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International Interim Awards Enforcement under the Indonesian Arbitration Law and UNCITRAL Model Law

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Abstract: The Indonesian umbrella regulation for arbitration, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, is silent regarding the enforcement of interim awards which creates uncertainty of law. This is in contrast to the arbitration-friendly regulations stemming from the UNCITRAL Model Law that are found in Asia's leading arbitral seats such as Hong Kong and Singapore. Presently, there is a growing demand for seats to adopt a mechanism for enforcing interim awards in international arbitration, as the absence of such enforcement undermines the efficacy of an effective justice system in transnational trade. Therefore, an analysis is needed to review the enforcement of interim awards under the Indonesian arbitration law and how it compares to the UNCITRAL Model Law, the Hong Kong Arbitration Ordinance, and the Singapore International Arbitration Act. Through the research, we found that there is a discrepancy both in the existence of an enforcement mechanism for interim awards and in the consistency between the law and practice in Indonesia, Hong Kong, and Singapore. In order for Indonesia to enhance its appeal as an arbitral seat, the uncertainty regarding the enforcement of interim awards must be remedied.

Keyword: Indonesian Arbitration Law, Uncitral Model Law, Interim Awards, Enforcement of Awards.

INTRODUCTION

A solid legal foundation for dispute resolution is crucial in creating a conducive investment climate and incentivizing economic growth. In line with this, Indonesia's National Medium-Term Development Plan 2020-2024 states that Indonesia's medium-term macroeconomic target includes an increase in economic growth of 5.7-6.0% per year through an increase in investments (BAPPENAS, 2020). Reflecting on previous policies, such as the omnibus law issuance, streamlining business licensing through online single submission, and establishing an investment priority list, Indonesia plans to achieve this goal through adjustments in laws and regulations (BKPM, 2022). One way to increase a country's volume of Foreign Direct Investment ("FDI") is to strengthen its regime of international arbitration, as it positively correlates with the level of FDI (Myburgh & Paniagua, 2016). This is because

investors are met with assurance and can take on less risk when conducting business in a country with an effective legal system for dispute resolution, a feature strong arbitration regimes possess (Wagle, 2011). This can be achieved by enhancing international arbitration law and ensuring effective enforcement of arbitral awards by its judicial bodies.

The legal umbrella of arbitration in Indonesia is primarily governed by Law Number 30 of 1999 on Arbitration and Dispute Resolution (the "Indonesian Arbitration Law"). The Indonesian Arbitration Law was created in response to the outdated use of the *Reglement op de Rechtsvordering* (the "Rv"), which dates from the country's Dutch East Indies era and was used up until the late 20th century as a reference for Indonesia's arbitration rules, which was deemed no longer able to accommodate the growing globalization of trade at the turn of the millennium (Yuhelson, 2018). Since its enactment over two decades ago, the Indonesian Arbitration Law has never been updated. However, this does not mean that the Indonesian Arbitration Law does not have areas that need improvement. There are certain legal ambiguities that can become obstacles during the arbitration process that may deter people or businesses from resolving disputes using arbitration.

According to the Indonesian Arbitration Law, arbitration is defined as a process for resolving civil disputes outside of public courts that is based on a written arbitration agreement between the parties involved. The Indonesian Arbitration Law classifies arbitration into domestic arbitration and international arbitration. One of the distinctions made between "domestic arbitration" and "international arbitration" lies in where the award is rendered. An award is classified as a domestic arbitral award if it is rendered inside the jurisdiction of Indonesia. In contrast, an international arbitral award is an award rendered by an arbitrator outside of the jurisdiction of Indonesia or is considered an international arbitral award under Indonesian law (Anindita & Amalia, 2018). The provisions regarding international arbitration, as well as the enforcement of its awards, refer to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention of 1958"), which was ratified by Indonesia in 1981 (Harahap, 2019).

