International
Comparative
Legal Guides

Insurance & Reinsurance

2024

13th Edition

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LMA Lloyd's market association
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International Comparative Legal Guides

Indonesia


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1 Regulatory

1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

Under Indonesian law, the oversight of insurance and reinsurance companies is entrusted to the Financial Services Authority (*Otoritas Jasa Keuangan* – "OJK") pursuant to Law No. 21 of 2011 concerning the Financial Services Authority. OJK, as a government agency, holds the responsibility of supervising and regulating all financial sectors, including insurance and reinsurance companies. This role supersedes the prior responsibilities held by the Ministry of Finance. Furthermore, OJK now serves as the exclusive authority for the supervision of and issuance of licences and permits for insurance and reinsurance companies operating in Indonesia.

1.2 What are the requirements/procedures for setting up a new insurance (or reinsurance) company?

In general, insurance and reinsurance companies are typically structured as Limited Liability Companies ("PT"), and their incorporation is subject to Law No. 40 of 2007 on Limited Liability Companies ("Company Law"). For business activity that would fall under the financial sector, the requirements and procedures under Law No. 40 of 2014 on Insurance as lastly amended by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ("Law 40/2014") and OJK Regulation No. 67/POJK.05/2016 on Business and Institutional Licensing of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies ("POJK 67/2016") must also be observed.

Both insurance and reinsurance companies must also obtain a Business Identification Number (*Nomor Induk Berusaha* or "NIB") from the Indonesia Investment Coordinating Board or "BKPM" and an operational licence from OJK depending on the specific line of insurance business such company intends to engage in.

Furthermore, based on Government Regulation No. 14/2018 as amended by Government Regulation No. 3/2020 concerning Foreign Ownership in Insurance and Reinsurance Companies, the foreign ownership limit in insurance and reinsurance companies is 80%. However, this provision does not apply to publicly listed insurance companies.

Minimum Capital

Insurance companies are required to have a minimum Paid-Up Capital of IDR150 billion, while reinsurance companies must have a minimum Paid-Up Capital of IDR300 billion. Please note that OJK has announced plans to increase the required capitalisation of insurance and reinsurance companies by 2028, hence the capitalisation requirement may be subject to future changes.

Guarantee Fund

When applying for a business permit from OJK, both insurance and reinsurance companies must maintain a minimum Guarantee Fund of 20% of their Paid-Up Capital.

1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

Insurance regulations in Indonesia only apply to insurance and reinsurance companies in Indonesia, as well as insurance policies issued and marketed by insurance and reinsurance companies within the territory of Indonesia. Whilst there is no explicit prohibition on the direct marketing of foreign insurance products by a foreign insurance company within Indonesia's territory, it is our understanding that marketing activities, especially those involving insurance, should ideally be carried out through an Indonesian company. In such cases, the foreign company would need to establish a subsidiary in the form of an Indonesian company.

1.4 Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

There are regulations that govern limitations related to clauses within insurance policies pursuant to OJK Regulation No. 23/POJK.05/2015 on Insurance Products and Insurance Product Marketing ("POJK 23/2015"). Whilst every insurance or reinsurance company is granted the freedom to regulate other clauses within the policy, it is pertinent to ensure that that the insurance product being created does not violate the provisions of POJK 23/2015.

Pursuant to POJK 23/2015, policies must not contain words, phrases or sentences that could lead to different interpretations regarding the covered risks, the responsibilities of the insurance company, and the rights and obligations of policyholders, insured individuals or participants, or that could make it more difficult for them to obtain their rights.

Additionally, insurance policies should at least include provisions regarding the policy's term, insurance benefits, premium payment methods, premium payment grace periods, coverage termination clauses, claim procedures and conditions, dispute resolution clauses, and the specific language used as a reference in case of differences of interpretation.

Furthermore, any insurance product or insurance policy created by an insurance or reinsurance company must be submitted to OJK to obtain OJK's approval before it can be marketed.

