

24 Years After the Arbitration Act: Supreme Court Regulation Advancing Indonesia's Arbitration Landscape

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On 12 October 2023, Supreme Court Regulation No. 3 of 2023 on the Procedures for the Court's Appointment of Arbitrators, the Right of Refusal, and the Examination of Applications for the Execution and Annulment of Arbitral Awards ("**SCR 2023**") was promulgated. This relatively new regulation was introduced 24 years after the enactment of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution ("**Arbitration Act**"). This article will briefly highlight the core features of SCR 2023, which complements the legislative framework on arbitration in Indonesia.

Refined Definition of Public Order

Prior to SCR 2023, under the Supreme Court Regulation No. 1 of 1990 on the Procedures for the Enforcement of Foreign Arbitral Awards ("**SCR 1990**"), public order was defined as a set of fundamental pillars of the entire legal system and society in Indonesia.¹ In comparison, SCR 2023 now describes public order as everything that constitutes the fundamental pillars necessary for the functioning of the legal system, economic system, and social-cultural system of Indonesia's society and nation ("**Refined Concept**").²

SCR 2023 builds upon the foundation set by SCR 1990 by offering a more comprehensive definition, which also includes the economic and socio-cultural systems that are integral to Indonesia's society and nationhood. This change reflects a more holistic and integrated understanding of public order, emphasising its interconnectedness with governance and social systems. This development ensures the credibility of arbitral award enforcement in order to protect the greater public interest. Nevertheless, the implementation of the Refined Concept may be subject to judges' interpretations and may vary depending on the details and context of each case.

Procedural Clarity for Interim Measures on Security Seizure in Arbitration

In fact, the Arbitration Act allows an arbitral tribunal — upon a party's request — to issue an arbitral

interim measure, e.g., a security attachment order ("**SAO**").³ However, there was no procedural legal framework regulation the implementation of SAOs.

With respect to the above, SCR 2023 provides the procedural guidance on SAOs rendered in an arbitration proceeding.⁴ Under this framework, the arbitral tribunal must register any SAO it issues with the courts. If the SAO has been registered, the party applying for the attachment may request the court to enforce the SAO.

Further, 2 (two) days after the enforcement of the SAO, the court must deliver the minutes of the SAO's enforcement to the arbitral tribunal or the relevant arbitral institution. In light of this, SCR 2023 provides that the procedures for attachments must follow the applicable civil procedural law. This means that the enforcement of arbitral SAOs will be handled in the same manner as security attachments ordered by the court.

According to our field research on the matter at hand, there have not been arbitral SAOs registered in the district court in Central Jakarta, South Jakarta, West Jakarta, and East Jakarta. In addition, the court staff confirmed that official guidance has yet to be issued by the Supreme Court to provide further technical aspects of the registration and enforcement of arbitral SAOs. We remain attentive to any developments and will update accordingly.

¹ Article 4(2) of SCR 1990.

² Article 1(9) of SCR 2023.

³ Article 32(1) of the Arbitration Act.

⁴ Articles 29(1) – 29(6) of SCR 2023.

Adjournment of the Enforcement During Ongoing Arbitral Annulment Proceedings

Currently, if a party submits an application to have an arbitral award annulled, the court must delay the enforcement of the arbitral award challenged by the annulment applicant.⁵ The court will terminate the adjournment and then recommence enforcement of the arbitral award if the court has ruled — in the first instance — that the annulment application has been refused or is inadmissible.

Removal of Arbitrator/Arbitral Institutions from the Arbitral Award Annulment Proceedings

Prior to SCR 2023, it was common practice to involve an arbitral institution related to a particular arbitration proceeding as a litigant in arbitral annulment proceedings. This is reflected in the following court judgments: (i) Court Judgment No. 3/Pdt.Sus-Arb/2023/PN Bnt; (ii) Court Judgment No. 299/Pdt.G/Arb/2017/PN Jkt Tim; and (iii) Court Judgment No. 531/Pdt.Sus-Arb/2023/Pn Bks.

Currently, SCR 2023 has asserted that arbitrators and/or arbitral institutions are not parties to be involved in the court proceedings on arbitral award annulment.⁶ This recent development is a significant and positive step as it provides legal protection for both arbitrators and arbitral institutions, ensuring that they are not drawn into litigious matters after arbitral awards are rendered.

Applications for Partial Enforcement of An Arbitral Award

SCR 2023 now provides that an enforcement application may be submitted to partially enforce an arbitral award.⁷ This allows a party to seek enforcement of only several chosen parts of an arbitral award.

Generally, there are 2 (two) reasons for partial enforcement of an arbitral award, as follows:

a) An Arbitral Award Has Been Partially Annulled by the Competent Court

Under the Arbitration Act, the competent court may only annul an arbitral award in some parts.⁸ In this circumstance, a party will then have to seek partial enforcement if they intend

to enforce the partially annulled award.

b) Foreseeable Challenge on Enforceability

An arbitral award may be deemed unenforceable in cases of: (i) the absence of a valid written arbitration agreement between the disputing parties; (ii) a dispute that is non-arbitrable due to its non-commercial nature; (iii) a dispute that is not legally open to settlement; or (iv) a violation of public policy or decency.⁹

In light of the above, when it is foreseeable that certain portions of the award may face strong enforceability challenges, an applicant may opt to enforce only the clearly enforceable parts through partial enforcement. This strategic approach minimises delays and avoids the risk of the court's refusal to enforce.

How SCR 2023 Advances Indonesia's Arbitration Landscape

The promulgation of SCR 2023 marks a transformative milestone in Indonesia's arbitration landscape. It refines the public order concept, introduces procedures for enforcing arbitral security attachment orders (SAOs), allows partial enforcement of arbitral awards, and ensures that both arbitrators and arbitral institutions are no longer drawn into arbitral annulment proceedings.

These developments provide greater predictability in arbitration outputs and represent a commitment to enhancing Indonesia's arbitration framework. To fully leverage these changes, businesses should act swiftly in enforcement or annulment proceedings, consider partial enforcement strategies, understand the broader public order concept, and proactively utilise SAOs when applicable. Further, strategic coordination with legal counsel during the drafting of arbitration agreements and the arbitral enforcement is key to maximising outcomes under the advanced arbitration framework.

For more detailed information on arbitration in Indonesia, please refer to Dentons' International Commercial Arbitration (ICA) Toolkit, available at [ICA-Toolkit-Indonesia](#)

⁵ Article 15 of SCR 2023.

⁶ Article 24(6) of SCR 2023.

⁷ Articles 8(2) and 16(3) of SCR 2023.

⁸ Article 72(2) of the Arbitration Act.

⁹ Articles 4, 5, and 62(2) of the Arbitration Act.

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The article above was prepared by Dentons HPRP's lawyers

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