

ACTIO

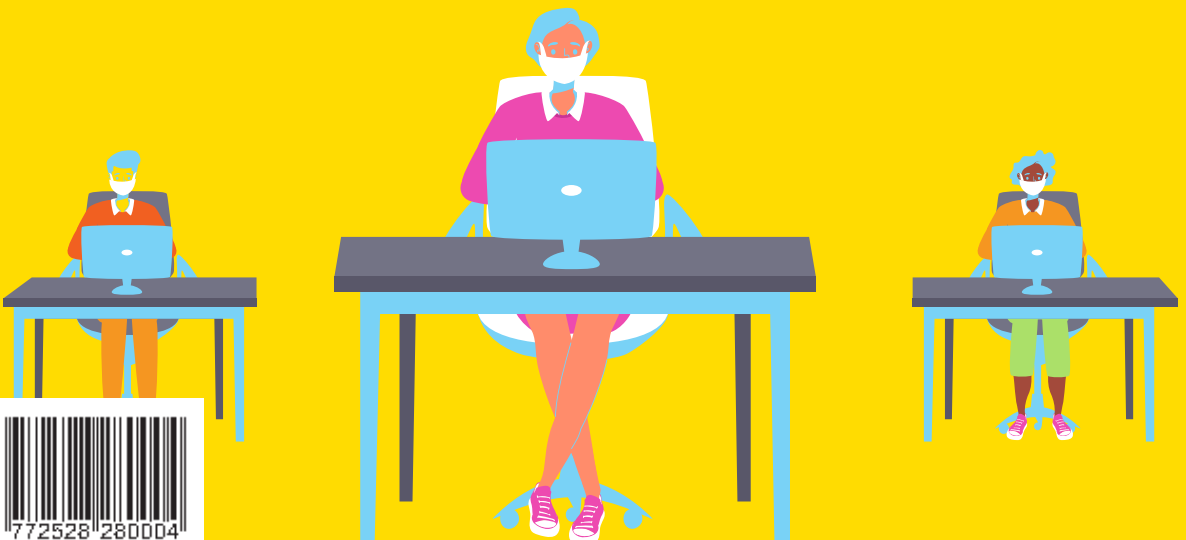
ISSUE #14 / OCTOBER 2020

Online Mediation

Important Considerations in an Electronic Arbitration Hearing

Implementation of E-Litigation: The Main Alternatives of Case Settlement in the Pandemic

LEGAL POLICY IN INDONESIA IN THE NEW NORMAL ERA





We, Akasa Cipta Tama (ACT), was established in April 2015 as a response to the demand of highly qualified translators for business, legal, technical, and general documents; as well as interpreters and note takers for meetings, seminars, and conference. Our translators, interpreters and note takers have extensive experiences in their respective fields.

With a comprehensive database of qualified human resources, ACT works to ensure the best results in every project we run. Some of our top personnel have worked for various international events and some of our clients include the Office of the President of the Republic of Indonesia, People's Consultative Assembly, The United Nations, The World Bank, AusAID, USAID, and some prominent law firms in Indonesia.



Please do not hesitate to contact us if you have any question at marketing.akasa@gmail.com.
Looking forward to hearing from you.



“Healthy citizens are the greatest asset any country can have”

- Winston Churchill -

Dear readers,

May our readers stay safe, healthy and happy.

Without realizing it, we are entering the month of October 2020. ACTIO is back for readers with the main topic regarding Indonesian Legal Policy to Maintain Economic Sustainability during the New Normal.

New Normal has entered the sixth month since the government of the Republic of Indonesia announced that the Covid-19 pandemic hit Indonesia in early March 2020. We are unfamiliar with this new situation and condition. Most aspects of our life, without exception, including the economic and operational aspects of company goes to downward direction.

The legal sector is also affected by facing difficulties in conducting various face-to-face activities. In this edition, ACTIO discusses policy breakthroughs in the field of law, including: implementation an electronic General Meeting of Shareholders of Public Companies, implementing e-Litigation and process of online arbitration.