Parties often encounter obstacles during the course of an arbitration. Such obstacles usually arise in the form of the parties' disagreement over the appointment of the arbitral tribunal, the transfer of assets, and the involvement of third parties. In this case, the mechanism that can facilitate such obstacles that arise in the middle of the arbitral proceedings is an interim award. An interim award is, as the name suggests, an award that, if necessary, is rendered before the final award. These awards are usually rendered to protect the interests of the parties and to ensure that the final award can be executed effectively (Born, 2009). Article 32 of the Indonesian Arbitration Law broadly regulates interim awards and provides that an arbitrator or an arbitral tribunal may issue them at the request of a party to regulate the orderliness of the arbitration process, which includes issuing a collateral seizure, ordering the entrustment of goods to a third party, or selling perishable goods (Permana & Ansari, 2023). However, an interim award may not always prove to be an effective solution to solving every issue relating to arbitration proceedings, especially if it is not accompanied by proper judicial enforcement of the award.

It is important to note that the arbitral tribunal's power to issue interim awards is limited in several aspects (Born, 2009). First, the arbitral tribunal's jurisdiction is limited to the parties, and it's difficult to issue an interim award to a non-party. Second, in contrast to court judgments, arbitral awards generally lack coercive power—where enforcement by force is possible in the absence of voluntary compliance—to push parties to comply with an interim award and thus rely solely on the good faith of the parties. Third, since interim awards are issued by the arbitral tribunal for the purpose of safeguarding arbitral proceedings, the scope of an interim award is limited to only fulfilling that purpose. Finally, the arbitral tribunal cannot issue interim awards until the arbitral tribunal is formed, which takes additional time

into the dispute. This research will focus on the second issue regarding the enforcement of an interim award.

To understand more about the mechanism and limitations of interim awards, imagine the following scenario: Company A, based in South Korea, is a manufacturer that specializes in manufacturing semiconductors. Company B, based in Indonesia, is a distributor of such semiconductors. Both companies have a long-term business relationship, with Company A manufacturing the semiconductors and Company B selling the products to the Indonesian market. One day, a dispute arose between the two companies over the quality of components supplied by Company A. Company B claimed that several of the components received were defective, resulting in a significant financial loss and damage to their reputation in the Indonesian market. Prior to this, both parties had entered into an arbitration agreement, whereby any disputes arising from the contract would be resolved through arbitration using the Indonesian Arbitration Law. This prompted Company B to issue a request for arbitration in accordance with their agreement.

There is a waiting period between Company B's issuance of the request for arbitration and the commencement of the arbitration proceedings. During this period, Company A, realizing the potential financial loss of the dispute, decided to take actions that could potentially impede the dispute. First, Company A liquidated its assets and transferred funds to its various subsidiaries located in different jurisdictions. Second, Company A attempted to eliminate evidence by altering key documents and falsifying quality control reports—in hopes of concealing its manufacturing shortcomings.

Based on the illustrated case, the arbitral tribunal may attempt to safeguard the proceeding by issuing an interim award in accordance with Article 32 of the Indonesian Arbitration Law. In the first step, the arbitral tribunal may issue Company A an interim award containing orders to freeze its assets so that the assets cannot be transferred until the final award is issued. However, in the second step, when the arbitral tribunal attempted to obtain documents relating to Company A's operations, the arbitral tribunal was faced with a problem: several important documents and key witnesses were held by a third party, namely the logistics company responsible for shipping the semiconductors. In this instance, the arbitral tribunal can still issue an interim award, however, compliance with the interim award's orders depends on the third party's good faith. This is because arbitral tribunals, under virtually all jurisdictions, do not have the authority to issue interim awards that are directly binding on third parties (Rab, 2022).

Given the limited powers of the arbitral tribunal, the losing party may choose to liquidate and transfer all of its assets to render a final award with no value. In certain cases such as the above, the only way for parties to protect their interests is through judicial enforcement (Bantekas, 2023).

The Indonesian Arbitration Law stipulates the procedure for enforcement of arbitral awards in Chapter VI and distinguishes the process between domestic arbitral awards and international arbitral awards. Domestic arbitration awards, which are governed under Part I of Chapter VI, can be enforced through any district court in Indonesia. On the other hand, international arbitration awards, which are governed under Part II of Chapter VI, can only be enforced through the Central Jakarta District Court. A problem that is present in the Indonesian Arbitration Law is the uncertainty regarding the enforcement of international arbitral interim awards. For example, Article 60 of the Indonesian Arbitration Law—which governs domestic arbitral awards in Part I of Chapter VI—states that "arbitral awards" are final, have permanent legal force, and are binding on the parties. An equivalent provision elaborating on the scope or characteristics of an award does not exist in the articles on international arbitration in Part II of Chapter VI. This ambiguity is worsened by Article 67 of the Indonesian Arbitration Law, which states the requirement for the enforcement of an international arbitral award to the Central Jakarta District Court includes submitting the

original or a written copy of the award, without specifying whether an interim award would suffice under the requirement. This is uncertainty could potentially be detrimental to future proceedings as, although interim awards and orders have been respected voluntarily on a regular basis, they are not always adhered to (Born, 2009). Therefore, the absence of a mechanism for enforcing interim awards could potentially reduce the incentive for businesses to designate Indonesia as an arbitral seat and hinder the development of arbitration in Indonesia.

