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Judicial Roles in International Arbitration: Divergent Paths Toward Convergence in Indonesia and China

Gatot P. Soemartono[a*] gatots@fh.untar.ac.id; Wu Keqi[b] keqi.wu@nyu.edu; Amad Sudiro[a] ahmads@fh.untar.ac.id; Evan Tjoa Putra[c] joe@pnplaw.id
[a]Universitas Tarumanagara, Jakarta, Indonesia
[b]New York University, New York, USA
[c]P&P Law Firm, Jakarta, Indonesia

ABSTRACT

This article assesses the arbitration regimes of Indonesia and China, focusing on the judicial roles and their implications for the effectiveness of international arbitration. Employing a comparative legal methodology, this study reveals that although judicial support is essential for effective arbitration, its characteristics differ across the two jurisdictions. The differences lead to significant convergence and divergence of their judicial roles in arbitration proceedings. Indonesia's arbitration framework aims to strike a balance between national legal norms and global arbitration standards, whereas China's hybrid approach combines strong support for arbitration with deliberate judicial intervention. The analysis provides valuable insights into how Indonesia and China, respectively, work to strengthen arbitration as a fair, efficient, and reliable dispute-resolution forum. In conclusion, although the roles of Chinese and Indonesian judicial support and interference vary, their overall direction aligns with the global pro-arbitration movement. The two jurisdictions exhibit a trend in which courts are increasingly not rivals to international arbitration but rather guarantors of its effectiveness.

KEYWORDS

Judicial roles; arbitration proceedings; Indonesian arbitration; international arbitration; Chinese arbitration; comparative study.

1. Introduction

Over the past decade, China and Indonesia have emerged as significant trading partners. Following their accession to the Regional Comprehensive Economic Partnership (RCEP), bilateral economic relations have entered a more integrated and dynamic phase. This expanding commercial engagement spans various sectors—from traditional industries like manufacturing and mining to emerging fields like the digital economy. (RCEP, 2023) However, the rapid expansion of trade is likely to lead to an increase in commercial disputes between Chinese and Indonesian enterprises, underscoring the need for robust dispute resolution mechanisms. That is why international commercial disputes choose arbitration over state court litigation.

Arbitration is a widely recognized approach to dispute resolution, valued for its impartiality, efficiency, and confidentiality. (Nguyen, 2023) Furthermore, arbitration panels often comprise subject-matter experts, ensuring that the final decision is well-informed. (Detotto et al., 2024)

* **Gatot P. Soemartono**, *gatots@fh.untar.ac.id (corresponding author),* ORCID: https://orcid.org/0009-0006-5474-6811

Global treaties, particularly the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter, the "NYC"), play a crucial role in making arbitral awards enforceable across borders. It provides businesses with confidence in the arbitration system, regardless of where they operate. (Seyadi, 2017)

Nevertheless, it comes at a cost. Arbitration relies heavily on the legal support provided by national justice systems. Courts intervene at each step in arbitration, providing interim measures, enforcing awards, and, at times, stepping in to ensure procedural fairness or protect public order. National courts' approach to this interaction essentially determines the effectiveness and credibility of arbitration in practice. (Bermann, 2017) In some jurisdictions, the enforceability of arbitral awards may be compromised if local courts are hesitant to cede their authority. (Torgbor, 2017) Even if the NYC promotes specified judicial functions, its standards leave room for interpretation, especially regarding public policy, arbitrability, or due process violations. (Basirat & Haqmal, 2023) Jurisdictions vary significantly in their application of these standards, resulting in uneven enforcement of arbitral awards and differing judicial attitudes. Some nations incline towards arbitration where they have adequate enforcement of arbitral awards. Other countries may have relatively strict regulations, yet a poor arbitration setup can increase problems during proceedings. (Lopes, 2024)

This diversity presents both opportunities and challenges. This research examines how the tension between judicial support and interference is managed by two jurisdictions: Indonesia and China, with each representing a distinct legal tradition and institutional environment. Indonesia employs a civil law tradition, with a localized arbitration law that is not yet entirely harmonized with global norms. (Soemartono & Lumbantobing, 2018) China, a socialist country with a growing international presence, maintains tight state control while also embracing arbitration to attract foreign investment. (Trakman et al., 2020)

To understand the importance of judicial roles in the success of international arbitration proceedings, this study will focus on these questions: (1) How do the arbitration regimes of Indonesia and China, respectively, address court involvement? and (2) what lessons can be drawn from comparing the judicial roles in the two jurisdictions in improving the effectiveness of arbitration? Answering these questions requires a legal doctrinal approach, consideration of policy, and comparative legal analysis.

This research is significant in both its timeliness and practical applications, considering the growing economic relations between Indonesia and China. Arbitration is increasingly relied upon to resolve commercial, investment, and even certain public-private disputes. As the use of arbitration expands, so does the scrutiny of its governance mechanisms—especially court oversight. As such, this research examines the judicial roles of courts as integral partners in upholding the rule of law within the arbitration process.

