BUSINESS AND HUMAN RIGHTS LAW & POLICY
2026, VOL. 2, NO. 2, 253-266 E-ISSN: 3110-4762 BHRLP

Enforcing International Arbitration Agreements in Indonesia: Its Possible Impact on Multinational Companies and Investments

Bima Danubrata Adhijoso

Senior Associate at SSEK Law Firm, Indonesia.
Email: bimaadhijoso@ssek.com

ABSTRACT
This paper examines Indonesia's approach to arbitration in cross-border commercial disputes by evaluating its domestic legal framework under Indonesian Arbitration Law and comparing it with international best practices reflected in the UNCITRAL Model Law, the New York Convention, and the ICC and the LCIA Arbitration Rules. The analysis focuses on several key aspects of arbitration practice, including the formation of valid arbitration agreements, joinder of third parties, challenges to arbitral awards, recognition and enforcement of arbitral awards, and the role of public order in enforcement proceedings. This paper argues that, although Indonesia's arbitration framework recognises core principles such as party autonomy, separability, finality of awards, and limited court intervention, practical uncertainties remain in its implementation. These uncertainties arise particularly from formalistic requirements, restrictive procedural mechanisms, and potential judicial inconsistency in enforcement-related matters. The paper further assesses how these issues may affect multinational companies operating in Indonesia, including through increased transaction costs, contractual uncertainty, and operational disruption. Finally, this paper highlights recent developments, including the Indonesian Supreme Court Regulation No. 3 of 2023, the Indonesian Constitutional Court Decision No. 100/PUU-XXII/2024, and the 2025 BANI Arbitration Rules, and offers recommendations for reform to better align Indonesia's arbitration regime with international best practices.

KEYWORDS: Indonesian Arbitration Law; Enforcement of Arbitral Awards; ICC Rules; LCIA Rules; UNCITRAL Model Law; New York Convention; Multinational Companies.

1. Introduction

In contemporary global commerce, international arbitration has become the preferred mechanism for resolving cross-border commercial disputes.[1] This is primarily because international arbitration offers parties a flexible and relatively efficient alternative to court litigation.[2] Unlike litigation before national courts, arbitration allows parties to shape important procedural aspects of the dispute resolution process, including the arbitral seat, governing law, language of proceedings, institutional rules, and method of appointing arbitrators.

International arbitration also provides a neutral forum for parties from different jurisdictions.[3] This neutrality is particularly important in cross-border transactions, where each party may be reluctant to submit disputes to the courts of the other party's home jurisdiction. In addition, arbitration offers confidentiality, procedural flexibility, and the possibility of international enforcement by virtue of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention").[4] These features make

1 White & Case LLP and Queen Mary University of London, *2025 International Arbitration Survey: The Path Forward: Realities and opportunities in arbitration* (2025), p. 5.
2 *Ibid*.
3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38 [NYC 1958], Art. V.
4 *Ibid*.

arbitration especially attractive to Multinational Companies ("MNCs") that require predictable, enforceable, and commercially sensitive dispute resolution mechanisms.

As Indonesia continues to participate in regional and global investment flows, commercial transactions involving Indonesian parties and foreign investors have become more common.[5] These transactions often involve MNCs, cross-border financing arrangements, foreign shareholders, international supply chains, and long-term commercial contracts. As a result, Indonesian companies and foreign investors operating in Indonesia increasingly incorporate international arbitration clauses in their commercial agreements as a dispute settlement mechanism. In this context, the reliability of Indonesia's arbitration framework has become an important consideration for parties engaged in cross-border business involving Indonesia.

Taking into account the above development in Indonesian MNCs, this paper examines how Indonesia's legal framework recognizes and enforces arbitration agreements and arbitral awards and compares Indonesia's approach with internationally accepted arbitration standards.

Indonesia's mechanism and framework for arbitration is principally governed by Law No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolution (the "Indonesian Arbitration Law").[6] Although the Indonesian Arbitration Law has provided a functional foundation for arbitration practice for more than two decades, this paper argues that it does not adopt some key features adopted in the UNCITRAL Model Law on International Commercial Arbitration, the ICC Arbitration Rules (2021) (the "UNCITRAL Model Law") as internationally recognized best practices for arbitration as alternative dispute resolution mechanism, and has several distinctive features that may diverge from international best practices.

