

# Revised\_JudicialRoles- Arbitration

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

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4 **Judicial Roles in International Arbitration: Divergent Paths Toward**  
5 **Convergence in Indonesia and China**  
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19 **ABSTRACT**  
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21 This article assesses the arbitration regimes of Indonesia and China, focusing on the judicial roles and  
22 their implications for the effectiveness of international arbitration. Employing a comparative legal  
23 methodology, this study reveals that although judicial support is essential for effective arbitration, its  
24 characteristics differ across the two jurisdictions. The differences lead to significant convergence and  
25 divergence of their judicial roles in arbitration proceedings. Indonesia's arbitration framework aims to  
26 strike a balance between national legal norms and global arbitration standards, whereas China's hybrid  
27 approach combines strong support for arbitration with deliberate judicial intervention. The analysis  
28 provides valuable insights into how Indonesia and China, respectively, work to strengthen arbitration  
29 as a fair, efficient, and reliable dispute-resolution forum. In conclusion, although the roles of Chinese  
30 and Indonesian judicial support and interference vary, their overall direction aligns with the global pro-  
31 arbitration movement. The two jurisdictions exhibit a trend in which courts are increasingly not rivals  
32 to international arbitration but rather guarantors of its effectiveness.  
33

34 **KEYWORDS**  
35 Judicial roles; arbitration proceedings; Indonesian arbitration; international arbitration; Chinese  
36 arbitration; comparative study.  
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39 **1. Introduction**  
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41 Over the past decade, China and Indonesia have emerged as significant trading partners. Following  
42 their accession to the Regional Comprehensive Economic Partnership (RCEP), bilateral economic  
43 relations have entered a more integrated and dynamic phase. This expanding commercial engagement  
44 spans various sectors—from traditional industries like manufacturing and mining to emerging fields  
45 like the digital economy. (RCEP, 2023) However, the rapid expansion of trade is likely to lead to an  
46 increase in commercial disputes between Chinese and Indonesian enterprises, underscoring the need  
47 for robust dispute resolution mechanisms. That is why international commercial disputes choose  
arbitration over state court litigation.  
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50 Arbitration is a widely recognized approach to dispute resolution, valued for its impartiality,  
51 efficiency, and confidentiality. (Nguyen, 2023) Furthermore, arbitration panels often comprise <sup>52</sup> subject-  
52 matter experts, ensuring that the final decision is well-informed. (Detotto et al., 2024) Global treaties,  
53 particularly the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral  
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4 Awards (hereinafter, the "NYC"), play a crucial role in making arbitral awards enforceable across  
5 borders. It provides businesses with confidence in the arbitration system, regardless of where they  
6 operate. (Seyadi, 2017)

7  
8 Nevertheless, it comes at a cost. Arbitration relies heavily on the legal support provided by national  
9 justice systems. Courts intervene at each step in arbitration, providing interim measures, enforcing  
10 awards, and, at times, stepping in to ensure procedural fairness or protect public order. National courts'  
11 approach to this interaction essentially determines the effectiveness and credibility of arbitration in  
12 practice. (Bermann, 2017) In some jurisdictions, the enforceability of arbitral awards may be  
13 compromised if local courts are hesitant to cede their authority. (Torgbor, 2017) Even if the NYC  
14 promotes specified judicial functions, its standards leave room for interpretation, especially regarding  
15 public policy, arbitrability, or due process violations. (Basirat & Haqmal, 2023) Jurisdictions vary  
16 significantly in their application of these standards, resulting in uneven enforcement of arbitral awards  
17 and differing judicial attitudes. Some nations incline towards arbitration where they have adequate  
18 enforcement of arbitral awards. Other countries may have relatively strict regulations, yet a poor  
19 arbitration setup can increase problems during proceedings. (Lopes, 2024)

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

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

34  
35 This research is significant in both its timeliness and practical applications, considering the growing  
36 economic relations between Indonesia and China. Arbitration is increasingly relied upon to resolve  
37 commercial, investment, and even certain public-private disputes. As the use of arbitration expands, so  
38 does the scrutiny of its governance mechanisms—especially court oversight. As such, this research  
39 examines the judicial roles of courts as integral partners in upholding the rule of law within the  
40 arbitration process.

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

47  
48 **2. Methodology**

49  
50 This research adopts a comparative legal methodology situated within a normative framework. The  
51 comparison is guided by several analytical lenses: a doctrinal inquiry into the legal principles embedded  
52 in each country's arbitration law; an institutional examination of the functions and authority of arbitral  
53 institutions within both jurisdictions; and a procedural assessment of the rules governing the conduct of  
54 arbitration. The primary sources analysed include national arbitration laws, procedural regulations,  
judicial decisions, and scholarly commentaries.

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56 In addition, secondary materials such as academic journals, treaties, and policy reports addressing  
57 the development and implementation of arbitration law in China and Indonesia is utilised to

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4 contextualise and deepen the assessment. The comparative focus on these two jurisdictions is based on  
5 distinct legal traditions and structural characteristics. Indonesia's evolving and pluralistic legal  
6 environment contrasts markedly with China's more centralised and state-driven system. This analytical  
7 structure enables a detailed examination of how each jurisdiction responds to recurring challenges in  
8 arbitration, thereby offering insight into the effectiveness, flexibility, and overall capacity of their legal  
9 frameworks to meet both domestic and international arbitration demands.

10  
11 **3. Indonesian and Chinese International Arbitration**  
12 As it was once a Dutch colony, Indonesia has retained its legal system, which is derived from Dutch  
13 law. Under Annex II of the 1945 Constitution, all laws enacted during the Dutch colonial period  
14 remain in effect until superseded by national rules. As a result, the Dutch Code of Civil Procedure  
15 (RRv) was implemented. The provisions concerning arbitration (lex arbitri) are found in sections 615  
16 to 651 of the RRv and remain in force until Indonesia enacts a new postcolonial lex arbitri.

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

24  
25 [16](#) In 1981, Indonesia issued Presidential Decree No. 34, which ratified the NYC. Indonesia joined  
26 the New York Convention with reciprocity and commercial-relations reservations, limiting  
27 enforcement to awards from fellow Convention states and disputes classified as commercial. This  
28 ratification indicates that the core provisions of the Convention likely contributed to the advancement  
29 of Indonesia's arbitration framework. Article 66 of the Indonesian Arbitration [Law](#) mirrors these  
30 conditions by requiring a treaty-reciprocal basis and a commercial subject matter for the enforcement  
31 of foreign awards. Together, the Convention reservations and Article 66 function as a dual filter that  
32 narrows the range foreign awards Indonesian courts may recognise and enforce. ([Lumbantobing,](#)  
33 [2019](#))