1.5 Are companies permitted to indemnify directors and officers under local company law?

Under the Company Law, there is no explicit restriction for companies to indemnify its directors and officers from claims raised by a third party. In practice, this indemnification can cover all kind of expenses incurred by the company against any claims, such as defence costs, legal representation expenses, losses, judgments, settlements, court costs and other expenses. To limit the negative effect of such events, in practice, it is common for Indonesian companies to open liability insurance for their directors.

Nonetheless, Article 97 paragraph (2) of the Company Law explicitly states that each director is personally liable for any loss of the company arising as the effect of their fault of negligence. The concept is further supported by Article 97 paragraph (6) of the same law, which establishes the shareholders' right to raise a claim through the District Court against the directors for such loss.

1.6 Are there any forms of compulsory insurance?

The common forms of compulsory insurance in Indonesia are Workers' Social Security Programs ("BPJS Ketenagakerjaan") and the National Health Program ("BPJS Kesehatan"), which all essentially relate to employees. However, other forms of mandatory insurance might be required dependent on the type of business activity of the company in question, such as Compulsory Traffic Accident Insurance, Marine Hull Insurance, Aviation Hull Insurance, and other forms of insurance as required by Indonesian laws and regulations.

2 (Re)insurance Claims

2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

To answer this question, we must first understand the principle of *contra proferentem* in insurance agreements, as regulated in Article 1349 of the Indonesian Civil Code ("ICC"). *Contra proferentem* stipulates that if there is an ambiguous interpretation in the agreement, the interpretation adopted is one that benefits the customer or policyholder. Therefore, if something is unclear or contains two or more meanings, the interpretation should not be detrimental to the insured.

In addition, in 2022, OJK also issued OJK Regulation No. 6/POJK.07/2022 on Consumer and General Public Protection in the Financial Services Sector ("POJK 6/2022"). In summary, POJK No. 6/2022 outlines several obligations imposed on the insurer towards the insured. These obligations include the insurer's duty to act in good faith, the prohibition of discrimination against the insured, and the responsibility for losses suffered by the insured. Furthermore, these provisions seem to lean in favour of the insured. Additionally, this regulation is crafted to safeguard the interests of consumers within the financial services sector, and especially to protect consumers in the insurance industry.

However, it is important to note that over-insurance must not occur, meaning that the insurance value should not exceed the actual value. In such a case, the insured may not receive compensation. Compensation is only for the insured to return to his previous financial condition.

2.2 Can a third party bring a direct action against an insurer?

In Indonesian insurance law, when a third party experiences loss or injury from an event covered under an insurance policy, they usually cannot directly file a claim against the insurance company. Instead, the general practice involves the third party initially submitting a claim to the owner or policyholder responsible for the incident. It is then the responsibility of the policyholder to forward this claim to the relevant insurance company for assessment. If the claim is approved, the insurance company will provide compensation to the policyholder in accordance with the terms outlined within the insurance policy.

Third parties who experience losses are usually directly involved in the claims process if they have specific agreements or arrangements with the insurance policyholder or insurance company. For example, a third party who is the designated beneficiary of an insurance policy may have the ability to directly file a claim with the insurance company. However, in certain situations, there are legal provisions that mandate insurance companies to compensate third parties without the requirement of involving the policyowner. For example, in motor vehicle insurance, insurance companies are generally obligated to settle claims to third parties who suffer losses resulting from accidents caused by motor vehicle insurance policyholders.

2.3 Can an insured bring a direct action against a reinsurer?

The insured cannot bring an action nor file a claim directly or indirectly with a reinsurer. This is due to the absence of an insurance relationship between the insured and the reinsurer. Reinsurance contracts are formed and binding between the reinsurer and the policyholder, which is the insurance company. The aim of this reinsurance agreement is to allow the reinsurer to provide coverage for the insurance that the insurer has issued to the insured.

2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?

In such instances, under the Indonesian Commercial Code, the insured is not required to pay insurance benefits if there is damage or loss directly arising from defects, inherent decay or the nature of the insured subject itself, unless explicitly stated otherwise. Additionally, in the absence of good faith as required by the principle of utmost good faith, any misleading information within the agreement may be utilised as a basis to consider it null and void, and thus being cancelled. As a result, the insurance claim and benefit would not be available for the insured.