In 2021, Queen Mary University of London alongside White & Case LLP conducted a survey to provide an up-to-date overview of arbitration practices worldwide. One key question was about what adaptation of mechanisms can improve a jurisdiction's attractiveness as a seat of arbitration. In the survey, having the ability to enforce emergency arbitration orders or arbitral tribunal-ordered interim awards received a score of 39%, ranking above seemingly important options such as "the political stability of the jurisdiction" and "the ability to sign awards electronically" (Queen Mary University of London, 2021). The survey shows the importance of having established mechanisms to enforce interim awards and how this correlates with the attractiveness of the country as a seat of arbitration. This is also supported by the previous iteration of this survey in 2012, which found that 77% of respondents had interim awards sought in 25% of their arbitration proceedings, further cementing the need for an enforcement mechanism for interim awards (Queen Mary University of London, 2012).

In contrast to the Indonesian Arbitration Law, the UNCITRAL Model Law on International Commercial Arbitration 1985 (the "Model Law"), amended in 2006, facilitates judicial enforcement of interim awards. Article 17H of the Model Law specifies that an interim award made by an arbitrator is deemed enforceable and can be enforced by a court of competent jurisdiction upon application—unless the arbitrator determines otherwise. Various arbitration laws, such as the numerous versions of the national adoption of the Model Law, allow for the enforcement of interim awards either through the mechanism presented in Article 17H of the Model Law or *sui generis*. For example, the Hong Kong Arbitration Ordinance (the "HKAO") adopts an approach similar to the 2006 revision of the Model Law, as it provides for judicial enforcement of some interim measures by arbitral tribunals (Born, 2009). According to Section 61 of the HKAO, an order or direction issued by an arbitral tribunal regarding arbitral proceedings, whether they take place inside or outside of Hong Kong, can be enforced in a manner similar to a court order or direction, provided that the court grants permission for the order or direction." Similarly, Singapore also provides a comparable mechanism. The enforcement of an arbitrator's interim award is possible under Section 27(1) of the Singapore International Arbitration Act (the "SIAA"), as its definition of an "arbitral award" includes—in addition to the final award—any order or directive made or given by an arbitral tribunal during an arbitration, which is considered enforceable under the New York Convention of 1958 (Reyes & Gu, 2018).

Indonesia could potentially emulate the success of Hong Kong and Singapore in accommodating international business if it is willing to improve its attractiveness as a seat. These two pioneers of international arbitration in Asia have seen their efforts to create arbitration-friendly regulations pay off through the growth of their economies which rely heavily on international businesses. If Indonesia truly wants to achieve its goal of increasing FDI, as stated in Indonesia's National Medium-Term Development Plan 2020-2024, it may be worthwhile to consider improvements to the arbitration legal framework in Indonesia.

In an increasingly globalized world, jurisdictions that are considered pro-arbitration, such as Hong Kong and Singapore, have benefited significantly as a strong legal framework is seen as an incentive for foreign companies to invest and conduct business (Prasad, 2017). In light of this, Indonesia must consider implementing an enforcement mechanism for international interim awards. This research will analyze the provisions and the

implementation of judicial enforcement of international interim awards under the Indonesian Arbitration Law compared to the Model Law and the jurisdictions that adopt it.

METHOD

Identified Problems

In light of the aforementioned background, the problem formulation in this research can be stated in the form of questions as follows:

1. What is the mechanism for enforcing international arbitration interim awards in Indonesia according to the Indonesian Arbitration Law?
2. How can the Indonesian Arbitration Law be amended to enforce international arbitration interim awards under the Model Law effectively?

