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Indonesia

Investment Treaty Arbitration

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This country-specific Q&A provides an overview of investment treaty arbitration laws and regulations applicable in Indonesia.

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Indonesia: Investment Treaty Arbitration

1. Has your home state signed and / or ratified the ICSID Convention? If so, has the state made any notifications and / or designations on signing or ratifying the treaty?

Indonesia signed the ICSID Convention on 16 February 1968 and deposited its instrument of ratification on 28 September 1968; the Convention entered into force for Indonesia on 28 October 1968, making it a Contracting State of ICSID

The ratification was implemented domestically through Law No. 5 of 1968 on the Settlement of Disputes between States and Nationals of Other States concerning Capital Investment, which approves and incorporates the ICSID Convention into Indonesian law.

Indonesia has made a notification under Article 25(4) of the ICSID Convention, which allows a State, at ratification or at any time thereafter, to notify ICSID of the class or classes of disputes that it would or would not consider submitting to the jurisdiction of ICSID.

2. Has your home state signed and / or ratified the New York Convention? If so, has it made any declarations and / or reservations on signing or ratifying the treaty?

Indonesia became a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 by accession on 7 October 1981. Ratification/ implementation was effected through Presidential Decree No. 34 of 1981, ratifying the New York Convention.

On acceding to the Convention, Indonesia made two reservations: the Reciprocity reservation and the commercial reservation.

3. Does your home state have a Model BIT? If yes, does the Model BIT adopt or omit any language which restricts or broadens the investor's rights?

Indonesia had signed over 60 BITs with foreign states, but has not officially adopted a simple BIT or template. Indonesia does not have a template that automatically

applies to all its BIT negotiation.

4. Please list all treaties facilitating investments (e.g. BITs, FTAs, MITs) currently in force that your home state has signed and / or ratified. To what extent do such treaties adopt or omit any of the language in your state's Model BIT or otherwise restrict or broaden the investor's rights? In particular: a) Has your state exercised termination rights or indicated any intention to do so? If so, on what basis (e.g. impact of the Achmea decisions, political opposition to the Energy Charter Treaty, or other changes in policy)? b) Do any of the treaties reflect (i) changes in environmental and energy policies, (ii) the advent of emergent technology, (iii) the regulation of investment procured by corruption, and (iv) transparency of investor state proceedings (whether due to the operation of the Mauritius Convention or otherwise). c) Does your jurisdiction publish any official guidelines, notes verbales or diplomatic notes concerning the interpretation of treaty provisions and other issues arising under the treaties?

a. Has your state exercised termination rights or indicated any intention to do so? If so, on what basis (e.g. impact of the Achmea decisions, political opposition to the Energy Charter Treaty, or other changes in policy)?

i. Yes. Indonesia began exercising its termination rights in 2014, targeting many BITs concluded in the 1970s-1990s. The main reasons were concerns over overly broad protection standards in older-generation treaties and the impact of ISDS disputes such as cases involving PT Newmont and Churchill Mining. These cases were perceived as constraining the state's regulatory space, particularly in relation to its natural resource policies, which aim to promote domestic value-added processing through local refinement requirements.

b. Do any of the treaties reflect (i) changes in environmental and energy policies, (ii) the advent of emergent technology, (iii) the regulation of investment procured by corruption, and (iv) transparency of investor

state proceedings (whether due to the operation of the Mauritius Convention or otherwise).*i. Environmental and energy policies*

Yes. New-generation treaties incorporate an explicit right to regulate and public-policy carve-outs that allow Indonesia to adopt or maintain measures for the protection of health, safety, the environment, and sustainable development, without such measures automatically being treated as treaty breaches. Preambles and certain substantive clauses also link investment protection to sustainable development objectives and environmental protection rather than treating them as competing goals.

ii. Advent of Emergent technology

No. Indonesia has not ratified any specific instrument in the field of emergent technology, instead, it has focused on regulating such matters through domestic law (e.g. and digital chapters in its trade agreements, rather than through technology-specific investment provisions.

iii. Regulation of investment procured by corruption

Yes. the 2018 Indonesia-Singapore BIT explicitly includes "measures against corruption"; it says the parties affirm that "bribery and other forms of corruption in any investment activities can undermine democracy and rule of law, discourage foreign investment and adversely affect economic development of the Parties". The treaty also includes a corporate social responsibility clause that encourages companies to follow international standards, including anti-corruption. Normatively, this opens up space for countries to reject or limit treaty protection for investments obtained through corruption.

iv. Transparency of investor state proceedings

While not always expressly tied to the Mauritius Convention, Indonesia's more recent treaty practice moves towards greater transparency in investor state proceedings, for example by providing for publication of key documents and awards, and by relying on arbitration rules that incorporate modern transparency standards. At the same time, the treaties preserve flexibility by not fully hard-wiring a single transparency instrument, but signalling a policy preference for more open and accountable ISDS procedures.

c. Does your jurisdiction publish any official guidelines, notes verbales or diplomatic notes concerning the interpretation of treaty provisions and other issues arising under the treaties?