2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?

One of the fundamental principles of insurance in Indonesia is utmost good faith. Article 251 of the Indonesian Commercial Code mandates that both the insurer and the insured must provide transparent and truthful information about the insured object. Essentially, the duty to disclose all facts related to the insured object, whether requested or not, is obligatory.

2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?

The principle of subrogation is reflected in Article 284 of the Indonesian Trade Code (*Kitab Undang-Undang Hukum Dagang* or "KUHD"). Therefore, whether or not said principle is regulated under the policy, upon payment of the indemnity to the insured, the insurer may assume the right to claim the loss from the negligent third party.

Although the principle can be adopted automatically, based on some case precedents in Indonesia, most cases have been triggered due to a third-party tort and the insured provided a subrogation letter to the insurer.

3 Litigation – Overview

3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?

The process to resolve a particular insurance dispute depends on the terms and conditions outlined in the insurance policy. Disputes can be resolved either through the relevant court(s) or through Alternative Dispute Resolution means.

For commercial insurance disputes, OJK Regulation No. 61/POJK.07/2020 on Alternative Dispute Resolution Institutions for Financial Services Sector Disputes ("POJK 61/2020") establishes the Alternative Dispute Resolution Institution for the Financial Services Sector ("LAPS SJK") and urges insurance companies and consumers to choose LAP SJK to settle disputes.

In the event the parties choose the court, the dispute in the first instance can be submitted to the District Court where the defendant is domiciled.

3.2 What, if any, court fees are payable in order to commence a commercial insurance dispute?

According to Appendix 3 of LAPS SJK Regulation No. Per-06/LAPS-SJK/I/2021 on Dispute Resolution Service Fees, the fees for settling commercial insurance disputes through LAPS SJK vary depending on the chosen dispute resolution method. Generally, for small claims and retail disputes, parties are exempt from mediation service costs, provided that the dispute's settlement value falls within a specific range as follows:

1. up to IDR200 million for disputes in the financing, pawnshop and financial technology sectors;
2. up to IDR500 million to facilitate the development of the banking, capital markets and insurance sectors with respect to life insurance claims, venture capital and credit guarantees; and
3. up to IDR750 million to support the financing of the insurance sector in relation to general insurance claims.

For commercial disputes, the participating parties are responsible for covering specific costs based on the chosen services and the value of assets under preservation. Meanwhile, the cost of settling a commercial insurance dispute in court is subject to the procedural requirements for resolving the dispute.

3.3 How long does a commercial case commonly take to bring to court once it has been initiated?

A commercial insurance dispute to be settled within LAPS SJK takes 20 working days for the verification process. Furthermore, based on the LAPS SJK regulations, the mediation period is set at 30 days from the time the parties mutually decide to engage in mediation through LAPS SJK. In contrast, when it comes to arbitration, the settlement period extends to 180 days once a sole arbitrator is appointed or an arbitration tribunal is formed. Nevertheless, this timeframe is subject to potential extensions based on specific provisions outlined in the LAPS SJK regulations.

Resolving a commercial insurance dispute is also possible by pursuing legal proceedings in the District Court where the defendant is located. This process, when conducted through the District Court, is theoretically expected to conclude within a maximum duration of six months. Furthermore, both parties involved have the option to appeal the court's decision to a higher court. Nonetheless, this estimate is contingent upon the complexity of the case and the responsiveness of both parties involved.

3.4 Does COVID-19 have, or continue to have, a significant effect on the operation of the courts, or litigation in general?

COVID-19 has indeed had a significant impact on the operation of the courts and litigation in general. This impact is demonstrated by Circular Letter of the Supreme Court of the Republic of Indonesia No. 4 of 2020 on the Guidelines for Implementing Duties During the Period of Preventing the Spread of COVID-19 Within the Supreme Court and Subordinate Judicial Bodies ("SEMA 4/2020"), which introduced specific guidelines for the operation of courts and litigation during the period of preventing the spread of COVID-19. In response to the pandemic, the courts have prioritised conducting their operations and litigation proceedings through e-court and e-litigation.