This paper argues that these differences have practical implications for both domestic and foreign stakeholders, particularly in relation to the enforceability of awards, the availability and enforcement of interim measures, and the degree of judicial involvement in arbitration-related matters.[7] International best practices generally favor limited court intervention, respect for party autonomy, and pro-enforcement approach to arbitral awards.[8] In Indonesia, however, uncertainty has historically arisen from inconsistent court practice, broad arguments based on public order, and limited mechanisms for enforcing certain types of interim arbitral relief.

That said, this paper takes note of Indonesia's recent development on this front. In 2023, the Indonesian Supreme Court Regulation No. 3 of 2023 ("SC Reg. 3/2023"),[9] has introduced greater procedural clarity in relation to arbitration-related court proceedings, including applications for enforcement, annulment, and security attachment. Further, in 2024, the

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5 ASEAN Secretariat and United Nations Conference on Trade and Development (UNCTAD), *ASEAN Investment Report 2025: Foreign Direct Investment and Supply Chain Development* (ASEAN Secretariat and UNCTAD 2025), pp. 15, 19.

6 Law No 30 of 1999 regarding Arbitration and Alternative Dispute Resolution (Indonesia) State Gazette of the Republic of Indonesia 1999 No 138, Supplement to State Gazette No 3872. [Law No. 30 of 1999].

7 Catherine A. Rogers, '*The Ethics of International Arbitrators*' in Thomas Schultz and Federico Ortino (eds), The Oxford Handbook of International Arbitration (OUP 2021) 567, [The Ethics of International Arbitrators], p. 570.

8 Gary B Born, 'Chapter 15: Procedures in International Arbitration' in *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014), pp. 2120-2318.

9 Supreme Court of the Republic of Indonesia, *Supreme Court Regulation No. 3 of 2023 on Procedures for the Appointment of Arbitrators by the Court, Rights to Challenge, Examination of Applications for Enforcement, and Annulment of Arbitral Awards* (PERMA No. 3 Tahun 2023) [SC Regulation 3/2023].

Indonesian Constitutional Court's Decision No. 100/PUU-XXII/2024 follows suit with clarifying the definition of international arbitral award by focusing on the seat of arbitration or express classification under Indonesian laws.[10] In addition, the 2025 Indonesian National Arbitration Board (*Badan Arbitrase Nasional Indonesia* or "BANI") Arbitration Rules[11] also introduced several modernizing features in Indonesian arbitration mechanisms, including emergency arbitration and clearer rules on multi-party and multi-contract arbitration.

Against this background, the paper analyses the extent to which Indonesia's framework aligns with international best practices and how existing gaps may affect MNCs and their investments. It argues that, while Indonesia has made progress, further reform is necessary to strengthen legal certainty, reduce judicial unpredictability, and enhance Indonesia's competitiveness as a potential arbitration venue in Southeast Asia.

2. Methodology

This paper adopts a normative juridical method. It seeks to analyse legal norms, principles, and doctrines, rather than to establish empirical or statistical findings. Accordingly, statistical data is not the primary basis of the analysis. This paper uses statutory, conceptual, case-based, and comparative approaches. The statutory approach is carried out by examining relevant legislation and regulations, including the Indonesian Arbitration Law, the UNCITRAL Model Law, the New York Convention, the ICC Arbitration Rules (2021) (the "ICC Arbitration Rules"), and the LCIA Arbitration Rules (2020) (the "LCIA Arbitration Rules"), SC Reg. 3/2023, and the 2025 BANI Arbitration Rules. The conceptual approach focuses on key principles of international arbitration, including party autonomy, separability, competence-competence, neutrality, confidentiality, finality, and limited judicial intervention. These principles are used as benchmarks to assess Indonesia's arbitration framework.

3. Arbitration Agreements under Indonesian Laws and International Best Practices

3.1. Formation of Arbitration Agreements

From International arbitration agreements are fundamental to cross-border dispute resolution. They operate as the contractual basis through which parties' consent to submit their disputes to arbitration rather than to national courts. A well-drafted arbitration clause typically addresses several matters, including the scope of disputes covered by the clause, the arbitral institution, the seat of arbitration, the governing law, the number and method of appointment of arbitrators, the language of arbitration, confidentiality, and the rules governing the proceedings.[12]

Under Indonesian Arbitration Law, arbitration is strictly consensual and must be founded on a valid written arbitration agreement. Article 1(1) of the Indonesian Arbitration Law defines an "*Arbitration Agreement*" as an agreement in writing by which the parties bind themselves to submit existing or future disputes to arbitration.[13] The requirement of writing is mandatory and is interpreted broadly to include arbitration clauses embedded in underlying commercial contracts, as well as a standalone arbitration agreement.