I. Indonesia does not produce formal interpretive guidelines relating specifically to treaties. However, explanatory memorandums may provide insight into history and intent.

5. Does your home state have any legislation / instrument facilitating direct foreign investment. If so: a) Please list out any formal criteria imposed by such legislation / instrument (if any) concerning the admission and divestment of foreign investment; b) Please list out what substantive right(s) and protection(s) foreign investors enjoy under such legislation / instrument; c) Please list out what recourse (if any) a foreign investor has against the home state in respect of its rights under such legislation / instrument; and d) Does this legislation regulate the use of third-party funding and other non-conventional means of financing.

a. Please list out any formal criteria imposed by such legislation / instrument (if any) concerning the admission and divestment of foreign investment;

I. Yes, Indonesia has legislation and instruments facilitating direct foreign investment. The main and largest statute is Undang Undang Nomor 25 Tahun 2007, or Law No. 25/2007 on Investment (Investment Law) as amended by the Job Creation.

II. Foreign investments must be made by foreign individuals/entities investing in Indonesia – Law no 25/2007 art 1(3)

III. The minimum investment value requirement for foreign investment company is IDR 10 billion – Regulation of the Investment Coordinating Board (BKPM) No. 5 of 2025

IV. Foreign investors cannot invest in sectors classified as "closed" in the Positive Investment List (Presidential Regulation No. 10 of 2021, amended by Presidential Regulation No. 49 of 2021). While some sectors are partially limited.

A. Fully closed: Casinos, national press or weapons B. Partial: Mining or telecommunications

V. Key Substantive legislation

A. Law No. 25 of 2007 on Investment (Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal)

B. Law No. 11 of 2020 on Job Creation (Omnibus Law) (Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja)

- Presidential Regulation No. 10 of 2021 on Investment Business Fields (Positive Investment List) (Peraturan Presiden Nomor 10 Tahun 2021)
- Presidential Regulation No. 49 of 2021 amending Presidential Regulation No. 10 of 2021 on Investment Business Fields (Peraturan Presiden Nomor 49 Tahun 2021)

C. Regulation of the Head of the Investment Coordinating Board (BKPM) No. 5 of 2025 on Investment Licensing and Facilities

b. Please list out what substantive right(s) and protection(s) foreign investors enjoy under such legislation / instrument;

I. Indonesia's main statute facilitating and protecting foreign direct investment is Law No. 25 of 2007 on Investment, complemented by implementing regulations (e.g., OSS risk based licensing rules) and, at the international level, by Indonesia's investment treaties (such as the ASEAN Comprehensive Investment Agreement and newer BITs). Below are the key substantive rights and protections under the domestic law (the part that applies to all foreign investors, regardless of treaty).

A. Law No. 25 of 2007 on Investment (often called the Investment/Capital Investment Law) governs both domestic and foreign investment in all business sectors, unless specifically carved out.

"Foreign investment" is defined as business activity in Indonesia carried out by a foreign investor, using foreign capital alone or in partnership with domestic investors. Foreign investment must generally be in the form of an Indonesian limited liability company (Perseroan Terbatas/ PT PMA) domiciled in Indonesia. The Indonesian government must provide equal treatment to all investors (domestic and foreign) conducting investment activities in Indonesia, subject to laws and any treaty based special rights.

This general national treatment principle is limited by the "negative list"/Positive Investment List and sectoral rules, but as a default rule, foreign investors should not be discriminated against solely based on nationality.

B. It also guarantees to investors the right to legal certainty and security in conducting business, including clear procedures, transparency, and timely licensing.

Protection to transfer ownership rights, inheritance, and to manage, maintain, utilize, and dispose of their investment assets within the framework of Indonesian law.

