

INSIDE ARBITRATION: SPOTLIGHT ARTICLE: GITTA SATRYANI

19 August 2020 | Global
Legal Briefings

CONGRATULATIONS ON YOUR PROMOTION. TELL US ABOUT YOUR CAREER UP TO NOW - WHAT DID YOUR PATH TO PARTNERSHIP LOOK LIKE?

That's a good question. I think it's best described as the scenic route, rather than a straight path!

I am Indonesian originally – I was born there, and speak the language – but I trained and qualified at Baker McKenzie in Singapore. I moved to Herbert Smith's Singapore office in late 2009, and was seconded to the London office in 2013 and 2014, before returning to Singapore.

When I got back, I was trying to figure out where I fit in, and how I could best contribute to the firm. The office did Indonesia disputes work, but at that time it was largely focused on international clients who were involved in Indonesian litigation. As Singapore developed into a key hub for Southeast Asia arbitration, the practice shifted its focus towards arbitration as well. I was in the right place at the right time to market the firm's Singapore arbitration practice to Indonesian clients. For a long time, I have split my time between the two countries. This arrangement works for me personally, and it mirrors the way the firm's clients conduct their business in the region. Typically, I act for clients who invest in Indonesia but have their head offices in Singapore. Splitting my time means I can be on the ground and available to all parts of the business.



WHAT LED YOU TO THE LAW?

My parents' cheapness! I was offered places to study either Chemical Engineering in the US, or Law in Singapore. It was a lot less expensive to stay in Singapore. Jokes aside, I am glad I took this path, I have enjoyed my time as a lawyer.

WHAT ATTRACTS YOU ABOUT INTERNATIONAL ARBITRATION?

My introduction to arbitration was an accident: a friend persuaded me to join the moot programme at the National University of Singapore. Through that, I participated in the Vis Moot, and really enjoyed it. It felt very international. At the beginning of my career, arbitration was one of the few options that offered an immediate path to an international practice, and that really attracted me. Even now, I really enjoy the international aspects of arbitration. Every case has connections to at least two different countries – often a lot more. There are links to international investors, international projects; no two cases are the same. There’s always something different, always something challenging.

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YOUR PRACTICE FOCUSES ON SE ASIA. WHAT KINDS OF DISPUTES ARE YOU SEEING IN THAT PART OF THE WORLD? WHAT DEVELOPMENTS HAVE YOU WITNESSED IN SE ASIAN ARBITRATION DURING YOUR CAREER?

The mainstay in Southeast Asia is energy and infrastructure, as well as commodities disputes. Increasingly, though, I am seeing post-M&A disputes, shareholder disputes and disputes involving investment funds. The countries I most often see are Malaysia, Indonesia, Thailand; all are trying to move away from a historic over-dependence on energy. Over the next five to ten years, we should see that translate into a more diverse range of disputes as well.

In the arbitration space, I have noticed a lot more regional players getting involved in international arbitration. Regional and local (meaning, a firm with no footprint outside its home country) Southeast Asian law firms (sometimes but not always staffed by expat lawyers) and Australian law firms, are all entering a market that was historically dominated by international firms staffed by international lawyers. In the past, the local and regional firms would bring on an international firm to co-counsel in an international arbitration. Increasingly, those regional and local firms are seeing that they can do the work alone.

I’m also seeing much greater diversity in the pool of arbitrators, which is fantastic. Alongside the “household names”, there are many more Asian arbitrators, and a healthy mix of men and women. There may be reasons for this that are specific to the region; for example, women working in Asia typically have better access to affordable childcare than their counterparts practising in the West . Whatever the reasons, it is great to see.

"Singapore has benefitted from its continued legal and political stability"

SINGAPORE HAS BEEN PHENOMENALLY SUCCESSFUL IN ESTABLISHING ITSELF AS A LEADING SEAT FOR SE ASIAN DISPUTES. WHAT IS THE SECRET TO ITS SUCCESS?