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

43 In 1986, China acceded to the NYC. This step was significant, as it signaled China's commitment  
44 to recognizing and enforcing foreign arbitral awards and aligning itself with international arbitration  
45 standards. Building upon this foundation, in 1994, the Chinese National People's Congress  
46 (hereinafter the "NPC") enacted the Arbitration Law of China (1994) (hereinafter the "1994 CAL")  
47 as the country's first comprehensive Arbitration Law. This 1994 legislation marked the formal  
48 beginning of a systematic legal framework for arbitration in China. ([Gu, 2017](#)) Since its initial  
49 implementation, the Chinese Arbitration Law of 1994 has undergone significant evolution with  
50 revisions in 2009 and 2017. ([Teh & Ribeiro, 2017](#)) In 2021, the Ministry of Justice of China  
51 (hereinafter the "MoJ") issued the 2021 Draft Amendment on Arbitration Law (hereinafter the "2021  
52 Draft") that introduced major reforms inspired by the Model Law. The 2021 Draft showed China's  
53 intention to modernize its arbitration system and align with international standards. However, after  
54 over three years' silence, the latter 2024 Draft Amendment to the Arbitration Law (hereinafter, the  
55 "2024 Draft") adopted a more conservative approach, retaining some progressive features while  
56 removing many international innovations from the 2021 Draft. Subsequently, the 2025 Draft  
57 Amendment to the Arbitration Law (hereinafter, the "2025 Draft") made only minor adjustments and

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4 largely retain<sup>31</sup> the major revisions of the 2024 Draft. Later, on 12 September 2025, the 2025  
5 Amendment of the Arbitration Law was adopted, and will take effect on 1 March 2026. This  
6 amendment is also regarded as the Chinese New Arbitration Law (hereinafter the "2025 CAL"). The  
7 legislative history of Chinese Arbitration over the past decade reflects China's efforts to reform and  
8 modernize its arbitration legal framework, aiming to enhance efficiency while maintaining fairness  
9 and justice in arbitral proceedings. (Hu, 2025)

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11 **4. Judicial Influence on Arbitration Agreements and Jurisdiction**

12 **4.1 Separability Principle**

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

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

24 The IAL also reinforces the separability principle, stating that district courts lack jurisdiction if an  
25 arbitration agreement exists<sup>21</sup> (Article 3 of IAL) Additionally, the parties waive their right to initiate  
26 any litigation if they have a written arbitration agreement in place. (Article 11(1) of IAL) The reason  
27 behind any limited court involvement is to prevent parties from disputing an arbitration clause after  
28 they have agreed<sup>22</sup> to arbitrate rather than litigate. (Adiasih, 2013) However, in practice, defendants  
29 often challenge the validity of the arbitration agreement. (Nugraheni & Hernawan, 2025) In some  
30 cases, Indonesian courts accept claims brought by a party subject to an arbitration agreement, even if  
31 the arbitration has already been initiated (such as *Bankers Trust v. Mayora; Siti Rukmana v. PT*  
32 *Berkah*).

33 The doctrine of separability is recognised within Chinese law. While Chinese statutes do not  
34 expressly reference the term "separability," the principle of an arbitration agreement's independence  
35 is implicitly acknowledged through legislative provisions and established arbitration practices.  
36 Pursuant to Article 30 of 2025 CAL (also see Article 19 of 1994 CAL), "The validity of the arbitration  
37 agreement is preserved independently, even if the main contract is modified, rescinded<sup>33</sup> or terminated,  
38 or deemed invalid." (Article 19 of 1994 CAL; Article 30 of 2025 CAL; See Zou, 2020) The Supreme  
39 People's Court of China (hereinafter, the "SPC") has affirmed the separability principle in its case law  
40 to support arbitration. According to SPC Guiding Case No. 196, "The arbitration agreement and the  
41 main contract are separable and independent from each other; their existence, validity, and governing  
42 laws are separate. The validity of the arbitration clause remains unaffected even though the main  
43 contract is not established." (SPC Guiding Case No. 196 [Yunyu Ltd. v. Zhongyuan City Corp.J., 2019])  
44 While Chinese national courts may, in rare and extreme cases, declare arbitration agreements invalid  
45 if they violate public policy or mandatory rules, statistics show that national courts recognize the  
46 separability doctrine and overwhelmingly uphold the validity of arbitration agreements, which  
47 remains at a relatively high level internationally. (King & Mallesons, 2018)

48 **4.2 Competence-Competence**

49 The competence-competence principle empowers the tribunal to make an initial decision regarding its  
50 jurisdiction over a particular dispute. It aims to reinforce the independence and efficiency of arbitration,  
51 while preventing parties from interfering with arbitration by abusing judicial processes. (Whitfield,  
52 2023; see also Almomani & Obeidat, 2015).

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

19 Interestingly, China adopts a noticeably more cautious orientation, one that places courts at the  
20 forefront. Under this approach, the competence-competence principle is recognised only in a limited  
21 form, as domestic courts continue to wield considerable influence over questions of jurisdiction. (Fu,  
22 2022; Chang, 2023) Both the 1994 CAL and the 2025 CAL confirm that an arbitral tribunal may  
23 assess the validity of the contract, aligning with the competence-competence doctrine, yet this power  
24 to rule on its own jurisdiction remains subject to important constraints. (Article 19 of 1994 CAL;  
25 Article 30 of 2025 CAL) It also maintains the court's eligibility to review the arbitral award. (Article  
26 20 of 1994 CAL; Article 31 of 2025 CAL) This "court first" approach provides that a party  
27 challenging the validity of an arbitration agreement may apply for a decision to either the arbitration  
28 commission or the people's court before the commencement of arbitral proceedings. If one party  
29 applies to the arbitration commission and the other to the people's court, the decision made by the  
30 people's court shall prevail.

31 However, both tribunals and courts have authority to assess the validity of arbitration clauses, a  
32 process referred to as "parallel review." (Gu, 2009a) In situations where a jurisdictional conflict arises  
33 between tribunals and national courts, China adopts a "court-first" approach, restricting the tribunal's  
34 jurisdictional independence under the doctrine of "competence-competence." For instance, in  
35 *Brentwood v. Fa'anlong* case, the Chinese domestic courts intervene to decide the validity of the  
36 arbitration agreement upon Brentwood's request. (Brentwood v. Fa'anlong, 2015) By doing so, the  
37 court took precedence over the arbitral tribunal's competence and ultimately confirmed the validity of  
38 the arbitration clause. Therefore, if the parties turn to the tribunal and national court separately, the  
39 court's ruling takes precedence over the tribunal's decision. This affirms not only the court's ability, but  
40 also its obligation to intervene in this matter. (Zhong & Tao, 2018). <sup>19</sup>

41 On 29 December 2017, China's Supreme People's Court issued the Provisions on Questions  
42 Concerning Approval and Reporting in Arbitration-related Judicial Review, often called the 2017 Prior  
43 Reporting System Provision. <sup>20</sup> With this measure, the SPC expanded the prior-reporting mechanism to  
44 cover every case involving judicial review of arbitration, whether the matter is domestic or contains a  
45 foreign element. In practice, no Chinese court may refuse to enforce an arbitral award unless it has first  
46 obtained approval from the appropriate higher court. This reform was intended to strengthen  
47 consistency and predictability in how courts oversee arbitration. (Wunschheim, 2018)

## 48 5. Judicial Intervention during the Arbitral Proceedings

### 49 5.1 Assistance in Taking Evidence

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

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

18 **5.2 Interim Measures**

19 Interim relief refers to temporary or urgent remedies granted by national courts to ensure the process of  
20 proceedings, preservation of evidence, or enforcement of an award. The primary purpose of these  
21 preliminary measures is mainly to prevent parties from dissipating assets, continuing infringement, or  
22 destroying evidence. (C. & Tan, 2013; Sherwin & Rennie, 2010) Regarding international arbitration,  
23 interim measures empowers national courts to exercise special intervention powers over arbitral  
24 tribunals during arbitration proceedings. These powers can be either supportive or negative in nature  
25 and are often exercised through the provision of interim relief. (Wu et al., 2023; Falconer & Bouchenaki,  
26 2010)