C. Beyond Law No. 25/2007, foreign investors from treaty partner countries (e.g., ASEAN states, Singapore, others with active BITs) may enjoy treaty based rights, including Fair and Equitable Treatment (FET) aligned with customary international law, Most Favoured Nation (MFN) treatment, national treatment, and full protection and security in many instruments.

c. Please list out what recourse (if any) a foreign investor has against the home state in respect of its rights under such legislation/instrument; and

I. Article 32 of the Investment Law sets out a structured escalation path for disputes between the government and investors through amicable settlement, and that is arbitration. Disputes are first to be settled amicably and if fails, the dispute "may be settled through arbitration or alternative dispute resolution methods or in court in accordance with legislation."

d. Does this legislation regulate the use of third-party funding and other non-conventional means of financing?

Indonesia's core foreign investment regime is contained in Law No. 25 of 2007 on Capital Investment, but there is no explicit provision in the Investment Law that addresses the use of third-party funding, alternative financing structures. Any such structures would need to be evaluated against other legal requirements under financial sector, company, and capital market laws, as well as applicable tax and foreign exchange regulations.

6. Has your home state appeared as a respondent in any investment treaty arbitrations? If so, please outline any notable practices adopted by your state in such proceedings (e.g. participation in proceedings, jurisdictional challenges, preliminary applications / objections, approach to awards rendered against it, etc.)

Yes, Indonesia has been a respondent state in multiple arbitration proceedings, such as *IMFA v. Indonesia*, *Amco Asia Corporation* (ICSID Case No. ARB/81/1) and the *Churchill Mining and Planet Mining* case. Indonesia frequently raises jurisdictional challenges and implements procedural defence strategies.

7. Have any significant court decisions/arbitral awards been issued in the last year involving your country (as a party or interested party)?

The most significant developments involving Indonesia in the past year have not been new ISDS awards against the State, but rather landmark domestic court decisions. Specifically, the Indonesian Constitutional Court issued critical rulings in early 2025 that fundamentally reshaped how international arbitral awards are classified and enforced within the jurisdiction. These rulings significantly alter how such awards are classified within the jurisdiction.

Here are the most recent court decisions;

1. Constitutional Court Decision No. 100/PUU-XXII/2024

Historically, Article 1(9) of the Indonesian Arbitration Law defined an "international arbitral award" ambiguously. It included awards rendered outside Indonesia's territory as well as awards that were "considered" or "deemed" to be international under Indonesian law. This created a legal vacuum and conflicting jurisprudence, where courts sometimes classified domestically-seated arbitrations (like an ICC arbitration seated in Jakarta) as "international," creating severe complications for annulment and enforcement.

The Constitutional Court declared the phrase "considered" or "deemed" to be unconstitutional and removed it from the Arbitration Law and strictly affirmed the pure territoriality principle. An award is now classified as an international arbitral award solely if it is physically rendered by an institution or arbitrator outside the legal territory of the Republic of Indonesia. This provides massive legal certainty for foreign investors and practitioners, cleanly separating domestic awards (which can be annulled by Indonesian courts) from international awards (which can only be enforced or refused enforcement, but not annulled locally).

2. Constitutional Court Decision No. 131/PUU-XXII/2024

A judicial review was filed challenging the constitutionality of Articles 67 and 68 of the Arbitration Law, which set out the administrative and procedural hurdles for enforcing international awards (such as requiring an exequatur from the Central Jakarta District Court).

The Court completely upheld the constitutionality of these articles and affirmed that the existing statutory procedures for enforcing foreign arbitral awards do not violate principles of legal certainty, equality before the

law, or non-discrimination. It reinforced that while Indonesia respects international arbitration, the State retains the sovereign right to subject foreign awards to rigorous formal enforcement parameters to protect national economic interests and public policy.

On the international front regarding ISDS, Indonesia has not been the recipient of any massive, adverse ICSID awards in the 2024–2025 period akin to the historic Churchill Mining or Amco Asia cases. The State's recent focus has instead been on proactively concluding modernized treaties, such as the 2025 EU-Indonesia CEPA, to prevent future ISDS exposure, Indonesia has avoided significant negative ICSID awards, like the historic Churchill Mining or Amco Asia cases, on the international ISDS front during the 2024–2025 period. Instead, the State has recently prioritized the proactive finalization of modern treaties, such as the 2025 EU-Indonesia CEPA, as a strategy to mitigate future exposure to ISDS claims.

8. Has jurisdiction been used to seat non-ICSID investment treaty proceedings? If so, please provide details.

Yes. Indonesian law and practice recognizes non-ICSID (e.g. UNCITRAL, PCA, ICC) investment treaty arbitrations, and "seat" (place of arbitration). While ICSID is more common, UNCITRAL arbitrations and other similar proceedings have taken place in Indonesia.