In addition, while previous comparative studies on arbitration between Indonesia and China have primarily explored post-arbitration proceedings (Luo, 2024; Luo, 2025), the issue of judicial support prior to arbitration, intervention during proceedings, and actions following arbitration h not been sufficiently addressed. This research seeks to fill the existing gap by conducting a comprehensive comparative assessment of the international arbitration regimes in Indonesia and China.

2. Methodology

This research adopts a comparative legal methodology situated within a normative framework. The comparison is guided by several analytical lenses: a doctrinal inquiry into the legal principles embedded in each country's arbitration law; an institutional examination of the functions and authority of arbitral institutions within both jurisdictions; and a procedural assessment of the rules governing the conduct of arbitration. The primary sources analysed

include national arbitration laws, procedural regulations, judicial decisions, and scholarly commentaries.

In addition, secondary materials such as academic journals, treaties, and policy reports addressing the development and implementation of arbitration law in China and Indonesia is utilised to contextualise and deepen the assessment. The comparative focus on these two jurisdictions is based on distinct legal traditions and structural characteristics. Indonesia's evolving and pluralistic legal environment contrasts markedly with China's more centralised and state-driven system. This analytical structure enables a detailed examination of how each jurisdiction responds to recurring challenges in arbitration, thereby offering insight into the effectiveness, flexibility, and overall capacity of their legal frameworks to meet both domestic and international arbitration demands.

3. Indonesian and Chinese International Arbitration

As it was once a Dutch colony, Indonesia has retained its legal system, which is derived from Dutch law. Under Annex II of the 1945 Constitution, all laws enacted during the Dutch colonial period remain in effect until superseded by national rules. As a result, the Dutch Code of Civil Procedure (RRv) was implemented. The provisions concerning arbitration (lex arbitri) are found in sections 615 to 651 of the RRv and remain in force until Indonesia enacts a new postcolonial lex arbitri.

In 1999, the government promulgated Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, also known as the Indonesian Arbitration Law (hereinafter referred to as the "**IAL**"; IAL). This law aligns with the global trend towards liberalizing national arbitration laws. It offers more detail with 82 articles compared to 36 articles of the UNCITRAL Model Law on International Commercial Arbitration (hereinafter the "Model Law"). The comprehensive scope suggests an attempt to unify arbitration of laws and rules within a single framework. (Schafer & Mulyana, 2002)

In 1981, Indonesia issued Presidential Decree No. 34, which ratified the NYC. Indonesia joined the New York Convention with reciprocity and commercial-relations reservations, limiting enforcement to awards from fellow Convention states and disputes classified as commercial. This ratification indicates that the core provisions of the Convention likely contributed to the advancement of Indonesia's arbitration framework. Article 66 of the Indonesian Arbitration Law mirrors these conditions by requiring a treaty-reciprocal basis and a commercial subject matter for the enforcement of foreign awards. Together, the Convention reservations and Article 66 function as a dual filter that narrows which foreign awards Indonesian courts may recognise and enforce. (Lumbantobing, 2019)

Meanwhile, the People's Republic of China ("**China**") has established a distinct legal framework for international arbitration. Chinese arbitration practice is characterized by a notable degree of state intervention. (Gu, 2009b) Tracing the legislative history of Chinese arbitration practice reveals that, for a considerable period, China maintained a judicial system in which national courts exercised extensive, and at times nearly absolute, supervisory authority over arbitration. (Shen, 2005) This defining feature began to shift only after the implementation of the "Reform and Opening-up" policy in the late 1970s. (Kun, 2013) Since then, the modern and internationally aligned legal framework for arbitration has gradually taken shape. (Ugarte & Wu, 2024)

In 1986, China acceded to the NYC. This step was significant, as it signaled China's commitment to recognizing and enforcing foreign arbitral awards and aligning itself with international arbitration standards. Building upon this foundation, in 1994, the Chinese National People's Congress (hereinafter the "**NPC**") enacted the Arbitration Law of China (1994) (hereinafter the "**1994 CAL**") as the country's first comprehensive Arbitration Law. This 1994 legislation marked the formal beginning of a systematic legal framework for arbitration in China. (Gu, 2017). Since its initial implementation, the Chinese Arbitration Law

of 1994 has undergone significant evolution with revisions in 2009 and 2017. (Teh & Ribeiro, 2017) In 2021, the Ministry of Justice of China (hereinafter the "MoJ") issued the 2021 Draft Amendment on Arbitration Law (hereinafter the "2021 Draft") that introduced major reforms inspired by the Model Law. The 2021 Draft showed China's intention to modernize its arbitration system and align with international standards. However, after over three years' silence, the latter 2024 Draft Amendment to the Arbitration Law (hereinafter, the "2024 Draft") adopted a more conservative approach, retaining some progressive features while removing many international innovations from the 2021 Draft. Subsequently, the 2025 Draft Amendment to the Arbitration Law (hereinafter, the "2025 Draft") made only minor adjustments and largely retained the major revisions of the 2024 Draft. Later, on 12 September 2025, the 2025 Amendment of the Arbitration Law was adopted, and will take effect on 1 March 2026. This amendment is also regarded as the Chinese New Arbitration Law (hereinafter the "**2025 CAL**"). The legislative history of Chinese Arbitration over the past decade reflects China's efforts to reform and modernize its arbitration legal framework, aiming to enhance efficiency while maintaining fairness and justice in arbitral proceedings. (Hu, 2025)

