



Trends In Cross Border Arbitration: Legal Challenges And Implementation In Indonesia

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Abstrak

This paper examines the trends, legal challenges, and effectiveness of cross-border arbitration in Indonesia within the context of contemporary international trade and investment. The rapid growth of global commerce necessitates reliable dispute resolution mechanisms, positioning international arbitration as a preferred alternative due to its neutrality, procedural flexibility, and enforceability under instruments such as the 1958 New York Convention. Using a normative juridical approach, this study analyzes primary and secondary legal sources, including statutory regulations, scholarly literature, and arbitral decisions, through systematic stages of data collection, analysis, and synthesis. The findings reveal that while Indonesia possesses a solid legal framework for arbitration, practical challenges persist, including inconsistent judicial interpretations, limited institutional capacity, high procedural costs, and deficiencies in arbitration clause drafting. These factors affect the effectiveness and credibility of international arbitration. The study concludes with recommendations for harmonizing domestic law with international standards, enhancing institutional capacity, and promoting empirical research to strengthen Indonesia's role as a competitive forum for cross-border dispute resolution.

I. INTRODUCTION

The rapid expansion of cross-border trade and investment in the era of globalization necessitates the availability of credible business dispute resolution mechanisms as a foundation for legal certainty and the reinforcement of economic growth. In this context, international arbitration is widely regarded as a preferred alternative dispute resolution mechanism outside national courts due to its impartial nature, procedural flexibility, and the enforceability of its awards, which benefit from cross-border recognition. Nevertheless, despite the deep entrenchment of transnational arbitration within international legal practice, its implementation in Indonesia continues to encounter a number of structural constraints that limit its optimal function and reduce its attractiveness as a primary dispute resolution forum for global business actors (Rafika, 2022).

The legal framework governing arbitration in Indonesia is primarily regulated by Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, which provides comprehensive provisions applicable to both domestic and international arbitration. In addition, Indonesia is a contracting state to the 1958 New York Convention on the Recognition and Enforcement

of Foreign Arbitral Awards, thereby enabling arbitral awards rendered abroad to be recognized and enforced within Indonesian jurisdiction. The existence of these two legal instruments underscores Indonesia's commitment to supporting and facilitating international arbitration, while simultaneously offering legal certainty to business entities seeking efficient dispute resolution mechanisms (Makarim, 2019).

Despite the availability of an established legal framework, the practical implementation of cross-border arbitration in Indonesia continues to face fundamental challenges. One of the primary issues concerns the lack of clarity and consistency in the application of norms governing the recognition and enforcement of international arbitral awards. In practice, national courts have at times exhibited excessive caution by delaying or refusing the execution of foreign arbitral awards on the grounds of public policy violations or procedural deficiencies, notwithstanding Indonesia's ratification of the New York Convention. This situation generates friction between the obligation to align with international arbitration standards and the state's interest in safeguarding national legal sovereignty and public interests (Wajdi et al., 2023).

Further challenges arise from structural and procedural aspects of cross-border arbitration practice, including the relatively high costs involved, prolonged dispute resolution timelines, and limited understanding among legal practitioners and business actors regarding the distinctive characteristics of international arbitration. Such limitations in legal literacy frequently result in inadequately drafted arbitration clauses within cross-border contracts, which in turn give rise to additional disputes concerning arbitral jurisdiction and the determination of applicable law. These complexities are further exacerbated by competition from well-established foreign arbitral institutions, such as the Singapore International Arbitration Centre (SIAC), which has successfully cultivated a strong reputation and high level of trust among international investors (Japar, 2025).

In response to evolving global arbitration practices, Indonesia has undertaken a series of regulatory reforms aimed at aligning its national arbitration framework with international standards, including institutional restructuring and conceptual clarification regarding international arbitral awards. Nevertheless, the extent to which harmonization between the domestic legal regime and global arbitration practices can be effectively achieved remains a subject requiring more comprehensive and systematic analysis. Against this backdrop, this study focuses on examining prevailing trends in cross-jurisdictional arbitration while identifying the legal and operational challenges faced in Indonesia, with the objective of formulating strategic recommendations to strengthen and develop the national arbitration ecosystem (Memi, 2017).