Research Specifications

The research method refers to how a researcher collects data. In discussing this issue, the author employs a normative juridical method, which systematically examines the applicable laws and regulations, supported by related jurisprudence as a comparison. In addition, the research will also include a comparison of Indonesian law with the practices of other Model Law-adopting countries such as Hong Kong and Singapore. The selection of countries for comparison is based on the success of Hong Kong and Singapore in becoming an arbitration-friendly jurisdiction, which has a positive correlation to the economic growth of these countries. The substance of the comparison will focus on the regulation of the enforcement of international arbitral interim awards within those jurisdictions. The comparison aims to learn about other countries' processes of arbitral interim awards enforcement, which may contribute to improving Indonesia's arbitration regulation.

Type of Data

The type of data used in this research is secondary data. Secondary data is obtained indirectly from respondents through books or writings from scientific journals or special research reports related to law. Secondary data in this study consists of primary legal materials and secondary legal materials. Primary legal materials are binding legal materials that consist of basic norms or rules (Soekanto & Mamudji, 2001).

The use of secondary data and legal materials will be adjusted to the issues discussed. According to Soekanto, research can be divided into three types based on its nature, namely: (1) exploratory research, (2) descriptive research, and (3) explanatory research (Soekanto, 2006). The research will be exploratory for the first identified problem—regarding the mechanism for enforcing international arbitration interim awards in Indonesia. Exploratory research is research conducted to obtain information, explanations, and data on things that are unknown (Muhaimin, 2018). In this case, the secondary data will include enforcements of previous arbitral interim awards such as in the case of PT APM v. Astro. Legal materials that will be used are the Indonesian Arbitration Law and the New York Convention of 1958.

As for the purpose of legal research itself, Soekanto breaks down normative legal study into several categories, namely research on legal principles, legal systematics, vertical and horizontal synchronization, comparative legal research, and legal history research (Soekanto, 2006). For the second problem—regarding the amendment of the Indonesian Arbitration Law to effectively enforce international arbitral awards under the Model Law—the research will cover comparative legal research. Comparative legal research aims to build general knowledge of positive law by comparing a country's legal system with legal systems in other countries. In this case, the secondary data used will be the law of enforcement of arbitral interim awards in jurisdictions that have adopted the Model Law, such as Hong Kong and Singapore. The legal materials will be the Model Law, the HKAO, and the SIAA.

Data Collection Method

The data collection method used is a literature study, which involves tracing various theories through law books available in libraries, print media, and electronic media.

Data Analysis

This research uses qualitative data analysis, a descriptive-analytical data analysis method that connects a problem with relevant literature or opinions of legal experts and is based on applicable laws and regulations. The data will be analyzed comprehensively and arranged systematically to obtain answers and conclusions to the problems discussed.

RESULTS AND DISCUSSION

Mechanism of Enforcement under the Indonesian Arbitration Law

From a normative perspective, the Indonesian Arbitration Law is silent regarding the enforcement of international interim awards. This is evident in its provisions on awards and enforcement laid out in Part II of Chapter VI. To begin with, Article 54 of the Indonesian Arbitration Law lists the criteria for an arbitral "award", with one of the requirements being that it must include the considerations of the arbitrator in regard to the entirety of the dispute (*keseluruhan sengketa*). In hindsight, the requirement leans more on only attributing final awards as an "award." This is because interim awards are, due to their nature, issued when the arbitration process is still ongoing, rendering it impossible for the arbitral tribunal to provide their consideration on the entirety of the dispute as it is not finished yet.

This notion is supplemented by the aforementioned Article 60 of the Indonesian Arbitration Law, which stipulates that an "arbitral award" (domestic) is final and has a permanent and binding legal effect on the parties. The elucidation section for this article further explains that the arbitral award is final in the sense that it cannot be appealed, cassated (*kasasi*), or reviewed. Interim awards do not fit this description, as they are not final and can still be modified or canceled through the final award. Moreover, although interim awards are binding to the parties, they do not have a legally binding effect (Judge, 2017).

The procedure for enforcing international arbitration awards is governed by Article 67 of the Indonesian Arbitration Law. Under it, international arbitration awards are to be registered with the Central Jakarta District Court. For this registration, the original text of the award or an authentic copy must be submitted, along with an official Indonesian translation of the text, in accordance with the guidelines for authenticating foreign documents. The provision, however, provides no details on whether the aforementioned copy of the "award" would include interim or exclusively final awards.