ACTIO team hopes that the articles in this edition can provide useful information for all readers.

Happy reading,

Yours faithfully,

ANGGRAENI AND PARTNERS

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Managing Partner

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ACTIO

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ONLINE MEDIATION

Online mediation can be an alternative for litigant parties to resolve disputes amidst the implementation of the Large-Scale Social Restrictions (PSBB) policy that is being implemented by the Government. Online mediation is regulated under Article 5 paragraph (3) of Supreme Court Regulation Number 1 of 2016 on Court-Sanctioned Mediation Procedures. The article provides that mediation meetings can be conducted through long-distance audio-visual communication media, so that it is possible for all parties to see and hear each other directly and participate in the meetings. However, this online mediation does not yet have more detailed regulations and is not yet

integrated as part of E-litigation, the Supreme Court Regulation Number 1 of 2019 on Administration of Court Cases and Proceedings by Electronic Means. Despite this, online mediation has proceeded and conducted by several courts, among others, mediation on case number 99/Pdt.G/2020/PA.Ngr by Negara Religious Court¹ and case number 43/Pdt.G/2020/PA.Stn by Sentani Religious Court².

Currently the Supreme Court is drafting Supreme Court Regulation regarding online mediation and we wait for a more comprehensive framework to conduct these Mediation meetings. **HAL/HES**

1. pa-negara.go.id
2. pa-sentani.go.id



IMPLEMENTATION OF E-LITIGATION: THE MAIN ALTERNATIVES OF CASE SETTLEMENT IN THE PANDEMIC

Since the first case of Covid-19 in March 2020 in Indonesia, President Joko Widodo has issued an appeal to all Indonesians to work from home. This appeal aims to reduce the potential for a wider spread of Covid-19.

Judicial institutions are also playing their part to prevent the potential spread of Covid-19 by the implementation of online trials (E-Litigation). This is a follow-up to the issuance of the Supreme Court Circular Letter Number 1 of 2020 on Adjustments to the Work System of Judges and Judicial Apparatus in Prevention of the Spread of Covid-19 within the Supreme Court and Lower Judiciary Bodies. (hereinafter referred to as SEMA No. 1 Tahun 2020) which was amended by the issuance of SEMA No. 2 of 2020 and thereafter amended by SEMA No. 3 of 2020. Based on the Supreme Court Circular Letter, courts throughout Indonesia are expected to carry out online trials (E-Litigation).

In fact, the procedure for the implementation of E-Litigation in Indonesian courts is not something new. E-Litigation was introduced by the Supreme Court of the Republic of Indonesia in the last few years with the issuance of Regulation of the Supreme Court of the Republic of Indonesia (hereinafter referred to as PERMA) Number 3 of 2018 on Electronic Administration of Case at Court, subsequently replaced by the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2019 concerning Electronic Administration of Case at Court. However, since the PERMA was published, the implementation of E-Litigation had not been implemented evenly in all courts in Indonesia. The Pandemic has changed this.

Since the Covid-19 pandemic broke out, the Supreme Court expects all courts in Indonesia to start implementing E-Litigation as the main mode of case handling in order to prevent crowds in court buildings. In theory, the implementation of E-Litigation is expected to increase the effectiveness and efficiency of case handling, especially for parties who are domiciled outside the jurisdiction of the court where the case is heard. This is obviously because these parties do not need to travel now between regions, reducing the potential of contagion between one area to another.



The biggest obstacle to the implementation of E-Litigation is that information technology hardware and internet access is not evenly distributed throughout Indonesia. This was conveyed by the Chairman of the Indonesian Advocates Association (PERADI) and senior Advocates, Dr. Luhut M.P. Pangaribuan, S.H., LL.M., that despite the signing of a memorandum of understanding regarding the use of video conferences in criminal case examinations, especially for examining witnesses; the obstacles to the availability of electronic devices in each instance, the position of the defendant, and the presence of related parties (witnesses) becomes an obstacles.¹

This is surely an important note for the Supreme Court to evaluate the effectiveness and fairness of the E-Litigation system. Equal access to justice, both substantive and procedural, must be protected for Accused persons.

