JLPH: Journal of Law, Politic and Humanities
E-ISSN: 2962-2816
P-ISSN: 2747-1985
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
DOI: https://doi.org/10.38035/jlph.v5i6

Reformulating the Definition of International Arbitral Awards in Indonesia: Responding to Constitutional Court Decision No. 100/2024 and a Comparative Analysis with the Regulation of International Arbitration in Other Countries

Tesalonika Putri Pinuram Rambe Purba[1*], Prita Amalia[2], Purnama Trisnamansyah[3]
[1]Faculty of Law, Padjadjaran University, Indonesia
[2]Faculty of Law, Padjadjaran University, Indonesia
[3]Faculty of Law, Padjadjaran University, Indonesia

[*]Corresponding Author: tesalonika20001@mail.unpad.ac.id

Abstract: This article discusses the urgency of reformulating the Definition of International Arbitration Awards as a legal implication following the Constitutional Court Decision No. 100/PUU-XXII/2024 on the implementation of international arbitration awards in Indonesia. The removal of the phrase "deemed" from Article 1 number (9) of the AAPS Law marks a shift towards a more assertive territorial approach in determining the international status of an arbitration award. Although this step strengthens legal certainty, there are still serious challenges related to the unclear concept of "place of arbitration" in the AAPS Law and the absence of explicit parameters to define the elements of international arbitration. Through normative legal methods and comparative studies of arbitration practices in countries such as Singapore, Australia, England, Hong Kong, and France, this article suggests a more comprehensive reformulation of the definition of international arbitration. This reformulation needs to include clear legal boundaries, a distinction between national and international arbitration, and a more structured execution mechanism to support a modern and pro-investment arbitration system in Indonesia.

Keywords: International Arbitration Awards, Foreign Arbitration Awards, Constitutional Court Decision 100/2024, Seat vs Venue, AAPS Law, International Arbitration, Comparative Arbitration Law.

INTRODUCTION

In the era of globalization, economic interactions between countries are becoming increasingly complex and dynamic. International trade, cross-border investment, and global business cooperation continue to grow, increasing the potential for disputes between parties from different jurisdictions. In this context, the need for an effective, efficient, and fair dispute resolution mechanism is very important to maintain stability and legal certainty in the international business realm.

Litigation in court often faces various obstacles, such as the potential for national legal bias, the potential for non-objectivity in cases involving foreign elements, long and expensive processes, and difficulties in executing decisions in other countries (Tuegeh Longdong, 2021). As an alternative, arbitration is the main choice in resolving international business disputes. According to Asikin Kusuma Atmaja, arbitration is an extrajudicial process that is decided by an agreement in which the parties agree to submit the dispute resolution to a referee in the event that there is a disagreement about how the agreement should be implemented (Safudin, 2018).

The confidentiality of the parties, the examination process's flexibility and informality, its speed and cost-effectiveness, the parties' freedom to select the arbitrator (judge), the parties' freedom to choose how the law will be applied to settle their issues, and the finality of the arbitration decision are the benefits of arbitration that make it a preferred method of dispute resolution. final and legally enforceable

In Indonesia, arbitration regulations are contained in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (AAPS Law). This law reflects Indonesia's commitment to supporting more flexible and efficient dispute resolution, in line with international standards. Quoting Huala Adolf's opinion, the AAPS Law is currently only a National Arbitration Law, although it also regulates rules regarding international arbitration, namely Articles 65 to 69. However, these articles only regulate the implementation of international arbitration decisions in Indonesia (Adolf, 2019).

The absence of precise definitions and guidelines for what constitutes an international arbitral ruling is one of the primary challenges (Adolf, 2015). As of right now, an award rendered by an arbitration body located outside of Indonesia or that is regarded as such by Indonesian law is referred to as an international arbitration decision. The provisions of Article 1 number 9 of the AAPS Law tend to produce arbitration awards that can be interpreted as international or national arbitration awards without clear parameters and requirements. This uncertainty arises due to the phrase in the article, which combines two different territorial principle approaches.

To address this, the Indonesian Constitutional Court issued Decision No. 100/PUU-XXII/2024, which removed the phrase “considered” from Article 1 number (9). Establishing more precise and impartial standards for identifying whether an arbitration ruling is local or foreign is the goal of this modification. It is anticipated that the elimination of this ambiguous language will lessen the subjectivity of judges, improve legal certainty, and make clear the judiciary's function in voiding arbitration verdicts.

