

2017



ARBITRATION CENTER

**ARBITRATION - A PREFERRED MECHANISM
FOR BUSINESS DISPUTES**

BADAN ARBITRASE NASIONAL INDONESIA

Wahana Graha Building, 1st & 2nd Floor Jl. Mampang Prapatan No. 2, Jakarta 12760, Indonesia,
Tel (62-21) 7940542, Fax (62-21) 7940543, e-mail: bani-arb@indo.net.id

BANI ARBITRATION CENTER

BANI Arbitration Center (BANI) is an arbitral institution, providing a range of services in relation to arbitration, mediation, binding opinion and other form of dispute resolutions.

BANI was established by initial support of Indonesia Chamber of Commerce and Industry. It was stated in the the Decree No. SKEP/152/DPH/1977 in November 30, 1977, signed by Mr Suwoto Sukendar (Marsekal TNI), the Chairman, and Mr. Drs Susdam Djamhari, the Secretary General of Indonesia Chamber of Commerce and Industry (KADIN Indonesia). Three prominent lawyers are the first Organizing Board, namely the late Prof. R. Subekti, the late Mr. Harjono Tjitrosobono and the late Prof. H. Priyatna Abdurrasyid. They were the chairmen of BANI in their times, Prof. R. Subekti (1977-1987), Mr. Harjono Tjitrosobono (1988-1993) and Prof. H. Priyatna Abdurrasyid (1993-2015). Since 2015 BANI is chaired by Mr. M. Husseyn Umar, SH, FCBarb, FCI Arb. BANI is located in Jakarta with offices in some Indonesia major cities including Surabaya, Bandung, Pontianak, Denpasar, Medan, Palembang and Jambi.

Committed to complete neutrality and independence in its role as an arbitral institution, BANI has developed its own rules and procedures for arbitration, including the time frame in which the Arbitration/Arbitral Tribunal has to render award. Such rules are used in both domestic and international arbitration taking place in Indonesia.

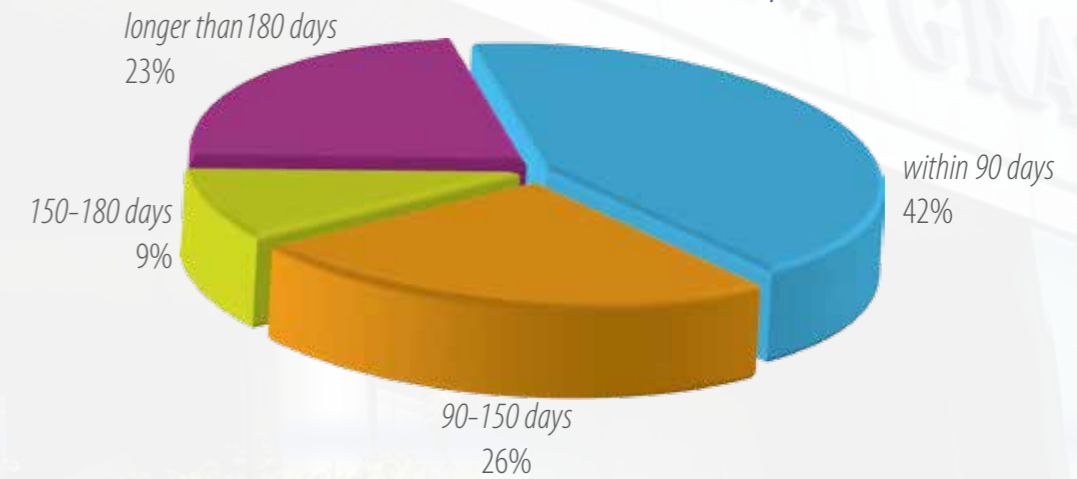
OBJECTIVE AND SCOPE

BANI was established for the following purposes:

