International Arbitration and Its Implications for National Legal Sovereignty

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Abstract

International arbitration is a dispute resolution mechanism increasingly used in cross-border legal relations, particularly in the areas of international trade and foreign investment. While international arbitration provides legal certainty and protection for investors, it also has implications for national legal sovereignty, particularly when a country must comply with arbitral awards outside the national judicial system. This study aims to analyze the implications of international arbitration on national legal sovereignty by examining the legal framework of international arbitration and the response of the Indonesian legal system to international arbitral awards. The research method used is qualitative research with a normative juridical approach through a literature review of laws and regulations, international treaties, and related legal literature. The results indicate that international arbitration has the potential to limit state authority in establishing public policy, but still plays an important role in creating legal certainty and a conducive investment climate. Therefore, a strategy is needed to strengthen national legal sovereignty through regulatory reform, a consistent role for national courts, and increased institutional capacity so that the state can safeguard national interests without neglecting international legal commitments.

I. INTRODUCTION

International arbitration is an increasingly dominant dispute resolution mechanism in cross-border legal relations, particularly in the areas of international trade and foreign investment. This mechanism is chosen because it offers a relatively fast, flexible, confidential process, and its decisions are final and binding on the parties. In practice, countries involved in international treaties and bilateral investment treaties (BITs) often agree to international arbitration as a dispute resolution forum, requiring national laws to align with the provisions of global arbitration law (Junaidi, 2024).

However, the application of international arbitration raises serious issues related to national legal sovereignty. A state's obligation to comply with foreign arbitral awards has the potential to limit its authority to regulate its own public policy, particularly when those awards relate to strategic sectors such as natural resources, the environment, and public services. In this context, international arbitration is often viewed as an instrument that favors investor interests over those of the host country, creating tension between investment protection and the principle of state sovereignty (Simangunsong, 2025).

For developing countries like Indonesia, the dilemma between attracting foreign investment and maintaining national legal sovereignty is becoming increasingly complex. On the one hand, participation in the international arbitration regime provides legal certainty for foreign investors, but on the other hand, it can reduce the country's discretion in formulating and implementing national policies. Several studies have shown that the recognition and enforcement of international arbitration awards in Indonesia often exposes the country to the risk of violating national interests if not balanced by strengthening national regulations and legal protections (Siahaan, 2025).

Based on this background, this study aims to normatively examine the implications of international arbitration on national legal sovereignty, by examining the legal framework of international arbitration and the response of the national legal system in maintaining a balance between international commitments and the interests of state sovereignty.

II. RESEARCH METHODS

This study uses a qualitative approach with a normative juridical research type. This approach was chosen to analyze the concepts, principles, and legal norms related to international arbitration and their implications for national legal sovereignty. The main focus of the research is directed at the study of relevant laws and regulations, international treaties, and legal doctrines. The research data sources consist of primary legal materials and secondary legal materials. Primary legal materials include international legal instruments related to arbitration, national regulations regarding arbitration and investment, and relevant international arbitral awards. Meanwhile, secondary legal materials include scientific journals, legal textbooks, and academic publications discussing international arbitration and state sovereignty. The data collection technique is carried out through library research by exploring credible and up-to-date legal literature. The data obtained are then analyzed using descriptive qualitative analysis, namely by systematically describing, interpreting, and constructing legal arguments to explain the relationship between international arbitration and national legal sovereignty.

III. RESULTS AND DISCUSSION

A. International Arbitration in the Global Legal System

International arbitration has evolved as a dispute resolution mechanism in line with the dynamics of globalization in international law and economics. Within the global legal system, arbitration is positioned as a neutral, independent, and efficient alternative forum compared to national courts, which are often perceived as slow and bound by formal procedures. These advantages make international arbitration a primary choice in international business contracts, particularly in the cross-border trade and investment sectors (Born, 2021). Conceptually, international arbitration is based on the principle of party autonomy, which grants parties the freedom to determine the applicable law, the venue of the arbitration, and the arbitral institution used. This principle is a key pillar of the modern arbitration system, but at the same time, it has consequences for national legal systems, as states must recognize and respect such private agreements, even if they fall outside the jurisdiction of their national courts (Gaillard, 2021).

In international practice, the recognition and enforcement of international arbitral awards is strengthened by the 1958 New York Convention, which obliges participating states to recognize and enforce foreign arbitral awards. This Convention creates an effective transnational legal regime, but also limits the scope for states to refuse to enforce arbitral awards except for very limited reasons, such as violations of public policy (Moses, 2022).