4. Judicial Influence on Arbitration Agreements and Jurisdiction

4.1 Separability Principle

The IAL supports the separability principle, asserting that an arbitration agreement remains effective even if the underlying contract is canceled, expires, or is found to be invalid. As a result, even after the main contract ceases to exist, the arbitration agreement remains binding for the parties, provided that the claims arise from actions or conduct that occurred during the contract term. (Article 10 of IAL; see Feehily, 2018)

Notably, Judge Stephen M. Schwebel has remarked that an agreement with an arbitration clause comprises two distinct contracts. He stated, "When parties to an agreement that includes an arbitration clause, they actually form two agreements, the arbitral twin of which survives any birth defect or acquired disability of the principal agreement." (Schwebel, 1994) This means that even though the main agreement is successfully contested or terminated due to illegality, the arbitration clause remains in effect.

The IAL also reinforces the separability principle, stating that district courts lack jurisdiction if an arbitration agreement exists. (Article 7 of IAL) Additionally, the parties waive their right to initiate any litigation if they have a written arbitration agreement in place. (Article 11(1) of IAL) The reason behind any limited court involvement is to prevent parties from disputing an arbitration clause after they have agreed to arbitrate rather than litigate. (Adiasih, 2013) However, in practice, defendants often challenge the validity of the arbitration agreement. (Nugrahenti & Herowan, 2025) In some cases, Indonesian courts accept claims brought by a party subject to an arbitration agreement, even if the arbitration has already been initiated (such as *Bankers Trust v. Mayora*; *Siti Rukmana v. PT Berkah*).

The doctrine of separability is recognised within Chinese law. While Chinese statutes do not expressly reference the term "separability," the principle of an arbitration agreement's independence is implicitly acknowledged through legislative provisions and established arbitration practices. Pursuant to Article 30 of 2025 CAL (also see Article 19 of 1994 CAL), "The validity of the arbitration agreement is preserved independently, even if the main contract is modified, rescinded, terminated, or deemed invalid." (Article 19 of 1994 CAL; Article 30 of 2025 CAL; See Zou, 2020) The Supreme People's Court of China (hereinafter, the "**SPC**") has affirmed the separability principle in its case law to support arbitration. According to SPC Guiding Case No. 196, "The arbitration agreement and the main contract are separable and independent from each other; their existence, validity, and governing laws are separate. The validity of the arbitration clause remains unaffected even though the main contract is not established." (*SPC Guiding Case No. 196 [Yunyu Ltd. v. Zhongyuan City Corp.]*, 2019) While Chinese national courts may, in rare and extreme cases, declare

arbitration agreements invalid if they violate public policy or mandatory rules, recent statistics show that national courts recognize the separability doctrine and overwhelmingly uphold the validity of arbitration agreements, which remains at a relatively high level internationally. (King & Mallesons, 2018)

4.2 Competence-Competence

The competence-competence principle empowers the tribunal to make an initial decision regarding its jurisdiction over a particular dispute. It aims to reinforce the independence and efficiency of arbitration, while preventing parties from interfering with arbitration by abusing judicial processes. (Whitfield, 2023; see also Almomani & Obeidat, 2015).

Regrettably, Indonesia's arbitration law lacks clarity and does not explicitly uphold the principle of competence-competence. The unclear competence-competence principle may lead to jurisdictional disputes resolved by the Indonesian court. For example, in PT. Golden Spike Energy Indonesia v. PT. Pertamina Hulu Energi Raja Tempirai, these two legal entities were bound by an arbitration agreement as outlined in Article 11.1.2 of their Production Sharing Contract, which states: "Disputes arising between Pertamina and the Contractor relating to this Contract or the interpretation and performance of any clauses herein shall be submitted to the International Chamber of Commerce for resolution." According to this arbitration clause, any dispute stemming from the agreement should be referred to the designated arbitration forum. However, the matter ultimately progressed to court, where a ruling declared the arbitration clause non-binding due to a transfer of the revenue-sharing contract. As a result of this ruling, the arbitral jurisdiction was annulled and transferred to the court. (GSEI v. Pertamina; see also Dewi & Jamil) As Indonesian district court judges typically have limited experience managing complex international business cases, this legal gap can impede the advancement of Indonesian international arbitration. (Soemartono & Lumbantobing, 2018; Marilyn & Soemartono, 2024).

