

THE ISSUANCE OF THE SUPREME COURT REGULATION NO. 3 OF 2023: AN ASSESSMENT OF HOW IT WOULD PROMOTE ARBITRATION IN INDONESIA

*Eva Fatimah Fauziah, * Sri Purnama†*

Abstract

*To ensure effectiveness of dispute resolution such as arbitration, underlying laws should be in harmony with international standards and cater the existing development developments. Indonesian arbitration law, the Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution[“**AADR Law**”], has remained the same since 1999 regardless there have been significant developments and evolution of the arbitration practice. Only after more than two decades there is finally an attempt to fill in the gaps existing in the AADR Law. This attempt came from the Supreme Court by issuing the Supreme Court Regulation No. 3 of 2023[“**SCR 3/2023**”]. The regulation provides more clarity regarding the appointment of arbitrators, right of recusal, and the examination of enforcement and annulment of arbitral awards. This article will showcase how these changes may affect the practice of arbitration in Indonesia.*

* Eva Fatimah Fauziah is a Senior Associate and Head of Legal Lab at Anggraeni and Partners, in the practice group of International Arbitration and Litigation. She holds a bachelor’s degree in law from University of Indonesia and Geneva LLM in International Dispute Settlement (MIDS). Email: eva.ff@ap-lawsolution.net.

† Sri Purnama is a Legal Research Analyst at Anggraeni and Partners, Legal Lab Division. Her areas of research are Arbitration and Alternative Dispute Resolutions, Transnational Litigation, and Cyber-Technology and Privacy. She holds a bachelor’s degree in law from Pelita Harapan University. Email: sri.p@ap-lawsolution.net.

I. Introduction

Dispute resolution in legal contexts manifests through litigation and non-litigation methods. Litigation involving judicial intervention results in enforceable judgments but is often criticised for its time-consuming and costly nature, and potential to sour relationships between disputants.¹

Non-litigation, specifically arbitration, offers a more streamlined alternative, empowering parties to tailor the resolution process, including selecting arbitrators and setting proceedings. Its confidentiality safeguards sensitive information and the finality of arbitral awards, making it preferred for business disputes. Recognised and practiced globally, including in Indonesia, arbitration operates under the framework of the Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, which, despite its age, remained largely unchanged for over two decades.² This stagnation contrasts with the dynamic evolution of global arbitration practices, highlighting a disconnect between the AADR Law and contemporary needs.

Whilst outdated, the AADR Law still accommodates the arbitration practice in Indonesia, promoting swift, confidential dispute resolution. However, recent judicial update, particularly the Supreme Court Regulation Number 3 of 2023 on Procedures for the Appointment of Arbitrators by the Court, the Rights of Recusal, Examinations of Request for Enforcement, and the Annulment of Arbitral Awards, aim to encourage ease of doing business to promote national economy growth. SCR 3/2023 addresses procedural gaps in the AADR Law, serving as both a complement

¹ *Advantages and Disadvantages of Litigation: A Quick Guide*, ROBERTSONS SOLICITORS (Feb. 14, 2022), <https://robsols.co.uk/advantages-and-disadvantages-of-litigation-a-quick-guide/>.

² Constitutional Court Judgment Number 15/PUU-XII/2014 (Indonesia).

and a procedural guide,³ thus marking a significant step towards aligning Indonesian arbitration with modern standards.

This article analyses SCR 3/2023's impact on arbitration practice and law enforcement in Indonesia, examining its role in facilitating the adoption of contemporary arbitration measures within the legal framework.

II. Historical context and evolution of arbitration in Indonesia

The AADR Law encompasses arbitration and alternatives like conciliation, mediation, and negotiation.⁴ This is in line with the definition of alternative dispute resolution [“ADR”] in the AADR Law, which states that ADR is a mechanism for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside of court by means of consultation, negotiation, mediation, conciliation, or expert assessment. This legislation offers a method for resolving disputes and acts as a preventive mechanism against conflict escalation, thus establishing a critical framework for business and trade arbitration in Indonesia.