4 Litigation – Procedure

4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action, and (b) non-parties to the action?

According to Article 137 of the Indonesian procedural law in the trial of civil and criminal cases, *Herzien Inlandsch Reglement* ("HIR"), parties have the right to request access to their opponent's statements and documents. If one party disputes the veracity of the statements submitted by their opponent, the District Court can examine this matter.

Following the examination, the court will decide on whether the disputed statement will be used in this case. In this context, when one party disputes the authenticity of a statement submitted to the judge, the court will first address and decide on the authenticity of the statement before proceeding with the examination of the subject matter of the lawsuit.

4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers, or (b) prepared in contemplation of litigation, or (c) produced in the course of settlement negotiations/attempts?

There are no specific regulations that prohibit any parties from withholding the disclosure of documents. The absence of explicit regulations means that parties retain the right to withhold the disclosure of documents, particularly those that may be detrimental to their case during trial. Nevertheless, Article 137 of HIR grants them the authority to request access to documents submitted to the judge for these specific purposes,

a request that must also be honoured when made by the panel seeking the disclosure of these pertinent documents. This article also provides an opportunity for both parties in the case to control each other by ensuring that the contents of the documents which are submitted as evidence by both parties are submitted to the judge, to see and check with their own eyes whether there is any reason to deny the validity of the documents.

4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

The powers of courts to require witnesses to give evidence are stipulated under Article 139 of HIR. Under this provision, when it is necessary to ascertain the truth during legal proceedings, the presiding judge is empowered to call upon the witnesses presented by the litigants for examination during a hearing.

4.4 Is evidence from witnesses allowed even if they are not present?

Witnesses must be present if they are to present evidence. Although, according to Perma 7/2022, trial evidence by examining witnesses and/or experts can be carried out remotely via audio-visual communication media. Testimonies provided outside of the court hearing (in the form of affidavits) are not classified as witness statements but are treated as written evidence.

4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

There are no restrictions on calling expert witnesses to testify in court. It is common to have court-appointed experts, either in addition to or in place of party-appointed experts. If, upon the request of the parties or as deemed necessary by the judge in the performance of their duties, a decision may order an examination or observation by experts. The decision shall explicitly specify the subject matter to be examined or observed and appoint three experts. However, if both parties request that the examination be conducted by only one expert, no more than one expert shall be appointed.

4.6 What sort of interim remedies are available from the courts?

In general, HIR does not recognise pre-action interim remedies before the submission of a claim. However, the parties can request an interlocutory decision from the courts. An interlocutory decision is issued by the judge before rendering a final decision, and its purpose is to facilitate the continuation of the case examination. This decision is a type of court decision, which may or may not be formal, that is not considered a final decision related to the indictment. Article 185 of HIR stipulates that interim decisions are not issued separately but are recorded in the trial minutes. Both parties can request an authenticated copy of the interim decision at their own expense.

4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

The right of appeal is one of the legal remedies available to a dissatisfied party who wishes to challenge the initial decision of the District Court. To invoke this right, it must be proposed to the High Court that holds jurisdiction over the decision (Articles 188–194 of HIR (for the court in Java and Madura) and Article 199 of *Rechtsreglement Buitengewesten* ("Rbg") (for outside Java and Madura), as well as Article 26 paragraph (1) of Law No. 48 of 2009 concerning Judicial Authority). Appeals must be submitted within a period of 14 days from pronouncement of the initial decision (Article 11 paragraph (1) of Law No. 20 of 1947 concerning Court Trial Reviews). It is important to note that there is only one stage of appeal, and subsequent legal action comes in the name of cassation or a review of the appeal decision. However, if the decision is made in the absence of the defendant (*verstek* decision), an appeal cannot be submitted; instead, only an opposition (*verzet*) is permitted.