Interestingly, China adopts a noticeably more cautious orientation, one that places courts at the forefront. Under this approach, the competence-competence principle is recognised only in a limited form, as domestic courts continue to wield considerable influence over questions of jurisdiction. (Fu, 2022; S. Zhang, 2023) Both the 1994 CAL and the 2025 CAL confirm that an arbitral tribunal may assess the validity of the contract, aligning with the competence-competence doctrine, yet this power to rule on its own jurisdiction remains subject to important constraints. (Article 19 of 1994 CAL; Article 30 of 2025 CAL) It also maintains the court's eligibility to review the arbitral award. (Article 20 of 1994 CAL; Article 31 of 2025 CAL) This "court first" approach provides that a party challenging the validity of an arbitration agreement may apply for a decision to either the arbitration commission or the people's court before the commencement of arbitral proceedings. If one party applies to the arbitration commission and the other to the people's court, the decision made by the people's court shall prevail.

However, both tribunals and courts have authority to assess the validity of arbitration clauses, a process referred to as "parallel review." (Gu, 2009a) In situations where a jurisdictional conflict arises between tribunals and national courts, China adopts a "court-first" approach, restricting the tribunal's jurisdictional independence under the doctrine of "competence-competence." For instance, in *Brentwood v. Fa'anlong* case, the Chinese domestic courts intervene to decide the validity of the arbitration agreement upon Brentwood's request. (Brentwood v. Fa'anlong, 2015) By doing so, the court took precedence over the arbitral tribunal's competence and ultimately confirmed the validity of the arbitration clause. Therefore, if the parties turn to the tribunal and national court separately, the court's ruling takes precedence over the tribunal's decision. This affirms not only the court's ability, but also its obligation to intervene in this matter. (Zhong & Tao, 2018).

On 29 December 2017, China's Supreme People's Court issued the Provisions on Questions Concerning Approval and Reporting in Arbitration-Related Judicial Review, often called the 2017 Prior Reporting System Provisions. With this measure, the SPC expanded the

prior-reporting mechanism to cover every case involving judicial review of arbitration, whether the matter is domestic or contains a foreign element. In practice, no Chinese court may refuse to enforce an arbitral award unless it has first obtained approval from the appropriate higher court. This reform was intended to strengthen consistency and predictability in how courts oversee arbitration. (Wunschheim, 2018)

5. Judicial Intervention during the Arbitral Proceedings

5.1 Assistance in Taking Evidence

Indonesia does not adhere to the Model Law in several key areas of court assistance for evidence collection. Indonesia takes a different perspective in certain aspects. In contrast to Article 27 of the Model Law, which allows a party or the arbitral tribunal to request judicial assistance in obtaining evidence from the country's competent court, the IAL does not provide any judicial aid in the process of gathering evidence. This includes the requirement that non-parties offer evidence or the requirement that the parties follow the evidentiary directives of the tribunal. (Soemartono & Lumbantobing, 2018). According to Indonesian civil procedural law, the court has the authority to summon a witness if that witness is hesitant to appear in court. This can be done at the request of one of the parties. However, this authority does not extend to the provision of aid in arbitral procedures and is limited only to situations that the court decides. (Hidayat et al., 2024).

In China, the CAL grants the arbitral tribunal authority to take evidence. (Article 43 of 1994 CAL; also see Article 55 of 2025 CAL) It clarifies that the arbitral tribunal may request relevant parties to aid in investigation and evidence of collection in accordance with the law. This shift away from the previous model that relied to some extent on judicial intervention in taking evidence. (Mu, 2022; Wei et al., 2019) Consequently, it would enhance the autonomy of arbitral tribunals in gathering evidence and facilitate a clearer determination of the facts. In addition, it is essential to note that CAL allows evidence of preservation. (Article 46 of 1994 CAL; Article 58 of 2025 CAL) The 2025 CAL further stipulates that in urgent circumstances, except for the "arbitration commission", parties may apply to the people's court for evidence of preservation prior to filing an arbitration request. (Article 58 of 2025 CAL; Wang & Wang, 2022).

5.2 Interim Measures

Interim relief refers to temporary or urgent remedies granted by national courts to ensure the process of proceedings, preservation of evidence, or enforcement of an award. The primary purpose of these preliminary measures is mainly to prevent parties from dissipating assets, continuing infringement, or destroying evidence. (C. & Tan, 2013; Sherwin & Rennie, 2010) Regarding international arbitration, interim measures empowers national courts to exercise special intervention powers over arbitral tribunals during arbitration proceedings. These powers can be either supportive or negative in nature and are often exercised through the provision of interim relief. (Wu et al., 2023; Falconer & Bouchenaki, 2010)

China adopts a relatively cautious approach towards interim measures. (Sun, 2020; W. Zhang & Tu, 2023) 1994 CAL and 2025 CAL establish the legal basis for property preservation. (Article 28 of 1994 CAL; Article 39 of 2025 CAL) National courts in some regions also provide preliminary guidelines on an international scale. (Xin & Radzi, 2025) There is some pilot exploration on the interference of Chinese domestic courts in transnational arbitral proceedings through property preservation. For example, in 2019, China issued the Mutual Assistance Arrangement for arbitration proceedings between Mainland courts and those in the Hong Kong Special Administrative Region (HKSAR). (Bookman, 2019) The Mutual Assistance Arrangement represents a groundbreaking legislative development in international arbitration, specifically in the preservation of property. Under the arrangement, property preservation measures in HKSAR arbitration proceedings are treated in a manner similar to those in mainland China. (O'Hare et al., 2021; Wenying, 2021).