II. RESEARCH METHODS

This study adopts a normative juridical approach, focusing on an analytical examination of statutory regulations, legal literature, scholarly opinions, as well as decisions issued by courts and arbitral institutions (Suyanto, 2023). The selection of this approach is grounded in the objective of the research, which aims to analyze the legal framework, normative principles, and theoretical constructions governing transnational arbitration and their application within the Indonesian legal system. The research materials are derived from primary legal sources, including Law Number 30 of 1999 on Arbitration and

Alternative Dispute Resolution and the 1958 New York Convention, complemented by secondary legal sources such as legal textbooks, academic journals, scholarly articles, and official documents issued by arbitral institutions.

The research is conducted systematically through several interrelated stages. The initial stage involves the collection and selection of relevant primary and secondary legal materials aligned with the focus of the study. The subsequent stage is dedicated to an in-depth analysis of statutory provisions and legal theories to identify the fundamental principles of transnational arbitration, prevailing dispute resolution patterns, and various juridical challenges arising in practical implementation. The final stage consists of synthesizing the findings to formulate comprehensive conclusions and develop strategic, application-oriented recommendations.

The scope of this research encompasses the entire body of statutory regulations, legal doctrines, arbitral awards, and scholarly references related to the practice of transnational arbitration in Indonesia. The sampling technique employed is purposive sampling, whereby documents and literature are selected based on their direct relevance to the research focus and their established legal or academic authority and credibility. The study is conducted through desk research, involving the examination of library resources, arbitral institution databases and archives, as well as official digital sources maintained by government agencies and relevant international organizations, thereby ensuring the validity and completeness of the collected data.

III. RESULTS AND DISCUSSION

A. Trends in the Implementation of Cross-Border Arbitration in the Context of Contemporary International Trade and Investment

Within an increasingly integrated global economy, international arbitration has experienced rapid development and has evolved into a primary mechanism for resolving cross-border commercial and investment disputes. This growth reflects the demand of business actors and investors for dispute resolution mechanisms that are neutral, efficient, and capable of ensuring legal certainty, particularly where contractual relationships involve divergent national legal systems. International arbitration offers

several notable advantages, including procedural flexibility, party autonomy in appointing arbitrators with specialized expertise, and the final and binding nature of arbitral awards that may be recognized and enforced across multiple jurisdictions through international legal instruments such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This trend has been further reinforced by the expansion of modern commercial and investment agreements both bilateral and multilateral which consistently incorporate arbitration clauses as the preferred method of dispute resolution outside national court systems (Ngantung, 2017).

In the sphere of cross-border investment, the Investor-State Dispute Settlement (ISDS) mechanism has developed into a fundamental component of the international investment law regime. This framework enables foreign investors to initiate claims against host states before international arbitral tribunals when state measures or policies are alleged to contravene agreed investment protection standards. Recent data published by the United Nations Conference on Trade and Development (UNCTAD) indicate a substantial increase in investor-state disputes over the past decades, with the total number of registered cases exceeding 1,400 by 2024, including approximately 58 new cases initiated in the same year. This trend demonstrates that the expansion of international arbitration is reflected not only in the growing volume of disputes but also in the escalating scale of claims, many of which involve amounts exceeding USD 100 million. Such developments underscore the strategic role of international arbitration as the principal mechanism for resolving high-value investment disputes (DEWI et al., 2021).

Beyond the rising number of cases, a discernible pattern has emerged in which extractive industries such as mining, energy, and strategic mineral resources constitute the dominant subject matter of investment disputes. This phenomenon mirrors shifts in the global economic agenda, including the transition toward sustainable energy and the increasing demand for alternative resources, which in turn contribute to greater complexity in international arbitration practice. The consequences of these developments are most

acutely felt by developing countries, which frequently appear as respondent states in investment disputes, while the majority of claims are initiated by investors from developed economies. Concurrently, contemporary arbitration practice is characterized by the growing use of third-party funding to mitigate the substantial costs of arbitration proceedings, the integration of technology including artificial intelligence to enhance procedural efficiency and effectiveness, and heightened attention to environmental, social, and governance (ESG) considerations in disputes involving large-scale international projects (Diansari, 2021).