27 China adopts a relatively cautious approach towards interim measures. (Sun, 2020; W. Zhang & Tu,  
28 2023) 1994 CAL and 2025 CAL establish the legal basis for property preservation. (Article 28 of 1994  
29 CAL; Article 39 of 2025 CAL) National courts in some regions also provide preliminary guidelines on  
30 an international scale. (Xin & Radzi, 2025) There is some pilot exploration on the interference of  
31 Chinese domestic courts in transnational arbitral proceedings through property preservation. For  
32 example, in 2019, China issued 36 Mutual Assistance Arrangement for arbitration proceedings between  
33 Mainland courts and those in the Hong Kong Special Administrative Region (HKSAR). (Bookman,  
34 2019) The Mutual Assistance Arrangement represents a groundbreaking legislative development in  
35 international arbitration, specifically in the preservation of property. Under the arrangement, property  
36 preservation measures in HKSAR arbitration proceedings are treated in a manner similar to those in  
37 mainland China. (O'Hare et al., 2021; Wenying, 2021).

38 Additionally, except for property preservation, Article 39 of the 2025 CAL also takes the  
39 preservation of behaviors into the scope of arbitral tribunals' interim measures. (Article 58 of 2025  
40 CAL) Under urgent circumstances, a party may apply for an order to compel the other party to  
41 perform certain acts or to prohibit it from performing certain acts. This achieves the consistency with  
42 Article 104 of the Chinese Civil Procedure Law (hereinafter the "CCPL"). There have been isolated  
43 cases supporting applications for preservation of behaviors. Following the implementation of the 2025  
44 version, parties to arbitration may directly apply to domestic courts for preservation of behaviors.

45 Unfortunately, in Indonesia, there is no stated legal foundation for courts to intervene in this manner;  
46 before, parties do not have access to an effective method of obtaining a rapid remedy. The power of  
47 courts to take interim measures is limited to conservatory attachment and the like. (Harahap, 2005) The  
48 IAL empowers tribunals with the competence to issue provisional or interim awards to regulate  
49 proceedings, which may involve actions such as the attachment of assets, the third-party deposit of  
50 goods, or the sale of perishable items, upon a party's request. (Article 32(1) of the IAL) However, this  
51 clause solely functions to defend the tribunal's jurisdiction; it does not establish a method by which the  
52 national courts can enforce it. As a result, parties who obtain temporary relief from a tribunal are left  
53 without a precise mechanism to implement those orders. This omission has a significant impact on the  
54 effectiveness of arbitration in Indonesia, particularly in cases involving international disputes. (Wajdi,  
55 2024)

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4 **6. Judicial Supervision of the International Arbitral Awards**

5 In arbitration, the domestic court serves as the supervisor after the arbitral award is rendered. This  
6 involvement is typically limited in scope, allowing national courts to review and potentially annul or  
7 deny enforcement of arbitral awards under restricted conditions. (Kee & Alvarez, 2023; Makarenkov  
8 & Varregoso Mesquita, 2023) The enforceability of an international arbitral award in the asset-holding  
9 jurisdiction is a key benchmark for assessing the support for international arbitration. (Soemartono,  
10 2017)

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

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

26 **6.1 Enforcement of Foreign Arbitral Awards**

27 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 & Oegroseno, 2018) The winning party may request an exequatur, or a writ of execution, after a foreign award has been registered by 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)

28 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).

29 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

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4 <sup>27</sup> 84 of 2025 CAL) Chinese rules on the recognition and enforcement of foreign arbitral awards are also  
5 consistent with Article V(1) of the NYC, which emphasizes the court's procedural review and restricts  
6 the basis for refusal to procedural matters only.

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

## 12 13 6.2 Annulment of Arbitral Awards

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

23 Internationally recognized grounds include sufficient party capacity, violations of due process,  
24 the tribunal's overreach, or procedural errors in the composition of the panel. The defense of public  
25 policy, a widely utilized defense in many legal systems, is also absent. As a result, the restricted  
26 application of Article 70 draws attention to the fact that the IAL places a particular emphasis on  
27 criminal activity as the primary reason for annulling an award. The three grounds are criminal in  
28 nature and distinguish themselves from the more general annulment requirements typically found in  
29 other jurisdictions. It represents a narrow approach to annulment, which may not be consistent with  
30 international norms. (Fitrianggraeni et al., 2023)

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

39 The Elucidation of Article 70 stipulates that a party can only submit an annulment application after  
40 the grounds for annulment have been proven by a court. The Constitution Court Decision No.  
41 15/PUU-XII/2014 removed the requirement that these grounds must first be proven by a court  
42 decision. (Constitutional Court, 2014) The Constitutional Court ruling has procedural consequences.  
43 Courts will now evaluate the claims for annulment based on the merits of the arguments and evidence  
44 presented by both parties during the annulment process, rather than requiring proof upfront. With the  
45 pre-proof requirement no longer necessary, parties can now file annulment based on the grounds  
46 outlined in Article 70 without having to establish those grounds in advance. This change lowers the  
47 barrier for parties seeking to challenge arbitration awards by allowing them to present their cases  
48 directly before the court. As a result of this decision, parties who feel aggrieved by the arbitral  
49 tribunal's decision can now file annulment petitions directly, without first having to prove those  
50 grounds through a separate court procedure. (Akbar & Mawarid, 2025).

51 China establishes different rules for annulling domestic and foreign-related awards. For domestic  
52 awards, Chinese national courts apply both procedural and substantive grounds for annulment. Article  
53 71 of 2025 CAL (also see Article 58 of 1994 CAL) allows a party to request annulment on procedural  
54 grounds.

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4 grounds—such as "the absence of a valid arbitration agreement, excess of arbitral authority, or  
5 violations of statutory procedures"—as well as on substantive grounds, including "fabrication or  
6 concealment of evidence and manifest errors in the award." ([Article 58 of 1994 CAL](#); [Article 71 of  
7 2025 CAL](#)) By contrast, for foreign-related (international) arbitral awards, Chinese national courts  
8 refer primarily to Article 83 of 2025 CAL (also see Article 70 of 1994 CAL). It limits the legal basis  
9 for setting aside international arbitral awards strictly to procedural grounds. Article 83 of the CAL  
10 specifies that "a foreign-related award may be set aside only for reasons such as absence of a valid  
11 arbitration agreement, exceeding the arbitration scope or arbitral authority, or violations of statutory  
12 procedures." ([Article 70 of 1994 CAL](#); [Article 83 of 2025 CAL](#))