In civil cases, Article 20 of PERMA No. 1 of 2019 provide that approval from both the Plaintiff and Defendant must be given before E-Litigation is implemented for that hearing. This requirement can sometimes be one of the inhibiting reasons in the implementation of E-Litigation. If one of the parties does not agree to carry out E-Litigation, the trial will continue to be carried out in a conventional manner. This is clearly non-negotiable since it relates to the principle of fair trial. Although in a pandemic like this, Judges are still bound by procedural rules and difficult litigants can insist on face to face hearings even where Judges want to prioritize health aspects and minimize the risk of contagion.

Overall, there are clearly arguments for stricter rules on E-Litigation and its implementation. E-Litigation is arguably a good solution in the midst of the outbreak of Covid-19. In the future, we hope that E-Litigation will be implemented more consistently throughout Indonesia, even if the situation has returned to normal. **ALH/HES**



1. <https://www.hukumonline.com/berita/baca/lt5edfd188dad3f/problematika-sidang-pidana-daring-saat-pandemi/>



HOLDING AN ELECTRONIC GENERAL MEETING OF SHAREHOLDERS OF A PUBLICLY-TRADED COMPANY

The implementation of the Large-Scale Social Restrictions (PSBB) policy by the Government as a measure to prevent the spread of COVID-19 has had a significant impact on business activities in Indonesia. One of which includes the holding of a General Meeting of Shareholders (RUPS) of a Publicly-Traded Company. RUPS is the Company Organ having the authorities not vested in the Board of Directors or the Board of Commissioners, within the limits set out under statutory provisions and/or articles of association. These normally include approval of legal actions on behalf of the Company; amendments to the articles of association; increase and/or reduction in capital; decisions on the use of net profit; and changes in the composition of the Board of Directors and Commissioners.¹

RUPS can be held at the place of domicile of the Company, at the place where the Company conducts

its main business activities as set out under the articles of association,² or may also be conducted through the media of teleconference, video conference or other electronic media facilities that enables all participants of the RUPS to view and hear each other directly and to participate in the meeting.

Due to COVID-19, holding a RUPS physically has become more difficult. Although decision making can be made through a circular resolution, a circular decision requires that all shareholders approve the proposed resolution. Further, the holding of a RUPS through electronic media as stipulated in Law Number 40 of 2007 concerning Limited Liability Company (Law 40/2007) have encountered obstacles and cannot be properly implemented, especially for Listed Company that has a large number of shareholders and a wide distribution of share ownership.³ Some of these obstacles include

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1. See Article 14 paragraph (4), Article 19 paragraph (1), Article 41 paragraph (1), Article 44 paragraph (1), Article 71 paragraph (1), Article 94 paragraph (1), and Article 111 paragraph (1) Law 40/2007.
 2. Article 76 paragraph (1) Law 40/2007.
 3. Paragraph 3 General Elucidation of Regulation of the Financial Services Authority of the Republic of Indonesia Number 16/POJK.04/2020 concerning the Implementation of Electronic General Meeting of Shareholders by Publicly-Traded Company.

meeting the requirements to view and hear each other, attendance quorums, decision quorums, and the form of minutes of the RUPS decision. One such example, PT Bumi Resources Tbk experienced this obstacle and had to reschedule their Annual RUPS because the attendance quorum requirement was not fulfilled due to COVID-19.

Considering that RUPS have ultimate authority to make decisions for the Company, it is necessary to make rules that could overcome the problems of holding the RUPS of a Publicly-Traded Company as mentioned above.

