

DISPUTE RESOLUTION

## Understanding the 2025 BANI Rules: Key Changes and Their Impact



*Badan Arbitrase Nasional Indonesia* ("**BANI**") has published its 2025 Rules and Procedures. These updated rules introduce significant changes that could impact how businesses handle dispute resolution and raise important considerations for parties involved in arbitration under BANI. We have highlighted key aspects of the 2025 BANI Rules, including the absence of an effective date, adjustments to multiparty and multicontract arbitration, expanded grounds for challenging arbitrators, and the introduction of emergency arbitrators. With these key areas in mind, we will explore the specific provisions of the 2025 BANI Rules and their potential effects below.

## **Absence of Effective Date**

The 2025 BANI Rules, while published, do not explicitly specify an official effective date, creating some initial uncertainty. Notably, the publication itself lacks a date of release. To clarify this matter, we directly inquired to BANI, who confirmed that cases submitted on or after 2 January 2025 will be governed by the 2025 BANI Rules. However, it is important to note that BANI has not yet issued a formal public announcement regarding this effective date.

This uncertainty also raises questions about whether parties have the liberty to choose which edition of the BANI Rules applies to their arbitration. Some arbitration clauses may explicitly reference the 2022 BANI Rules or other particular versions of the rules. The current situation makes it unclear whether parties still have such liberty or if the 2025 BANI Rules will apply mandatorily. Given this lack of formal clarification, parties considering BANI arbitration should seek further guidance to ensure they operate under the correct procedural framework.

## **Adjustment to Consolidation, Multiparty, and Multicontract Arbitration**

Under the 2022 BANI Rules, multiparty and multicontract arbitration, among others, can be materialised through consolidation application of arbitration requests which is subject to the BANI Chairman's discretion. This required:

1. Consent from all parties, and the dispute must arise from the same legal relationship.
2. The disputes involving the same parties, and designating BANI as the arbitration forum.
3. At least one common party across multiple agreements, all specifying BANI arbitration.

The 2025 BANI Rules replace this discretionary consolidation with explicit provisions for initiating multiparty and multicontract arbitrations in filing arbitration request. Specifically:

1. Parties can submit an arbitration request involving multiple parties if a clear connection between them can be demonstrated.
2. Parties can submit an arbitration request for disputes involving multiple agreements if the agreements are interrelated and all designate BANI arbitration.

This shift empowers parties to initiate multiparty and multicontract arbitrations from the outset, rather than filing separate cases and later seeking consolidation.

That being said, it is unclear whether consolidation, as allowed under the 2022 BANI Rules, is still possible under the 2025 BANI Rules. Since the term "consolidation" has been removed from the new rules, leaving only provisions for initiating such arbitrations. Further clarification might also be required on whether requests for such arbitrations

are still contingent upon the discretion of the BANI Chairman or BANI Secretariat, or whether they will be automatically processed upon filing.

## Expanded Grounds for Challenging Arbitrators

The 2025 BANI Rules have expanded the grounds for challenging or removing an arbitrator by introducing a new provision under Article 13, titled "*Kelalaian Bertindak*" (Failure to Act).

This new provision allows for the challenge of an arbitrator if they fail to perform their duties, either *de jure* or *de facto*. If the BANI Chairman determines that the arbitrator is unable to perform their functions, this failure to act will now be considered a valid ground for their removal.

## Highlights of The Newly-Introduced Emergency Arbitration

The 2025 BANI Rules introduce a significant new feature: Emergency Arbitration. This allows parties to seek urgent temporary relief from an Emergency Arbitrator before the full arbitral tribunal is formally constituted. This is particularly useful in situations where waiting for the full tribunal would cause irreparable harm.