4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

The party in default is required to provide interest compensation, as stipulated in Articles 1236 and 1239 of the ICC. Any claim for interest must be proven by the party who is in breach of the agreement.

As for the current interest rate of the claim, there is no recent regulation in Indonesia that sets the ceiling to the interest rate stipulated by law. Indonesia still refers to an old colonial law (Staatsblad.1848: No. 22), which states that the (default) interest rate stipulated by law is 6% *per annum*. In practice, this interest rate stipulated by law will be implemented only in the case where the parties do not determine or specify the interest rate in the agreement. In the case where the parties have agreed on the interest rate, the principles of Article 1767 of the ICC, which allows the parties to set the interest rate based on an agreement, shall prevail.

There are, however, several court decisions that have taken a different position, whereby in the event that the parties do not set any interest rate in the agreement, the "reasonable" interest rate that can be implemented should refer to the Indonesian Central Bank's prevailing interest rate at the time (currently, 6.75%). However, the Indonesian legal system does not recognise the concept of "precedent" as recognised in the common law system (i.e. where decisions of a higher court are binding on the lower courts) but does acknowledge the concept of jurisprudence. This means that Indonesian court decisions do not constitute a source of law at any level of the judicial hierarchy as would be the case in common law jurisdictions.

4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

Article 183 of HIR specifies that one of the parties mentioned in the decision is responsible for covering the court fees. The specific standards for the calculation of court fees are outlined in Article 182 of HIR and include examples such as:

1. clerk's office fees and stamp fees;
2. expenses related to witnesses, experts and interpreters, including their oath costs;
3. fees for local inspections and action taken by the judge;
4. salaries of employees assigned to issue summons, notifications and other bailiff letters;
5. the costs mentioned in Article 138 (6) of HIR; and
6. employee expenses for executing decisions.

The court fees in Indonesia are usually not an extensive fee and should not be the reason to avoid any court proceedings. However, choosing to settle disputes outside of court can

offer several cost advantages including avoiding lawyers' fees, saving time, reducing expenses related to witnesses and experts, minimising costs associated with a lost trial, and safeguarding business privacy and reputation.

4.10 Can the courts compel the parties to mediate disputes, or engage with other forms of Alternative Dispute Resolution? If so, do they exercise such powers?

Before proceeding to trial, the parties are required to engage in mediation within 30 days as outlined in Supreme Court Regulation No. 1 of 2016 ("Regulation 1 of 2016") on Mediation Procedures in Court. The mediator is a court judge who assists the parties in exploring various potential solutions for dispute resolution. Up until a case is decided, the parties, based on party autonomy, can propose mediation at the case examination stage. If the mediation proves successful and a mediation agreement is reached, legal action cannot proceed, as the agreement is considered final and binding. In Indonesian law, the courts have authority to order parties to attempt mediation before going to trial. This approach is often employed to alleviate the burden on the court system and promote efficiency while reducing costs.

4.11 If a party refuses a request to mediate (or engage with other forms of Alternative Dispute Resolution), what consequences may follow?

The consequences of a party's actions in mediation can result in a declaration of bad faith by the mediator, in accordance with Article 7 paragraph (2) of Regulation 1/2016. This occurs when a party:

a. fails to appear after being properly summoned on two consecutive occasions for a mediation meeting without a valid reason;
b. attends the first mediation meeting but fails to appear at subsequent meetings, despite being properly summoned two times in a row without valid reasons;
c. repeatedly disrupts mediation meeting schedules by unjustifiably missing meetings;
d. attends a mediation meeting but fails to submit and/or respond to the other party's Case Resume; and/or
e. refuses to sign the agreed mediation agreement without valid reasons.

If a party refuses to participate in mediation, the mediation process cannot proceed. In such a case, the plaintiff can resubmit the lawsuit as per Article 29 paragraph (4) of Regulation 1/2016. Additionally, the mediator is obligated to declare the mediation as unsuccessful and provide written notification of this to the Case Examining Judge (Article 32 paragraph (1) of Regulation 1/2016).

5 Arbitration

5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?