However, it remains to be seen whether the Constitutional Court's decision is truly able to strengthen legal certainty in the Indonesian arbitration framework. The need to revise the Arbitration Law is increasingly important so that the national legal framework can be in line with international norms. The revision must include clear standards for defining international arbitration, mechanisms for recognition and enforcement, and limitations on judicial authority. Strengthening regulatory coherence and legal consistency is crucial to improving the effectiveness of the arbitration system in Indonesia.

Based on the above, this article aims to examine the urgency of reformulating the definition of International Arbitration Awards as a legal implication of Constitutional Court Decision No. 100/2024 and discuss how international arbitration practices and regulations are applied in other countries such as Singapore, Australia, France, England, and Hong Kong.

METHOD

This article uses a normative legal method supported by a comparative legal approach and is descriptive-analytical in nature. The research focuses on the analysis of positive legal norms, both national and international, related to the definition and classification of international arbitration awards. To examine the urgency of reformulating the definition of

international arbitration awards as a legal implication after the Constitutional Court Decision No. 100/PUU-XXI/2024, a statute approach is used to examine the provisions in the AAPS Law and international legal instruments such as the New York Convention of 1958 and the UNCITRAL Model Law of International Commercial Arbitration 1985 (UNCITRAL Model Law). In addition, a comparative legal approach (comparative approach) also applied to systematically examine how countries such as Singapore, Australia, France, England and Hong Kong regulate the differences between domestic and international arbitration, foreign arbitral awards, the application of the UNCITRAL Model Law 1985, the principle of seat theory, the degree of court intervention and the opt-in mechanism.oropt-out in the arbitration process.

RESULTS AND DISCUSSION

The Urgency of Reformulation of The Definition of International Arbitration Awards as Legal Implications After The Constitutional Court Decision 100/2024

Before the Constitutional Court Decision was issued, Article 1 Number (9) of the AAPS Law defined an International Arbitration Decision as: *"a decision rendered by an arbitration institution or individual arbitrator outside the jurisdiction of the Republic of Indonesia, or a decision by an arbitration institution or individual arbitrator which, according to the provisions of the laws of the Republic of Indonesia,consideredas an international arbitration award."*

Through Presidential Decree No. 34 of 1981, the New York Convention of 1958 Convention On The Recognition and Enforcement of Foreign Arbitral Awards became a part of national law, and the Arbitration Law essentially adopts its provisions. Article 1 of the Convention states that foreign arbitral awards are *"arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought."*

If we look at it briefly, there is a difference in the phrases between the two regulations, where the Indonesian AAPS Law uses the phrase "International Arbitration Award" while the New York Convention of 1958 uses the phrase "Foreign Arbitration Award". Then in Article 2 of Perma No. 1 of 1990 it states that *"A foreign arbitration award is an award rendered by an arbitration body or an individual arbitrator outside the jurisdiction of the Republic of Indonesia, or an award by an arbitration body or an individual arbitrator which, according to the laws of the Republic of Indonesia, is considered a foreign arbitration award."*

Basically, Indonesian law does not differentiate between what is meant by an International Arbitration Award and a Foreign Arbitration Award (Diandra & Amalia, 2017). Referring to Article 2 of Perma No. 1 of 1990, the definition of a Foreign Arbitration Award is identical to the formulation in Article 1 number 9 of the AAPS Law. However, the term used is not "international arbitration award", but rather "foreign arbitration award". As a result, the two terms are often used interchangeably*(interchangeably)* without contextual clarity, although both refer to the same type of arbitral award in the context of recognition and enforcement in Indonesia. However, they are basically two different things under international law.

Following the development of the arbitration regulatory system in Indonesia, there are often several court decisions that conflict with each other. Decision of the Supreme Court of the Republic of Indonesia Number 219 B/Pdt.Sus-Arbt/2016 between PT Indiratex Spindo and Everseason Enterprises Ltd; Decision of the Supreme Court of the Republic of Indonesia Number 674 B/Pdt.Sus-Arbt/2014 between PT Daya Mandiri Resources and PT Dayaindo Resources International Tbk; Decision of the Supreme Court Number 631 K/Pdt.Sus-Arbt/2012 between PT Harvey Nichols and Company Limited and PT. Hamparan Nusantara; 2. PT. Mitra Adiperkasa, Tbk stated that an international arbitration decision is a decision made

in a country other than Indonesia and the court in the country where the decision was made has the authority to cancel the arbitration decision. In this case, the Supreme Court interpreted Article 1 number 9 of the AAPS Law narrowly stated lthat an International Arbitration Award is an Award rendered outside the territory of Indonesia.