Additionally, except for property preservation, Article 39 of the 2025 CAL also takes the preservation of behaviors into the scope of arbitral tribunals' interim measures. (Article 58 of

2025 CAL) Under urgent circumstances, a party may apply for an order to compel with the other party to perform certain acts or to prohibit it from performing certain acts. This achieves the consistency with Article 104 of the Chinese Civil Procedure Law (hereinafter the "CCPL"). There have been isolated cases supporting applications for preservation of behaviors. Following the implementation of the 2025 version, parties to arbitration may directly apply to domestic courts for preservation of behaviors.

Unfortunately, in Indonesia, there is no stated legal foundation for courts to intervene in this manner; therefore, parties do not have access to an effective method of obtaining a rapid remedy. The power of courts to take interim measures is limited to conservatory attachment and the like. (Harahap, 2005) The IAL empowers tribunals with the competence to issue provisional or interim awards to regulate proceedings, which may involve actions such as the attachment of assets, the third-party deposit of goods, or the sale of perishable items, upon a party's request. (Article 32(1) of the IAL) However, this clause solely functions to defend the tribunal's jurisdiction; it does not establish a method by which the national courts can enforce it. As a result, parties who obtain temporary relief from a tribunal are left without a precise mechanism to implement those orders. This omission has a significant impact on the effectiveness of arbitration in Indonesia, particularly in cases involving international disputes. (Wajdi, 2024)

6. Judicial Supervision of the International Arbitral Awards

In arbitration, the domestic court serves as the supervisor after the arbitral award is rendered. This involvement is typically limited in scope, allowing national courts to review and potentially annul or deny enforcement of arbitral awards under restricted conditions. (Kee & Alvarez, 2023; Makarenkov & Varregoso Mesquita, 2023) The enforceability of an international arbitral award in the asset-holding jurisdiction is a key benchmark for assessing the support for international arbitration. (Soemartono, 2017)

Since acceding to the NYC, Indonesia have established a relatively well-developed normative framework regulating the cross-border recognition and enforcement of arbitral decisions. However, concerning the supervision of the national courts, Indonesia retain certain distinctive features and differ from the model law and some typical judicial jurisdictions. (Luo, 2024, 2025).

China has established a comprehensive legal regime for the recognition and enforcement of international arbitral awards. Both the 1994 CAL and 2025 CAL distinguish between domestic and foreign-related arbitral awards. A dual system under this distinction is applied, which the procedures and standards for judicial review differ. For foreign-related arbitral awards, the SPC introduces the Report and Approval System (bao he zhi du) to mitigate the risk of in-consistent judicial practice and local protectionism. Under this system, if an Intermediate People's Court (hereinafter the "IPC") intends to refuse recognition or enforcement of a foreign-related arbitral award, it must first submit the case to the Higher People's Court (hereinafter the "HPC") for judicial review. Only if the HPC agrees with the IPC's position will the case be reported to the SPC for final consideration. No lower court may render a decision of non-enforcement until the SPC has provided its approval. By operating the Report and Approval System, the domestic courts exercise a tightly controlled form of judicial supervision.

6.1 Enforcement of Foreign Arbitral Awards

The procedure and requirements for executing arbitral awards, whether domestic or international, are stipulated under the IAL. Domestic arbitral awards may be executed by applying for enforcement to the chairman of any district court where the award has been registered. On the other hand, the Central Jakarta District Court is the designated district court solely responsible for enforcing international arbitral awards. (Article 66 of IAL; see also Farabi & Oegrosono, 2018) The winning party may request an exequatur, or a writ of execution, after a foreign award has been registered in this court. However, there are

restrictions on the enforcement of foreign awards. (Sari et al., 2024) If the Central Jakarta District Court denies enforcement or issues a non-exequatur, a cassation may be submitted directly to the Supreme Court to challenge the decision. Conversely, if the Chairman of the Central Jakarta District Court grants the exequatur for a foreign award, the decision is final and cannot be appealed. (Article 68(1)(2) of the IAL)

The IAL does not contain an explicit list of reasons to contest the implementation of foreign arbitral awards. However, it is widely accepted that non-fulfillment of any stipulated conditions, such as reciprocity, commercial nature, or non-contravention of public order, is automatically grounds for denial of enforcement. (Katsikis & Nicholls, 2020) It is worth noting that Article V (1)(2) of the NYC elaborates the refusal of enforcement of foreign arbitral awards, which includes incapacity, invalidity, due process, award consideration, public policy, and non-compliance with procedural requirements. In this sense, it may be argued that the Indonesian government provides fewer grounds for objection than the more expansive basis for refusing enforcement under the NYC. (Roosdiono & Taqwa, 2024).

