has its own rules or administers proceedings. Rather, BIAMC's focus is on the provision of hearing venues, and arbitration-related resources, although it has also indicated that it is able to "*facilitate ad hoc arbitrations and mediations*". Pending clarification as to the scope and extent of such facilitation, including the composition of BIAMC's case team and how fees are charged, users may not see BIAMC as a true alternative to BANI.



C. Sector-specific arbitral institutions – a new approach?

In parallel with the establishment of organisations such as PAMI, INIAC, or BIAMC, Indonesia has also seen a number of sector-specific institutions being established or consolidated, such as the following.

Sector	Institution/explanatory note
Financial services	<p>LAPS SJK (<i>Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan</i>)</p> <ul style="list-style-type: none"> • The Financial Services Sector Alternative Dispute Resolution Institution was established in September 2020 and replaces the roles and functions of six sub-sector arbitration institutions including BAPMI (capital markets) and BMAI (insurance). • In addition to administering arbitrations involving disputes in the financial services sector, LAPS SJK is also able to accept requests to issue binding opinions on referred matters (by agreement). • Disputes which fall within LAPS SJK's purview include disputes between (1) consumers and financial services business actors (Commercial Parties), (2) two or more Commercial Parties, involving agreements related to financial services. • LAPS SJK also administers disputes in the financial services sector involving Sharia/ Islamic law (eg Sharia insurance, banking, pension funds, etc.).
Construction	<p>BADAPSKI (<i>Badan Arbitrase dan Alternatif Penyelesaian Sengketa Konstruksi Indonesia</i>)</p> <ul style="list-style-type: none"> • The Indonesian Board of Construction Arbitration and Alternative Dispute Resolution is intended to deal with commercial disputes in the construction sector in Indonesia.

D. Important considerations for Indonesia-related commercial contracts

Notwithstanding the proliferation of institutions, to the best of our knowledge, take up or adoption by users of these alternatives are currently still low except for LAPS SJK where Commercial Parties have started to adopt them in domestic contracts with consumers.

It remains to be seen whether any of these institutions will be able to displace BANI e for Indonesia seated arbitrations.

In the meantime, the following points are worth noting when arbitrating onshore:

- Parties should specify which city in Indonesia should be the arbitral seat (eg arbitration seated in Jakarta, Indonesia).

- Parties could still select an international institution to administer an onshore arbitration. Alternatively, Parties could opt for *ad hoc* arbitration although care should be taken to select an appropriate appointing authority.

- Where Parties must choose a domestic institution, consider whether it is appropriate to select BANI or another domestic institution. Different institutions will have different rules, and different approach to selecting arbitrators, which may affect the conduct of the proceedings.

- Parties should take care to select the language of the arbitration (Indonesian language is the default under the applicable curial law), as this could inform Parties as to which institution will be more appropriate to administer the arbitration.

For other tips and considerations, please see our [Guide to Dispute Resolution and Governing Law Clauses in Indonesia Related Contracts \(2nd Ed, February 2020\)](#), which is due to be updated later this year.

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