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[10] *Constitutional Court of the Republic of Indonesia, Decision No 100/PUU-XXII/2024* (2 January 2025).

[11] Badan Arbitrase Nasional Indonesia (BANI), *Peraturan dan Prosedur Arbitrase BANI 2025* (2025) [BANI Arbitration Rules 2025].

[12] The Ethics of International Arbitrators, *Op. Cit.*, p. 568.

[13] Law No. 30 of 1999, *Op. Cit.*, Art. 1(1).

Arbitration agreements in Indonesia may be concluded prior to the emergence of a dispute (in the form of an arbitration clause contained in a commercial contract) or after a dispute has arisen (in the form of a submission agreement).[14] Pre-dispute arbitration clauses are the prevailing form in Indonesian commercial practice and are commonly incorporated into cross-border contracts involving Indonesian MNCs.

Post-dispute arbitration agreements are expressly recognized under the Indonesian Arbitration Law but are subject to strict formal requirements under Article 9(3) of the Indonesian Arbitration Law. Such requirement includes the requirement to have the post-dispute arbitration agreement in written form and the requirement to have the particulars of the dispute, the parties and tribunal, the seat and duration of arbitration, cost allocation, and express statements of consent from both the arbitrator(s) and the disputing parties detailed therein.[15] Indonesian courts have consistently treated these requirements as cumulative and formal in nature.

At the institutional level, the 2025 BANI Arbitration Rules reinforce the importance of clarity and precision at the agreement stage. BANI has introduced an updated model arbitration clause, which reflects greater emphasis on certainty as to institutional designation, scope of disputes, and procedural framework.[16] In practice, parties designating BANI are encouraged to adopt the model clause or ensure that their arbitration agreement clearly refers to the applicable version of the BANI Rules, given the transition from the 2022 BANI Arbitration Rules to the 2020 BANI Arbitration Rules.

As a consequence of a valid arbitration agreement, Indonesian courts are precluded from exercising jurisdiction over the dispute. Articles 3 and 11 of the Indonesian Arbitration Law give effect to this negative jurisdictional principle,[17] which continues to be applied by Indonesian courts, subject to limited statutory exceptions.

The approach taken under Indonesian Laws above reflects the basic international principle that arbitration is founded on consent. International best practices similarly require a clear agreement between the parties to submit disputes to arbitration. However, the prevailing international best practices approach appears to be more liberal and pro-arbitration in construing the existence, validity, and scope of arbitration agreements.

Under international best practices, courts and arbitral tribunals typically seek to uphold arbitration agreements where the parties' intention to arbitrate is clear, even if the clause is imperfectly drafted. This approach reflects the pro-enforcement policy underlying the New York Convention[18] and modern arbitration practices, including the UNCITRAL Model Law.[19] Rather than invalidating arbitration clauses based on technical or formal defects, arbitration-friendly jurisdictions typically interpret the principle of consent in a manner that gives effect to the parties' commercial intention.

This approach is closely connected to the principle of party autonomy.[20] Parties are free to determine the scope of disputes to be referred to arbitration, the arbitral institution, the seat of arbitration, the applicable procedural rules, the number of arbitrators, and the language

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14 Law No. 30 of 1999, *Op. Cit.*, Art. 1(3).
15 Law No. 30 of 1999, *Op. Cit.*, Art. 9(3).
16 BANI Arbitration Rules 2025, *Op. Cit.*, Appendix (Model Arbitration Clause).
17 Law No. 30 of 1999, *Op. Cit.*, Arts. 3, 11.
18 NYC 1958, *Op. Cit.*, Art. II.
19 UNCITRAL Model Law on International Commercial Arbitration 1985 (amended 2006) [UNCITRAL Model Law], Art. 7.
20 UNCITRAL Model Law, *Op. Cit.*, arts. 7-8; Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014), pp.1412-1420.

of the proceedings. International best practices encourage parties to specify these matters clearly at the drafting stage, but the absence of certain details does not necessarily invalidate the arbitration agreement if the parties' intention to arbitrate can still be ascertained.

Institutional rules also reflect these best practices. Leading arbitral institutions such as the ICC, LCIA, and BANI Arbitration Rules provide model arbitration clauses to assist parties in drafting effective arbitration agreements. These model clauses typically require parties to identify the arbitral institution, the applicable rules, the seat of arbitration, the number of arbitrators, and the language of arbitration. While these clauses are not mandatory, they reduce the risk of jurisdictional objections and procedural uncertainty.