Similarly, for domestic arbitral awards, Chinese courts refer to Article 76 of 2025 CAL (also see Article 63 of 1994 CAL) and Article 248 of the CCPL, which allow for broader substantive review grounds, such as forged evidence, concealed evidence, or manifestly erroneous awards, to deny recognition and execute an arbitral award. (Article 63 of 1994 CAL; Article 76 of 2025 CAL) However, for foreign-related awards, national courts adopt a more arbitration-friendly approach to recognition and enforcement. As Article 84 of 2025 CAL (also see Article 71 of 1994 CAL) and Article 291 of the CCPL stipulate, the established grounds for declining enforcement are limited to procedural issues such as "absence of an arbitration agreement, excessive arbitral award, lack of jurisdiction by the tribunal, and violation of statutory procedures." (Article 71 of 1994 CAL; Article 84 of 2025 CAL) Chinese rules on the recognition and enforcement of foreign arbitral awards are also consistent with Article V(1) of the NYC, which emphasizes the court's procedural review and restricts the basis for refusal to procedural matters only.

Under the prevailing legal framework, China has witnessed a notable shift in its judicial approach to recognizing and enforcing foreign-related arbitral awards in recent years, from a relatively conservative stance to a more pro-arbitration judicial attitude. The non-enforcement cases are sporadic, and only a limited number of transnational awards have been refused support by Chinese courts. (Dong & Yuan, 2022).

6.2 Annulment of Arbitral Awards

The provisions for annulment in the IAL are only applicable to domestic or national arbitral awards and do not apply to international or foreign arbitral awards. Article 70 of the Law outlines the specific conditions that must be met before a party can submit a request to have a domestic arbitral verdict overturned. These requirements are specific and mostly center on criminal misconduct: (a) it is found that documents or letters used in the arbitration were forged or identified to be falsified after the decision was rendered; (b) the opposing party purposefully concealed essential documents that would have had a significant impact on the outcome; or (c) one of the parties used fraudulent means to obtain the award during the arbitral proceedings. The provision does not include fundamental reasons for annulment that are commonly found in the practice of international arbitration. (Roosdiono, 2022)

Internationally recognized grounds include insufficient party capacity, violations of due process, the tribunal's overreach, or procedural errors in the composition of the panel. The defense of public policy, a widely utilized defense in many legal systems, is also absent. As a result, the restricted application of Article 70 draws attention to the fact that the IAL places a particular emphasis on criminal activity as the primary reason for annulling an award. The three grounds are criminal in nature and distinguish themselves from the more general

annulment requirements typically found in other jurisdictions. It represents a narrow approach to annulment, which may not be consistent with international norms. (Fitrianggraeni et al., 2023)

The process for annulment of arbitral verdicts was unclear and complicated in practice, despite Article 70 of the IAL appearing to have a limited scope. It is because the Elucidation of Article 70 stipulates that a party can only submit an annulment application after the grounds for annulment have been proven by a court. This weakens the integrity and finality of arbitration in Indonesia. (Siahaan & Soemartono, 2025) It is for this reason that the Constitutional Court issued Decision No. 15/PUU-XII/2014, which significantly altered the procedural threshold for annulment applications. The Elucidation is considered problematic in relation to the 1945 Constitution because it creates legal uncertainty and infringes upon people's legal rights. (Constituonal Court, 2014)

The Elucidation of Article 70 stipulates that a party can only submit an annulment application after the grounds for annulment have been proven by a court. The Constitutional Court Decision No. 15/PUU-XII/2014 removed the requirement that these grounds must first be proven by a court decision. (Constitutional Court, 2014) The Constitutional Court ruling has procedural consequences. Courts will now evaluate the claims for annulment based on the merits of the arguments and evidence presented by both parties during the annulment process, rather than requiring proof upfront. With the pre-proof requirement no longer necessary, parties can now file annulment based on the grounds outlined in Article 70 without having to establish those grounds in advance. This change lowers the barrier for parties seeking to challenge arbitration awards by allowing them to present their cases directly before the court. As a result of this decision, parties who feel aggrieved by the arbitral tribunal's decision can now file annulment petitions directly, without first having to prove those grounds through a separate court procedure. (Akbar & Mawarid, 2025).

China establishes different rules for annulling domestic and foreign-related awards. For domestic awards, Chinese national courts apply both procedural and substantive grounds for annulment. Article 71 of 2025 CAL (also see Article 58 of 1994 CAL) allows a party to request annulment on procedural grounds—such as "the absence of a valid arbitration agreement, excess of arbitral authority, or violations of statutory procedures"—as well as on substantive grounds, including "fabrication or concealment of evidence and manifest errors in the award." (Article 58 of 1994 CAL; Article 71 of 2025 CAL) By contrast, for foreign-related (international) arbitral awards, Chinese national courts refer primarily to Article 83 of 2025 CAL (also see Article 70 of 1994 CAL). It limits the legal basis for setting aside international arbitral awards strictly to procedural grounds. Article 83 of the CAL specifies that "a foreign-related award may be set aside only for reasons such as absence of a valid arbitration agreement, exceeding the arbitration scope or arbitral authority, or violations of statutory procedures." (Article 70 of 1994 CAL; Article 83 of 2025 CAL)