A significant milestone in Indonesian arbitration was the adoption of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards through Presidential Decree No. 34 of 1981. This international commitment necessitates a harmonious relationship between national arbitration laws and global standards. Even with that, enforcement of arbitral awards was still full of challenge under the presumption that there was no implementing regulation. Only until the AADR Law was issued that the jurisdiction saw clearer procedure on how (international) arbitral awards could be enforced. However, the AADR Law does not follow the guidance

³ Agus Satory, Hotma P. Sibuea, *Problematika Kedudukan Dan Pengujian Peraturan Mahkamah Agung Secara Materiil Sebagai Peraturan Perundang-Undangan*, 6(1) PAKUAN LAW REVIEW, 1-27 (2020).

⁴ *Alternative Dispute Resolution*, CORNWELL LAW SCHOOL, (date?https://www.law.cornell.edu/wex/alternative_dispute_resolution.

provided in the UNCITRAL Model Law on International Commercial Arbitration, which underscores the AADR Law, although accommodates basic provisions of arbitration found in many jurisdictions, does not follow the dynamic development of arbitration practices and norms in ensuring the efficacy of convening arbitration and enforcing arbitral award within the region.

The lack of clarity and current regulations' inability to accommodate contemporary arbitration's complexities pose challenges, especially in disputes involving international parties. This discrepancy has led to a preference for litigation despite its inherent risks for commercial entities.

Criticism from legal experts, practitioners, and the business community has been vocal about the urgency of updating the AADR Law to align with global arbitration practices.⁵ However, revising the law has been stymied by stakeholders' need for more initiative to push for its inclusion in the 2019-2024 National Legislation Program. This inaction extends from the absence of academic proposals to the failure to submit draft revisions.⁶

In response to the evolving arbitration landscape and the legislative stagnation, there is a pressing need for more granular legal provisions to detail the AADR Law's framework, particularly regarding the judiciary's role in arbitration processes. The AADR Law's broad strokes leave much to the discretion of court proceedings without concrete procedural guidance. Here, under its purview, the Supreme Court stepped in with SCR 3/2023 to offer directives for court engagement in arbitration, attempting to fill the gaps left by the AADR Law's generality. This initiative represents

⁵ Oleh, *UU Arbitrase Diusulkan Untuk Segera Direvisi*, UNIVERSITAS GADJAH MADA (Jan. 15 2022), <https://ugm.ac.id/id/berita/18791-uu-arbitrase-diusulkan-untuk-segera-direvisi/>.

⁶ Rofiq Hidayat, *Jalan Menuju Opsi Merevisi atau Membuat UU Arbitrase Baru*, HUKUM ONLINE (Aug 25, 2020) <https://www.hukumonline.com/berita/a/jalan-menuju-opsi-merevisi-atau-membuat-uu-arbitrase-baru-lt5f44a29432823/>.

a critical step towards modernising Indonesian arbitration and ensuring its functionality within national and international contexts.⁷

III. Analysis and legal implications of SCR 3/2023

A. Key features of SCR 3/2023

Efforts to align Indonesian arbitration law with the global standard to mainly promote investment climate needs to be continued to be pursued. One manifestation of this is the issuance and ratification of SCR 3/2023. Several regulatory aspects mark these adjustments such as below.

i. Appointment of arbitrators and rights of recusal

The standout provision of SCR 3/2023 is its approach to appointing arbitrators when parties disagree. Article 4(1) of SCR 3/2023 allows for the court's involvement, explicitly mandating the Chairman of the Court to appoint arbitrators within 14 days of the request,⁸ should the parties reach an impasse.⁹ This mechanism ensures continuity in the arbitration process, highlighting a pragmatic resolution to deadlock situations over arbitrator selection. The term "Chairman of the Court" encompasses both the District and Religious Courts, allowing for flexibility based on the nature of the dispute. This inclusivity ensures that the Religious Court appropriately manages commercial disputes with Sharia elements, whereas other commercial disputes fall under the District Court's purview.

This provision underscores the importance of judicial intervention in maintaining the integrity of the arbitration process,¹⁰ especially in situations

⁷ Arbitration and Alternative Dispute Resolutions, Law No. 30 of 1999, art. 32(4) (Indonesia) (*hereinafter* "AADR Law").