BANI's inclusion of Emergency Arbitration aligns with international arbitration progress and reflects its commitment to improving efficiency in dispute resolutions. Here are key observations about the Emergency Arbitration provisions:

### 1. Alignment with Indonesia's Arbitration Law

While Emergency Arbitration is a welcome addition, it is important to note that Indonesia's Arbitration Law (Law No. 30 of 1999) does not explicitly recognise Emergency Arbitration procedures. One of the characteristics of an arbitral award that is currently envisaged under Indonesia's arbitration law is if the arbitral award is final and binding between the parties. In this regard, the concept of emergency arbitration might lack such legal attributes due to its interim nature. Thus, this could raise questions regarding the legal standing and enforceability of Emergency Awards under the current regulatory framework.

In some jurisdictions, such as Singapore and Hong Kong, legislative amendments were introduced before, or right after, arbitration institutions formally adopted emergency arbitration procedures—to ensure a clear legal basis for award enforcement. Against this backdrop, it remains to be seen how Indonesian courts will recognise and enforce Emergency Awards, especially considering past cases such as *Astro Nusantara International BV and others v. PT Ayunda Prima Mitra and others*, where the enforceability of interim arbitral award was challenged.

### 2. The Final and Binding Nature of Emergency Arbitral Awards

Although the 2025 BANI Rules indicates the interim nature of the Emergency Arbitral Award, there is also a provision affirming that Emergency Arbitral Awards are final and binding. The respective provision also includes a waiver of the parties' right to seek recourse from the District Court, potentially extending to annulment. While this aims to enhance enforceability, it raises questions on how would this intersect with Indonesia's Arbitration Law, which allows annulment of arbitral awards under specific circumstances, such as fraud (Article 70). Clarifying how this waiver aligns with national legal principles would provide greater legal certainty.

In international arbitration, institutions like SIAC and ICC treat Emergency Awards as interim measures, allowing the regular tribunal to modify or set them aside. Additionally, Indonesia's Supreme Court Regulation No. 3 of 2023 permits partial enforcement of arbitral awards, but its applicability to Emergency Awards remains untested. As emergency arbitration proceedings develop, further observation will be needed to assess how these provisions function in practice.

### 3. Scope and Authority of the Emergency Arbitrator

Certain aspects regarding the scope of the authority of the Emergency Arbitrator also require clarification. The 2025 BANI Rules do not explicitly state whether a regular arbitral tribunal can modify or overturn an Emergency Award, which contrasts with international practices where the regular arbitral tribunal retains authority over interim measures.

### 4. Timeframe for Rendering an Emergency Award

Regarding the timeframe for rendering an Emergency Award, the 2025 BANI Rules specify a 14-day timeframe for Emergency Arbitration proceedings, extendable by 7 days. However, a specific deadline for issuing the Emergency Award itself is not provided. This differs from SIAC and ICC rules, which establish clear deadlines for issuing Emergency Awards. Further clarification on this matter would be beneficial for BANI users.

### 5. Challenge Process and Its Impact on Emergency Proceedings

Finally, while the 2025 BANI Rules allow for challenges to Emergency Arbitrators, they do not specify whether this suspends the emergency proceedings. In contrast, SIAC rules, for example, provide for the suspension of proceedings during a challenge. Therefore, further guidance from BANI on this point would provide greater certainty for parties utilising this

## Key Takeaways

The 2025 BANI Rules introduce significant advancements, aligning with international arbitration practices. However, several key points warrant careful consideration for users:

- Effective Date:** The absence of a clearly defined effective date necessitates proactive confirmation with BANI before initiating any arbitration proceedings. While BANI has indicated that cases filed after 2 January 2025, will follow the new rules, this has not been formally announced.
- Multiparty and Multicontract Arbitration:** The new rules facilitate multiparty and multicontract arbitrations, but it is crucial to ensure these are initiated from the outset. The concept of "consolidation" seems to have been removed.
- Enhanced Arbitrator Accountability:** The expanded grounds for challenging arbitrators, specifically the "Failure to Act" provisions, strengthen accountability mechanism for addressing arbitrator misconduct.
- Emergency Arbitration Enforceability:** While a valuable addition, the legal landscape surrounding Emergency Arbitration in Indonesia requires attention. Users should be aware that Indonesia's Arbitration Law does not explicitly recognise Emergency Arbitration, potentially impacting enforceability.