9. Please set out (i) the interim and / or preliminary measures available in your jurisdiction in support of investment treaty proceedings, and (ii) the court practice in granting such measures.

1. The interim and/ or preliminary measures available in Indonesia of investment treaty proceedings

In investment treaty cases against Indonesia, interim measures are primarily governed by the applicable dispute-settlement mechanism in the treaty (e.g., ICSID, ICSID Additional Facility, UNCITRAL, or other institutional rules). These tribunals may order or recommend measures such as: suspension of parallel proceedings, preservation of the status quo, non aggravation of the dispute, and steps to prevent irreparable harm or to protect the tribunal's jurisdiction and the effectiveness of the final award.

Under ICSID in particular, Article 47 of the ICSID Convention and Arbitration Rule 39 allow the tribunal, on

a party's request, to recommend any provisional measures necessary to preserve rights, where the need is urgent and irreparable harm is at stake. Tribunals have used this to order measures including cooperation in evidence production, security for compliance with a future award, and restraints on State conduct that would frustrate the arbitration.

Indonesian Arbitration Law expressly empowers arbitral tribunals seated in Indonesia to issue provisional or interlocutory measures. Article 32 allows the tribunal, at a party's request, to make a provisional award or other interlocutory decision "to regulate the manner of running the examination of the dispute," including:

1. granting a security attachment
2. ordering the deposit of goods with a third party
3. ordering the sale of perishable goods.

These interim decisions are issued as "provisional awards" or "interlocutory decisions," with execution periods that do not count towards the statutory time limit for rendering the final award. Scholarly commentary notes that Arbitration Law thus gives Indonesian-seated tribunals a general authority to issue interim measures, though the statute lists only a few illustrative examples and does not comprehensively regulate other forms (such as orders to maintain the status quo or preserve evidence).

2. The court practice in granting such measures

In ordinary civil litigation, district courts can grant interim and precautionary measures such as seizure (conservatory attachment) and provisional remedies to secure assets.

The Jurisdiction lies with the relevant District Court, usually where the main claim is filed. The request is normally submitted together with, or after, the main statement of claim; stand alone interim applications without a pending main case are not accepted. Judges enjoy wide discretion and typically require a concrete showing that the defendant may dissipate or hide assets (for seizure) or that urgent protection is needed.

Interim measures are usually granted through an interlocutory decision (*putusan sela*), which can be appealed within 14 days; appeal does not automatically stay enforceability unless the appeal is later granted

Under Article 32 of Indonesian Arbitration Law, arbitral tribunals seated in Indonesia can issue provisional or interlocutory awards, including security attachment, deposit of goods with third parties, and sale of perishable goods. Court practice accepts that such domestic

tribunal ordered interim awards can be enforced via the district courts, particularly where they resemble familiar measures like confiscation or asset preservation.

The Arbitration Law's enforcement chapter for international awards (Articles 54–66) assumes a final award, and is silent on interim awards, leading courts to insist on finality as a condition for enforcement.

Indonesian courts have no specific statutory framework to recognize or enforce provisional measures ordered by ICSID or UNCITRAL tribunals, and practice to date indicates that they would treat such orders similarly to other international interim awards, i.e., as non enforceable if non final.

As a result, interim relief granted in investment treaty proceedings is mainly effective as a matter of international law and State compliance, rather than through domestic judicial enforcement in Indonesia.

10. Please set out any default procedures applicable to appointment of arbitrators and also the Court's practice of invoking such procedures particularly in the context of investment treaty arbitrations seated in your home state.

1. Default procedures applicable to the appointment of arbitrators

Yes. There are specific default statutory procedures under Indonesian Law. For arbitrations seated in Indonesia. The Arbitration Law sets out fallback mechanisms if the parties fail to agree on constitution of the Tribunal. These default procedures apply primarily to ad hoc arbitrations where the parties have not agreed on a separate set of procedural rules.

The following rules consisted of;

- a. Article 14 of the Arbitration Law states that the Claimant must propose a candidate to the respondent. If the parties set to fail to reach agreement within 14 days of the respondent receiving the proposal, either party may apply to the Chief Judge of the relevant district court to appoint a sole arbitrator
- b. Article 15 of the Arbitration Law states that the default rule is that each party appoints one arbitrator, and those two co-arbitrators choose a third to act as the presiding arbitrator.
 - l. In the condition a respondent fails to appoint its arbitrator within 30 days of receiving the notice of

arbitration, the arbiter appointed by the claimant will automatically act as a sole arbitrator, and their award will be binding on both parties.