In this respect, the 2025 BANI Arbitration Rules are consistent with international practice.[21] The introduction of an updated BANI model clause reflects the importance of clarity at the agreement stage. This is particularly relevant in Indonesia, where poorly drafted arbitration clauses may create room for objections before courts or during enforcement proceedings. Therefore, parties choosing BANI arbitration should either adopt the BANI model clause or ensure that their arbitration clause expressly refers to BANI, the applicable version of the BANI Rules, the seat of arbitration, the number of arbitrators, and the language of arbitration.

Nevertheless, there remains an important difference between Indonesia's formal legal approach and international best practices. International best practices prioritize the parties' intention to arbitrate and generally avoid excessive formalism. By contrast, Indonesian law, particularly in relation to post-dispute arbitration agreements under Article 9(3) of the Indonesian Arbitration Law, imposes detailed formal requirements.[22] While these requirements promote certainty, they may also create risks where an agreement is substantively clear but technically incomplete.

Accordingly, Indonesia's arbitration framework is broadly aligned with international best practices in recognizing consent, written arbitration agreements, party autonomy, separability, and the exclusion of court jurisdiction. However, Indonesia would benefit from a more consistently pro-arbitration interpretive approach, especially where the parties' intention to arbitrate is evident. Such an approach would reduce the risk of technical challenges, strengthen the enforceability of arbitration agreements, and bring Indonesian arbitration practice closer to leading international arbitration jurisdictions.

3.2. Joinder of Third Parties

The Indonesian Arbitration Law adopts a restrictive approach to the participation of third parties in arbitration. Article 30 of the Indonesian Arbitration Law permits the joinder of a third party only where the third party has a related legal interest in the dispute and where its participation is approved by both the disputing parties and the arbitral tribunal.[23] Consent therefore remains the central requirement, and joinder cannot be made unilaterally by one party.

This approach reflects the consensual nature of arbitration.[24] Unlike court litigation, where procedural rules may allow third parties to be joined in certain circumstances, arbitration is founded on party consent. Accordingly, a person or entity that has not agreed to arbitrate generally cannot be compelled to participate in arbitral proceedings. Indonesian law does not

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[21] BANI Arbitration Rules 2025, *Loc. Cit*.
[22] Law No. 30 of 1999, *Op. Cit.*, Art. 9(3).
[23] Law No. 30 of 1999, *Op. Cit.*, Art. 30.
[24] Law No. 30 of 1999, *Op. Cit.*, Art. 30; Andrea Marco Steingruber, 'The Evolution of Arbitration and its Consensual Nature' in *Consent in International Arbitration* (Oxford University Press, 2012), p. 12.

recognize broad doctrines of compulsory joinder, implied consent, or group of companies' doctrine in the same way that some arbitral tribunals or foreign courts may consider them in exceptional circumstances. As a result, third-party participation in Indonesian arbitration has traditionally been limited in practice, particularly in disputes involving complex contractual structures, corporate groups, or multiple related agreements.

This restrictive approach differs from modern international arbitration practice, which has increasingly developed procedural mechanisms to address multi-party and multi-contract disputes. Leading institutional rules, such as the ICC and LCIA Arbitration Rules, provide mechanisms for joinder or consolidation where certain requirements are met, including consent of the parties, compatibility of arbitration agreements, or a close connection between the claims.[25] These mechanisms are intended to avoid fragmented proceedings, inconsistent awards, and inefficiency in disputes arising from complex commercial transactions.

The 2025 BANI Arbitration Rules represent an important development in this respect. The rules expressly accommodate multi-party and multi-contract arbitration at the filing stage, provided that there is a clear connection between the parties or contracts and that the relevant arbitration agreements designate BANI arbitration.[26] This development brings BANI practice closer to modern international arbitral practice by allowing related disputes to be managed more efficiently within a single proceeding.

However, the 2025 BANI Arbitration Rules do not override the consent-based foundation of Indonesian Arbitration Law. The availability of multi-party or multi-contract arbitration remains dependent on the existence and wording of the relevant arbitration agreements. Therefore, while Indonesia has moved toward greater procedural flexibility, its framework remains more conservative than some leading arbitration jurisdictions.