Meanwhile, the Supreme Court Decision of the Republic of Indonesia Number 904 K/Pdt.Sus/2009 between PT Lirik Petroleum vs. PT Pertamina, where the Supreme Court Decision upheld the South Jakarta District Court Decision regarding the scope of the limitations of "International Arbitration Decisions". In this decision, the Supreme Court upheld the Decision of the Central Jakarta District Court which stated that the dispute was an international arbitration decision. One of the main considerations of the panel of judges in determining that the arbitration decision handed down in Jakarta was included as an international arbitration decision was the existence of "foreign elements" in the dispute. These elements include the use of a foreign arbitration institution, transactions in foreign currency, and the use of English in contracts and communications between the parties. However, this consideration seems to ignore the fact that all parties to the dispute are Indonesian legal entities, the contract is subject to Indonesian law, and its implementation relates to an oil and gas project in Riau Province. A similar thing was also found in the DKI Jakarta High Court Decision No. 175/PDT/2018/PT.DKI between Fico Corporation against BANI and PT Prima Multi Mineral. Despite being issued in Jakarta and originating from the Indonesian National Arbitration Board, the arbitration award is nonetheless regarded as an international arbitration award. This occurs as a result of one of the parties being a foreign-domiciled legal entity. Thus, the Decision of the DKI Jakarta High Court No. 175/PDT/2018/PT.DKI has similarities with the Decision of the Supreme Court Number 904 K/Pdt.Sus/2009, which states that although the arbitration award was handed down in Indonesia, because it has foreign elements the decision shall be deemed to be an International Arbitration Award.

This inconsistency is caused by the absence of a clear differentiation between foreign and international terms in national law, as well as the absence of clear parameters to identify the international character of an arbitration. Because of this, in practice, parties frequently interpret international arbitration awards liberally, taking into account not just the location of the award's rendering but also the presence of foreign components in the dispute, such as the parties' nationalities or the usage of foreign laws and languages. This pattern of interpretation refers to the phrase of the second sentence in Article 1 number 9 of the AAPS Law, namely *"or the decision of an arbitration institution or individual arbitrator which according to the provisions of the laws of the Republic of Indonesia* ***considered*** *as an international arbitration award."* These provisions are the legal basis for the court to classify a decision as international even if it was rendered in Indonesia, as long as there is *foreign elements*.

Then on January 3, 2025, the Constitutional Court issued Decision No. 100/PUU-XXII/2024 which changed the definition of an international arbitration award by eliminating the word considered in the second sentence phrase:

> *"a decision rendered by an arbitration institution or individual arbitrator outside the jurisdiction of the Republic of Indonesia, or a decision by an arbitration institution or individual arbitrator which, according to the laws of the Republic of Indonesia, constitutes an international arbitration decision."* This Constitutional Court decision confirms the territorial concept in defining international arbitration awards in Indonesia. By eliminating the phrase "considered", this provision is expected to no longer be open to various interpretations or interpreted arbitrarily by the Court. Therefore, instead of merely being "considered", an arbitration award must clearly meet the parameters set out in the statutory provisions in order to be qualified as an international arbitration award. Of course, with the existence of several cases above, there is concern that there will be legal uncertainty in classifying what is meant by an International Arbitration Award, so

that the Constitutional Court in this case took a stance to eliminate the phrase "considered".

Referring to the Post-Constitutional Court Decision, an arbitration award can be categorized as international if: (i) it is made outside the jurisdiction of Indonesia ("Territorial Factor"); or (ii) it meets the criteria as an international arbitration award as regulated in Indonesian laws and regulations ("Other Factors"). Although the Constitutional Court Decision has opened up space for the formation of future regulations to regulate these matters, current Indonesian laws and regulations have not yet determined in detail the parameters of the "Other Factors" in question. Therefore, a clearer formulation is needed to strengthen legal certainty regarding the definition and scope of international arbitration awards. This means that until now there have been no statutory provisions that expressly detail what is meant by "Other Factors", so that the Territorial Factor is the only reference in determining whether an arbitration award is an international arbitration award in Indonesia. So in conclusion, the definition of an international arbitration award refers solely to the fact that the award was made outside the territory of Indonesia, thus meeting the requirements as an international arbitration award.