Singapore has benefitted from its continued legal and political stability. This stability has led to our clients opting to put their headquarters in Singapore. The legal sector mirrors the way our clients work, including in the dispute resolution space.

Another factor is that Singapore benefits from a consistently high level of government support for the dispute resolution sector.

ARE THERE ANY OTHER SEATS YOU RECOMMEND FOR SEA ARBITRATIONS?

Traditionally, if a client wants to arbitrate in Asia, I would recommend Hong Kong as the main alternative to Singapore. Kuala Lumpur is making a major push to compete as a lower cost alternative to both Singapore and Hong Kong. On the whole, it is doing well, and I think it will give those seats a run for their money over the next few years. Malaysian court support for arbitration isn't yet thoroughly tested, but otherwise it seems to be a strong alternative.

Outside Asia, it's the usual suspects: London, Paris, possibly Stockholm for certain cases (typically energy cases). Another good option is Western Australia (Perth); it has a great legal sector, strong courts, and a history of handling energy disputes and commercial arbitrations.

INTERNATIONAL ARBITRATION HAS HISTORICALLY INVOLVED LOTS OF INTERNATIONAL TRAVEL. COVID HAS STOPPED THAT IN ITS TRACKS. WILL THESE CHANGES BE PERMANENT, OR WILL ARBITRATORS BE BACK ON THE ROAD AS SOON AS IT IS SAFE?

I don't know. I think the changes probably won't all be permanent. By its nature, arbitration attracts people who crave international exposure and contact with people. The aftermath of COVID is likely to affect the frequency of travel, though, and the length of hearings, and make us consider more carefully whether to travel. In future, we may see travel concentrated more heavily, but I don't think travel will disappear from arbitration altogether.

YOU DIVIDE YOUR TIME BETWEEN SINGAPORE AND JAKARTA, OFTEN WITH YOUR CHILDREN. HOW DO YOU FEEL ABOUT THE ADVENT OF MORE REMOTE WORKING, VIRTUAL HEARINGS, ETC?

Having young children means I have to travel "smart", and not stay away for too long at a time. That's part of the reason it works well for me to travel to Jakarta and within the Southeast Asian region. It also means that working remotely is completely familiar to me; it's something I've been doing for a long time.

For me, the jury is still out on virtual hearings. I'm about to do my first one, which will include testimony from a witness who is based at a mine in Borneo. We'll see how it goes. There is something very physical about the ability to read the witness in person, and to read the room. We are using a virtual hearing protocol, but have reserved the right to apply to discontinue if the proceeding is materially affected by bad connections or anything else related to it being held virtually.

HOW DO YOU VIEW THE ARBITRATION LANDSCAPE IN INDONESIA?

Unfortunately, it's not ideal at the moment. It is affected by many of the same factors that affect litigation in Indonesia, including a general lack of certainty. There is an ongoing dispute between the "two BANIs" [Indonesia's main arbitral institutions], and inconsistent application by the courts of the standards for setting aside and enforcing arbitral awards. The pool of qualified arbitrators is very small, and there is little real choice because the domestic arbitral institutions operate closed lists of arbitrators. It is hard to break in to those lists. Also, arbitrator fees are very low in Indonesia, so well-known and experienced Indonesian and international arbitrators often decline appointments.

On the other hand, Indonesian parties now see arbitration as a real alternative to litigation, not a completely foreign concept. They now understand that there are tangible benefits to a private dispute resolution process, where they have a say in the procedure and in the choice of arbitrator. Arbitration is also seen as a way to mitigate the traditional risks associated with litigating in the Indonesian courts. Finally, there is greater awareness that selecting an Indonesian seat doesn't mean parties must use an Indonesian arbitral institution or opt for ad hoc arbitration. Opting for SIAC, ICC, HKIAC, AIAC or LCIA arbitration seated in Jakarta helps to internationalise the standard and conduct of the proceedings as well as enlarging the available pool of arbitrators. So there is significant progress in that regard.

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KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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