The development of international arbitration is also inextricably linked to the increasing number of disputes between investors and states (Investor–State Dispute Settlement/ISDS). Through this mechanism, foreign investors can sue host states in international arbitration forums for public policies deemed detrimental to their investment interests. This position positions international arbitration beyond simply a private mechanism and instead serves as a global legal instrument with direct implications for state authority in regulating domestic affairs (Schill, 2021).

Thus, international arbitration has evolved into an integral part of the global, supranational legal system. While providing legal certainty for international economic actors, the existence of this system also raises critical questions about the extent to which states retain full control over their national legal systems when faced with binding international legal obligations (Born, 2021).

B. Implications of International Arbitration on National Legal Sovereignty

National legal sovereignty is classically understood as the exclusive authority of a state to regulate, enforce, and interpret laws within its own jurisdiction. However, in the context of international arbitration, the concept of sovereignty undergoes a significant transformation. States that consent to international arbitration implicitly cede some of their judicial authority to arbitral forums outside their national judicial systems (Sauvant & Sachs, 2021).

The most obvious implication of international arbitration on national legal sovereignty is seen in the limitations of states'

ability to review the substance of arbitral awards. National courts are generally authorized only to examine the formal aspects of arbitral awards, without the ability to reassess the merits of the case. This situation prevents states from fully controlling decisions that directly impact national public policy, including fiscal, environmental, and natural resource policies (Vadi, 2022).

Furthermore, the ISDS mechanism is often criticized for its potential regulatory chill effect, where countries are reluctant to issue new regulations for fear of being sued by foreign investors through international arbitration. This phenomenon demonstrates that international arbitration impacts not only legal aspects but also political processes and public policies within a country, indirectly reducing a country's sovereignty in determining the direction of its national development (Tienhaara, 2021).

In the context of developing countries, the imbalance between states and investors further increases the risk of erosion of national legal sovereignty. Foreign investors generally have stronger financial resources and legal access, while states are often on the defensive. As a result, international arbitration tends to be perceived as a mechanism that favors the interests of global capital over the national interests of host countries (Alvarez, 2022). Nevertheless, it cannot be denied that international arbitration also provides strategic benefits to states, particularly in enhancing investor confidence and creating a stable investment climate. Therefore, the primary challenge for states is not to reject international arbitration altogether, but rather to formulate legal strategies that balance international obligations with the protection of national legal sovereignty through regulatory reform and adaptive national legal policies (Sauvant & Sachs, 2021).

C. Implementation of International Arbitration Awards in the Indonesian Legal System

The enforcement of international arbitration awards in Indonesia is regulated through a mechanism for obtaining exequatur in a district court before the award can be enforced domestically. This is crucial because without recognition and enforcement of the award through national courts, foreign arbitral awards lack executory legal force in Indonesian jurisdiction. However, the exequatur process often faces substantive and procedural obstacles due to the operation of strict national legal standards and differing understandings of international arbitration principles (Sari, Zulfikar, & Dorlah, 2024).

Another obstacle that has emerged is the legal uncertainty among national legal practitioners in interpreting and applying international arbitration rules, including in addressing conflicting norms between Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and applicable international arbitration instruments. This imperfect harmonization has the potential to cause international arbitration awards to face legal challenges, such as annulment or suspension of enforcement by national courts (Winata, 2023).

Furthermore, although Indonesia has ratified the 1958 New York Convention to recognize and enforce foreign arbitral awards, practice in national courts shows a tendency to interpret the concept of Indonesian public policy differently as a reason for refusing to enforce arbitral awards. This lack of uniformity reflects the need to strengthen national legal guidelines regarding the limits of public law that align with international standards without compromising national legal sovereignty. Thus, the enforcement of international arbitral awards in Indonesia presents an arena that demonstrates the tension between adherence to international norms and the enforcement of national legal principles. A cautious approach and a harmonization strategy that integrates global arbitration principles with national legal values are necessary to minimize substantial conflicts that could hinder the implementation of arbitral awards in Indonesia.

D. National Legal Challenges in Addressing International Arbitration

The main challenge in implementing international arbitration in Indonesia is the imbalance between investor protection and national interests, which has the potential to create conflicts over national legal sovereignty. While arbitration provides legal certainty for foreign investors, it also forces countries to submit to foreign arbitration

forums that often decide disputes based on international standards that differ from national values or policies (Anggraeni, 2023).

Furthermore, structural barriers such as the lack of harmonization between national regulations and international arbitration standards create legal uncertainty for legal actors. This uncertainty is particularly evident in the context of the enforcement of arbitral awards, which often require national courts to interpret terms or norms derived from international treaties, thus weakening the effectiveness of arbitration as a cross-border dispute resolution mechanism (Winata, 2023). (IBLAM Journal)

The impact of globalization on the national arbitration legal system has also created pressure on Indonesian legal authorities to undertake more progressive regulatory reforms. The Indonesian National Arbitration Board (BANI), as a domestic arbitration institution, must adapt its institution to remain internationally competitive while upholding national legal principles and the values of Indonesian legal culture. Regulatory reform that is responsive to these international dynamics is crucial for strengthening the position of national law in the context of global arbitration without losing its national legal identity (Putra & Anggriawan, 2025).