The AAPS Law itself does not clearly regulate what is meant by a National (domestic) Arbitration Award, after this Constitutional Court Decision, a contrario, what is meant by a national arbitration award is "a decision handed down/made by an Arbitration Institution or individual arbitrator within the jurisdiction of the Republic of Indonesia." This means what if there is a difference in nationality of the parties to the case, or the object of the dispute (partially or in whole) is outside the territory of Indonesia or the place that has the closest relationship with the subject of the dispute is outside the territory of Indonesia. The AAPS Law does not regulate the position of arbitration with a heavy foreign elements and also does not provide a clear definition of what is meant by national arbitration and international arbitration. If we refer to the Post-Constitutional Court Decision above, even though there are differences in the nationality of the parties, the object of the dispute is outside the territory of Indonesia and there is *foreign elements* otherwise, as long as it is made in the territory of Indonesia, it falls within the definition of a National Arbitration Decision.

The second issue that arises is regarding the meaning of the phrase 'dropped/made outside the territory of Indonesia.' Does the phrase refer to the seat or venue of the arbitration? It is important to distinguish between the "seat" of arbitration (often also referred to as the "place" of arbitration) and the geographical location where the arbitration hearing or meeting is held *(venue).* The seat of arbitration is a choice of law concept that determines the legal domicile of an arbitration process (Born, 2020). An arbitration award is formally considered to have been issued in the jurisdiction that serves as the legal or juridical seat of the arbitration (Born, 2021). The consequences of the determination of the seat include the determination of the procedural law applicable in the arbitration process, the national court that has the authority to handle issues arising during the arbitration process, including the formation of the arbitration panel, and the court that has the authority over the annulment of the award. All these aspects play an important role in the continuity and validity of the arbitration process.

In this case, the AAPS Law does not explicitly provide a definition of what is meant by "place of arbitration". Although Article 37 of the AAPS Law uses the term "place of arbitration", the phrase is not further explained, thus creating ambiguity in interpretation. This ambiguity has the potential to open up room for debate as to whether the term "place" in the provision refers to the seat of arbitration namely the legal location that determines the procedural law and jurisdiction of the competent court or simply the "venue", namely the physical location where the arbitration hearing is held. This lack of affirmation has the potential to create legal uncertainty in determining the legal consequences of the location of arbitration,

especially in the context of the recognition and enforcement of international arbitration awards in Indonesia.

This problem will be more complex if the parties to the arbitration agreement do not specify the seat of arbitration in detail in its clause. The ambiguity in the arbitration agreement opens up the opportunity for different interpretations by national courts, which ultimately risks giving rise to domestic judicial intervention, increasing legal uncertainty, and hampering the effectiveness of the implementation of cross-border arbitration awards. Therefore, although the Constitutional Court Decision has provided clarity that an International Arbitration Award is any award rendered outside the territory of Republic of Indonesia, the phrase "place where the award was rendered" remains a central point in determining whether an arbitration award has the status of a national or international award.

Constitutional Court Decision No. 100/PUU-XXI/2024 is basically a positive step in simplifying and clarifying the definition of international arbitration awards by emphasizing the territorial approach. However, if Indonesia does adopt a territorial approach explicitly, namely referring to awards made/delivered outside the territory of Indonesia, then the more appropriate term to use is "foreign arbitral awards" as stipulated in the New York Convention of 1958, not “international”. This is important to avoid the misunderstanding that any award through international arbitration or containing foreign elements is an international arbitration award. This condition shows the urgent need to comprehensively reformulate the definition and align national terminology with international standards. In addition, to avoid ambiguity in implementation, it is necessary to clearly formulate in the legislation what is meant by "place of arbitration", including the distinction between seat (juridical place) and venue (physical location of the hearing). This formulation is important to provide legal certainty for the parties and consistency of interpretation for judges in the process of recognizing and implementing arbitration awards in Indonesia.