For MNCs, this has important practical implications. Cross-border transactions often involve multiple parties within the same corporate group, parallel contracts, financing arrangements, guarantees, and related project documents. If the arbitration clauses across these documents are not harmonized, disputes may need to be resolved in separate proceedings, increasing cost, delay, and the risk of inconsistent outcomes. Parties should therefore ensure that related contracts contain consistent arbitration clauses, designate the same arbitral institution, seat, rules, and language, and expressly address joinder and consolidation where appropriate.

Accordingly, Indonesia's position on joinder is broadly consistent with the principle of consent in international arbitration but remains relatively restrictive compared with international best practices. The 2025 BANI Arbitration Rules are a positive step toward procedural modernization, but further clarity in the Indonesian Arbitration Law would help ensure that multi-party and multi-contract disputes can be managed efficiently without undermining party consent.

3.3. Challenge of Arbitration Awards

An arbitral award rendered in Indonesia is final and binding. This principle is expressly stipulated in Article 60 of the Indonesian Arbitration Law, which provides that arbitral awards are not subject to appeal or review on the merits.[27] Notwithstanding this finality, a party may seek annulment of a domestic arbitral award by submitting an application to the competent

[25] ICC Arbitration Rules 2021, Arts. 7, 10; LCIA Arbitration Rules 2020, Arts. 22A.7, 22A.8.
[26] BANI Arbitration Rules 2025, *Op. Cit.*, Arts. 9(1)-(2).
[27] Law No. 30 of 1999, *Op. Cit.*, Art. 30.

District Court.[28] The grounds for annulment are exhaustively listed under Article 70 of the Arbitration Law and reaffirmed under Article 24.4 of SC Reg. 3/2023, namely: a). where letters or documents submitted in the arbitration hearings, after the award has been rendered, are proven or declared to be fraudulent or forged; b). discovery of a material document after the award has been rendered, that was intentionally concealed by the opposing party; or c). where the award is rendered based on fraud that was committed by one of the parties in the proceeding.

These grounds are interpreted narrowly by Indonesian courts and are not intended to permit any re-examination of the tribunal's legal reasoning, factual findings, or evaluation of evidence. Annulment proceedings are therefore limited to procedural integrity and serious misconduct affecting the legitimacy of the award. Pursuant to Article 71 of the Indonesian Arbitration Law and Article 24.1 of SC Reg. 3/2023, an application for annulment must be filed within 30 days from the date of registration of the arbitral award with the competent District Court.[29] This time limit is strictly applied, and failure to comply will render the application inadmissible.

If the District Court grants the annulment application, the decision may be appealed to the Supreme Court.[30] Conversely, where the District Court rejects the annulment application, such decision is final and not subject to appeal.[31] This asymmetrical appeal mechanism reflects the pro-finality stance of Indonesian arbitration law and seeks to limit prolonged post-award litigation. Indonesian courts only have jurisdiction to annul arbitral awards rendered within the territory of Indonesia.

In accordance with long-standing judicial policy, as reflected in the Indonesian Supreme Court Chairman's Decree No. KMA/032/SK/IV/2006 on Technical Guidelines for the Administration of Courts, annulment proceedings are available exclusively in respect of domestic arbitral awards. Foreign arbitral awards are not subject to annulment under Indonesian law and may only be resisted at the enforcement stage on limited grounds. In recent practice, Indonesian courts, particularly following the issuance of SC Reg. 3/2023, have demonstrated a more restrained approach to annulment applications, emphasizing the exceptional nature of annulment and reinforcing the principle that arbitration is intended to provide final and binding resolution of disputes.

When compared with international best practices, Indonesia's annulment framework is both arbitration-friendly and distinctive. It is arbitration-friendly because it recognizes the finality of arbitral awards and does not allow courts to review the merits of the dispute. However, it is distinctive because the statutory grounds for annulment under Article 70 are narrower and more specific than the grounds typically found in Model Law jurisdictions, where an award may also be challenged on grounds such as invalidity of the arbitration agreement, lack of proper notice, excess of jurisdiction, improper tribunal composition, non-arbitrability, or public policy.

This narrow formulation can support finality, but it may also create practical uncertainty where parties attempt to reframe broader procedural objections such as fraud, concealment of documents, or forgery. SC Reg. 3/2023 is therefore important because it reinforces the exceptional nature of annulment and seeks to discipline the role of courts in post-award proceedings.