13  
14 Nevertheless, both domestic and international awards are required to serve the public interest;  
15 otherwise, this would constitute a substantive reason for national courts to annul awards. Except for  
16 public interest considerations, domestic arbitral awards in China can be reviewed more broadly. In  
17 contrast, foreign-related awards are subject to a narrower, procedural-only review, aligning more  
18 closely with China's obligations under the NYC. ([King, 2015](#)) This distinct difference between the  
19 annulment of domestic and foreign arbitral awards represents a clear judicial attitude that national  
20 courts hold a pro-arbitration stance towards international arbitration while remaining conservative in  
21 their approach to domestic arbitration. ([Alford et al., 2022](#); [Li et al., 2023](#)) According to the SPC  
22 reports, Chinese domestic courts concluded more than 16,000 arbitration-related cases in 2023, with  
23 an annulment rate of 5.11% (552 cases annulled). The trend further improved in 2024, when courts  
24 handled approximately 18,000 cases and the annulment rate dropped to less than 2%. Regarding  
25 foreign arbitral awards, only 6 applications for recognition and enforcement were annulled or refused  
26 in 2023, and none were recorded in 2024. ([SPC, 2024](#); [SPC, 2025](#)) This judicial attitude is consistent  
27 with China's policy of maintaining judicial supervision while meeting international arbitration  
28 standards. However, unlike China, the Indonesian Supreme Court does not publish official data on  
29 annulment or non-enforcement of arbitral awards, which constrains the ability to evaluate its  
30 jurisprudential practice with empirical clarity.

### 31 6.3 Public Policy 2

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

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

45 In contrast, the application for recognition and enforcement of foreign awards is rejected through a  
46 formal decision ("putusan"), as opposed to a non-appealable determination in domestic cases. If the  
47 Chairman of the Central Jakarta District Court considers an award to be contrary to public policy, the  
48 application ~~will~~ be rejected. Unlike domestic arbitral awards, however, Article 68(2) of the IAL permits  
49 a cassation appeal to the Supreme Court to be used to challenge this decision. 37

50 2 The doctrine of Indonesia's public policy continues to operate in a broad manner, allowing courts to  
51 set aside or decline enforcement of arbitral awards on wide ranging grounds, which in turn creates  
52 uncertainty for disputing parties ([Adolf, 2021](#)). A central difficulty stems from the absence of a precise  
53 and limiting statutory definition of "public policy." The current formulation describes public order as  
54 "everything that is the basic foundation needed for the running of the legal system, economic system,

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4 and socio-cultural system of the Indonesian people and nation" (Perma). The open ended and highly  
5 subjective nature of terms such as "everything" and "basic foundation" leaves ample room for divergent  
6 interpretations. Because these concepts are inherently abstract, judges may apply them expansively,  
7 resulting in broad and unpredictable readings of public policy. Such latitude can open the door to  
8 discretionary judicial intervention, including refusals to enforce arbitral awards based on personal  
9 assessments of social norms, morality, or societal expectations (Sugianto, 2025). Within this broader  
10 context, it is worth noting that both the UNCITRAL Arbitration Rules and the New York Convention  
11 emphasise that the public policy exception should remain exceptional and that the Model Law also  
12 promotes a narrow and clearly defined understanding of public policy. (Soemartono & Lumbantobing,  
13 2018). In contrast, Chinese courts have shifted toward a more restrained approach that aligns with  
14 international conventions, applying the public policy exception only in exceptional circumstances and  
15 thereby providing greater certainty in recognition and enforcement proceedings (Jingdong, 2021).  
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17 The absence of a precise and well-defined interpretation of public policy causes anxiety among  
18 international investors and users of arbitration. Parties who have attempted to execute international  
19 arbitral awards have faced uncertainty during this process. This is because it permits judicial  
20 intervention at the court's discretion, as seen in the case of Astro v. Ayunda (Astro v. Ayunda). This  
21 doctrinal ambiguity not only opens the door to judicial discretion but also poses a threat to Indonesia's  
22 credibility as a jurisdiction favorable to arbitration. (Adolf, 2019)

23 In the Chinese context, a people's court shall set aside or refuse to enforce an arbitral award if it  
24 finds the award violates public policy. (Article 71 of 2025 CAL; Article 76 of 2025 CAL) "public  
25 policy" is commonly referred to as "social public interest" (*she hui gong gong li yi*). In judicial practices,  
26 Chinese national courts define this notion in relevant judicial 20 nions and cases. According SPC's  
27 judicial reply in many cases, the "social public interest" refers to the fundamental values of the legal  
28 order, the core ethics of society, and matters affecting national or public security. It should be invoked  
29 only in exceptional circumstances where an award "harms the public order that transcends the rights  
30 and obligations of the parties themselves". (Brentwood v. Fa'anlong, 2015; Jwell Machinery v. OAO  
31 Uralmash, 2006) Domestic courts have consistently adopted a strict and cautious approach, applying  
32 the public interest principle based on a narrow interpretation. (Lin, 2022) Both domestic and  
33 international arbitral awards shall respect the public interest; otherwise, national courts shall have the  
34 right to refuse enforcement. Reasons for courts 3 refuse to enforce are the violation of public interest.  
35 Article 8 of the Interpretation of Certain Issues of the Law on the Law Applicable to Foreign-Related  
36 Civil Relations provides an enumerated description of the connotation of "public interest." In judicial  
37 practice, although it is more common for an applicant to seek annulment based on "violation of public  
38 interest," the nat 201 court's determination is rigorous. (Qisheng, 2014) Many case laws have  
39 demonstrated that a violation of public interest refers to cases where an arbitral award contravenes the  
40 fundamental principles of Chinese law, infringing on societal customs and jeopardizing state and public  
41 security. (ED & F Man (Hong Kong) Co 34 Id. v. China National Sugar & Wines Group Corp., 2003;  
42 Jilong & Xianglong, 2023) Breaching mandatory provisions of laws is not entirely equivalent to  
43 contravening public policy principles. (Hainan Textile v. Mitsui & Co., Ltd.)

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47 Table 1  
48 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	No express statutory competence-competence; courts	Tribunal competence-competence is not fully

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60	(Competence-Competence)  Separability  Enforcement	have accepted jurisdiction in some cases notwithstanding an arbitration clause.)  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 Central Jakarta Court is authorized to issue exequatur for foreign awards, subject to certain conditions, including reciprocity, commercial nature, and non-public policy violations.	recognized, taking a "court first" stance.  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.  Intermediate people's courts are authorized to enforce foreign awards if no procedural or public policy violation occurs.
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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

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4 continue to impact how arbitration proceedings and awards are conducted and enforced in practice  
5 (see Table 2).