From a practical perspective, we can look at the application for interim award enforcement in the *PT APM v. Astro* case. The dispute arose out of an unsuccessful joint venture between an Astro group of companies (claimant) and a Lippo group of companies (respondent), which contains an offer of pay TV, radio, and interactive multimedia services to the Indonesian market, with the help of PT Ayunda Prima Mitra (PT APM). The parties signed a Subscription and Shareholders Agreement ("SSA") in March 2005, but a key requirement was finalizing service agreements, which never happened. Despite this, Astro provided funding and support to Lippo's Indonesian subsidiary from December 2005 onwards, expecting the venture to launch eventually. By August 2007, it was clear the venture wouldn't proceed, and both parties looked for ways to exit. The issue of ongoing support and funding became a major point of contention. Astro insisted they weren't obligated to continue, while Lippo argued there was an earlier verbal agreement requiring Astro's contribution (Tempo, 2008). After Astro invoiced Lippo for the provided services and demanded repayment in August 2008, and Lippo refused, Astro initiated arbitration in Singapore according to the SIAC Rules.

The tribunal issued an interim award (ARB062/08/JL) in favor of Astro, which contains the following:

1. A rejection of the respondent's challenge to the tribunal's jurisdiction and that the tribunal has jurisdiction to hear and determine any dispute on Article 17.4 of the SSA as detailed in the amendment and novation agreement.
2. Orders that R.1 immediately cease all litigation, refrain from further involvement in the case other than to formally request the dismissal of the aforementioned proceedings, and delay filing any new lawsuits concerning the joint venture partnership unless they are resolved through arbitration as specified in the SSA.
3. An order stating that the potential claimants will be joined in these arbitration proceedings.

Upon receiving the award, Astro took action to register it and aims to have it enforced under Indonesian law. The award was filed and deposited (*deponir*) at the Central Jakarta District Court on 1 September 2009 as 05/PDT/ARB.INT/2009/PN.JKT.PST in accordance with Article 67(1) of the Indonesian Arbitration Law. However, on the next day, the respondents filed requests to annul the enforcement of the interim award, in the form of two separate registrations: (1) 177/PDT.P/2009/PN.JKT.PST, which PT Direct Vision filed; and (2) 178/PDT.P/2009/PN.JKT.PST, which PT Ayunda Prima Mitra filed.

Ultimately, the Central Jakarta District Court refused to register ARB062/08/JL for enforcement on several grounds, one of them being that it was not final. The court stated that "after careful examination and study of the case records of the International Arbitration Award based on SIAC Regulation No. 062 of 2008 (ARB062/08/JL) issued on 07 May 2009, it is evident that the International Arbitration Award is not a final award." It can be concluded from this case that, despite the Indonesian Arbitration Law being silent on the enforcement of interim awards, in practice, finality is required for an award to be enforceable.

We can see a discrepancy between the established regulations and the reality in practice and the overall uncertainty in the Indonesian Arbitration Law regarding how it views the enforcement of international arbitral interim awards. It is worth noting, however, that this discrepancy or lack of clarity is not entirely the fault of Indonesian legislators. As noted previously in the background, the Indonesian Arbitration Law was drafted in response to the growing trend of globalized trade, of which the Rv could no longer sustainably facilitate. This indicates that Indonesia, up to that point, had used laws inherited from the Dutch East Indies era that were mostly intended to accommodate civil proceedings, in lieu of a specific, designated arbitration law. This was due to the fact that the Dutch had no intention or expectation that the colony at the time would be able to participate in global trade—as an autonomous entity separate from colonial interest—to the extent that it would necessitate a specific law or chapter dedicated to it (Entriani, 2017). The main reference to this is Article 377 of the *Herzien Indlansch Reglement* which states that in the event that the Natives and Easterners intend to resolve their disputes through arbitration, they are subject to the rules of the court of law applicable to Europeans.

Most of the provisions contained in the Indonesian Arbitration Law exhibit significant characteristics of the Rv as opposed to the Model Law. This is because the Indonesian Arbitration Law intentionally did not adopt the Model Law as its basis, rather opting to base it on previous legislatures that had been used. This decision might explain why the Indonesian Arbitration Law seems to take a very conservative approach to applying interim awards enforcement.