II. In the condition the two party appointed arbitrators fail to agree on presiding an arbitrator within 14 days of their appointment, either party may request the Chief Judge of the district court to appoint the presiding arbitrator.

2. The Court's practice in invoking such procedures, particularly for investment treaty arbitrations

Yes. Indonesian courts will invoke these powers and assists in the appointment of arbitrators, provided a party formally submits a request. Recently, court practice has become much more sufficient under this regard. Under the Indonesian Supreme Court Regulation No.3 of 2023, the procedure has been subject to strict time limits. The district court is now mandated to issue a decree appointing an arbitrator within 14 calendar days of receiving a valid request.

However, in the specific context of investment treaty arbitrations in Indonesia, domestic court practically never invoke or apply these default appointment procedures. This absence of judicial intervention is driven by two key factors;

a. Non-ICSID investment treaty arbitrations are conducted under established international frameworks (e.g., UNCITRAL Arbitration Rules) or administered by international institutions (e.g., PCA or SIAC). Article 34 of the Arbitration Law strictly respects party autonomy, meaning appointing mechanisms within those international rules (e.g., utilizing the Secretary General permanent court of Arbitration as the appointing authority) will entirely supersede the domestic District Court jurisdiction.

b. The Indonesian court's authority to appoint an arbitrator is strictly a residual, fallback mechanism. Furthermore, Article 32(4) of the Investment Law expressly stipulates that disputes between the Government and foreign investors are to be resolved through international arbitration. Domestic investment legislation and Bilateral Investment Treaties (BITs) consistently direct parties toward established international frameworks equipped with their own designated appointing authorities. Consequently, the domestic statutory fallback under the Indonesian Arbitration Law is effectively never triggered in treaty-based disputes.

11. In the context of awards issued in non-ICSID investment treaty arbitrations seated in your jurisdiction, please set out (i) the grounds available in your jurisdiction on which such awards can be annulled or set aside, and (ii) the court practice in applying these grounds.

1. The grounds available in your jurisdiction on which such awards can be annulled or set aside

Yes. There are specific statutory grounds available in Indonesia to annul or set aside such awards. Any non-ICSID investment treaty arbitration seated within Indonesia is legally classified as domestic arbitration. The annulment process is governed exclusively by the Arbitration Law.

Under Article 70 of the Arbitration Law, the grounds for annulling an arbitral award are exhaustive and strictly limited to three circumstances;

- a. Letters or documents submitted during the dispute examination process are subsequently admitted or proven to be false or forged;
- b. Following the rendering of the award, decisive documents are discovered which were deliberately concealed by the opposing party during proceedings; and
- c. The award was rendered as a direct result of fraud or deception by one of the parties during the dispute examination process.

2. The court practice in applying these grounds

Indonesian courts practice regarding application of these annulment grounds is characterized by the following principles;

- a. Indonesian courts are not permitted to conduct a de novo review or reassess the substantive merits of the arbitral tribunal findings. The court's supervisory jurisdiction is formally restricted to examining procedural integrity of the award.
- b. The burden of proof is high. In the absence of prerequisite criminal conviction, civil judges adjudicating annulment applications must independently assess allegations of fraud, forgery, or concealment. In practice, courts require the applicant to demonstrate concrete factual deceit. Mere disagreements over the interpretation of facts, contractual clauses, or the law do not satisfy this threshold.
- c. While lower district courts have occasionally

entertained applications based on expansive interpretations or non-statutory grounds (e.g., public policy or ultra petita violations). The Supreme Court of Indonesia remains consistent and pro-arbitration jurisprudence. It routinely overturns lower court judgements that attempt to set aside awards on non-statutory grounds, strictly enforcing the narrow parameters of Article 70 of the Arbitration Law.

12. In the context of ICSID awards, please set out: (i) the grounds available in your jurisdiction on which such awards can be challenged and (ii) the court practice in applying these grounds.

1. The grounds available in your jurisdiction on which such awards can be challenged

There are no domestic grounds available in Indonesia to challenge, set aside, or even annul an ICSID award. As Indonesia has ratified the ICSID Convention through Law No.5 of 1968, Indonesia recognized the ICSID Awards as final and binding. Hence, Indonesian national courts lack the jurisdictional competence to review, vary, or set them aside.