This approach is based on party autonomy and the freedom of contract, which enables the parties to agree on arbitration as the preferred method for resolving disputes outside of the court system. The principle of party autonomy affirms that contract parties have the freedom to determine how they will address their disputes, including selecting arbitration as the preferred dispute resolution mechanism. Consequently, courts typically have limited grounds for intervening in ongoing arbitration proceedings, such as jurisdictional issues or challenges to executing the arbitral award. This principle is established by Article 1 paragraph (3) of Law No. 30 of 1999 on Alternative Dispute Resolution and Arbitration ("Law 30/1999"), which states that under an arbitration agreement, whether in the form of a clause in the primary contract or a written agreement made by the parties after a dispute arises, the parties are obliged to resolve the dispute through arbitration.

Courts do not possess the authority to interfere with the arbitration process, and they cannot re-examine the substance of the dispute. According to Article 3 of Law 30/1999, the court has no authority to adjudicate disputes covered by an arbitration agreement. Its jurisdiction is limited to reviewing the procedural aspects of the arbitral award. Courts may only become involved when a party seeks to challenge the validity or enforcement of an arbitral award.

5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?

The arbitration clause in a (re)insurance contract must include clear and unambiguous language. Without such language, the parties cannot opt for arbitration as a method of dispute resolution. The following elements are essential within the arbitration clause in a (re)insurance contract:

1. the arbitration clause should unambiguously convey that the parties are waiving their right to pursue litigation in a court and are instead opting for arbitration as the dispute resolution mechanism;
2. it should clearly state the governing law of the arbitration agreement and designate the seat or location of the arbitration. These details are crucial in determining the procedural rules and legal framework that will govern the arbitration process;
3. the arbitration clause must explicitly define which categories of disputes are subject to arbitration. This can encompass all disputes arising from the contract or specify certain types of disputes;
4. it should specify whether the arbitration proceedings will be conducted in accordance with the rules of a particular arbitration institution (e.g., BANI, SIAC, LAPS SJK, etc.) or whether it will be conducted as an *ad hoc* arbitration;
5. the clause should address the appointment of arbitrators, either by specifying their number and expertise or by outlining a process for their selection; and
6. concerning the initiation of arbitration proceedings, the contract should include provisions detailing how the arbitration process is to be commenced, including requirements for notices of specified timeframes.

If an arbitration clause is not included in the insurance or reinsurance contract but is subsequently entered into through a separate arbitration agreement after the dispute has arisen, there is reference to the governance of such a situation under Article 9 paragraphs (1) and (3) of Law 30/1999. In such cases, the arbitration agreement must be in writing and signed by the parties. It should contain the following elements: (a) details of disputed issues; (b) the full names and places of residence of the parties involved; (c) the full names and places of residence of the chosen arbitrator or arbitration panel; (d) the location where the arbitrator or arbitration panel will issue their decision; (e) the full name of secretary; (f) the timeframe for dispute resolution; (g) a statement

of willingness from the chosen arbitrator; and (h) a statement of the willingness of the disputing party to cover all costs necessary for arbitration proceeding. It is important to note that failure to adhere to these requirements can render the arbitration agreement null and void.

5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?

There are situations in which a court may choose not to enforce an explicit arbitration clause, even if it is present in a contract. Some of the common grounds encompass:

1. Invalidity or unconscionability: if the arbitration clause is found to be unconscionable, inequitable or otherwise invalid, a court may refuse to enforce it.
2. Lack of capacity or authority: when one of the parties lacked the legal capacity to enter into the contract or consent to arbitration (e.g., due to failure to meet a condition precedent clause or absence of a required licence), a court might decline to enforce the arbitration clause.
3. Fraud, duress or misrepresentation: if the arbitration clause was induced by fraud, duress, undue influence or a material misrepresentation, a court may consider it unenforceable.
4. Scope of the arbitration clause: when a party contends that the ongoing dispute falls outside the scope of the arbitration clause, a court may adjudicate on this matter.
5. Considerations of public order: courts might choose not to enforce an arbitration clause if doing so would violate public order.
6. Procedural irregularities in the arbitration agreement: in cases where there are significant procedural discrepancies in the formation of the arbitration agreement.