In the context of international trade, arbitration continues to occupy a central position as the dispute resolution mechanism most favored by multinational corporations, particularly in contractual relationships involving trade and services. Numerous legal studies indicate that business actors prefer arbitration over litigation before national courts due to its relatively expedited procedures, perceived neutrality, and capacity to safeguard commercial confidentiality. This preference has been further strengthened by the rapid digitalization of the global economy, which has significantly increased the volume of cross-border transactions and, correspondingly, the complexity of potential disputes. Findings from recent international surveys reveal that more than eighty percent of legal practitioners continue to regard international arbitration as the primary means of resolving cross-jurisdictional disputes, thereby affirming sustained global confidence in this mechanism despite persistent implementation challenges (Rafika, 2022).

Notwithstanding its strategic importance, the implementation of international arbitration remains confronted with several critical issues requiring careful consideration. Within the ISDS framework, for instance, criticisms frequently focus on the perceived imbalance between investor interests and state sovereignty, particularly for developing countries that must bear substantial arbitration costs while facing limitations in procedural transparency. Such conditions may exert pressure on the regulatory autonomy and public policy space of host states. These concerns have fueled global debates on the need to reform investment dispute settlement

mechanisms, including proposals for the establishment of a permanent international investment court as a more transparent and equitable alternative. At the same time, many states continue to pursue the harmonization of domestic legal frameworks with international instruments such as the UNCITRAL Model Law, with the aim of enhancing legal certainty and strengthening the attractiveness of arbitration across jurisdictions while adapting to the evolving challenges of the global legal landscape (DEWI et al., 2021).

B. Legal Challenges in the Implementation of Cross-Border Arbitration in Indonesia

The implementation of international arbitration in Indonesia continues to face several significant legal challenges, notwithstanding its widespread recognition as an effective, neutral, and professional mechanism for resolving disputes in global commercial practice. From a normative perspective, arbitration is governed by Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, further reinforced by Indonesia's accession to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (DEWI et al., 2021). Nevertheless, divergences between domestic legal provisions and international standards frequently result in inconsistencies at the level of practical application. This situation undermines legal certainty and adversely affects perceptions of Indonesia's competitiveness as a reliable arbitration forum among business actors and the international commercial community.

One of the most fundamental legal issues lies in the uncertainty surrounding the recognition and enforcement of foreign arbitral awards by national courts. In a number of cases, Indonesian courts have engaged in substantive re-examination of foreign arbitral awards by relying on an expansive interpretation of the concept of national public order, leading to delays or even refusals in enforcement. Such practices are evident where awards rendered by foreign arbitral institutions are denied execution on the grounds that they allegedly contravene Indonesian public policy, despite the normative obligation to recognize and enforce such awards under the New York Convention. The resulting uncertainty is not merely

attributable to differences in legal terminology, but rather to divergent judicial interpretations of the legal standards used to justify refusal or annulment of enforcement. Consequently, this situation heightens legal risks for foreign investors and business actors, potentially diminishing investment interest due to doubts regarding the effectiveness of enforcing international arbitral awards within the Indonesian jurisdiction (Al-Ghifari et al., 2025).

In addition to this issue, further challenges arise from the complex interaction between domestic legal regulations and ratified international instruments. A number of scholars have highlighted the ambiguous position of the New York Convention within Indonesia's hierarchy of laws, particularly when it conflicts with provisions of the Arbitration Law and its subsequent implementing regulations. This has given rise to debates concerning the applicability of the principle of *lex posterior derogat legi priori*. The tension between international norms and domestic legislation generates legal uncertainty, especially where both regimes regulate procedural aspects or provide differing interpretations in the enforcement of arbitral awards. Such uncertainty may ultimately reduce the confidence of foreign parties in selecting arbitration forums connected to the Indonesian jurisdiction (Nova, 2023).

From a practical implementation standpoint, limitations in human resource capacity and insufficient understanding of international arbitration law among members of the judiciary and domestic legal practitioners remain significant obstacles. In several decisions, national courts have tended to treat international arbitration as though it possesses the same characteristics as domestic arbitration, reflecting a limited appreciation of the distinctive features of the international arbitration regime. These include, *inter alia*, the principles of *kompetenz-kompetenz* and the final and binding nature of arbitral awards. This knowledge gap affects not only the stages of recognition and enforcement but also the quality of legal representation provided to disputing parties. As a result, the risk of procedural errors and flawed legal interpretation increases, ultimately diminishing the overall effectiveness of international arbitration in Indonesia.