Nevertheless, both domestic and international awards are required to serve the public interest; otherwise, this would constitute a substantive reason for national courts to annul awards. Except for public interest considerations, domestic arbitral awards in China can be reviewed more broadly. In contrast, foreign-related awards are subject to a narrower, procedural-only review, aligning more closely with China's obligations under the NYC. (King, 2015) This distinct difference between the annulment of domestic and foreign arbitral awards represents a clear judicial attitude that national courts hold a pro-arbitration stance towards international arbitration while remaining conservative in their approach to domestic arbitration. (Alford et al., 2022; Li et al., 2023) According to the SPC reports, Chinese domestic courts concluded more than 16,000 arbitration-related cases in 2023, with an annulment rate of 5.11% (552 cases annulled). The trend further improved in 2024, when courts handled approximately 18,000 cases and the annulment rate dropped to less than 2%. Regarding foreign arbitral awards, only 6 applications for recognition and enforcement

were annulled or refused in 2023, and none were recorded in 2024. (SPC, 2024; SPC, 2025) This judicial attitude is consistent with China's policy of maintaining judicial supervision while meeting international arbitration standards. However, unlike China, the Indonesian Supreme Court does not publish official data on annulment or non-enforcement of arbitral awards, which constrains the ability to evaluate its jurisprudential practice with empirical clarity.

6.3 Public Policy

The interpretation and application of public policy in Indonesia as a basis for denying recognition and execution remains a contentious issue. Article V(2)(b) of the NYC provides that an arbitral award may be refused recognition or enforcement if the competent authority in the enforcing state determines that enforcement would be contrary to the public policy of that state. Article 66(c) of Indonesia's Arbitration Law supports the concept that an international arbitral ruling can only be enforced in Indonesia if it complies with public policy or public order (also known as "ketertiban umum"). This conformity with the NYC establishes a significant barrier to enforcing awards. (Adolf, 2019)

Clarification was provided by the Supreme Court Regulation No. 3 of 2023. (Perma) This Perma differentiates between domestic and foreign arbitral awards. Article 11 of the Perma states that if the chairman of the district court considers a domestic arbitral decision to be contrary to public policy, then the application for execution must be denied by a formal "determination" ("penetapan"). Importantly, as stated in Article 12(1) of the Perma and Article 62(2) of the IAL, this decision is final and cannot be appealed or challenged in a legal proceeding. For this reason, the court has considerable discretion.

In contrast, the application for recognition and enforcement of foreign awards is rejected through a formal decision ("putusan"), as opposed to a non-appealable determination in domestic cases. If the Chairman of the Central Jakarta District Court considers an award to be contrary to public policy, the application will be rejected. Unlike domestic arbitral awards, however, Article 68(2) of the IAL permits a cassation appeal to the Supreme Court to be used to challenge this decision.

The doctrine of Indonesia's public policy continues to operate in a broad manner, allowing courts to set aside or decline enforcement of arbitral awards on wide ranging grounds, which in turn creates uncertainty for disputing parties (Adolf, 2021). A central difficulty stems from the absence of a precise and limiting statutory definition of "public policy." The current formulation describes public order as "everything that is the basic foundation needed for the running of the legal system, economic system, and socio-cultural system of the Indonesian people and nation" (Perma). The open ended and highly subjective nature of terms such as "everything" and "basic foundation" leaves ample room for divergent interpretations. Because these concepts are inherently abstract, judges may apply them expansively, resulting in broad and unpredictable readings of public policy. Such latitude can open the door to discretionary judicial intervention, including refusals to enforce arbitral awards based on personal assessments of social norms, morality, or societal expectations (Sugianto, 2025). Within this broader context, it is worth noting that both the UNCITRAL Arbitration Rules and the New York Convention emphasise that the public policy exception should remain exceptional and that the Model Law also promotes a narrow and clearly defined understanding of public policy. (Soemartono & Lumbantobing, 2018) In contrast, Chinese courts have shifted toward a more restrained approach that aligns with international conventions, applying the public policy exception only in exceptional circumstances and thereby providing greater certainty in recognition and enforcement proceedings (Jingdong, 2021).

The absence of a precise and well-defined interpretation of public policy causes anxiety among international investors and users of arbitration. Parties who have attempted to execute international arbitral awards have faced uncertainty during this process. This is because it permits judicial intervention at the court's discretion, as seen in the case of Astro v. Ayunda (Astro v. Ayunda). This doctrinal ambiguity not only opens the door to judicial

discretion but also poses a threat to Indonesia's credibility as a jurisdiction favorable to arbitration. (Adolf, 2019)