Furthermore, another significant challenge is the lack of capacity and understanding among national legal practitioners in handling international arbitration. This includes a lack of experience in drafting international arbitration clauses in investment contracts, a lack of understanding of international arbitration procedures, and limited resources to deal with international arbitration institutions. This unpreparedness has the potential to weaken a country's position in both initial negotiations and the arbitration process itself (Sari, Zulfikar, & Dorlah, 2024).

All these challenges reflect the need for countries to strengthen their legal instruments and internal mechanisms to deal with the phenomenon of international arbitration, while maintaining national legal sovereignty and protecting public interests without neglecting international legal obligations.

E. Strategy for Strengthening National Legal Sovereignty in the International Arbitration Regime

Strengthening national legal sovereignty in facing international arbitration requires a preventative and responsive legal strategy. One key strategy is strengthening the national regulatory framework, particularly through the refinement of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution to make it more adaptive to developments in international arbitration without eliminating the principle of protecting national interests. Clear and comprehensive regulations will provide legal certainty for countries in facing arbitration claims while limiting the potential for abuse of the arbitration mechanism by foreign investors (Hidayat & Pramudya, 2022).

In addition to regulatory reform, the state also needs to strengthen the role of national courts in addressing international arbitration decisions, particularly in interpreting the concept of public policy proportionately. An overly broad interpretation has the potential to hamper Indonesia's credibility with investors, while an overly narrow interpretation could compromise the public interest and national legal sovereignty. Therefore, consistent judicial guidelines are needed to ensure national courts maintain a balance between international obligations and the protection of national interests (Rahman, 2023).

The next strategy is to increase institutional capacity and human resources in the field of international arbitration. The government and relevant institutions need to equip legal officials, contract drafters, and state officials with a thorough understanding of international arbitration clauses and the legal risks that may arise. This capacity building is crucial to prevent the country from being in a weak position from the investment agreement formulation stage to the international arbitration process (Utami & Nugroho, 2024). Furthermore, strengthening national arbitration institutions, such as the Indonesian National Arbitration Board (BANI), is also part of the strategy to maintain national legal sovereignty. By enhancing the credibility and professional standards of domestic arbitration institutions, Indonesia can encourage dispute resolution through

national forums that remain internationally recognized. This effort also serves as an affirmation of national legal sovereignty amid the dominance of international arbitration institutions (Setiawan, 2021).

Thus, strengthening national legal sovereignty does not have to be achieved by rejecting international arbitration, but rather through measured legal strategies, ongoing regulatory reform, and increased national capacity. This approach allows states to continue participating in the global legal system without losing control over their own legal policies and public interests (Hidayat & Pramudya, 2022).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

International arbitration has evolved into a dispute resolution mechanism that plays a strategic role in the global legal system, particularly in the areas of trade and foreign investment. Its existence provides legal certainty for parties and increases investor confidence in a country's investment climate. However, the application of international arbitration also carries significant implications for national legal sovereignty, particularly when countries must comply with arbitral awards that are outside the national judicial system and potentially limit public policy space.

The discussion shows that, in the Indonesian context, international arbitration poses challenges in the form of limited authority of national courts, inconsistent interpretation of the concept of public order, and the potential for imbalance between the state and foreign investors. This situation emphasizes that international arbitration is no longer merely a private dispute resolution mechanism but has transformed into a legal instrument that influences public policy and the direction of national development. Nevertheless, international arbitration cannot be viewed entirely negatively. Indonesia's participation in the international arbitration regime is a consequence of its involvement in the global economic system.

Therefore, the main challenge for countries is not to reject international arbitration, but rather to strengthen the national legal framework, increase institutional capacity and human resources, and formulate legal strategies that are able to maintain a balance between international commitments and the protection of national legal sovereignty.

B. Suggestion

Thus, strengthening national legal sovereignty within the international arbitration regime must be achieved through an adaptive and sustainable approach, namely by strengthening national regulations, clarifying the role of national courts, and developing credible domestic arbitration institutions. This approach is expected to safeguard national interests while maintaining Indonesia's position as a country that adheres to international law and is open to global cooperation.

REFERENCE LISTAN

Alvarez, J. E. (2022). The public international law regime governing international investment. Hague Journal on the Rule of Law, 14(2), https://link.springer.com/content/pdf/10.1007/s40803-022-00170-2.pdf 203–224.