Another issue of considerable importance concerns the cost structure and accessibility of international arbitration. Although arbitration is often regarded as more efficient than litigation before national courts, in practice international arbitration frequently entails substantial financial burdens. These costs arise from the involvement of professional arbitrators, administrative fees charged by international arbitral institutions, and additional expenses related to the use of foreign languages or the designation of arbitral seats outside the parties' home jurisdictions. In practical terms, such financial demands restrict access for parties with limited resources and may generate inequality in the utilization of arbitration as a dispute resolution mechanism (Harahap, 2018).

C. Efektivitas Implementasi Arbitrase Lintas Negara di Indonesia

The implementation of international arbitration in Indonesia holds considerable potential for ensuring legal certainty, maintaining forum neutrality, and safeguarding the rights and interests of disputing parties. Nevertheless, in practice, this mechanism continues to encounter various challenges that affect the overall effectiveness of its application. From a normative standpoint, arbitration in Indonesia is governed by Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, which serves as the principal legal foundation for the conduct of arbitration in both domestic and cross-border contexts (Triana & Si, 2019). In addition, Indonesia's accession to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards further strengthens this legal framework by enabling the recognition of international arbitral awards within the Indonesian legal system. Conceptually, the existence of these legal instruments provides a degree of legal certainty for parties opting for arbitration as a forum for transnational dispute resolution.

From the perspective of legal certainty, international arbitration offers a significant advantage due to the final and binding nature of arbitral awards, which are capable of cross-jurisdictional recognition through the ratification of the New York Convention of 1958. This characteristic fosters confidence

among the parties that arbitral awards are not easily subject to unilateral annulment by domestic legal regimes, in contrast to litigation before national courts, where multiple layers of legal remedies may prolong dispute resolution. However, in the Indonesian context, the enforcement of international arbitral awards remains subject to procedural requirements, including registration and the granting of *exequatur* by the competent district court, such as the Central Jakarta District Court, prior to execution (Makarim, 2019).

From the standpoint of forum neutrality, international arbitration continues to provide a relatively impartial dispute resolution forum. Parties are afforded broad autonomy to determine the applicable law, the language of the proceedings, and to appoint independent arbitrators possessing specialized expertise relevant to the subject matter of the dispute, without being directly subordinated to the jurisdiction of national courts. This element of neutrality is of strategic importance in cross-border commercial and investment disputes, as it serves to minimize perceptions of bias in favor of a particular legal system (Zaryanda, 2023).

With regard to the protection of parties' rights, international arbitration is generally regarded as a dispute resolution mechanism that upholds principles of fairness and procedural justice. This is reflected in its adaptable processes, procedural rules shaped by mutual agreement, and the application of the principle of equality in the presentation of evidence and legal arguments. Through such mechanisms, both domestic and foreign parties are afforded proportionate opportunities to submit evidence, advance legal arguments, and appoint arbitrators with the requisite competence and professional integrity. Nonetheless, in practice, the effectiveness of rights protection through international arbitration in Indonesia remains constrained by several factors, including limited institutional capacity to address the complexities of cross-border arbitration, inconsistent recognition and enforcement of arbitral awards by national courts, and the high costs associated with arbitration proceedings, which ultimately restrict access to justice for parties with limited financial resources (Harahap, 2018).

D. Factors Influencing the Success or Failure of Cross-Border Arbitration in Indonesia

The conduct of cross-border arbitration in Indonesia is not determined solely by the existence of written legal norms, but is also shaped by various substantive and technical factors that directly affect its overall effectiveness. One of the most critical aspects concerns the level of understanding and the quality of drafting arbitration clauses in international contracts (Mangei, 2020). In practice, many business agreements involving Indonesian parties still employ generic arbitration clauses without careful consideration of applicable international legal standards or the specific characteristics of the chosen arbitral forum. As a result, when disputes arise, divergent interpretations or uncertainty regarding jurisdiction frequently emerge, ultimately hindering the arbitration process. Such deficiencies in the formulation of arbitration clauses may even give rise to additional disputes before the arbitral tribunal is able to examine the merits of the case (Hombokau, 2024).