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7 The comparative analysis of judicial roles in arbitration proceedings within the legal frameworks  
8 of Indonesia and China underscores a fundamental truth: the effectiveness of international arbitration  
9 depends not only on party autonomy and institutional design but also on the attitudes and capabilities  
10 of national courts. Courts play a significant role in international arbitration proceedings by acting as  
11 institutional gatekeepers with the authority to assist or limit the arbitration process. While both  
12 jurisdictions acknowledge the necessity of judicial support, their approaches differ significantly.  
13 Indonesia's tendency toward intervention can lead to challenges in arbitration effectiveness, while  
14 China's restrained judicial involvement promotes a more robust arbitration framework. Future  
15 reforms in Indonesia are required to align more closely with best practices observed in China.  
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27 Indonesia's prospective reform would involve limiting the role of courts to specific supportive  
28 functions, such as assistance with evidence taking and narrowly focused interim measures, while  
29 allowing annulment only on procedural and substantive grounds. (Dewa, 2024) Legislative reform  
30 should work toward establishing a clearer, more predictable, and investment-oriented arbitration  
31 framework. Key components include adopting the UNCITRAL Model Law to harmonise Indonesia's  
32 system with widely accepted international standards, explicitly codifying the competence-competence  
33 principle to affirm the tribunal's primary competence over issues of jurisdiction, and refining the  
34 public policy standard so it cannot be invoked in a wide-ranging means to invalidate otherwise  
35 legitimate awards. Nevertheless, these statutory enhancements will achieve practical significance only  
36 if they are implemented by a judiciary that is competent, impartial, and consistent in its interpretation  
37 and enforcement. (Soemartono & Lumbantobing, 2018; Marilyn & Soemartono, 2024)

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8 **REVIEWER 1**

9 The overall thesis that both systems trend pro-arbitration while retaining distinct modes of supervision is  
10 valuable. The manuscript reads clearly and is well-signposted.

11 **1. Comment 1**

12 The national arbitration statute is the Arbitration Law of the PRC 1994 (as amended). Please  
13 remove "2017 Arbitration Law" from Table 1 and throughout. State unequivocally the status of any  
14 2023-2025 revision (draft, promulgated, in force), with the promulgation date and authoritative  
15 text if applicable.

16 **Response:**

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

34 **2. Comment 2**

35 Anchor your discussions to article numbers: separability (Art 19 CAL), competence-competence  
36 and court/commission and court review provisions in the Civil Procedure Law for foreign-related and  
37 foreign awards (e.g., CPL arts commonly cited for recognition/enforcement and set-aside of  
38 foreign-related awards).

39 **Response:**

40 *The 2025 Amendment of the Arbitration Law was adopted, and will take effect on 1 March 2026.*  
41 *This amendment is also regarded as the Chinese New Arbitration Law (hereinafter the 2025*  
42 *"CAL").*

43 a. Separability

44 The doctrine of separability is recognised within Chinese law. While Chinese statutes do not  
45 expressly reference the term "separability," the principle of an arbitration agreement's  
46 independence is implicitly acknowledged through legislative provisions and established  
47 arbitration practices. Pursuant to Article 19 of the 1994 CAL, "The validity of the arbitration  
48 agreement is preserved independently, even if the main contract is modified, rescinded,  
49 terminated, or deemed invalid."

50 The Supreme People's Court of China (hereinafter, the "SPC") has affirmed the separability  
51 principle in its case law to support arbitration. According to SPC Guiding Case No. 196, "The  
52 arbitration agreement and the main contract are separable and independent from each other;  
53 their existence, validity, and governing laws are separate. The validity of the arbitration clause  
54 remains unaffected even though the main contract is not established."

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10 b. Competence-competence  
11 China adopts a noticeably more cautious orientation, one that places courts at the forefront.  
12 Under this approach, the competence-competence principle is recognised only in a limited  
13 form, as domestic courts continue to wield considerable influence over questions of  
14 jurisdiction. (Fu, 2022; S. Zhang, 2023) Both the 1994 CAL and the 2025 CAL confirm that  
15 an arbitral tribunal may assess the validity of the contract, aligning with the competence-  
16 competence doctrine, yet this power to rule on its own jurisdiction remains subject to  
17 important constraints. (Article 19 of 1994 CAL; Article 30 of 2025 CAL) It also maintains  
18 the court's eligibility to review the arbitral award. (Article 20 of 1994 CAL; Article 31 of  
19 2025 CAL) This "court first" approach provides that a party challenging the validity of an  
21 arbitration agreement may apply for a decision to either the arbitration commission or the  
22 people's court before the commencement of arbitral proceedings. If one party applies to the  
23 arbitration commission and the other to the people's court, the decision made by the people's  
24 court shall prevail.  
25  
26 c. Set aside domestic awards  
27 China establishes different rules for annulling domestic and foreign-related awards. For  
28 domestic awards, Chinese national courts apply both procedural and substantive grounds for  
29 annulment. Article 71 of 2025 CAL (also see Article 58 of 1994 CAL) allows a party to request  
30 annulment on procedural grounds—such as "the absence of a valid arbitration agreement,  
31 excess of arbitral authority, or violations of statutory procedures"—as well as on substantive  
32 grounds, including "fabrication or concealment of evidence and manifest errors in the award."  
33 By contrast, for foreign-related (international) arbitral awards, Chinese national courts refer  
34 primarily to Article 83 of 2025 CAL (also see Article 70 of 1994 CAL). It limits the legal basis  
35 for setting aside international arbitral awards strictly to procedural grounds. Article 83 of the  
36 CAL specifies that "a foreign-related award may be set aside only for reasons such as absence  
37 of a valid arbitration agreement, exceeding the arbitration scope or arbitral authority, or  
38 violations of statutory procedures."

39 3. **Comment 3**  
40 When you characterise China's "court-first" approach, please add the SPC prior-reporting  
41 mechanism for non-enforcement and set-aside of foreign-related and foreign awards and cite the  
42 SPC notices/interpretations by name and date. This is central to the pro-enforcement trend.

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

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8 On 29 December 2017, China's Supreme People's Court issued the Provisions on Questions  
9 Concerning Approval and Reporting in Arbitration-Related Judicial Review, often called the 2017  
10 Prior Reporting System Provisions. With this measure, the SPC expanded the prior-reporting  
11 mechanism to cover every case involving judicial review of arbitration, whether the matter is  
12 domestic or contains a foreign element. In practice, no Chinese court may refuse to enforce an  
13 arbitral award unless it has first obtained approval from the appropriate higher court. This reform  
14 was intended to strengthen consistency and predictability in how courts oversee arbitration.

15 **4. Comment 4**

16 Indonesia. Make explicit the New York Convention reservations (reciprocity and "commercial"  
17 reservations upon accession by Presidential Decree No. 34/1981) and tie them to IAL Art 66  
18 conditions.

19 **Response:**

20 Indonesia joined the New York Convention with reciprocity and commercial-relations reservations  
21 under Presidential Decree No. 34/1981, limiting enforcement to awards from fellow Convention  
22 states and disputes classified as commercial. Article 66 of the Indonesian Arbitration Law mirrors  
23 these conditions by requiring a treaty basis and a commercial subject matter for the enforcement of  
24 foreign awards. Together, the Convention reservations and Article 66 function as a dual filter that  
25 narrows which foreign awards Indonesian courts may recognise and enforce.

26 Source:

27 Lumbantobing, J. (2019). The 1958 New York Convention in Indonesia: History and  
28 Commentaries Beyond Monism-Dualism," *Indonesia Law. Indonesia Law Review*, 9(3), 222-240.  
29 <https://doi.org/10.15742/ilrev.v9n3.583>

30 **5. Comment 5**

31 Clarify that the IAL does not enumerate NYC Art V(1)-(2) grounds but that courts apply a  
32 combination of IAL conditions and public policy review; support this with at least one Supreme  
33 Court case or Perma application example.

