



# Key Changes in the 2025 BANI Rules and their Impact on Arbitration Proceedings

Issue 10 | April 2025

Earlier this year, the Indonesian National Board of Arbitration (*Badan Arbitrase Nasional Indonesia* – “**BANI**”) enacted the latest BANI Rules and Procedures (“**2025 BANI Rules**”). This latest iteration includes many updates and refinements of existing concepts as well as the introduction of a long-awaited emergency arbitration proceeding.

This advisory highlights some new key provisions in the 2025 BANI Rules that future disputing parties should take into consideration.

## Introduction of Emergency Arbitration

The most significant development in the 2025 BANI Rules is the introduction of emergency arbitration. A party may now seek emergency arbitration when urgent interim measures (*tindakan sementara*) or urgent conservatory measures (*tindakan konservasi yang mendesak/penyitaan*) are required. This request must be submitted before the arbitral tribunal is constituted, meaning that while an emergency arbitration is linked to the main dispute, it will not address or rule on the merits, which will be left to the appointed arbitral tribunal.

The 2025 BANI Rules set out the following terms for emergency arbitration:

### 1. Request for Emergency Arbitration

A request for emergency arbitration must be submitted to the BANI Secretariat and include, among other things, the parties’ details, the grounds for the request and the relief sought, and claimant’s justification for needing urgent interim or conservatory measures before the arbitral tribunal is constituted.

The Chairman of BANI has the authority to approve or dismiss the request for emergency arbitration. If approved, the BANI Secretariat will deliver the documents to the respondent. If

dismissed, the Secretariat will inform both the claimant and the respondent.

## 2. Appointment of Sole Arbitrator

The BANI Chairman has the authority to appoint a sole emergency arbitrator within two calendar days of receiving the request for emergency arbitration. This emergency arbitrator cannot later serve as an arbitrator in the main arbitration proceedings. Once the emergency arbitrator is appointed, the BANI Secretariat will notify the parties and distribute the relevant documents.

## 3. Challenge (*Perlawanan*) to the Emergency Arbitrator

Any challenge (*perlawanan*) to the emergency arbitrator must be submitted in writing within two calendar days of receiving the notification of their appointment. The challenged party and the emergency arbitrator must respond in writing within two calendar days of receiving the challenge. The BANI Chairman will decide whether to approve or dismiss the challenge within four calendar days of receiving the written responses.

## 4. The Proceedings

The parties may agree on the actual venue of the arbitration and whether it will be conducted in-person or online such as via telephone, video conference, or other telecommunication means. The first hearing of an emergency arbitration must commence within three calendar days of the emergency arbitrator's appointment. The proceedings must be completed within 14 calendar days of the appointment of the emergency arbitrator, with a possible extension of up to seven calendar days provided there is an acceptable reason for the extension.

## 5. Emergency Arbitration Award

Unlike regular arbitration proceedings, where BANI must issue its final award within 30 calendar days after the last hearing, an emergency arbitration award should ideally be issued within the 14-day hearing period. While the 2025 BANI Rules do not explicitly require this, a BANI official has confirmed that the aim is to conclude emergency arbitration, including the issuance of the award, within this timeframe.

The 2025 BANI Rules state that an emergency arbitration award is provisional in nature. However, it remains final and binding. The rules explicitly require parties to: (i) execute the award without delay, and (ii) waive any right to appeal or seek other remedies before the District Court regarding the emergency arbitration award.

## 6. Cost of Emergency Arbitration

The BANI website lists the cost of emergency arbitration at IDR200 million (excluding applicable VAT), regardless of the case's value. The cost must be paid on the same day the request for emergency arbitration is submitted.

### **Introduction of BANI Arbitration Model Clause**

Unlike the previous versions of BANI Rules and Procedures, the 2025 BANI Rules include a suggested standard model clause for parties to incorporate into agreements if they opt to resolve disputes through BANI. The suggested clause itself covers only major points and thus, further adjustments may be necessary.

### **Arbitration Involving Multiple Parties and/or Multiple Agreements**

BANI simplifies the arrangement for an arbitration case with multiple parties or based on multiple agreements. Previously, parties may request multiple arbitration cases to be consolidated if: (i) the parties agree to consolidate, and the disputes arose from the same legal relationship; (ii) the arbitration request is based on several agreements between the same parties with the chosen dispute resolution being BANI arbitration; or (iii) the arbitration request is based on several agreements with one party being the common denominator and the chosen dispute resolution being BANI arbitration.

The 2025 BANI Rules streamlined this process by allowing an arbitration request to be submitted by or against multiple (related) parties and/or based on multiple (related) agreements. Once submitted, the case will be treated as a single arbitration case. However, the 2025 BANI Rules do not provide a definition or a threshold for parties or agreements to be considered as “related”.

### **Foreign Counsel**

Prior to 2025, a foreign counsel of a disputing party must be accompanied by an Indonesian legal counsel if the dispute is governed under Indonesian law. However, this limitation is no longer included in the 2025 BANI Rules, meaning that in all cases (regardless of the governing law), a foreign counsel of a disputing party must be accompanied by an Indonesian legal counsel.

### **The Arbitrator's Negligence/Default**

The 2025 BANI Rules added another ground to replace an arbitrator, namely if the arbitrator defaulted in his/her duty *de jure* and *de facto*. The Chairman of BANI, based on his/her discretion, may determine that the arbitrator can no longer perform his/her duty.

### **Remarks**

The 2025 BANI Rules have addressed the need for expediency in certain aspects of arbitration by introducing the emergency arbitration mechanism. This procedure offers parties a more efficient means of obtaining interim relief when immediate action is required to prevent further losses such as asset dissipation. However, the main issue remains: if the losing party refuses to voluntarily comply with the emergency arbitration award, what legal remedies are available to the winning party for enforcement?

BANI also made further adjustments to the existing rules and concepts although some detailed matters are still absent. Looking ahead, we anticipate further enhancements and/or adjustments from BANI to increase the efficiency and effectiveness of arbitration proceedings.

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