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[28] *Ibid.*, Art. 70.
[29] Law No. 30 of 1999, *Loc. Cit.*; SC Regulation 3/2023, *Loc. Cit*.
[30] *Ibid*.
[31] *Ibid*.

For MNCs, the key implication is that arbitration in Indonesia offers a high degree of formal finality, but post-award risk cannot be ignored. Parties should ensure that arbitration proceedings are conducted with procedural discipline, that documentary evidence is properly authenticated, and that the award is promptly registered where required. In cross-border transactions, parties should also distinguish clearly between domestic awards, which may be subject to annulment in Indonesia, and foreign arbitral awards, which may only be challenged in Indonesia at the enforcement stage.

Accordingly, Indonesia's approach to challenging arbitral awards is broadly consistent with the international principle of finality, but its practical effectiveness depends on consistent judicial restraint. Continued narrow interpretation of Article 70 of the Indonesian Arbitration Law and careful separation between annulment of domestic awards and refusal of enforcement of foreign awards are essential to maintaining confidence in Indonesia's arbitration framework.

3.4. Enforcement of Arbitration Awards

Arbitral awards are not self-executing in Indonesia and must be enforced through the courts.[32] Domestic awards must be registered with the competent District Court within 30 days pursuant to Article 59 of the Indonesian Arbitration Law. Enforcement is granted upon application by the prevailing party, subject to limited review, including public policy considerations under Article 62 of the Indonesian Arbitration Law.[33]

In such enforcement, courts do not re-examine the merits. International awards are recognized and enforced through the Central Jakarta District Court pursuant to Articles 65–67 of the Indonesian Arbitration Law, subject to requirements that: (i) the award is rendered in a treaty state (including under the New York Convention); (ii) the dispute falls within commercial law; (iii) enforcement does not violate public order; and (iv) a writ (*exequatur*) is obtained from the Central Jakarta District Court (or from the Supreme Court where the Republic of Indonesia is a party).[34]

Refusal decisions may be challenged to the Indonesian Supreme Court, which must decide within 90 days. At the enforcement stage, review is procedural and formal, not merits based. The enforcement of international arbitral awards can be refused pursuant to Article 66 of the Indonesian Arbitration Law if the award:[35] a). was rendered in a country not bound by any bilateral or multilateral treaty on the recognition and enforcement of international arbitration awards with Indonesia; b). does not fall within the scope of commercial law under Indonesian laws; or c). violates public order.

SC Reg. 3/2023 further clarifies that "*public order*" refers to matters that undermine the fundamental principles governing Indonesia's legal system, economic order, and socio-cultural values.[36] Indonesian courts have increasingly adopted a restrictive interpretation of public order, particularly in the context of international arbitral awards.

At the enforcement stage, Indonesian courts are limited to a formal and procedural review of the arbitral award and do not re-examine the merits of the dispute. The filing of an annulment application does not automatically suspend enforcement, although courts may exercise discretion to stay execution in exceptional circumstances. Once enforcement is

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[32] Law No. 30 of 1999, *Op.Cit.*, Arts. 60, 65, 66.
[33] Law No. 30 of 1999, *Op.Cit.*, Art. 62.
[34] Law No. 30 of 1999, *Op.Cit.*, Art. 66.
[35] Law No. 30 of 1999, *Op.Cit.*, Art. 66.
[36] SC Regulation 3/2023, *Loc.Cit*.

granted, execution is carried out in accordance with Indonesian civil procedural law by the court having jurisdiction over the losing party's assets.

Compared with international best practices, Indonesia's enforcement framework is broadly aligned with the New York Convention because it recognizes and enforces international arbitral awards subject to limited grounds for refusal.[37] However, Indonesia's framework remains procedurally more cumbersome than leading arbitration jurisdictions. The requirement to obtain an *exequatur*, the centralization of international award enforcement through the Central Jakarta District Court, and the potential invocation of public order objections may create additional time and cost for award creditors.

For MNCs, this means that obtaining a favourable arbitral award is only one stage of the dispute resolution process. Where the losing party's assets are located in Indonesia, the award creditor must also consider the Indonesian enforcement process, possible public order objections, and the practical steps required for execution. Accordingly, parties entering into cross-border transactions involving Indonesian counterparties should draft arbitration clauses carefully, select an appropriate arbitral seat, preserve evidence of due process throughout the arbitration, and assess at an early stage whether enforcement in Indonesia is likely to be required.