The above conditions are pursuant to Article 62 paragraph (2) of Law 30/1999. This article specifies that, before issuing an enforcement order for an arbitration award, the Chairman of the District Court must verify whether the arbitration award complies with the provisions outlined in Articles 4 and 5 of Law 30/1999 and does not violate principles of decency and public order. If the award does not meet these criteria, the court has the authority to reject the arbitration clause, which means the arbitration is then unenforceable.

5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.

Interim forms of relief typically serve to maintain the *status quo*, preserve evidence and protect the rights of the involved parties during arbitration proceedings. Here are several examples:

1. Upon a party's request, the arbitrator or arbitration panel can issue provisional or other interim decision to ensure the orderly progression of the dispute investigation. These decisions may involve actions such as determining collateral confiscation, directing the safekeeping of goods by a third party or facilitating the sale of perishable goods (Article 32 paragraph (1) of Law 30/1999). These measures prevent parties from taking actions that could potentially impede the arbitration process. For example, a court might grant an injunction to halt the sale of contested assets, preventing parties from disposing of or relocating assets relevant to the dispute that could be moved out of the arbitration's jurisdiction.
2. Preservation of evidence: according to Article 35 paragraph (1) of Law 30/1999, the arbitrator or arbitration panel may order that each document or piece of evidence be accompanied by a translation into a language specified by them.
3. Conducting necessary meetings: according to Article 35 paragraph (2) of Law 30/1999, the arbitrator or arbitration panel may hear witness statements or hold necessary meetings at a location outside of where the arbitration is held.

5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?

The arbitrator is not bound and has discretion in making an award if it is not regulated in the arbitration clause. According to Article 4 paragraph (1) of Law 30/1999, the arbitrator has the authority to determine in their decision the rights and obligations of the parties if this is not regulated within the agreement. Furthermore, Article 17 of Law 30/1999 states that the arbitral tribunal is legally obligated to give their decision and in accordance with applicable provisions, and the parties shall accept the decision as final and binding as mutually agreed.

However, the parties can agree in the arbitration agreement or arbitration clause to state that an arbitral tribunal is legally bound to give detailed reasons for the arbitration award. The level of detailed reasoning in an arbitration award depends on the stipulations set forth in the arbitration agreement. When such specificity is expressly mandated, it becomes incumbent upon the arbitration panel to ensure its inclusion. This underscores the fundamental principle of party autonomy inherent in arbitration, granting parties the latitude to mutually determine the extent of the legally reasoned detail to be incorporated in the award.

It is prudent to consider the specific Rules of Arbitration Forum chosen by the parties, such as the BANI Rules 2022 or the SIAC Rules 2023, which may offer provisions addressing this aspect.

5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?

There is no right of appeal to the courts from the decision of an arbitral tribunal or an arbitration award. This is because, under Indonesian law, specifically Law 30/1999, it is stipulated that an arbitration award is final and binding on the parties (Article 60 of Law 30/1999). However, Article 61 of Law 30/1999 states that in the event the parties do not implement the arbitration award voluntarily, the award is enforced based on the order of the Chairman of the District Court at the request of one of the parties to the dispute. Therefore, the rights that the parties have regarding the enforcement of the arbitration award are solely in the form of execution of the award by the court, and the court can only review the validity of the procedure.

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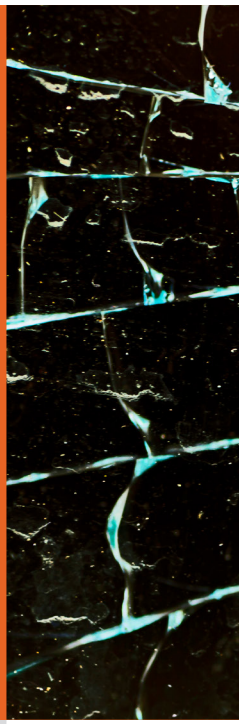

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