Anggraeni, Y. S. (2023). Peran arbitrase internasional ICSID dalam upaya perlindungan terhadap investor asing di Indonesia. Civilia: Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan, 2(3), 96–106. https://jurnal.anfa.co.id/index.php/civilia/article/download/397/350

Born, G. B. (2021). International commercial arbitration and the rule of law. Journal of International Arbitration, 38(3), 301–328. https://kluwerlawonline.com/api/Product/CitationPDF/TOC/JOIA2021029

Gaillard, E. (2021). The normative power of international arbitration. Arbitration International, 37(2), 233–250. https://academic.oup.com/arbint/article-pdf/37/2/233/38910394/aiab007.pdf

Hidayat, A., & Pramudya, R. (2022). Kedaulatan negara dan tantangan arbitrase internasional dalam hukum investasi Indonesia. Jurnal Hukum IUS QUIA IUSTUM, 29(3), 489–508. https://journal.uii.ac.id/IUSTUM/article/download/23345/13478

Junaidi, J. (2024). Implikasi perlindungan investor asing dalam arbitrase internasional terhadap kedaulatan negara: Studi kasus Churchill Mining. Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora, 2(10), 872–884. https://jurnal.kolibi.org/index.php/kultura/article/download/3960/3795/14646

Moses, M. L. (2022). The principles and practice of international commercial arbitration. Loyola University Chicago International Law Review, 19(1), 1–22. https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1590&context=lucilr

Putra, A. R., & Anggriawan, T. P. (2025). Pengaruh globalisasi terhadap reformasi regulasi arbitrase di Indonesia terkait peran strategis Badan Arbitrase Nasional Indonesia (BANI). Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh, 13(2), 523–544. https://ojs.unimal.ac.id/suloh/article/view/22248

Rahman, F. (2023). Konsep ketertiban umum dalam pengakuan dan pelaksanaan putusan arbitrase internasional di Indonesia. Jurnal Yudisial, 16(2), 211–229. https://jurnal.komisiyudisial.go.id/index.php/jy/article/download/707/pdf

Sari, N. J., Zulfikar, A. A., & Dorlah, S. (2024). Implementation of international arbitration awards in Indonesia from the perspective of legal value theory. Jurnal Media Hukum, 31(1), 167–185. https://journal.umy.ac.id/index.php/jmh/article/download/20026/ World

Sauvant, K. P., & Sachs, L. E. (2021). The policy implications of investment arbitration. Journal of Investment & Trade, 22(5), 697–725. https://brill.com/downloadpdf/journals/jwit/22/5/article-p697_1.pdf

Schill, S. W. (2021). Reforming investor-state dispute settlement. ICSID Review – Foreign Investment Law Journal, 36(2), 229–251. https://academic.oup.com/icsidreview/article-pdf/36/2/229/38955245/siaa009.pdf

Setiawan, D. (2021). Peran Badan Arbitrase Nasional Indonesia dalam menjaga kepastian hukum penyelesaian sengketa bisnis. Jurnal RechtsVinding, 10(2), 247–264. https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/download/748/468

Siahaan, M. I. H. (2025). Kepastian hukum di Indonesia terhadap penyelesaian sengketa penanaman modal asing melalui lembaga arbitrase internasional. Jurnal Ilmiah Global Education, 5(4). https://ejournal.nusantaraglobal.or.id/index.php/jige/article/download/3477/2463

Simangunsong, N. Y. (2025). ISDS dan arbitrase investasi dalam menjaga keseimbangan antara hak investor dan kedaulatan negara. Jurnal Ilmiah Wahana Pendidikan, 11(11.A), 135–146. https://jurnal.peneliti.net/index.php/JIWP/article/download/11864/8245

Tienhaara, K. (2021). Regulatory chill and investment arbitration. Transnational Legal Theory, 12(2), 243–266. https://www.tandfonline.com/doi/pdf/10.1080/20414005.2021.1901842

Utami, N. S., & Nugroho, B. A. (2024). Penguatan kapasitas hukum negara dalam menghadapi sengketa arbitrase internasional. Jurnal Legislasi Indonesia, 21(1), 67–82. https://ejurnal.peraturan.go.id/index.php/jli/article/download/1268/842

Vadi, V. (2022). Public policy and international investment law. International Community Law Review, 24(1), 1–25. https://brill.com/downloadpdf/journals/icla/24/1/article-p1_1.pdf

Winata, A. S. (2023). Ketidakpastian hukum dalam penyelesaian sengketa bisnis internasional melalui arbitrase internasional di Indonesia. IBLAM Law Review, 3(1), 89–98. https://ejurnal.iblam.ac.id/IRL/article/download/120/