- a. To participate actively in the law enforcement process in Indonesia through the application of arbitration and alternative dispute resolution for resolving disputes in the various sectors of trade, investment, industry and finance, such as corporate, insurance, financial institution matters, aviation, telecommunication, mining, sea, land and air transportation, manufacturing, intellectual property rights, licensing, franchise, construction, shipping/ maritime issues, environmental issues, remote sensing and others within the scope as set forth by laws and regulations and international practices.
- b. To provide services for the dispute settlement through arbitration or other forms of alternative dispute resolution, such as negotiation, mediation, conciliation and binding opinion in accordance with the Rules of Procedures of BANI or other rules as opted by the parties.
- c. To act autonomously and independently in regard of upholding law and justice.
- d. To carry out studies, research and training/education programs as well as seminars or workshops pertaining to arbitration and alternative dispute resolution.

FIGURE 1
COMPLETION TIME

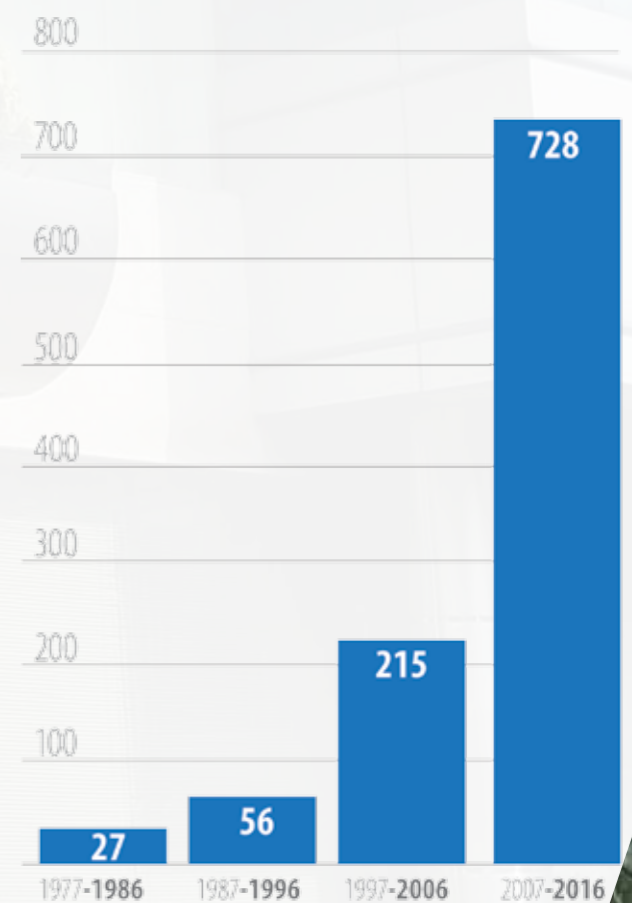
Time Required for BANI Arbitration Tribunal to issue an award for disputes period of 2014-2016



In Indonesia, the significant interest to settle dispute through arbitration began to rise with the promulgation of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (Arbitration Law). The growing interest has been consistent with the globalization in which the out of court settlement has become the preferred choice of business entities to resolve their disputes. Besides it is speedy, efficient, direct, and has final and binding characteristics, without possibility of appeal or cassation. Other benefits of arbitration are that it has confidentiality characteristics, in which the proceeding and the award are not published.

FIGURE 2
CASE SUBMISSION

The growing number of submissions to BANI Arbitration Center over the four decades since its inauguration in 1977



NETWORK AND COOPERATION

Presently, BANI has approximately 135 listed arbitrators with various professional backgrounds of which about forty percent are foreign nationals.

Based on the New York Convention, foreign awards can be executed in In-donesia and Indonesian arbitration awards involving foreign companies can be enforcable at law in other countries.

BANI has established cooperation agreements with arbitration associations and centres in other countries for the purpose of promoting international commercial arbitration and other forms of ADR.