International Arbitration Practices and Arrangements in Other Countries and Recommended Arrangements Regarding International Arbitration in Indonesia

Basically, if we refer to the New York Convention of 1958, this instrument does not explicitly define what is meant by an international arbitration award. This convention only regulates recognition and enforcement of foreign arbitral awards, namely a foreign arbitral award which is simply defined as a decision that is “made” in one country (State A), but its recognition and enforcement are requested in another country (State B). In this context, an arbitration award is categorized as foreign if it is made outside the territory of the country where recognition is requested, and is therefore subject to the recognition and enforcement mechanism under Article I(1) of the New York Convention of 1958 which states that the location of the “making” of the judgment (place where the award is made) determined by seat of arbitration namely the place agreed in the arbitration agreement or, if there is none, determined by the tribunal or arbitral institution concerned. Almost all jurisdictions agree that the place“made” refers to the seat of arbitration, and that a judgment can only be deemed to have been “made” in one country (the award is “made” in only one place, and that place is the seat). Many countries also adopt a territorial approach, namely that every decision made in the national jurisdiction is treated as a domestic decision, while those made abroad are considered foreign decisions.

However, in international legal practice, there is a term international arbitration which refers to an arbitration process that contains foreign elements for example because the parties come from different countries, the laws used are different, or the location of the contract is in another country even though the final decision is made domestically. In this context, as explained previously, in Indonesia the terms “international” and “foreign” are often used interchangeably without a clear distinction in regulations or practices, including in the AAPS

Law and the drafting of arbitration contracts. As a result, this often causes confusion for practitioners and lay parties: whether every decision resulting from an international arbitration process is automatically qualified as a foreign arbitration decision in the formal legal sense. In fact, as explained in the previous paragraph, the qualification as "foreign" is very dependent on where the decision is made *(seat),* not merely because the arbitration process involves international elements.

Whether a commercial arbitration is international or domestic can affect the legal rules used in the resolution process. Some legal systems make a clear distinction between domestic and international arbitration, setting out different rules for each. Conversely, there are also legal systems that choose to apply the same rules to all types of arbitration. However, it is important not to confuse the international or domestic nature of the arbitral proceedings with the status of the arbitral award as domestic or foreign. The two are different matters, since the recognition and enforcement of arbitral awards subject to different legal regimes depending on whether the judgment is deemed to originate domestically or from a foreign jurisdiction (Lew et al., 2003). An arbitration is said to be international in nature can be determined through three approaches. First, if the disputed topic, the procedure for implementing the arbitration, or the institution conducting the arbitration has an international character *(Objective Theory).* Second, if the parties involved come from different countries or legal systems *(Subjective Theory).* Third, if there are combined elements of both-both in terms of substance and the parties involved which indicate the international dimension of the arbitration.

1. Objective Criterion

The objective criterion assesses the international nature of arbitration based on the subject matter of the dispute and the nature of the underlying transaction whether it is national or cross-border. In other words, if the disputed transaction involves international commercial interests, cross-border elements, or if the dispute is submitted to an international arbitral institution such as the ICC, LCIA, or ICSID, then the arbitration can be considered an international arbitration. This objective approach is most evident in French law. Article 1492 of the French Code of Civil Procedure states that an arbitration is international if it involves international commercial interests. There is a wealth of French jurisprudence on this definition of an international transaction. French courts tend to take a broad and flexible approach to interpreting international arbitration economically that is, an arbitration is international if the dispute arises from a dispute involving the economies of more than one country. In this case, the criteria are not the nationality of the parties, the applicable law, or the place of the arbitration, but simply the fact that goods, services, or funds are transferred across borders (Redfern & Hunter, 2015).

2. Subjective Criterion

The subjective approach to determining whether an arbitration is international focuses on the origin of the parties to the arbitration agreement, such as their nationality, domicile or place of business. That is, an arbitration is considered international if the parties are from different countries or jurisdictions. This approach was previously used in the English arbitration law system, but has the disadvantage of limiting the scope of international arbitration.

3. The Combined Criterion: The Model Law Approach

The third approach combines subjective and objective criteria. A recent trend towards the application of this combined criterion can be found in the UNCITRAL Model Law of 1985 on International Commercial Arbitration.

Article 1 (3):

"An arbitration is international if:

a. The parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States.
b. One of the following places is situated outside the State in which the parties have their places of business:
   1) The place of arbitration if determined in, or pursuant to, the arbitration agreement.
   2) Any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely con- nected.
c. The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country."