34 **Response:**

35 The IAL does not contain an explicit list of the NYC Art V reasons to contest the implementation  
36 of foreign arbitral awards. Instead, courts may apply a mix of IAL conditions together with a public  
37 policy review. It is widely accepted that non-fulfillment of any stipulated conditions, such as  
38 reciprocity, commercial nature, or non-contravention of public order, is automatically grounds for  
39 denial of enforcement. It is worth noting, however, that Article V (1)(2) of the NYC elaborates the  
40 refusal of enforcement of foreign arbitral awards, which includes incapacity, invalidity, due  
41 process, award consideration, public policy, and non-compliance with procedural requirements. In  
42 this sense, it may be argued that the IAL provides fewer grounds for objection than the more  
43 expansive basis for refusing enforcement under the NYC.

44 Source:

45 1. Katsikis, D., & Nicholls, A. C. (2020). Enforcement in Indonesia: Obtaining a Power of  
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48 2. Roosdiono, A. W., & Taqwa, M. D. (2024). Questioning the Validity of the New York  
49 Convention 1958 on Recognition and Enforcement of Foreign Arbitral Awards in Indonesia.  
50 *Pandecta Research Law Journal*, 19(2), 583-617.  
<https://journal.unnes.ac.id/journals/pandecta/article/view/4099/2033>

51 **6. Comment 6**

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8 For annulment, set out Art 70 IAL grounds verbatim (forgery, concealed decisive documents,  
9 fraud) and add Constitutional Court Decision No. 15/PUU-XII/2014, which struck down the  
10 Elucidation's pre-proof requirement; explain the procedural consequence.  
11

12 **Response:**

13 Article 70 of the IAL allows annulment only if: (a) forged documents were used in the hearings;  
14 (b) decisive documents were deliberately concealed; or (c) the award was based on fraud. The  
15 Elucidation of Article 70 stipulates that a party can only submit an annulment application after the  
16 grounds for annulment have been proven by a court. The Constitutional Court Decision No.  
17 15/PUU-XII/2014 removed the requirement that these grounds must first be proven by a court  
18 decision. (Constitutional Court, 2014)

19 The Constitutional Court ruling has procedural consequences. Courts will now evaluate the claims  
20 for annulment based on the merits of the arguments and evidence presented by both parties during  
21 the annulment process, rather than requiring proof upfront. Since the pre-proof requirement has  
22 been removed, parties may now seek annulment under the grounds listed in Article 70 without  
23 having to establish those grounds in advance. This adjustment effectively eases access for parties  
24 wishing to contest an arbitral award, as they can bring their objections straight to the court.  
25 Consequently, any party dissatisfied with the tribunal's ruling may lodge an annulment application  
26 directly, without undergoing a preliminary procedure to demonstrate the alleged grounds. (Akbar  
27 & Mawarid, 2025).

28 Source:

29 1. Constitutional Court Decision No. 15/PUU-XII/2014 concerning Annulment of Arbitral  
30 Awards.  
[https://www.mkri.id/public/content/persidangan/resume/resume\\_perkara\\_1135\\_Perkara%20No%2015.pdf](https://www.mkri.id/public/content/persidangan/resume/resume_perkara_1135_Perkara%20No%2015.pdf)

31 2. Akbar, A. C. A., & Mawarid, M. L. A. (2025). Akibat Hukum Putusan Mahkamah Konstitusi  
32 Nomor 15/PUU-XII/2014 Mengenai Pembatalan Putusan Arbitrase. *Sriwijaya Journal of  
33 Private Law*, 2(1), 58–72. <https://journal.fh.unsri.ac.id/index.php/SJPL/article/view/4809>

34 **7. Comment 7**

35 China. Separate clearly: domestic awards (broader review including some substantive defects under  
36 CAL Art 58) versus foreign-related and foreign awards (recognition/enforcement typically mirrors  
37 procedural grounds akin to NYC Art V(1), with public interest as a narrow refusal basis).

38 **Response:**

39 The CAL draws a clear line between domestic awards and those involving a foreign element. For  
40 domestic arbitral awards, Chinese courts refer to Article 58 of the 1994 CAL (see also Article 76  
41 of the 2025 CAL) and Article 248 of the CCPL, which allow for broader substantive review  
42 grounds, such as forged evidence, concealed evidence, or manifestly erroneous awards, to deny  
43 recognition and execute an arbitral award. However, for foreign-related awards, national courts  
44 adopt a more arbitration-friendly approach to recognition and enforcement. As Article 84 of the  
45 2025 CAL and Article 291 of the CCPL stipulate, the established grounds for declining  
46 enforcement are limited to procedural issues such as "absence of an arbitration agreement,  
47 excessive arbitral award, lack of jurisdiction by the tribunal, and violation of statutory procedures."  
48 Chinese rules on the recognition and enforcement of foreign arbitral awards are also consistent with  
49 Article V(1) of the NYC, which emphasizes the court's procedural review and restricts the basis for  
50 refusal to procedural matters only.

51 **REVIEWER 2**

52 **1. Comment 1**

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8 Please try to include any case law from Indonesia or China to prove that the legislative weakness  
9 on competence-competence is also significant in practice.  
10

11 **Response:**

12 The legislative weakness on competence-competence principle may lead to jurisdictional disputes  
13 resolved by the Indonesian court. For example, in PT. Golden Spike Energy Indonesia v. PT.  
14 Pertamina Hulu Energi Raja Tempirai, these two legal entities were bound by an arbitration  
15 agreement as outlined in Article 11.1.2 of their Production Sharing Contract, which states:  
16 “Disputes arising between Pertamina and the Contractor relating to this Contract or the  
17 interpretation and performance of any clauses herein shall be submitted to the International  
18 Chamber of Commerce for resolution.” According to this arbitration clause, any dispute stemming  
19 from the agreement should be referred to the designated arbitration forum. However, the matter  
20 ultimately progressed to court, where a ruling declared the arbitration clause non-binding due to a  
21 transfer of the revenue-sharing contract. As a result of this ruling, the arbitral jurisdiction was  
22 annulled and transferred to the court. (GSEI v. Pertamina; see also Dewi and Jamil) As Indonesian  
23 local judges from district courts typically have limited experience in managing complex  
24 international business cases, this legal gap can impede the advancement of Indonesian international  
25 arbitration. (Soemartono & Lumbantobing, 2018).

26 Source:

1. Central Jakarta District Court, Decision No. 153/PDT.G/2013/PN.JktPst (PT. Golden Spike  
27 Energy Indonesia v. PT. Pertamina Hulu Energi Raja Tempirai)
2. Dewi, Ayu Atika & Abdul Jamil (2023) The Concept of Competence-Competence: An  
28 Indonesian Approach. *KnE Social Sciences*, International Conference on Advance & Scientific  
29 Innovation (ICASI), 297-306. [10.18502/kss.v8i9.13341](https://doi.org/10.18502/kss.v8i9.13341)
3. Soemartono, G., & Lumbantobing, J. (2018). IAL and Practice in Light of the UNCITRAL  
30 Model Law. In Gary F. Bell (ed.) *The UNCITRAL Model Law and Asian Arbitration Laws* (pp.  
31 300–347). Cambridge University Press. <https://doi.org/10.1017/9781316875070.012>

32  
33 China: For instance, in *Brentwood v. Fa'anlong* case, the Chinese domestic courts intervene to  
34 decide the validity of the arbitration agreement upon Brentwood's request. (*Brentwood v.*,  
35 *Fa'anlong*, 2015) By doing so, the court took precedence over the arbitral tribunal's competence  
36 and ultimately confirmed the validity of the arbitration clause. Therefore, if the parties turn to the  
37 tribunal and national court separately, the court's ruling takes precedence over the tribunal's  
38 decision. This affirms not only the court's ability, but also its obligation to intervene in this matter.  
39 (*Zhong & Tao*, 2018).

