

Update on The Indonesian Arbitration Law (Supreme Court Regulation No. 3 of 2023 - “SC Regulation 3/2023”)

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Introduction

At the end of 2023, the Indonesian Supreme Court issued SC Regulation 3/2023 to implement several chapters of the Arbitration Law (Law No. 30 of 1999).

In short, SC Regulation 3/2023 covers the following issues:

1. the appointment of arbitrators and the Right of First Refusal;
2. the Examination of Requests for the Enforcement of Arbitration Awards; and
3. the Examination of Requests for the Annulment of Arbitration Awards.

The Appointment of Arbitrators and the Right of First Refusal

While the Arbitration Law contains several provisions on the appointment of arbitrators, it does not provide the specific procedure or timeline for doing so. This gap absence has been filled by the issuance of SC Regulation 3/2023.

Under SC Regulation 3/2023, if the parties cannot agree on the appointment of an arbitrator, either both or one of the parties can submit a petition to the District Court to appoint the arbitrator. The chairman of the District Court will then hear the parties on the issues and

subsequently issue a decree appointing the arbitrator or the arbitral tribunal **within 14 calendar days** of the submission of the petition.

Within 14 calendar days of the issuance of the above decree, the right of first refusal can be applied for by submitting a petition. The petition must explain the admissible reasons and provide authentic evidence of the doubtfulness of the arbitrator's being able to perform his/her duties freely and the likeliness of his/her taking sides. Other reasons for applying for the right of first refusal include proof that the arbitrator has a family, financial or work relationship with one of the parties or their proxies. The Chairman of the District Court will hear the claimant on its petition for a right of first refusal and the respondent's response. Subsequently, the Chairman of the District Court will issue its ruling **within 14 calendar days** of the submission of the petition.

The Registration of Domestic Arbitration Awards

In line with the provision of the Arbitration Law, SC Regulation 3/2023 also requires the original or an authentic copy of an arbitration award (together with the evidence of the notification of the parties of the arbitration award) to be registered by the arbitrator or its proxy with the court registrar **within 30 calendar days** of the award being read out. The main difference is that under SC Regulation 3/2023, if the arbitrator is appointed by an arbitration body, the arbitration award will be registered by the management of the arbitration body or its proxy. It can also be registered through the court information online system.

The Registration of International/Foreign Arbitration Awards

While the requirements under the Arbitration Law remain the same, the significant change under SC Regulation 3/2023 is that an international/foreign arbitration award must be registered by the court registrar **within 14 calendar days** of submission of all the required registration dossiers. It can also be registered through the court information online system.

The Enforcement of Domestic Arbitration Awards

If a party does not voluntarily comply with the arbitration award, the arbitration award will be enforced under an order issued by the Chairman of the District Court in response to a petition submitted by one of the disputing parties.

Upon receipt of the petition, the Chairman will check whether the arbitration award complies with the requirements under the Arbitration Law and is not contrary to decency or public order. If it does comply, the Chairman of the District Court will issue an order to enforce the arbitration award. Otherwise, the Chairman of the District Court will issue a statement rejecting the petition for the enforcement of the arbitration award. There is no legal remedy against this statement.

The enforcement order or rejection statement must be conveyed to the parties **within 30 calendar days** of the submission of the petition for the enforcement of the arbitration award.

In addition, SC Regulation 3/2023 clearly states that if a petition for the annulment of an arbitration award and a petition for the enforcement of an arbitration award are submitted at the same time, the Chairman of the District Court must postpone the enforcement of the arbitration award until the ruling of the court of first instance on the petition for the annulment of the award is handed down.

The Enforcement of International/Foreign Arbitration Awards

If a party does not voluntarily comply with the arbitration award, one of the parties can submit a petition to the Chairman of the Central Jakarta District Court for a writ of execution (*exequatur*). **Within 14 calendar days** of the submission of the request for a writ of execution, the Chairman of the Central Jakarta District Court will issue his/her decision on whether to accept or to reject the request according to the Arbitration Law. If the Chairman of the Central Jakarta District Court rejects the request for a writ of execution, the party requesting it can submit an appeal to the Supreme Court (*kasasi*).

If the Chairman of the Central Jakarta District Court decides that the arbitration award is not within the scope of trading or is contrary to public order, it will reject the request under a court ruling. This ruling can be appealed against to the Supreme Court (*kasasi*).

The Annulment of a Domestic Arbitration Award

As well as under the Arbitration Law, SC Regulation 3/2023 specifically states that the arbitrator or the arbitral tribunal or the arbitration body is not included as a party in the examination of a request for the annulment of a domestic arbitration award.

Further, according to SC Regulation 3/2023 court proceedings on a request for the annulment of an award should only consist of the reading out of the request, the submission of the

response, an interlocutory ruling (if any), evidentiary hearings and the reading out of the court ruling.

Conclusion

While the enforcement of arbitration awards (both domestic and international/foreign) will still follow the Civil Procedure Law, SC Regulation 3/2023 provides clear guidelines on the registration procedures. In the past, the registration procedures could take months to be completed.

Unfortunately, the requirement that an enforcement of arbitration award must be postponed if there is a challenge may be used by an unscrupulous party to delay the enforcement even if such challenge has no merit.

If you have any questions, please contact:

1. [Rahayu Ningsih Hoed](mailto:rahayu.hoed@makarim.com), Partner – rahayu.hoed@makarim.com
2. Rudy Andreas Sitorus, Senior Associate - rudy.sitorus@makarim.com

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