This aversion to the enforcement of foreign awards is not only present in arbitration but also in traditional litigation. In this regard, the Rv also posits that court decisions made by a foreign court cannot be executed in Indonesia as they lack the executorial power. Simply put, Indonesian courts do not view foreign court judgments as "judgments" but rather as facts regarding the dispute that can be used later as a factor of deliberation in forming a judgment for said dispute (Wibowo, 2023). For a foreign court judgment to be "executed" in Indonesia,

the dispute must be re-examined from the initial process until a valid judgment—one that was made by an Indonesian court—is issued. "Executed" in this instance, should be used very carefully as the process does not warrant the court to issue a judgment containing the same orders as the original foreign judgment.

It is fair to assume that this line of thinking was also used in rendering 05/PDT/ARB.INT/2009/PN.JKT.PST, as one of the deliberations mentioned by the court—that the interim award had exceeded its competence by interfering with the Indonesian court process and thus deemed non-executable. Nevertheless, this presents a challenge for businesses operating in Indonesia, and a possible solution may lie in the Model Law.

Mechanism of Enforcement in the Model Law

Before analyzing the provisions of the Model Law it is important to understand the concept and the purpose behind its creation. Unlike international conventions that work through ratification by member states and can become binding through nationalized laws, the concept of "model law" is a mechanism for countries to base their national laws around a universally similar foundation—akin to a "model" which countries can modify and build their own laws upon. The reason why it would be useful for countries' laws to have a universally similar foundation is to have harmonization of law between jurisdictions, which is beneficial in commercial arbitration as a sizable portion of arbitral disputes revolves around cross-border transactions (Campbell, 2024).

UNCITRAL itself has released several model laws, with the most notable being the model law on commercial arbitration released in 1985. The Model Law, courtesy of its form, serves as a base for countries to build and design their arbitration laws around. On its own, the Model Law merits no legal effect unless adopted into a national law. Therefore, an analysis of the base regulation alone is insufficient to determine how the law performs in practice. With this in mind, this paper will additionally cover two arbitration-friendly jurisdictions that have adopted the Model Law and provide provisions similar to it, namely Hong Kong and Singapore, to serve as an empirical benchmark.

1. Enforcement under the Model Law

   The Model Law initially did not stipulate the enforceability of interim awards in its original 1985 iteration and left the question of whether an interim relief can be considered an "award" under the New York Convention of 1958 open for interpretation. The only provision written regarding interim awards in the original Model Law is Article 17, which only states that tribunals are permitted to order any party to take protective interim measures upon request, should they deem them necessary. Similarly, the New York Convention of 1958 is silent on enforcement for interim awards ordered by arbitral tribunals (Dilboboev, 2022). Article 1 of the New York Convention of 1958 only mentions that the convention applies to arbitral "awards" and, while the term had no agreed-upon definition at the time, in practice, many countries view finality as a necessary quality of "awards." During this period, the provisions of interim awards enforcement are interpreted broadly due to the lack of clear guidelines in the New York Convention of 1958 and the original Model Law.

   For the following 20 years since its inception, the original Article 17 served as the sole and primary reference point for interim awards in the Model Law. The concept of amending the Model Law only emerged later in 1998, which marks the 40th anniversary of the New York Convention of 1958. This anniversary served as a catalyst that shifted the agenda from a mere celebration to a more introspective discussion on how to improve international arbitration as a whole. One of the chairs for Working Group II at the time, V. V. Veeder, remarked that an area worth improving is the absence of an international legal framework for enforcing international interim awards. He asserted that this absence undermines the efficacy of an effective justice system in international business. He later

concluded that the optimal solution would be enacting a supplementary convention to the New York Convention of 1958, which would address the issue of courts' enforcement of arbitral tribunals' interim awards. This deliberation from the Working Group birthed the additional sub-sections of Article 17 that clarified the grounds for tribunals to issue interim awards and how courts are to enforce them (Castello, 2012).

Provisions regarding the recognition and enforcement of interim awards are now found in the 2006 amendments of the Model Law, particularly in Articles 17H and 17I. Article 17H of the Model Law stipulates that an interim measure issued by an arbitral tribunal is binding and can be enforced by a competent court, regardless of the country in which it was issued. Article 17I subsequently serves as grounds for refusing recognition or enforcement. The incorporation of Articles 17H and 17I primarily served two purposes: Firstly, it reassured courts that interim measures were sufficiently defined and, therefore, merited enforcement. Secondly, it aimed to encourage countries' arbitration laws to adopt of follow the provisions laid out in the newly amended Model Law, facilitating the aforementioned enforcement mechanism. Though the amendment was somewhat successful in fulfilling these purposes, it is important to bear in mind that, at the time of this writing, only 46 countries have adopted the 2006 amendments out of the total 91 countries that have adopted the Model Law (UNCITRAL, 2024).