The parties who are seeking to challenge the ICSID Award must apply directly to the Secretary-General of ICSID for annulment by an ad-hoc committee. This internal recourse is limited exclusively to the five exhaustive grounds set out in Article 52(1) of the ICSID Convention.

2. The court's practice in applying these grounds.

Indonesian courts are expressly precluded from exercising supervisory jurisdiction over the merits or procedural validity of ICSID Awards. There is no domestic court practice regarding the application of challenge and annulment grounds to such awards.

The involvement of Indonesia judiciary is strictly limited to the recognition and execution phases. Article 54 of the ICSID Convention, Indonesian Courts are treaty-bound to recognize an ICSID Award as binding and to enforce its pecuniary obligations as if it were a final judgment of an Indonesian court.

13. To what extent can sovereign immunity (from suit and/or execution) be invoked in your jurisdiction in the context of enforcement of investment treaty awards.

Sovereign immunity allows a state to protect its assets. Sovereign states remain immune from specific claims in

international commercial transactions as prescribed by international law, however the doctrine of restrictive immunity is considered the norm. Generally, Indonesia follows the international practice of restrictive immunity, but there is no one codified sovereign immunity statute. The approach is derived from treaty obligations, civil procedure, and judicial practice.

14. Please outline the grounds on which recognition and enforcement of ICSID awards can be resisted under any relevant legislation or case law. Please also set out any notable examples of how such grounds have been applied in practice.

I. No Domestic Grounds to Resist Recognition

The ICSID framework functions as a fully self-contained system, unlike non-ICSID foreign arbitral awards, which are governed by the New York Convention and Indonesia's Arbitration Law. Indonesia formally adopted the ICSID Convention through Law No. 5 of 1968.

Under Article 54 of the ICSID Convention, an ICSID award is legally binding on Indonesian courts. Indonesian law requires these courts to recognize and enforce the award's financial obligations as if the award were a final domestic court judgment. Therefore, domestic courts are not authorized to refuse recognition or enforcement on typical domestic grounds, such as a lack of arbitrability or a violation of Indonesian public policy.

II. The ICSID annulment mechanism

Due to domestic courts cannot review the award, a party seeking to legally resist an ICSID award must utilize the internal annulment mechanism provided in Article 52(1) of the ICSID Convention. An application must be made to an ad hoc Annulment Committee and can only be based on five exhaustive backgrounds;

- a. The Tribunal was properly constituted;
- b. The Tribunal manifestly exceeded its powers;
- c. There was a corruption on the part of a member of the Tribunal;
- d. There was a serious departure from a fundamental rule of procedure; or
- e. The award failed to state the reasons on which it is based.

Under Article 52(5) of the ICSID Convention, the challenging party may actively resist the award's

execution by requesting a provisional stay of enforcement while the annulment proceeding is pending.

III. Sovereign Immunity

While Indonesia cannot resist the recognition of an ICSID award, it can lawfully resist the execution (the forced seizure of assets) of that award. Article 55 of the ICSID Convention explicitly states that the obligation to enforce does not derogate from a Contracting State's domestic laws regarding sovereign immunity from execution.

Therefore, prevailing if a prevailing investor attempts to attach or seize sovereign assets in Indonesia, the state can resist this execution by invoking Article 50 Law No.1 of 2004 on State Treasury which grants direct-state owned assets such as state funds or infrastructure absolute immunity from seizure or execution.

IV. Landmark Case

The most prominent historical example of Indonesia successfully resisting an ICSID award occurred in *Amco Asia Corporation v. Republic of Indonesia* (ICSID Case No. ARB/81/1). Following an adverse award rendered against it in 1984, Indonesia actively resisted enforcement by applying for annulment under Article 52 of the ICSID Convention. Indonesia argued that among other things, the tribunal had manifestly exceeded its powers and failed to state the reasons upon which it based the award (specifically regarding the calculation of investment shortfalls and findings of due process violations).

Concurrently with its annulment application, Indonesia successfully requested and obtained a provisional stay of enforcement, preventing the claimants from executing the award while the challenge was being heard. In a landmark 1986 decision, the ad hoc Annulment Committee agreed with several of Indonesia's arguments and partially annulled the award. This case remains the classic textbook example of Indonesia successfully utilizing the ICSID Convention's internal procedural grounds to resist a multi-million dollar award.

15. Please outline the practice in your jurisdiction, as requested in the above question, but in relation to non-ICSID investment treaty awards.