Another significant factor relates to institutional capacity and the level of mastery of international law within the national legal system, particularly among courts authorized to recognize and enforce foreign arbitral awards. Although Indonesia is a party to the 1958 New York Convention, the recognition and enforcement of international arbitral awards in practice continue to encounter obstacles. These challenges stem from the tendency of certain national courts to lack a full understanding of the fundamental characteristics and principles of international arbitration, leading them to apply relatively strict scrutiny to foreign awards, especially by relying on a broad interpretation of the national public policy exception. Inconsistencies in the application of this standard generate legal uncertainty and may result in delays or even refusals in the enforcement of arbitral awards. Ultimately, such conditions risk diminishing the confidence of foreign parties in the effectiveness and credibility of international arbitration in Indonesia as a dispute resolution forum.

Financial considerations and the availability of resources also constitute important determinants in the implementation of cross-

border arbitration. International arbitration proceedings generally involve substantial costs, including fees for experienced arbitrators, administrative charges imposed by international arbitral institutions, and various operational expenses such as document translation, travel, and hearing arrangements. For business actors, particularly companies from developing countries as well as small and medium-sized enterprises, these cost structures often pose significant barriers that limit access to arbitration as an efficient dispute resolution mechanism. Conversely, for large corporations with sufficient financial capacity and resources, cost considerations tend to be less restrictive and may even support the effectiveness and success of dispute resolution through international arbitration (Isnaini, 2020).

Beyond technical and financial factors, the perceived neutrality and credibility of arbitral institutions also play a decisive role in shaping the parties' choice of Indonesia as a dispute resolution forum. In practice, international business actors tend to favor arbitral institutions that have established strong reputations at the regional or global level, such as the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC). Such preferences are generally driven by proven track records, procedures perceived as more efficient, and consistency in the recognition and enforcement of arbitral awards. This trend indicates that international market perceptions of the quality, independence, and professionalism of national arbitral forums exert a direct influence on the number and intensity of international arbitration cases resolved in Indonesia (Tampongangoy, 2015).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Overall, the development of international arbitration has become an integral component of contemporary international trade and investment, driven by the need for neutral, efficient, and legally certain dispute resolution mechanisms. Globally, arbitration has demonstrated its strategic relevance through increasing caseloads, higher-value disputes, and expanding sectoral coverage, particularly in investment-related conflicts. In the

Indonesian context, this trend is supported by an established normative framework, notably Law Number 30 of 1999 and Indonesia's accession to the 1958 New York Convention, which collectively provide the formal legal basis for cross-border arbitration. Conceptually, these instruments position arbitration as a credible alternative to litigation, capable of safeguarding party autonomy, ensuring procedural fairness, and offering final and binding resolutions with cross-jurisdictional enforceability.

Nevertheless, the effective implementation of cross-border arbitration in Indonesia remains constrained by persistent legal, institutional, and practical challenges. Uncertainty in the recognition and enforcement of foreign arbitral awards, inconsistent judicial interpretations particularly concerning public policy and limitations in institutional capacity continue to undermine legal certainty and international confidence. These challenges are further compounded by high arbitration costs, uneven access to resources, and competition from well-established regional arbitral institutions. Accordingly, the success of international arbitration in Indonesia depends not only on the existence of formal legal norms, but also on the enhancement of judicial understanding, institutional professionalism, clarity in arbitration clause drafting, and sustained harmonization with international arbitration standards. Addressing these factors is essential to strengthening Indonesia's position as a reliable and competitive forum for cross-border dispute resolution.

B. Suggestions

Based on the overall discussion, it is recommended that the legal and institutional framework governing cross-border arbitration in Indonesia be further strengthened through more consistent harmonization between domestic law and international legal instruments, particularly the 1958 New York Convention and the UNCITRAL Model Law. This effort should be accompanied by continuous capacity-building programs for judicial authorities and legal practitioners in the field of international arbitration, with the aim of promoting uniform legal interpretation and enhancing legal certainty as well as

confidence among business actors and investors.

In addition, the development of academic studies and empirical research on cross-border arbitration should be further encouraged in order to respond to the increasing complexity of global trade and investment. Future research is expected to move beyond purely normative analysis by incorporating comparative approaches and international best practices, including the use of technology and sustainability considerations. In this way, legal scholarship can provide more practical, adaptive, and relevant contributions to the advancement of cross-border arbitration in both theory and practice.

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