2. Enforcement under the HKAO

Hong Kong was one of the first jurisdictions to adopt the Model Law and permit the enforcement of interim awards under its national arbitration law. Regarding the enforcement of interim awards, Section 43 of the HKAO establishes that Article 17H of the Model Law is, in effect, substituted with Section 61 of the HKAO. Section 61 of the HKAO stipulates that an order or direction made by an arbitral tribunal in relation to arbitral proceedings, whether in or outside Hong Kong, has the same effect and is enforceable in the same manner as an order or direction of the Court, subject to the leave of the Court.

It is important to recognize the distinction of how "interim awards" is perceived between Article 17H of the Model Law and Section 61 of the HKAO. Although the HKAO does not explicitly contain a definition of what constitutes an "award," the enforcement mechanism in the HKAO does not consider orders pertaining to procedural matters as "awards" (Dymond, 2024). This does not mean that the concept of "interim awards" is absent in the HKAO framework. Instead, Section 71 of the HKAO mentions that the tribunal can issue multiple awards at different times, addressing different aspects of the matters to be determined. This suggests that partial and interim awards do exist within the HKAO framework, albeit in a narrower context.

To further understand the enforcement of interim awards in Hong Kong, we can look at *GE Transportation v. A-Power* (2014). The dispute centered around a contract for manufacturing gearboxes used in wind turbines. In it, GE Transportation held the rights of the vendor under a purchase agreement and was provided a guarantee by A-Power. When A-Power defaulted, arbitration was initiated through the Hong Kong International Arbitration Chamber ("HKIAC"), which resulted in an award exceeding $361 million in their favor. More importantly in the context of this research, the tribunal ordered an interim order to freeze a portion of A-Power's assets up to a total of USD 323 million to safeguard future awards. This order was then applied to the High Court of Hong Kong for leave in order to enforce the interim order pursuant to Section 61 of the HKAO. The court subsequently granted leave, enforcing the award in the process.

Aside from the aforementioned provisions, Hong Kong also facilitates interim awards enforcement with awards that are rendered in mainland China. In 2019, Hong Kong established the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the

Hong Kong Special Administrative Region (the "Arrangement"). The Arrangement allows for arbitral proceedings in Hong Kong to enforce its interim awards to courts in Mainland China, and vice-versa. However, this mechanism is only available to a select number of arbitral institutions, such as the HKIAC, the CIETAC, and the ICC. For an example of how the Arrangement works in practice, in 2018 the Beijing Arbitration Commission administered a dispute regarding an investment agreement between two companies registered in Hong Kong, and a company registered outside of China (Respondek, 2023). The claimant filed a request to preserve assets and evidence, to which an emergency freezing order was granted by the arbitrator. The order was submitted to the Hong Kong High Court in accordance with Hong Kong laws and regulations and was subsequently enforced (Reyes, 2017).

3. Enforcement under the SIAA

Similar to the Model Law and the HKAO, the SIAA also allows the enforcement of interim awards. Section 27(1) of the SIAA establishes that the definition of an arbitral "award" includes any order or direction issued by an arbitral tribunal during the course of the arbitration proceedings. This broad definition allows for the enforcement of interim awards as it views the interim orders given by arbitral tribunals as "awards" in the same vein as final awards. Moreover, Section 12(6) of the SIAA stipulates that all orders or directions issued by an arbitral tribunal during an arbitration proceeding are enforceable in the manner of a court order provided that such order is authorized by the General Division of the High Court.

In practice, the recognition and the grounds for setting aside an interim award under the SIAA can be seen in *CVG v. CVH* (2022). A franchise disagreement arose between a company, CVG, and its Singapore franchisee, CVH. Their franchise agreement, outlined in four contracts, specified that any disputes would be settled through arbitration in Pennsylvania, USA, under the rules of the International Centre for Dispute Resolution (ICDR). In 2020, CVG filed for bankruptcy protection, which led to an acquisition from another company that installed new executives in the company. Later in 2022, CVG sent CVH a notice of default, threatening to default CVH for alleged breaches of the franchise agreements. In response, CVH terminated the franchise agreements, alleging that CVG had done material breaches. Subsequently, a dispute arose, and CVG initiated arbitration proceedings under the agreements. In light of the circumstances, the emergency arbitrator issued an interim award that restored the parties' status quo to the position prior to the termination.