5. **Emergency Award Finality:** While BANI's approach aims to reinforce their enforceability, it will be important to assess how this interacts with annulment provisions under Indonesian law.
6. **Emergency Arbitrator Authority:** The scope of the Emergency Arbitrator's authority, particularly regarding the ability of the regular tribunal to modify or overturn an Emergency Award, remains unclear.
7. **Emergency Awards Timelines:** While the rules define the timeframe for emergency proceedings, a specific deadline for rendering the Emergency Award itself is not provided.
8. **Challenges to Emergency Arbitrator:** The impact of challenges to Emergency Arbitrator on ongoing emergency proceedings requires further clarification.

In conclusion, the 2025 BANI Rules represent a positive step towards modernising arbitration practices. To ensure smooth implementation and mitigate potential uncertainties, users are advised to proactively seek guidance from BANI on procedural matters and stay informed of any official announcements or clarifications.



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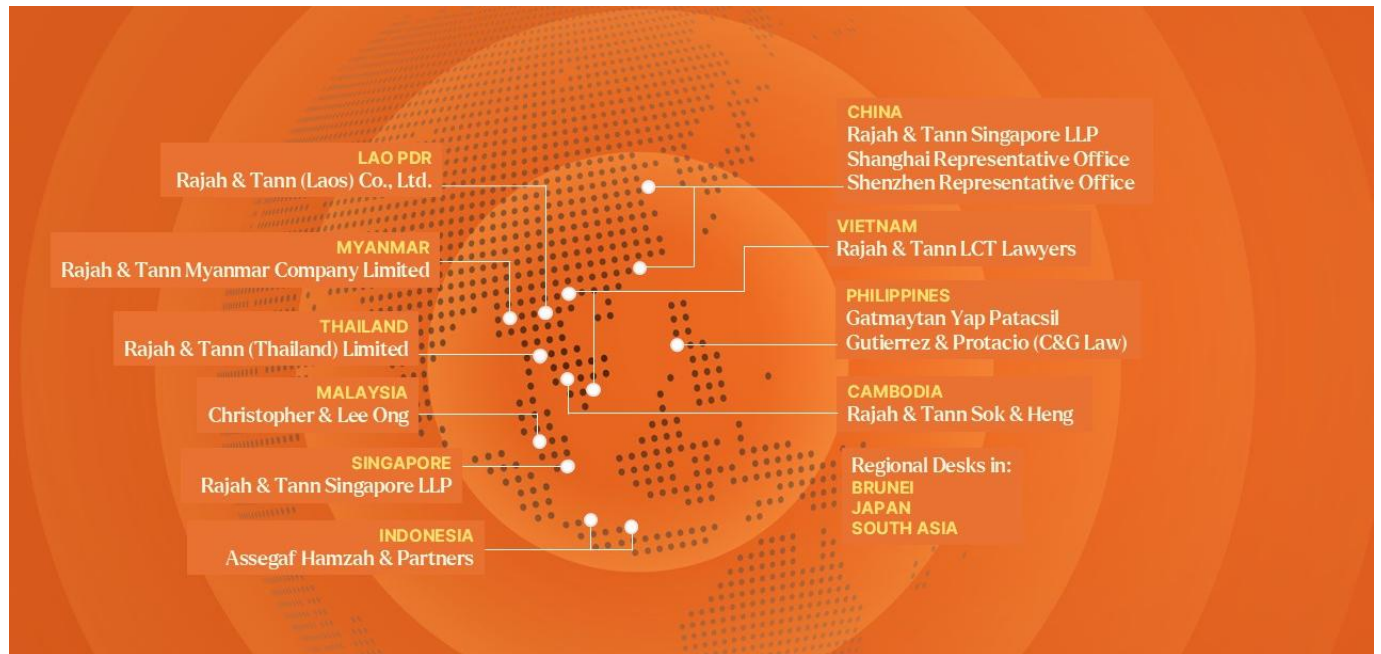
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