In conclusion, Indonesia has a functioning legal framework for the recognition and enforcement of arbitral awards, and recent developments have improved clarity. Nevertheless, further consistency in court practice, especially in relation to public order and execution procedures, is necessary for Indonesia to fully align with international best practices and strengthen confidence among foreign investors and MNCs.

4. Impact of Indonesia's Ineffective Legal Framework on MNCs' Business Operations

Indonesia's position as the world's fourth most populous country and a member of the G20 makes it an attractive destination for foreign investment and MNC operations. Yet, the deficiencies in Indonesia's arbitration enforcement framework create tangible operational and commercial risks that directly undermine MNCs' ability to conduct business confidently within the jurisdiction. The inability to rely on arbitration, the hallmark mechanism of international commercial dispute resolution, imposes cascading costs on MNCs across multiple dimensions, from contract negotiation and financing to strategic investment decisions.[38]

4.1. Increased Transaction Costs and Contractual Uncertainty

One of the most immediate consequences of Indonesia's unpredictable arbitration environment is the increase in transaction costs borne by MNCs. When MNCs cannot rely on the enforceability of arbitration clauses, they are compelled to adopt more elaborate contractual safeguards, such as parent company guarantees, performance bonds, or enhanced indemnity structures, to mitigate the risk of unenforceable dispute resolution mechanisms.[39] These additional protections inflate the cost of deal-making in Indonesia relative to other jurisdictions in the region.

Moreover, the Indonesian courts' tendency to scrutinize arbitration clauses for technical defects under Article 2 of the Indonesian Arbitration Law, as illustrated by the rigid

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[37] NYC 1958, *Loc. Cit.*

[38] United Nations Conference on Trade and Development (UNCTAD), *World Investment Report 2023: Investing in Sustainable Energy for All* (United Nations, 2023), p. 15.

[39] World Bank, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (World Bank, 2020), p. 42

institutional specificity requirement,[40] forces MNCs to engage specialized Indonesian legal counsel to draft arbitration clauses that comply with local formality requirements. This is not merely a question of legal cost; it introduces a layer of legal risk that is difficult for foreign parties to anticipate. An MNC drafting a commercial contract using standard international arbitration clauses, which would be readily upheld in Singapore or Hong Kong, may find those same clauses invalidated in Indonesia on the grounds that they omit the name of a specific arbitral institution. This mismatch between international drafting norms and Indonesian judicial expectations creates fertile ground for opportunistic litigation by Indonesian counterparties seeking to frustrate arbitration proceedings
agenda.

4.2. Chilling Effect on Foreign Direct Investment

The unpredictability of Indonesia's arbitration enforcement has a broader chilling effect on Foreign Direct Investment ("FDI"). MNCs evaluating investment destinations across Southeast Asia routinely assess the legal infrastructure available for dispute resolution as a key criterion in their investment decisions.[41] A jurisdiction that cannot guarantee the enforcement of arbitral awards substantially elevates the perceived risk of investment, often resulting in MNCs either avoiding the jurisdiction altogether or demanding a higher return on investment as compensation for the additional legal risk.

Indonesia's inconsistent enforcement record, exemplified by the Indonesian Supreme Court's treatment of foreign awards in cases such as *PT First Media v Astro Nusantara* and *PGN v CRW*, has not gone unnoticed by the international investment community.[42] The Karaha Bodas dispute, involving a geothermal energy project in West Java, is perhaps the most internationally prominent illustration of how Indonesian judicial intervention in arbitration can impose severe consequences on MNCs. After an international arbitral tribunal in Switzerland rendered an award of over USD 261 million in favor of Karaha Bodas Company, Indonesian courts refused enforcement, forcing Karaha Bodas to pursue enforcement across multiple jurisdictions, including Hong Kong and the United States courts, to recover the award.[43] This episode sent a clear signal to the international investment community about the risks of relying on Indonesian courts to honor international arbitral awards.

UNCTAD data indicates that Indonesia's FDI inflows, while growing in nominal terms, remain disproportionately low relative to the size of its economy when compared to regional peers such as Vietnam and Thailand, jurisdictions that offer more predictable legal environments. While the causes of this disparity are multifactorial, legal unpredictability, including in arbitration, is consistently identified by investors as a key deterrent.

4.3. Operational Disruption from Prolonged Dispute Resolution

Beyond the investment decision stage, the deficiencies in Indonesia's arbitration framework create operational disruption for MNCs already engaged in the Indonesian market. When Indonesian courts intervene in arbitration proceedings or delay the enforcement of an

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[40] Law No. 30 of 1999, *Op.Cit.*, Art. 2.n

[41] Organisation for Economic Co-operation and Development (OECD), *FDI Regulatory Restrictiveness Index 2022* (OECD, 2022).