As a response to these obstacles related to holding a RUPS, the Financial Services Authority (Otoritas Jasa Keuangan (OJK)) issued Regulation of the Financial Services Authority of the Republic of Indonesia Number 16/POJK.04/2020 concerning the Implementation of Electronic General Meeting of Shareholders by Publicly-Traded Company (POJK 16/2020).

POJK 16/2020 is expected to be a solution for Publicly-Traded Company to hold RUPS electronically. The implementation of electronic RUPS can be conducted using Electronic RUPS Organization System (e-RUPS) provided by e-RUPS Providers or systems that are provided by Publicly-Traded Company. In the implementation of electronic RUPS, Publicly-Traded Company are required to:

- a. include information as regards the plan for the implementation of electronic RUPS in the notification of electronic RUPS meeting agenda to OJK, RUPS announcement, and RUPS summonses; and
- b. organize physical RUPS which should at least be attended by:

1. the chair of the RUPS;
2. one member of the Board of Directors and/or 1 member of the Board of Commissioners; and
3. supporting capital-market professionals who assist in the implementation of RUPS.

However, the provision regarding physical attendance above may not be implemented by performing limitation of physical attendance of shareholders, either partly or wholly. This is allowed if under certain conditions which have been determined by the Government or with the approval from OJK.

Based on Article 8 paragraph 6 POJK 16/2020, RUPS should at least contain the following activities:

- a. opening;
- b. determination of attendance quorum;
- c. discussion of questions or opinions that are submitted by shareholders or proxy of shareholders electronically in each meeting agenda;
- d. the determination of resolution in each meeting agenda based on the decision-making quorum; and
- e. closing.

The minutes of electronic RUPS shall be drawn up in the form of a notarial deed by a notary who is registered with OJK without requiring signatures from RUPS participants.

The presence of shareholders electronically through e-RUPS could substitute the presence of shareholders physically and are deemed as the fulfillment of attendance quorum. In the end, POJK 16/2020 intends to facilitate Publicly-Traded Company to hold an effective, lawful and efficient RUPS, which will strengthen financial system stability amidst COVID-19. **DRP/HES**

4. Ibid.

5. <http://www.theeconomics.com/capital-market/tak-kuorum-rups-bumi-akan-dijadwal-ulang/>, accessed on 6 September 2020.

6. According to Article 1 number 6 POJK 16/2020, e-RUPS is a system or electronic means that is used to support information provision, implementation, and reporting of RUPS of Publicly-Traded Company.

7. According to Article 4 paragraph (2) POJK 16/2020, e-RUPS Providers are the Depository and Settlement Agency appointed by OJK or other parties approved by OJK.