40 Source:

41 2. **Comment 2**

42 Please add any statistics on annulment or non-enforcement of arbitral awards, so it becomes more  
43 clear what is the impact of the legislation in practice.

44 3. **Response:**

45 According to the SPC reports, Chinese domestic courts concluded more than 16,000 arbitration-  
46 related cases in 2023, with an annulment rate of 5.11% (552 cases annulled). The trend further  
47 improved in 2024, when courts handled approximately 18,000 cases and the annulment rate  
48 dropped to less than 2%. Regarding foreign arbitral awards, only 6 applications for recognition and  
49 enforcement were annulled or refused in 2023, and none were recorded in 2024. (SPC, 2024: SPC,  
50 2025)

51 This judicial posture represents a deliberate balance between retaining judicial oversight and  
52 affirming conformity with international arbitration standards. However, unlike China, the  
53 Indonesian Supreme Court does not publish official data on annulment or non-enforcement of  
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8 arbitral awards, which constrains the ability to evaluate its jurisprudential practice with empirical  
9 clarity.

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11 REVIEWER 3

12 1. Comment 1

13 Title: Consider refining the title to reflect the nuanced comparative and doctrinal focus. I suggest:  
14 "Judicial Gatekeeping in International Arbitration: Divergent Paths Toward Convergence in  
15 Indonesia and China".

16 **Response:**

17 We agree on revising the title: "Judicial Roles in International Arbitration: Divergent Paths  
18 Toward Convergence in Indonesia and China"

19 2. Comment 2

20 Methodology: Clarify the Comparative Framework: The article mentions a "comparative legal  
21 methodology" but does not specify the criteria used for comparison. Consider adding a short  
22 paragraph explaining the basis for selecting Indonesia and China and the analytical framework  
23 (e.g., doctrinal, institutional, procedural dimensions).

24 **Response:**

25 This study employs a comparative legal research methodology, structured within a normative  
26 framework. The criteria for comparison encompass doctrinal analysis, which involves examining  
27 the legal principles within each country's arbitration laws; institutional analysis, which concentrates  
28 on the roles of arbitral institutions in both jurisdictions; and procedural analysis, which evaluates  
29 the mechanisms governing arbitration proceedings. The main things that were looked at were  
national arbitration laws, procedural regulations, court decisions, and comments from legal experts.

30 Additionally, secondary materials such as law journals, treatises, and policy studies examining the  
31 development and application of arbitration law in China and Indonesia are utilised to put into  
32 perspective and enhance the analysis. The comparison between Indonesia and China is based on  
33 the fact that they have different legal traditions and frameworks that affect how arbitration works.  
34 Indonesia's legal system is still growing and has a diverse legal culture, which is different from  
35 China's more centralised and state-driven system. The analytical framework facilitates an in-depth  
36 study of how each system addresses prevalent issues in arbitration, thereby providing significant  
37 insights into the efficacy and adaptability of their respective legal infrastructures in relation to  
38 domestic and international arbitration requirements.

39 3. Comment 3

40 Subheadings: Use more descriptive subheadings to guide the reader (e.g., instead of "Roles Before  
41 Arbitral Proceedings," use "Judicial Influence on Arbitration Agreements and Jurisdiction").  
42 Consider revising other subheadings accordingly.

43 **Response:**

44 We have changed the subheadings in accordance with the Reviewer's suggestions

45 4. Comment 4

46 Recent Developments: Include more recent case law or legislative updates, especially regarding  
47 China's 2024 arbitration law amendment.

48 **Response:**

49 The 2024 revision introduces several innovations that substantially reshape the country's  
50 arbitration framework. Most significantly, it codifies the concept of the "seat of arbitration" for the  
51 first time, clarifying that the law of the seat governs key aspects of judicial review and bringing  
52 China closer to the UNCITRAL Model Law framework. The amendment also expressly permits ad  
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8      hoc arbitration in narrowly defined foreign-related circumstances, a major departure from China's  
9      long-standing institutional-arbitration requirement.

10     Additionally, the 2024 law refines the grounds for set-aside and non-enforcement by adopting a  
11     more internationally aligned list of procedural and public policy thresholds, while providing courts  
12     with greater flexibility to order "partial set-aside" in the event that only a separable portion of the  
13     award is defective. These statutory reforms have already begun to influence recent case law, with  
14     several 2023–2024 decisions from the Beijing and Shanghai courts emphasizing proportionality,  
15     endorsing kompetenz-kompetenz, and narrowing the application of public policy to truly  
16     exceptional circumstances.

17     For example, in SPC Retrial Decision in Brentwood Industries v. Guangzhou Lide Chemical  
18     (Supreme People's Court, 2023, Civil Ruling No. 411), the SPC refused to set aside a CIETAC  
19     award and emphasized that public policy should be applied "narrowly and exceptionally," signaling  
20     continuity with international standards. Similarly, the Shanghai No. 1 Intermediate Court in Ningbo  
21     Wuxiang v. Chia Tai International Finance (Shanghai No. 1 Intermediate People's Court, 2023, Hu  
22     01 Min Te No. 516) upheld a HKIAC award seated in Hong Kong, reaffirming judicial deference  
23     to kompetenz-kompetenz and rejecting objections based on alleged procedural irregularities. More  
24     recently, in Siemens Ltd. China v. Shanghai Golden Landmark (Shanghai No. 2 Intermediate  
25     People's Court, 2024, Hu 02 Min Te No. 83), the court applied a "partial set-aside" approach  
26     consistent with the 2024 statutory reform, annulling only the severable portion of the award affected  
27     by a procedural defect.

28      **5. Comment 5**

29      Public Policy Discussion: The section on public policy in Indonesia is insightful but could benefit  
30      from a comparative doctrinal analysis with China's narrower interpretation. Consider referencing  
31      international standards or UNCITRAL guidance.

32      **Response:**

33      In Indonesia, the doctrine of public policy continues to operate in a broad manner, allowing courts  
34      to set aside or decline enforcement of arbitral awards on wide ranging grounds, which in turn  
35      creates uncertainty for disputing parties (Adolf, 2021). A central difficulty stems from the absence  
36      of a precise and limiting statutory definition of "public policy." The current formulation describes  
37      public order as "everything that is the basic foundation needed for the running of the legal system,  
38      economic system, and socio cultural system of the Indonesian people and nation" (SC). The open  
39      ended and highly subjective nature of terms such as "everything" and "basic foundation" leaves  
40      ample room for divergent interpretations. Because these concepts are inherently abstract, judges  
41      may apply them expansively, resulting in broad and unpredictable readings of public policy. Such  
42      latitude can open the door to discretionary judicial intervention, including refusals to enforce  
43      arbitral awards based on personal assessments of social norms, morality, or societal expectations  
44      (Sugianto, 2025).