Recognition and enforcement of foreign arbitral awards may be refused under Article 66 of the Arbitration Law if the award falls outside the scope of commercial law or if enforcement would contravene Indonesian public policy (See *Astro Nusantara International B.V. et al. v PT Ayunda*

Prima Mitra et al). In practice, public policy remains the principal ground invoked by parties seeking to resist enforcement. More information can also be found in the Supreme Court Regulation No. 3 of 2023, it provides the definition and interpretation of public order as related to annulments on grounds of contravening public order. Once an exequatur order has been issued, it is viewed as final and binding by the courts. However, there are grounds for annulment under Article 70 of the Arbitration Law. The recent trends in court decisions have suggested a trend in interpreting Article 70 as limited to domestic interpretation, to further support the view that foreign awards are to be as binding as domestic awards and that their jurisdiction falls at the seat of the arbitration.

16. To what extent does your jurisdiction permit awards against states to be enforced against state-owned assets or the assets of state-owned or state-linked entities?

Indonesia recognizes and enforces foreign arbitral awards under the Arbitration Law and Presidential Decree No. 34 of 1981. However, enforcement is conditioned on public policy, jurisdiction and sovereign immunity considerations.

Indonesian SOEs are separate legal persons, but scholarship and practice recognize a strict legal dichotomy between direct state assets and the assets of SOE when determining the extent to which arbitral awards can be enforced.

I. Enforcement against direct state assets are strictly prohibited

Under Article 50 Law No.1 of 2004 on State Treasury that prohibits any party, including domestic courts from placing a security attachment (*sita jaminan*) or execution attachment (*sita eksekusi*) on state or regional government-owned assets. This prohibition covers;

- a. State or regional money securities;
- b. Movable and immovable state properties; and
- c. Assets of third parties controlled by the state that are necessary for carrying out governmental duties.

Consequently, a prevailing party cannot forcibly attach or seize the Republic Indonesia's sovereign assets to satisfy an arbitral award rendered against a state. In practice, enforcing an award against the state requires voluntarily compliance. The winning party must request the government to formally allocate the compensation

amount within the state revenue and expenditure budget.

II. Enforcement against SOE's are permitted but with distinct limitations

Enforcement against assets of state owned or state linked entities, specifically limited liability SOEs (persero) is treated differently due to the doctrine of "separate state wealth".

17. Please highlight any recent trends, legal, political or otherwise, that might affect your jurisdiction's use of arbitration generally or ISDS specifically.

Yes, there are several significant changes on Indonesia's that are rapidly modernizing its general commercial arbitration framework and reshaping its approach to Investor-State Dispute Settlement through;

1. Judicial Reform and pro-arbitration court procedures through the Supreme Court Regulation No.3 of 2023.

A major legal trend is the Indonesian judiciary proactive effort to streamline arbitration related court procedures to enhance legal certainty. The Supreme Court issued Supreme Court Regulation No.3 of 2023, which improves landscape for enforcing awards through;

i. Under Article 7(4) of the Supreme Court Regulation No.3 of 2023, the registration of an international arbitral award must be executed by the Court Registrar within 14 days after the registration file is complete. Furthermore, Article 22 of the Supreme Court No.3 of 2023 mandates that the court's decision regarding the enforcement petition must be provided no later than 30 days since the application was registered.

ii. Article 1(9) of the Supreme Court Regulation No.3 of 2023, introduces a clear and narrower definition of 'public policy' (ketertiban umum) as the foundational principles necessary for the operation of Indonesia's legal, economic, and socio-cultural systems.

iii. Article 29 (1) and (2) of the Supreme Court Regulation No.3 of 2023 provide a much needed procedural mechanism for domestic courts to assist in the execution of interim measures, stipulating that an arbitrator or arbitral tribunal can register a security seizure (sita jaminan) order to the Court, and the requesting party can apply to the Court for its execution. Domestic courts have a procedural mechanism to aid in enforcing interim measures. Specifically, an arbitrator or arbitral tribunal can register an order for security seizure with the Court,

and the party requesting the seizure can then apply to the Court for its execution.