The UNCITRAL Model Law 1985 has been widely adopted by many countries as the basis for their legal framework in international commercial arbitration. The rapid progress in the practice of international commercial arbitration has encouraged various national legal systems to not only accept its existence, but also to create a supportive legal framework so that this mechanism can grow and function optimally. In general, there are two approaches used by countries in designing their arbitration regulatory framework:

1. **Dualistic approach**, namely when the country clearly distinguishes between domestic and international arbitration arrangements, with separate legal provisions for each; or
2. **Unitary approach**, namely when a country applies a single, unified legal framework for all types of arbitration, both domestic and international, thus creating a uniform system.

These approaches essentially reflect each country's perspective in determining the point of contact between arbitration and the national legal system. In other words, the way a country determines the "international" status of an arbitration is not only related to the technical elements of the transaction or the identity of the parties, but also reflects the basic assumptions about where the legal jurisdiction should play a role in supervising or regulating the arbitration. In this context, two major theories in international arbitration law emerged as the main conceptual foundations, namely the seat theory and the delocalisation theory.

Seat Theory

In arbitration, the country where the arbitral decision will be considered to have been made and where the arbitration has its official legal or juridical seat is referred to as the "seat" (or "place"). It is crucial to consider the venue in which the arbitration procedure is held. This is because the arbitration, as an independent entity, interacts with the national courts of the nation in which it is held. Despite having the jurisdiction to decide the contested subject, the arbitral tribunal does not have the authority to actually enforce or carry out its ruling (Pulido, 2025). Therefore, support from state judicial institutions is essential, because only the court has the authority granted by the state to enforce the decision. Thus, cooperation between the arbitration tribunal and the court is essential for the arbitration decision to be implemented effectively.

In this context, the "seat" or place of arbitration becomes a very crucial aspect, because the law where the arbitration takes place *(lex loci or lex arbitri)* will be the reference legal system. This law will not only determine the legal framework for the implementation of arbitration, but also regulate the scope of court intervention in supporting the arbitration process or in certain cases, such as the annulment of an arbitration award.

Therefore, a tendency towards territorialism has emerged, namely a view that emphasizes the close relationship between international arbitration and the country where the arbitration is

held. In this framework, the country where the arbitration is held has full authority to regulate activities that occur within its jurisdiction, including the arbitration itself.

Delocalization Theory

Some scholars argue that arbitration tribunals, or at least should, be positioned as institutions that are delocalized, not affiliated with a particular country (a-national), or even supranational in nature. In short, this view emphasizes that the parties should have full freedom to resolve their disputes in accordance with the arbitration agreement and the agreed rules of arbitration procedure, without interference, or at least with minimal interference, from the legal system of any country (Kjos, 2013). The meaning of "seat" becomes less important in the concept of delocalisation, because the award that has been rendered is no longer dependent on the recognition of the country where the arbitration was carried out. Instead, the award will be applied autonomously based on the agreement of the parties and the law of the place where the execution is requested, making it freer from the control of a particular country but facing variations in legal requirements in each jurisdiction (Paulsson, 1981).

Belgium once tried to apply the principle of delocalisation to an extreme through a 1985 law that prohibited foreign parties with no Belgian connection from seeking annulment of arbitral awards in Belgian courts. The aim was to encourage more autonomous arbitration free from judicial oversight. However, this policy actually backfired, with business actors avoiding Belgium as a venue for arbitration due to the lack of guarantees of access to legal protection from the courts. So in 1998, Belgium changed its law and gave foreign parties the option to explicitly agree to*opt-out*from judicial review; if there is no such agreement, the court may still accept the annulment request. This Belgian case is concrete evidence that judicial supervision remains important in international arbitration practice, and that delocalisation is not always attractive to business actors (Moses, 2024).