[42] United Nations Conference on Trade and Development (UNCTAD), Investment Policy Hub: Indonesia (2023) <https://investmentpolicy.unctad.org/investment-laws/laws/89/indonesia-foreign-investment-law> accessed 10 October 2024.

[43] *Karaha Bodas Co LLC v Perusahaan Pertambangan Minyak Dan Gas Bumi Negara* 335 F3d 357 (5th Cir 2003).

award, as permitted under Article 11(2) of the Indonesian Arbitration Law, MNCs face protracted disputes that consume management time, divert financial resources, and distract from core business operations. The uncertainty surrounding the enforceability of interim measures in Indonesia is particularly damaging, as MNCs cannot rely on arbitral tribunals' interim orders being upheld by Indonesian courts during the pendency of arbitration.

For MNCs operating in capital-intensive sectors, such as natural resources, infrastructure, and energy sectors, in which Indonesia has significant interest and activity, then prolonged dispute resolution carries particularly acute risks. Disputes in these sectors often involve large-scale projects, where delays can halt construction, disrupt supply chains, and result in significant financial losses for all parties involved. The lack of reliable mechanisms for the expeditious enforcement of arbitral awards in Indonesia thus translates directly into heightened operational risks for MNCs in precisely those sectors where Indonesia most needs foreign investments.

5. Conclusion

This paper finds that the effectiveness of Indonesia's arbitration framework depends not only on the text of the Indonesian Arbitration Law, but also on its practical implementation by Indonesian courts and arbitral institutions. In several respects, Indonesia's framework is broadly aligned with international best practices. For example, Indonesian law recognises arbitration as a consent-based mechanism, limits annulment of domestic arbitral awards to specific statutory grounds and permits the recognition and enforcement of international arbitral awards through the Central Jakarta District Court. These features reflect Indonesia's general commitment to arbitration as an alternative dispute resolution mechanism.

At the same time, several gaps remain. Indonesia does not adopt the UNCITRAL Model Law, and its arbitration regime contains features that are more formalistic and less procedurally flexible than those of leading arbitration jurisdictions. These include strict requirements for post-dispute arbitration agreements, a restrictive approach to third-party joinder, procedural complexity in enforcing arbitral awards, and continuing uncertainty surrounding the interpretation of public order. The enforcement of interim measures also remains limited. Although SC Reg. 3/2023 introduced an important mechanism for court assistance in enforcing tribunal-ordered security attachment, it does not comprehensively address other forms of interim relief or the enforcement of emergency arbitration decisions.

For MNCs, the practical implications are significant. Cross-border commercial transactions require dispute resolution mechanisms that are predictable, efficient, neutral, and enforceable. Where arbitration clauses are vulnerable to technical objections, interim measures are difficult to enforce, or public order objections create uncertainty at the enforcement stage, MNCs face increased transaction costs, operational disruption, and heightened investment risk. These risks may affect how MNCs structure their contracts, price legal risk, and assess Indonesia as a destination for investment.

To strengthen Indonesia's arbitration framework, this paper recommends several reforms. First, Indonesia should consider amending the Indonesian Arbitration Law to align more closely with internationally accepted standards, particularly those reflected in the UNCITRAL Model Law. Second, Indonesian courts should continue to apply a narrow and consistent interpretation of public order so that enforcement proceedings are not used as a disguised appeal on the merits. Third, Indonesia should expressly recognise and provide clear enforcement mechanisms for a broader range of tribunal-ordered interim measures, including emergency arbitration decisions. Fourth, the Indonesian Arbitration Law should provide greater clarity on multi-party and multi-contract arbitration while preserving the consent-based

nature of arbitration. Finally, continued judicial training and institutional development are necessary to ensure that courts consistently adopt an arbitration-supportive approach.

Finally, Indonesia has a functioning arbitration framework and has taken meaningful steps toward modernisation. Nevertheless, further reform is necessary to improve predictability, reduce judicial uncertainty, and strengthen the enforceability of arbitration agreements and arbitral awards. By aligning its arbitration regime more closely with international best practices, Indonesia can enhance confidence among MNCs, support foreign investment, and improve its competitiveness as a dispute resolution venue in Southeast Asia.

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