45      Within this broader context, it is worth noting that both the UNCITRAL Arbitration Rules and the  
46      New York Convention emphasise that the public policy exception should remain exceptional and  
47      sparingly invoked and that the Model Law also promotes a narrow and clearly defined  
48      understanding of public policy. (Soemartono & Lumbantobing, 2018) In contrast, Chinese courts  
49      have shifted toward a more restrained approach that aligns with international conventions, applying  
50      the public policy exception only in exceptional circumstances and thereby providing greater  
51      certainty in recognition and enforcement proceedings (Jingdong, 2021).

52      Source:

53      1. Adolf, H. (2021). The Meaning of Public Policy Under Indonesian Arbitration Law.  
54      *Transnational Business Law Journal*, 2(1), 16-34. <https://doi.org/10.23920/transbuslj.v2i1.646>

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8 2. Supreme Court Regulation No. 3 of 2023 concerning Procedures for the Examination of  
9 Applications for Execution of Arbitration Judgments.  
10 3. Sugianto, F., Indradewi, A.A., Sanjaya, R., Yamamoto, A. (2025). Unclear Public Policy: The  
11 Real Barrier in Recognizing Foreign Arbitration Awards? *Indonesian State Law Review*, 8(1),  
12 1-36. <https://doi.org/10.15294/isrev.v8i1.21448>  
13 4. Soemartono, G., & Lumbantobing, J. (2018). IAL and Practice in Light of the UNCITRAL  
14 Model Law. In Gary F. Bell (ed.) The UNCITRAL Model Law and Asian Arbitration Laws  
15 (pp. 300–347). Cambridge University Press. <https://doi.org/10.1017/9781316875070.012>  
16 5. Jingdong, L. & Lulu, W. (2021). An Empirical Study of China's Recognition and Enforcement  
17 of Foreign Arbitral Awards Under the Belt and Road Initiative, China International  
18 Commercial Court. <https://cicc.court.gov.cn/html/1/219/199/203/2304.html?>

19 **6. Comment 6**

20 Competence-Competence Principle: The discussion could be enriched by exploring how the lack  
21 of clarity in Indonesia affects arbitral autonomy and comparing it with jurisdictions that fully  
22 embrace the principle.

23 **Response:**

24 The weak Competence-Competence principle in Indonesia substantially limits arbitral autonomy.  
25 The law does not clearly grant tribunals the primary authority to rule on their own jurisdiction,  
26 allowing parties to bypass the tribunal and directly ask the district court to assess the validity of the  
27 arbitration agreement. This mechanism becomes a “torpedo,” enabling a party to stall or derail  
28 proceedings simply by filing a court challenge, which can freeze the arbitration process.  
29 (Andiansyah, 2022) As a result, the core purpose of the arbitration agreement is undermined, the  
30 process becomes slower and more costly due to dependence on the court’s timeline, and neutrality  
31 is compromised when disputes are shifted from an international tribunal to a domestic court that  
32 may lack specialised expertise or be perceived as favouring local interests. (Almomani, 2015)  
33 Unlike Indonesia, jurisdictions like Singapore, England & Wales, Switzerland, and France that  
34 have adopted the UNCITRAL Model Law take a strongly pro-arbitration stance. The role of the  
35 national court is transformed from a potential interferer to a supportive gatekeeper that protects the  
36 integrity of the arbitral process. (Rajah, 2025)

37 Source:

38 1. Andiansyah, M. R., & Amalia, P. (2022) The Waiving of Jurisdictional Concerns in Arbitration:  
39 A Case Study of the IMFA v. Indonesia Arbitration. *Journal of Law, Policy, and Globalization*,  
40 123. <https://iiste.org/Journals/index.php/JLPG/article/view/59443>.  
41 2. Almomani, M. A., & Obeidat, I. M. (2015). Court's role in deciding the arbitrator's jurisdiction:  
42 is Kompetenz-Kompetenz exclusive? *Uniform Law Review - Revue de Droit Uniforme*, 20(2–  
43 3), 201–210. <https://doi.org/10.1093/ulr/unv020>.  
44 3. Rajah, V.K. (2025) Courting Global Commerce: The Shifting Dynamics Between International  
45 Arbitration and International Commercial Courts, *Journal of International Arbitration*, 42(2).

46 **7. Comment 7**

47 Reform Comments: The conclusion hints at future reforms in Indonesia. Consider elaborating on  
48 specific legislative or judicial reforms that could align Indonesia more closely with international  
49 best practices.

50 **Response:**

51 Indonesia's prospective reform path is likely to prioritise enhancing the autonomy of the arbitral  
52 process. This would involve limiting the role of courts to specific supportive functions, such as  
53 assistance with evidence taking and narrowly focused interim measures, while allowing annulment  
54 only on procedural, substantive, or public policy grounds, accompanied by a more carefully defined  
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8 and confined conception of public policy. (Dewa, 2024) Legislative reform should work toward  
9 establishing a clearer, more predictable, and investment oriented arbitration framework. Key  
10 components include adopting the UNCITRAL Model Law to harmonise Indonesia's system with  
11 widely accepted international standards, explicitly codifying the competence-competence principle  
12 to affirm the tribunal's primary competence over issues of jurisdiction, and refining the public  
13 policy standard so it cannot be invoked in a wide-ranging means to invalidate otherwise legitimate  
14 awards. Nevertheless, these statutory enhancements will achieve practical significance only if they  
15 are implemented by a judiciary that is competent, impartial, and consistent in its interpretation and  
16 enforcement. (Soemartono & Lumbantobing, 2018; Whitfield, 2023)

17 Source:

1. Dewa, A.F.P. & Wiryani, F. (2024). Implementation of International Arbitration in Settlement  
2 of Investment Disputes: Challenges Opportunities in Indonesia. *Proceedings of the  
3 International Conference on Law Reform*, 102-107. [https://www.atlantis-  
5 press.com/proceedings/inclar-24/126008734](https://www.atlantis-<br/>4 press.com/proceedings/inclar-24/126008734)
2. Soemartono, G., & Lumbantobing, J. (2018). IAL and Practice in Light of the UNCITRAL  
3 Model Law. In Gary F. Bell (ed.) The UNCITRAL Model Law and Asian Arbitration Laws  
4 (pp. 300-347). Cambridge University Press. <https://doi.org/10.1017/9781316875070.012>
3. Whitfield, H.F. (2023) Kompetenz-Kompetenz: An Arbitral Tribunal Authority to Decide Its  
4 Jurisdiction. *Beijing Law Review*, 14(2), 1941-53. DOI: [10.4236/blr.2023.144107](https://doi.org/10.4236/blr.2023.144107)

5 **8. Comment 8**

6 Investor Confidence: Discuss how judicial attitudes toward arbitration affect foreign investment  
7 and cross-border commercial relations.

8 **Response:**

9 Judicial hostility toward arbitration directly impacts foreign investment and cross-border business.  
10 When courts intervene by questioning the arbitration clause, proceedings, or award, they increase  
11 costs and cause delays, making arbitration lengthy and expensive. As a result, businesses may avoid  
12 these jurisdictions or impose higher costs and stricter terms to manage risk. Courts that discourage  
13 arbitration signal an unsafe business environment, while predictable and supportive courts foster  
14 the trust necessary for investment and trade.



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