Following the favorable ruling, CVG then attempted to enforce the interim award in Singapore. During the same time, CVH also attempted to set it aside on the grounds that Singapore is unable to enforce foreign interim awards from emergency arbitrators. CVH sought to rely on the ambiguity of the term "arbitral award" in the SIAA and argued it excludes foreign interim awards issued by emergency arbitrators. This submission was brought up because Part 3 of the SIAA, which addresses the enforcement of foreign arbitral awards, was not covered in the 2012 amendments to the SIAA that broadened the definition of "arbitral tribunal" to include an emergency arbitrator. In line with this, CVH would then argue that Part 3 of the SIAA should not be applied to foreign interim awards on the grounds that it was not the original legislative purpose. This submission was then denied by Justice Chua Lee Ming. According to Justice Chua, a purposive interpretation of Section 27(1) of the SIAA indicated that the term "arbitral award" in the SIAA included foreign interim awards issued by emergency arbitrators. As a result, the SIAA is deemed to allow for the enforcement of interim awards issued by foreign emergency arbitrators.

4. Strengthening the Indonesian Arbitration Law

Hong Kong and Singapore are—for very good reasons—often at the forefront of the arbitration scene in Asia and globally. Among these reasons is their pro-arbitration

policies, including the ability to enforce interim awards, which boost their reputation as a "safe seat" among other jurisdictions. The arbitration-friendly legal framework of both countries has facilitated increased rates of international business. Thanks to this arbitration-friendly framework, both countries benefited from the revenue generated from the fees associated with arbitration and from the ease of maintaining close ties with trade partners (MacArthur, 2017). If Indonesia wishes to emulate their success—as is evident in Indonesia's National Medium-Term Development Plan 2020-2024—it is imperative to consider improving its arbitration regulatory framework, including adding provisions for enforcing interim awards in international arbitration.

The amendments needed to improve the Indonesian Arbitration Law in regards to the enforcement of interim awards may not have to be a verbatim adoption of Articles 17H and 17I of the Model Law. As apparent in Hong Kong and Singapore, it is possible to incorporate provisions similar to the Model Law into the national arbitration laws by considering the country's legal system and culture. What is important now is simply to have a provision in place to fill this uncertainty about the enforcement of interim awards in the current Indonesian Arbitration Law. Further research may explore what this solution to enforcing interim awards might look like.

At this time, the National Medium-Term Development Plan 2020-2024 is nearing its end, as the 2024 Indonesian election signals a change in the governmental cabinet and policymakers. This presents an opportune moment to reflect and identify areas for improvement in the next national development plan. As arbitration increasingly becomes the forum of choice for resolving disputes in international business, national efforts to improve the ease of doing business, such as those in Indonesia, would be incomplete without adequate reforms to arbitration law.

CONCLUSION

The Indonesian Arbitration Law is silent regarding the enforcement of interim awards. This lack of provision creates uncertainty regarding the enforceability of interim awards. While there is minimal legal basis for such enforcement, in practice, they are deemed unenforceable by the Central Jakarta District Court in *PT APM v. Astro*, by requiring finality to be a necessary element for an award to be recognized.

In contrast, the Model Law provides a mechanism for courts to enforce interim awards through Articles 17H and 17I, which the Working Group drafted to ensure the efficacy of an effective justice system in international business transactions. This mechanism was subsequently adopted similarly by the leading arbitration seats in Asia in their arbitration regulations, namely the HKAO and the SIAA. Hong Kong and Singapore provide a legal basis to enforce interim awards and, in line with the aforementioned provisions, allow it in practice.

Given Hong Kong and Singapore's success in marketing themselves as arbitration hubs and the benefits they have derived from this association, it is recommended that Indonesia consider rectifying its uncertainty regarding the enforcement of interim awards in its arbitration law. Future research regarding what solution can be implemented in Indonesia for interim awards enforcement may provide more clarity on this issue..

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