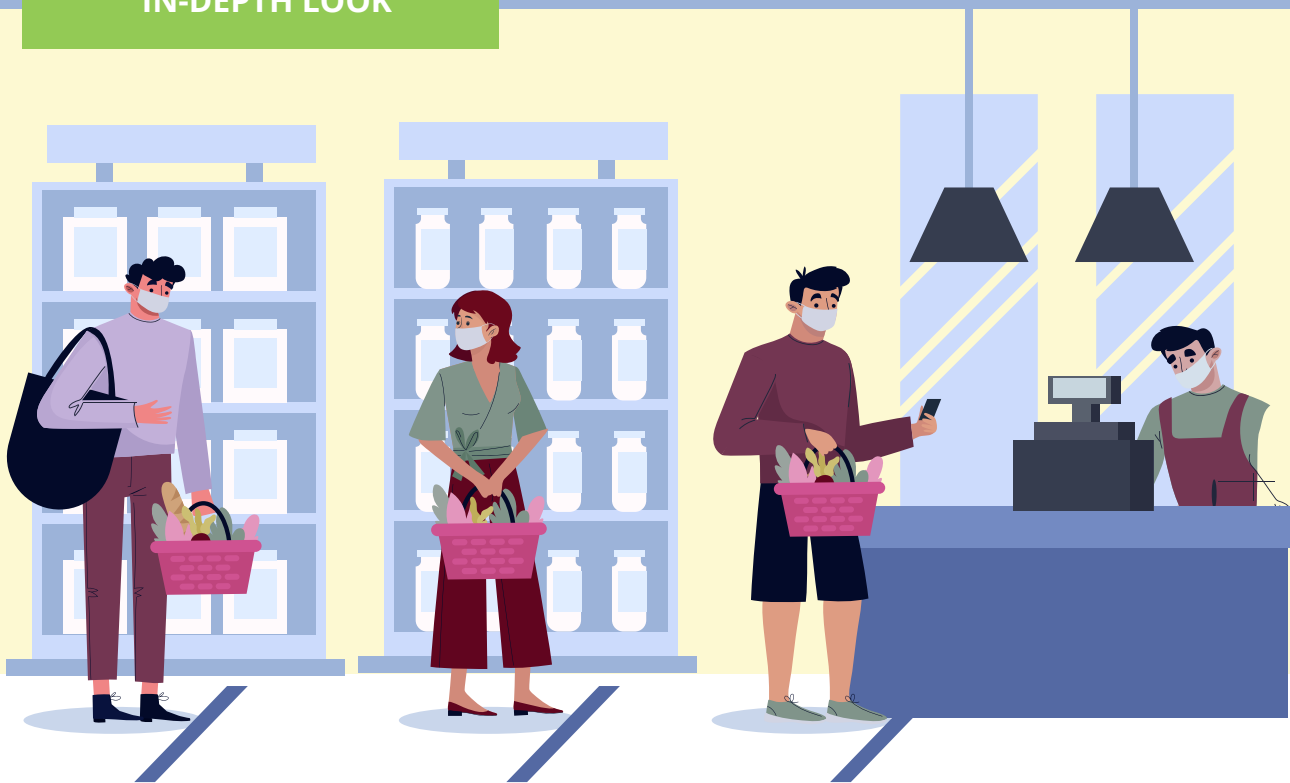
8. Article 9 paragraph (1) and (2) POJK 16/2020.

9. Article 12 paragraph (1) POJK 16/2020.

10. Article 8 paragraph (5) POJK 16/2020.

11. Article 4 paragraph (1) POJK 16/2020.

12. Article 8 paragraph (1) POJK 16/2020.



GOVERNMENT OF DKI JAKARTA EFFORTS TO CONTAIN THE TRANSMISSION OF COVID-19

On 19 August 2020 the Governor of Special Capital City of Jakarta issued Governor Regulation Number 80 of 2020 on The Implementation of Large-Scale Social Restriction During the Transition Period to a Healthy, Safe and Productive Public (Pergub 80/2020). Article 4 Pergub 80/2020 stated that the Government of DKI Jakarta is committed to prevent the increase of transmission and spread of Covid-19 in DKI Jakarta Province by implementing 3 (three) policies:

1. implementation of discipline and law enforcement of health protocols;
2. sequencing of public activities; and
3. control of modes of transportation.

In relation to the Government of DKI Jakarta efforts to enforce the law, Article 5 paragraph (1) Pergub 80/2020 allows the Government to enforce administrative sanctions in the form of temporary

closure of places that do not comply with the decree stated under Article 4 paragraph (5) Pergub 80/2020.

In relation to the implementation of these administrative sanctions as stipulated under Article 5 paragraph (1) Pergub 80/2020, the regulation sets out different Agencies to specifically ensure compliance as set out in Article 5 paragraph (2) Pergub 80/2020 and are conducted by:

1. Satpol PP for government-owned offices, food stalls, eateries, cafes, restaurants, public areas and other places that may attract crowds;
2. Manpower, Transmigration and Energy Agency for privately owned offices and workplaces;
3. Tourism and Creative Economy Agency for hotels/other similar lodgings, tourist attractions and business places according to the scope of authority;

4. Industry, Trade, Cooperatives, Small-and Medium-Scale Business Agency for industrial places and business places according to the scope of authority, street vendors/stalls at fostered locations and temporary locations;
5. Education Agency for schools and other educational institutions;
6. Health Agency for health service facilities; and
7. Mayor/Regent of Administration for house of worship, and may be accompanied by elements of the Police and/or TNI.