Comparison table 1. of international arbitration rules in several countries:

Country	National and International Arbitration Law Approaches	International Arbitration Criteria	Seat Theory / Delocalization
Singapore	1. Adhering to a dualist system, with two main laws governing arbitration: International Arbitration Act (IAA) 1994 for international arbitration and Arbitration Act 2001 for domestic arbitration 2. International arbitration is governed by the IAA with minimal court intervention, while domestic arbitration is governed by the AA with greater potential for court intervention. 3. Two-track arbitration system (*dual-track arbitration regime*) which is implemented in allowing the parties to opt in (*opt in*) or out (*opt out*) between International Arbitration Act (IAA) or Arbitration Act according to their agreement	Adopting the UNCITRAL Model Law 1985	1. Singapore follows a strict territory approach (*seat theory*) 2. Singapore in its Arbitration Act details the meaning of "place of arbitration", namely the seat of the arbitration or the juridical place of the arbitration. 3. A foreign arbitral award is defined asdecisionmade outside Singapore and enforceable in Singapore under the New York Convention, provided that the country in which the judgment is made is also a party to that convention.

Country	National and International Arbitration Law Approaches	International Arbitration Criteria	Seat Theory / Delocalization
Australia	1. Adopting a dualist system with the International Arbitration Act (IAA) 1974 regulating international arbitration and the Commercial Arbitration Acts (CAA) regulating domestic arbitration. 2. Parties to international arbitration cannot opt out from the application of the IAA and Model Law. 3. The main differences between the IAA and the CAA in Australia lie in the scope, level of court intervention and procedural flexibility offered by each legislation. The IAA does not provide for a right of appeal on legal questions, placing greater emphasis on the finality of the arbitral award. 4. On the contrary, CAA although also based on the UNCITRAL Model Law, provides greater scope for court intervention. Parties have the discretion to explicitly choose to apply the IAA and the Model Law in their arbitration agreements, thereby allowing them to "opt-in" to the international legal regime.	Adopting the UNCITRAL Model Law 1985	Australia follows the seat theory. A foreign arbitral award is defined as an award made outside Australia and enforceable in Australia under the New York Convention.
French	1. Adopting a dualist system, namely domestic and international arbitration are distinguished. 2. Arbitration is categorized as international if it "involves international trade interests", regardless of the seat of arbitration (whether in France or outside France) or the nationality of the parties (Article 1504 French Code of Civil Procedure – FCCP). French adopting a broad definition of "international trade interests". 3. The grounds for annulling an international arbitral award in France are more strictly limited than in domestic arbitration.	France does not use the UNCITRAL Model Law 1985 approach to determine whether an arbitration is international and anything that is of an international trade nature is international arbitration whether it is brought domestically or abroad.	1. France in the enforcement process does not solely rely on the legal status of the arbitration award in the country where the arbitration sits (seat), but rather places more emphasis on the independence and integrity of the award itself. (More adherent to the concept of delocalization)
United Kingdom	1. Regulates domestic and international arbitration under a single, unified legislative framework, namely the Arbitration Act 1996, which applies to	Not adopting the provisions of the UNCITRAL Model Law 1985	1. England follows a strict territory approach (*seat theory*) 2. The UK in its Arbitration Act details what is meant by "seat of arbitration",

Country	National and International Arbitration Law Approaches	International Arbitration Criteria	Seat Theory / Delocalization
	arbitrations domiciled in England, Wales or Northern Ireland. 2. This law does not explicitly define the term "international arbitration". 3. The procedural framework and legal standards set out in the Arbitration Act 1996 apply in a unitary manner, thus being uniform in resolving domestic and international disputes through arbitration.		namely the juridical seat of the arbitration. 3. A foreign arbitral award is defined asdecisionmade outside England and enforceable in England under the New York Convention, provided that the country in which the judgment was made is also a party to that convention.
Hongkong	1. Adopting a unified (unitary) arbitration regime through the Arbitration Ordinance (Cap. 609), which regulates both domestic and international arbitration within one legislative framework. 2. The enactment of this regulation marks a shift from the dualistic approach previously set out in Cap. 341, by unifying arbitration practice through the full adoption of the UNCITRAL Model Law 1985 as the legal basis for all arbitrations domiciled in Hong Kong. 3. Despite having established a unitary framework, Hong Kong retains flexibility, namely that parties can expressly "opt-in" to certain provisions in Schedule 2, such as allowing appeals to the courts on questions of law arising from arbitral awards.	Adopting the UNCITRAL Model Law 1985	1. Hong Kong follows a strict territory approach (*seat theory*) 2. A foreign arbitral award is defined asdecisionmade outside Hong Kong and enforceable in Hong Kong under the New York Convention, provided that the country in which the judgment was made is also a party to that convention.