These other arbitration associations and centres include, among others, the following institutions:

- Japan Commercial Arbitration Association (JCAA)
- Netherlands Arbitration Institute (NAI)
- Korean Commercial Arbitration Board (KCAB)
- Australian Centre for International Commercial Arbitration (ACICA)
- Philippines Dispute Resolution Centre, Inc. (PDRCI)
- Hong Kong International Arbitration Centre (HKIAC)
- The Foundation for International Commercial Arbitration and Alternate Dispute Resolution (SICA-FICA)
- Singapore Institute of Arbitrators (SIArb)
- Arbitration Association of Brunei Darussalam (AABD)
- Kuala Lumpur Regional Centre for Arbitration (KLRCA)
- Belgian Centre for Arbitration and Mediation (CEPANI)

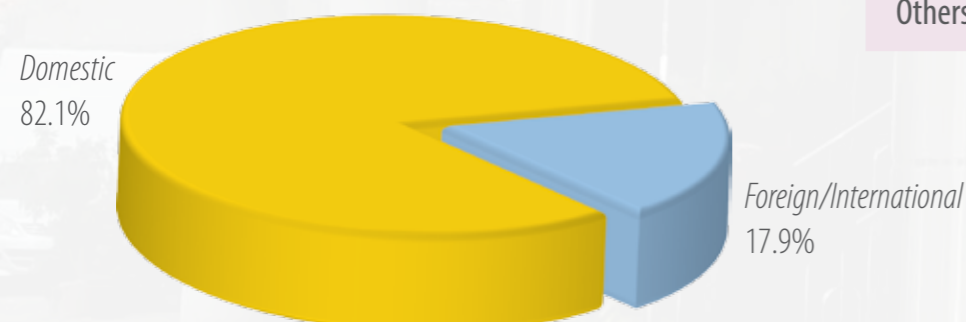
FIGURE 3 SECTOR OF EXPERTISE

Case Submissions, by business sectors over the last 3 years (2014-2016)

SECTORS	%
Construction	26.6%
Leasing	23.0%
IT & Telecommunication	14.7%
Trading (Sale and Purchase)	8.9%
Mining/Energy	6.4%
Investment	3.9%
Transportation	2.8%
Insurance	1.7%
Agency	1.1%
Finance & Banking	0.3%
Others	10.8%

FIGURE 4 INTERNATIONAL ARBITRATION

Domestic and Foreign International Arbitration / Involvement 2010-2016



In 2004 BANI and other 16 arbitration institutions in the region initiated the establishment of Asia Pacific Regional Arbitration Group (APRAG) in Sydney (Australia). APRAG membership is increasingly growing. Currently it has 42 (fourty two) arbitration institutions throughout the region. In 2016 BANI was honoured to be the host of APRAG Conference 2016 in Bali, and in this event Mr. M. Husseyn Umar, the current Chairman of BANI, has been elected as the President of APRAG.

In the spirit of regional cooperation, in 2007 BANI along with 5 (five) arbitral institutes established Regional Arbitral Institute Forum (RAIF), which later with the establishment of Indonesian Arbitrators Institute (IArbI), in 2012, BANI membership was handed over to IArbI. Nevertheless, in 2012 BANI was honoured to host the annual RAIF conference in Bali along with an international seminar on arbitration.

BANI is also a member of the ICCA (International Council for Commercial Arbitration). At present, ICCA has 40 Governing Board Members and 25 Advisory Members coming from 37 different countries.

WHY ARBITRATION ?

Resolving dispute through arbitration has the following general advantages:

1. **Closed proceeding (confidentiality in proceeding);**
2. **Simple procedure (with time limitation);**
3. **Free choice of independent arbitrators with professional background;**
4. **Free choice of jurisdiction and venue;**
5. **Final and binding award.**

The effectiveness of arbitration depends on :

1. Good faith/attitude of the disputing parties to solve the differences/dispute.
2. The integrity and professionalism of the arbitrator(s)
3. The readiness of the parties to voluntarily implement the award
4. The attitude of the court whenever necessary with regard to the execution/enforcement of the award.

BINDING OPINION & ARBITRATION CLAUSE

In the absence of any dispute, according to the Indonesian Arbitration Law, both parties in a contract can request BANI for a binding opinion regarding questions arising out of that contract.