Furthermore, the Government of DKI Jakarta, through Article 4 paragraph (4) Pergub 80/2020 implement the Large-Scale Social Restriction (PSBB) in stages in public places/facilities, including:

1. offices/workplaces, business places, industrial places, hotels/other similar lodgings and tourist attractions;
2. schools and other educational institutions;
3. houses of worship;
4. modes of transportation;
5. food stalls, eateries, cafes and restaurants;
6. street vendors/stalls at fostered locations and temporary locations;
7. health service facilities; and
8. public areas and other places that may attract crowds.

In relation to the supervision of the volume of vehicles in DKI Jakarta, the Government of DKI Jakarta has revised the odd-even policy as stipulated in Government Regulation Number 88 of 2020 on the Amendment of Governor Regulation Number 33 of 2020 on The Implementation of Large-Scale Social to the handling of Corona Virus Disease 2019 (Covid-19) at Special Capital City Region of Jakarta Province (Pergub 88/2020). Under Pergub 88/2020 the Government of DKI Jakarta revoked the implementation of odd-even policy which was previously governed under Article 8 paragraph (1) point a and b Pergub 80/2020.

However, even though Government of DKI Jakarta no longer enforces the odd-even policy, other regulations continue to be enforced as follows:

1. The users of private passenger cars are required to comply with the following rules:
 - a) used only for the fulfillment of basic needs and/or other activities allowed during PSBB;
 - b) disinfect the vehicle upon usage;
 - c) wear a mask on the vehicle;
 - d) do not travel if experiencing above normal body temperature or sickness;
 - e) limit the capacity of the passenger car to a maximum of 2 (two) people per seat row, except the passenger with the same household.

2. The users of private motorized vehicles are required to comply with the following rules:
 - a) used only for the fulfillment of basic needs and/or other activities allowed during PSBB;
 - b) disinfect the vehicle and accessories after use;
 - c) wear a mask in the vehicle; and
 - d) do not travel if experiencing above normal body temperature or sickness.

In conclusion, even though the Government of DKI Jakarta no longer imposes the odd-even policy, it is expected that provision of Article 18 paragraph (4) and (5) Pergub 88/2020 are able to contribute to the prevention of an increase of in transmission and spread of Covid-19 in DKI Jakarta Province.

MAD/HES





Is there a Republic of Indonesia government policy regarding wage adjustments because of restrictions on business activities?

Policy regarding adjustments and payments of wages procedures are regulated in a Ministerial Circular Manpower of the Republic of Indonesia Number M/3/Hk.04/iii/2020 Year 2020 concerning Protection Workers / Laborers and Business Continuity in Covid-19 Prevention and Control Framework (SE KEMENAKER). This SE KEMENARKER is intended and aims to maintain business continuity and protect workers. The SE KEMENAKER requires two condition before wage adjustments can be implemented. The first condition is an agreement between business owners/entrepreneurs with workers, and the second condition being the existence of a government policy that results in all or part of the workforce being absent from work as a result of a government directive or policy.