2. The Indonesian National Board of Arbitration ("BANI"), one of the oldest arbitration bodies in Indonesia, promulgated its 2025 Arbitration Rules, signaling a strong trend towards harmonizing domestic practice with leading global standards can be seen from the following points;

i. Under Article 17(5) and Attachment 1 (Article 1) of the BANI Rules 2025, BANI has introduced an emergency arbitration mechanism. This allows a party that needs urgent interim or conservatory measures prior to the constitution of arbitration tribunal apply for the emergency arbitration.

ii. The new BANI Rules 2025 allows disputes arising from more than one agreement to be submitted in a single request for arbitration, provided there is a connection between agreements and BANI was the chosen forum. Additionally, Article 9(1) of the BANI Rules 2025, explicitly accommodates requests for arbitration submitted by multiple parties.

3. Constitutional Court Review on International Awards (Case No. 100/PUU-XXII/2024)

i. Another significant development is the ongoing judicial review at the Indonesian Constitutional Court (Case No. 100/PUU-XXII/2024) regarding the definition of an "international arbitral award". The petition challenges Article 1(9) of the Arbitration Law, highlighting the legal uncertainty caused by mixing of narrow and broad territorial concepts in defining international awards.

ii. In the petition (Prayers of Relief), the petitioner argues that the phrase "or... an award... considered as an international arbitral award under Indonesian Law" violates the guarantee of legal certainty under Article 28D (1) of the Indonesian Constitution Law 1945. The petitioner requests the court to declare this phrase unconstitutional to strictly affirm the narrow territorial principle, meaning an international arbitral award is exclusively one rendered by a tribunal outside the Indonesian legal territory.

18. Please highlight any other investment treaty related developments in your jurisdiction to the extent not covered above (for e.g., impact of the Achmea decisions, decisions concerning treaty interpretation, appointment of and challenges to

arbitrators, immunity of arbitrators, third-party funding and other non-conventional means of financing such proceedings).

Here are the significant recent developments shaping the investment treaty and arbitration landscape in Indonesia;

I. Immunity of Arbitrators and Arbitral Institutions (Landmark Judicial Update)

There has been a major procedural development regarding arbitrator immunity. Historically, disgruntled losing parties in Indonesia would aggressively try to undermine arbitral awards by naming the individual arbitrators or the arbitral institution (such as BANI) as co-defendants in civil annulment lawsuits, threatening them with personal liability.

To stamp out this practice, Article 24(6) of the Supreme Court Regulation No.3 of 2023 explicitly stipulates that arbitrators and arbitral institutions must not be included as parties in annulment proceedings. This significantly strengthens the statutory immunity granted in Article 21 of the Arbitration Law, providing protection for tribunals and institutions from being thrown into post award domestic litigation.

ii. Third-Party Funding ("TPF")

Currently it is unregulated in Indonesia.

iii. The European Union – Indonesia 2025 CEPA and IPA

A monumental development in Indonesia 's investment treaty landscape occurred very recently. In September 2025, the European Union and Indonesia officially finalized negotiations for their Comprehensive Economic Partnership Agreement (CEPA) alongside a dedicated Investment Protection Agreement (IPA).

This signals massive shift away from traditional ad-hoc

ISDS mechanisms. In alignment with EU's boarder global push and heavily reflecting the post-Achmea paradigm of moving away fragmented private investor state tribunals. This new framework emphasizes highly structured dispute resolution mechanisms designed to protect the host state's "right to regulate" in the public interest, particularly regarding environmental and social policies.

IV. ISDS Reform and Achnea Statement

While the Achmea decision strictly applies to intra EU-BIT's, its underlying rationale by reclaiming judicial and regulatory authority from private arbitral tribunals in which heavily mirrors Indonesia's own geopolitical stance.

Indonesia has been one of the most vocal emerging economies pushing back against the "regulatory chill" which resulted from first-Generation BIT's. In its official submission to Paragraph 10 of the UNCITRAL Doc.A/CN.9/WG.III/WP.156 that states the Government of Indonesia explicitly noted that the threat of ISDS can make governments hesitant to undertake legitimate regulatory measures in the public interest for fear of claims. This prompted Indonesia's major 2014 initiative review its existing IIAs to preserve the state policy space and right to regulate.

Indonesia is highly active in the on-going UNCITRAL Working Group III sessions on ISDS reform, regularly offering comments and inputs. Domestically, there is a strong academic and political consensus supporting systemic reforms proposed in these sessions, such as the potential establishment of a two-tier multilateral investment court. By establishing a strict code of conduct for ISDS panel members ensure impartiality and allowing the states to file counterclaims against foreign investors. Furthermore, stipulated in Paragraph 17 of the UNCITRAL Submission, Indonesia strongly advocates for the exhaustion of the local remedies before an investor can make ISDS claim.

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