They can request BANI for instance to grant a binding opinion with regard to: the interpretation of ambiguous provisions in the contract, the formulation of new provisions or the revisions of the old provisions to meet changing circumstances, etc. BANI's binding opinion is final and binding upon the parties.

BANI recommends all parties wishing to make reference to BANI arbitration, to use the following standard arbitration clause in their contracts:

"All disputes arising from this contract shall be finally settled under the administrative and procedural Rules of Arbitration of BANI Arbitration Center (BANI) by arbitrators appointed in accordance with the said Rules".

BANI has been actively organizing and participating in various national and international various conferences or seminars on arbitration / alternative dispute resolution.

BANI has been issuing the Indonesia Arbitration Quarterly Newsletter, a quarterly legal journal, publishing recent development and analysis on arbitration, and related knowledge on the alternative dispute resolution. Prominent arbitrators, scientists and practitioners either from Indonesia or abroad contribute their works in each issues of the journal.

HYBRID ARBITRATION AND ADR

BANI Arbitration Center has been combining arbitration procedures with other ADR mechanism since 2000, which predates the RI Supreme Court Circular Memorandum promoting the pre-trial court annexed mediation to be implemented by all state courts in Indonesia.

ADR in a combined process into arbitration procedure in BANI (in practice through application of med-arb and/or arb-med proceedings) has successfully carried out and resulted in awards in almost 50% of the total arbitration procedures conducted.

The implementation of "Hybrid Arbitration" found to be concurrent with out-of-court dispute settlement philosophy (non litigation dispute settlement) which in seeking the solution of a dispute between parties the arbitration tribunal should take into account not only "right based" consideration, but also acknowledge the "interest based" view of the parties.

ARBITRATION AWARDS

The crucial issues of the arbitration are enforcement and recognition of the awards. As the prominent and the oldest arbitration institution in the region, BANI awards have been strongly acknowledged. The Indonesian Supreme Court has been upholding the BANI Arbitration Awards. However, out of thousand awards rendered there were only three awards annulled by the Supreme Courts (i.e. 2001, 2002 and 2007). The challenge of the awards can be examined through the below chart.

FIGURE 5
SUCCESSFUL AWARDS AND CHALLENGES

Numbers of Successful, Challenges and Annulment of BANI Awards, 1993-2015



BANI 2017



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Tel. (62-21) 7940542, Fax (62-21) 7940543 e-mail: bani-arb@indo.net.id
www.baniarbitration.org

BANI Bandung Office

Kompleks Surapati Core Blok AB No. 33
Jl. PHH Mustofa (Suci)
Bandung 40125
Phone : (022) 7152 0320
Fax : (022) 8724 2706
E-mail : banibandung@gmail.com

BANI Surabaya Office

Jl. Ketintang Baru II/1-3
Surabaya 60231
Phone : +62 (031) 8287414, 8293486
Fax : +62 (031) 8290522
E-mail : banisurabaya1@gmail.com

BANI Medan Office

Jl. Sekip Baru No. 16
Medan 20112
Phone : +62 (061) 4523654
Fax : +62 (061) 4155523
E-mail : banimedanoffice@gmail.com
azwir.advocat@yahoo.com

BANI Pontianak Office

Komp. Ayani Mega Mall Blok AA-6
Jl. A. Yani, Pontianak 78122
Phone : +62 (0561) 66 55 299
Fax : +62 (0561) 761 018
E-mail : sekretariat@banipnk.com

BANI Palembang Office

Jl. Jend. Sudirman No. 635
Palembang 30128
Ph./Fax : (0711) 5630744
E-mail : banisumsel@gmail.com

BANI Denpasar Office

Jl. P Tanimbar No. 46 Denpasar 80114, Bali
Ph./Fax : +62 (0361) 227459
E-mail : banidenpasar@gmail.com,
widnyana_made@yahoo.com

BANI Jambi Office

Jl. Jend. Sudirman No. 88, Thehok, Jambi
Phone : (0741) 31185
Fax : (0741) 31185
E-mail : aldipanri@gmail.com