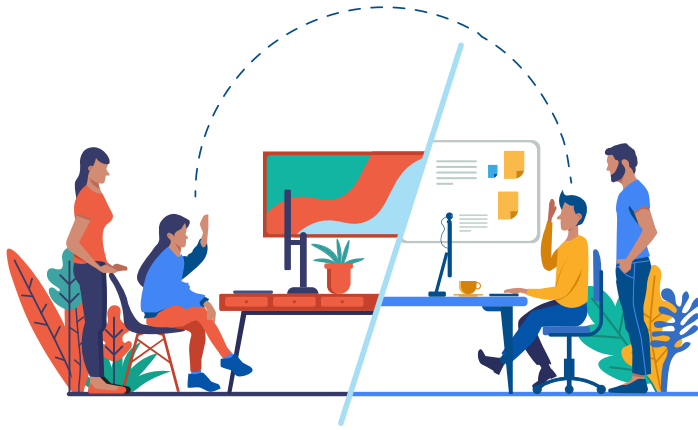


Is there a Republic of Indonesia government policy regarding postponement of work in the construction sector due to Covid-19?

Based on the Instruction of the Minister of Public Works and Public Housing Number: 02/IN/M/2020 concerning Corona Virus Spread Prevention Protocol Disease 2019 (Covid-19) (Instruction of the Minister of Public Works) in Operation of Construction Services, and is regulated as Temporary Work Stoppages. Instructions of the Minister of Public Works provides for Temporary Work Stoppages which can be implemented for the following reasons:

- Has a high risk due to the project location at the distribution center;
- Workers being tested positive and/or workers have been classified as Patients under Supervision (PDP); or
- Heads of Ministries/Institutions/Agencies/The Regional Head have issued a regulation to temporarily stop activities due to force majeure.

Strictly speaking, the Public Works Minister's Instruction is couched as Temporary Work Stoppages and are included as a cessation due to force majeure. Furthermore, as a result of the Temporary Work Stoppages, the inherent obligation of the Service User and Service Providers to Construction Workers, Subcontractors, Manufacturers and Suppliers involved in the form of compensation for labour costs and Payments continue and are still binding. However, a thorough analysis of each contract provision is necessary and the construction of each clause should be evaluated on a case by case basis. **VKA/HES**



IMPORTANT CONSIDERATIONS IN AN ELECTRONIC ARBITRATION HEARING

Modifications in procedures in hearings due to the implementation of Large-Scale Social Restrictions (LSSR) during the COVID-19 pandemic are required to manage the dispute resolution process between the disputing parties. Badan Arbitrase Nasional Indonesia (BANI Arbitration Center) issued Decree Number: 20.015/V/SK-BANI/HU concerning the Rules and Procedures for Conducting Arbitration Electronically Electronic Arbitration (Decree 015/2020), as a guidelines if the physical hearing is difficult to conduct.

Decree 015/2020 applies as a reference if the parties have agreed to conduct the hearing electronically. In general, Decree 015/2020 regulates the following matters:

1. The parties may attend the hearing electronically using internet-based telecommunication facilities, including but not limited to video conferencing facilities, which the parties may agree on the platform;¹
2. The parties are obliged to agree that only the official representatives of each party can attend the hearing electronically;²
3. The parties are not allowed to record the hearing;³ and
4. All additional costs arising from the electronic hearing will be borne by the parties, where the parties are also required to pay a deposit in advance.⁴

Apart from the general arrangements as described in Decree 015/2020, the parties also need to pay attention to technical matters to ensure that the arbitration hearing runs smoothly, including:

1. Stability of internet connection to maintain uninterrupted and good quality communication during the hearing;
2. Selection of an adequate and reliable electronic hearing platform;
3. Utilization of case document management services, so that the parties can quickly refer to, retrieve and display documents during the hearing;
4. Utilization of live-note services as hearing transcription for ease of reference to the proceedings and to oral arguments, especially in instances when there are technical difficulties with sound equipment; and
5. Availability of other necessary facilities. For example, security and procedures to ensure that persons attending the hearing are authorized to and are official representatives of the parties.

To conclude, communication and good faith from each party are necessary to ensure that the entire electronic hearing is run smoothly, fairly and securely. **KBA/HES**

1. Article 4 of Decree 015/2020

2. Article 5 paragraph (1) Decree 015/2020

3. Article 5 paragraph (3) Decree

4. Article 11 paragraph (1) and (2) Decree 015/2020



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