In the Chinese context, a people's court shall set aside or refuse to enforce an arbitral award if it finds that the award violates public policy. (Article 71 of 2025 CAL; Article 76 of 2025 CAL) "public policy" is commonly referred to as "social public interest" (*she hui gong gong li yi*). In judicial practices, Chinese national courts define this notion in relevant judicial opinions and cases. According SPC's judicial reply in many cases, the "social public interest" refers to the fundamental values of the legal order, the core ethics of society, and matters affecting national or public security. It should be invoked only in exceptional circumstances where an award "harms the public order that transcends the rights and obligations of the parties themselves". (Brentwood v. Fa'anlong, 2015; Jwell Machinery v. OAO Uralmash, 2006) Domestic courts have consistently adopted a strict and cautious approach, applying the public interest principle based on a narrow interpretation. (Lin, 2022) Both domestic and international arbitral awards shall respect the public interest; otherwise, national courts shall have the right to refuse enforcement. Reasons for courts to refuse to enforce are the violation of public interest. Article 8 of the Interpretation of Certain Issues of the Law on the Law Applicable to Foreign-Related Civil Relations provides an enumerated description of the connotation of "public interest." In judicial practice, although it is more common for an applicant to seek annulment based on "violation of public interest," the national court's determination is rigorous. (Qisheng, 2014) Many case laws have demonstrated that a violation of public interest refers to cases where an arbitral award contravenes the fundamental principles of Chinese law, infringing on societal customs and jeopardizing state and public security. (*ED & F Man (Hong Kong) Co., Ltd. v. China National Sugar & Wines Group Corp.*, 2003; Jilong & Xianglong, 2023) Breaching mandatory provisions of laws is not entirely equivalent to contravening public policy principles. (*Hainan Taxtile v. Mitsui & Co., Ltd.*)

Table 1
Convergence of Judicial Roles

Aspect	Indonesia	China
Arbitration Law	Law No. 30 of 1999—not Model Law (some ambiguities and outdated provisions).	Arbitration Law of China (1994)—not Model Law (amendment in 2009, 2017 and current amendment on 2025).
Jurisdiction (Competence-Competence)	No express statutory competence-competence; courts have accepted jurisdiction in some cases notwithstanding an arbitration clause.)	Tribunal competence-competence is not fully recognized, taking a "court first" stance.
Separability	An arbitration agreement is independent and not void for cancellation, expiration, or invalidity of the main contract. Courts have no more right to intervene.	The arbitration agreement is independent; validity is not affected by any modification, rescission, termination, or invalidity of the main contract. Courts must respect the agreement.
Enforcement	The Central Jakarta Court is authorized to issue exequatur for foreign awards,	Intermediate people's courts are authorized to enforce foreign awards if no

	subject to certain conditions, including reciprocity, commercial nature, and non-public policy violations.	procedural or public policy violation occurs.

Table 2
Divergence of Judicial Roles

Aspect	Indonesia	China
Taking Evidence	No court support for taking evidence, including evidence of preservation.	The court can provide evidence of preservation upon request by the arbitration commission, and the parties under urgent circumstances.
Interim Measures	No court assistance in interim relief; the tribunal can still issue interim awards but has no procedures to enforce them.	The court can provide specific interim relief, especially property preservation and preservation of behaviors at the regional level.
Annulment	Awards can be annulled only for fraud, corruption, or new evidence.	Awards can be annulled for procedural, substantive, or public policy violations.
Public Policy	Public policy is a statutory ground, but it is broad and lacks a precise definition, giving courts wide discretion.	Public policy is a statutory ground referred to as public interest. Courts apply a narrow interpretation.

7. Conclusion

Both Indonesia's and China's arbitration laws exhibit a growing convergence toward supporting arbitration and limiting excessive judicial interference (refer to Table 1). Although both jurisdictions proudly subscribe to the NYC and share similar features with civil law systems, their respective arbitration regimes still exhibit some differences. Key divergences in their judicial interference continue to impact how arbitration proceedings and awards are conducted and enforced in practice (see Table 2).

The comparative analysis of judicial roles in arbitration proceedings within the legal frameworks of Indonesia and China underscores a fundamental truth: the effectiveness of international arbitration depends not only on party autonomy and institutional design but also on the attitudes and capabilities of national courts. Courts play a significant role in international arbitration proceedings by acting as institutional gatekeepers with the authority to assist or limit the arbitration process. While both jurisdictions acknowledge the necessity of judicial support, their approaches differ significantly. Indonesia's tendency toward intervention can lead to challenges in arbitration effectiveness, while China's restrained judicial involvement promotes a more robust arbitration framework. Future reforms in Indonesia are required to align more closely with best practices observed in China.

Indonesia's prospective reform would involve limiting the role of courts to specific supportive functions, such as assistance with evidence taking and narrowly focused interim measures, while allowing annulment only on procedural and substantive grounds. (Dewa, 2024) Legislative reform should work toward establishing a clearer, more predictable, and investment-oriented arbitration framework. Key components include adopting the UNCITRAL Model Law to harmonise Indonesia's system with widely accepted international standards, explicitly codifying the competence-competence principle to affirm the tribunal's primary competence over issues of jurisdiction, and refining the public policy standard so it cannot be invoked in a wide-ranging means to invalidate otherwise legitimate awards. Nevertheless, these statutory enhancements will achieve practical significance only if they are implemented by a judiciary that is competent, impartial, and consistent in its interpretation and enforcement. (Soemartono & Lumbantobing, 2018; Marilyn & Soemartono, 2024)

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