Indonesia is expected to learn from these systems by first explicitly formulating the definition of international arbitration and national (domestic) arbitration in national legislation. This clarity is important to avoid overlapping meanings between the terms "international" and "foreign" which have often been used interchangeably in practice and regulation, and to provide legal certainty for parties who choose arbitration as a dispute resolution forum. In the future, Indonesia can choose whether to apply a dualistic approach by separating the regulations between domestic and international arbitration or a unitary approach, namely applying one legal framework that applies to both. Regardless of the model chosen, what is more important is how the substance of the regulation is designed in a comprehensive, structured, and in line with international principles, as reflected in the UNCITRAL Model Law. Thus, Indonesia will not only be able to increase the trust of the business world in the dispute resolution mechanism through arbitration, but also strengthen its position as a country that is pro-arbitration and ready to compete in international dispute resolution forums.

CONCLUSION

In closing, it can be concluded that the reformulation of the definition of international arbitration awards in the Indonesian legal system is an urgent need. The ambiguity of terminology and differences in interpretation between court decisions have created legal uncertainty and reduced Indonesia's effectiveness and competitiveness as an international arbitration forum. Constitutional Court Decision No. 100/PUU-XXII/2024 is a significant initial step because it confirms the territorial approach and removes the phrase "considered" in the definition of international arbitration awards. However, this step must be immediately followed by a comprehensive regulatory update, including confirmation of the terms used whether referring to "foreign arbitration awards" as stipulated in the New York Convention of 1958, explicit regulations regarding the meaning of "place of arbitration", and the formulation of clear parameters regarding the elements that form the international character of an arbitration. This update is important to ensure consistency, legal certainty, and the effectiveness of the implementation of cross-border arbitration awards in Indonesia.

Through comparative studies of various countries such as Singapore, Australia, England, Hong Kong, and France, Indonesia is expected to gain inspiration in designing a modern, progressive, and legal certainty-oriented arbitration regulatory model. Both the dualistic approach that clearly distinguishes between domestic and international arbitration, and the unitary approach that applies a single integrated legal framework, can both be used as strategic references that are adjusted to the national context. Therefore, the reform of the AAPS Law should not only be textual, but also structural and conceptual, by ensuring that its substance is in line with the principles of the UNCITRAL Model Law and international practice standards. Thus, Indonesia will not only strengthen the trust of the business world in a fair and effective dispute resolution system, but also increase its competitiveness as a pro-arbitration country in the global legal order.

REFERENCE

Adolf, H. (2015). *Dasar-Dasar, Teori, Prinsip dan Filosofi Arbitrase*. Keni Media.

Adolf, H. (2019). *Peraturan dan Prosedur Arbitrase*. Keni Media.

Born, G. B. (2020). International commercial arbitration. *Netherlands: Kluwer Law International*.

Born, G. B. (2021). International arbitration: law and practice. *Netherlands: Kluwer Law International*.

Diandra, S., & Amalia, P. (2017). Klasifikasi putusan arbitrase internasional menurut hukum Indonesia ditinjau dari hukum internasional. *Jurnal Bina Mulia Hukum*, *2*(1), 1–20.

Kjos, H. E. (2013). *Territorialized and Internationalized Arbitration Tribunals*. Oxford University Press.

Lew, J. M., Mistelis, L. A., & Kroll, S. M. (2003). *Comparative International Commercial Arbitration*. Kluwer Law International.

Moses, M. L. (2024). *The Principles and Practice of International Commercial Arbitration* (4th, Ed.). Cambridge University Press.

Paulsson, J. (1981). Arbitration unbound: award detached from the law of its country of origin. *International & Comparative Law Quarterly*, *30*(2), 358–387.

Pulido, I. E. R. (2025). La deslocalización del arbitraje comercial internacional. Principios y prácticas en la aplicación de medidas cautelares. *Vniversitas*, *74*. https://doi.org/10.11144/Javeriana.vj74.dica

Redfern, A., & Hunter, M. (2015). *Law and Practice of International Arbitration* (6th, Ed.). Oxford University Press.

Safudin, E. (2018). *Alternatif Penyelesaian Sengketa dan Arbitrase*. Intrans Publishing.

Tuegeh Longdong, T. (2021). *Pengakuan dan Pelaksanaan Putusan Arbitrase Asing dan Permasalahannya*. Karya Kita.