⁸ SCR 3/2023, Art. 4 (3) (Indonesia).

⁹ SCR 3/2023, Art. 4 (1) (Indonesia).

¹⁰ *Arb-Med-Arb: An Effort to Enhance Amicable Dispute Resolution*, ASSEGAF HAMZAH & PARTNERS (Aug. 3 2022), <https://www.ahp.id/arb-med-arb-an-effort-to-enhance-amicable-dispute-resolution/>.

where party autonomy might otherwise stall proceedings.¹¹ Including a strict timeline for appointing arbitrators further ensures efficiency and reduces the potential for extended disputes.

The regulation also addresses the challenge of arbitrator neutrality, offering a recourse for parties dissatisfied with an appointed arbitrator's potential biases due to personal, financial, or employment relationships. Parties can request the Chairman of the Court to review such concerns, with decisions made within 14 days.¹² This process, mirroring the impartiality expected of judges, is designed to uphold the fairness of the arbitration process, and protect against bias. The finality of the Chairman's decision on such matters, without the avenue for further legal challenge, underscores the regulation's aim to resolve disputes regarding arbitrator impartiality decisively, thus preventing additional conflicts and ensuring the arbitration's progression.¹³

ii. *Differentiation between domestic and international arbitral awards*

The first difference between domestic arbitral awards and international arbitral awards can be observed from a territorial perspective. Here, territoriality is understood to encompass the legal jurisdiction of Indonesia and the areas covered by the diplomatic representation of the Republic of Indonesia in foreign countries. Thus, domestic arbitral awards are defined as those rendered within the territorial bounds of Indonesia, whereas, international arbitral awards are rendered outside these territorial limits.¹⁴

¹¹ C. Chatterjee, *The Reality of Party Autonomy Rule in International Arbitration*, 20(6) JOURNAL OF INTERNATIONAL ARBITRATION 539, 540 (2003).

¹² SCR 3/2023, Art. 4 (4) & (5) (Indonesia).

¹³ SCR 3/2023, Art. 5 (1), (3), & (4) (Indonesia).

¹⁴ Sashia Diandra Anindita & Prita Amalia, *Klasifikasi Putusan Arbitrase Internasional Menurut Hukum Indonesia Ditinjau Dari Hukum Internasional*, 2(1) JURNAL BINA HUKUM (2017); *see*, Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, Article 1(1) (*hereinafter* "New York Convention").

The subsequent distinction relates to the absolute jurisdiction of courts over each arbitral award. The entire process, from the registration of domestic arbitral awards, the submission of requests for the enforcement of domestic arbitral awards, and the filing of applications to annul domestic arbitral awards, falls within the exclusive purview of the District Courts.¹⁵ However, if the award contains elements of Sharia law, all such applications are exclusively handled by the Religious Courts.¹⁶ Meanwhile, both absolute and relative court jurisdictions, apply to the registration of international arbitral awards, the submission of requests for the enforcement of international arbitral awards, and the filing of applications to annul international arbitral awards. These applications fall under the authority of the Central Jakarta District Court.¹⁷ The same applies to international Sharia arbitral awards, which must be managed by the Central Jakarta Religious Court.¹⁸

Legal remedies available in case an application for the enforcement of an arbitral award is denied by the Court also differ. When a domestic arbitration/Sharia arbitral award is rejected by the District Court/Religious Court due to contraventions of the AADR Law and public order, no legal remedies are available to the parties.¹⁹ This contrasts with international arbitration/international Sharia arbitral awards rejected by the Central Jakarta District Court/Central Jakarta Religious Court. In such cases, the last resort legal remedy, cassation to the Supreme Court, can be pursued.²⁰

Another difference is found in the timeframe for the registration of arbitral awards. For national/Sharia national arbitral awards, registration is limited to a maximum of 30 days.²¹ This restriction does not apply to

¹⁵ SCR 3/2023, Art. 2 (1) (Indonesia).

¹⁶ SCR 3/2023, Art. 2 (2) (Indonesia).

¹⁷ SCR 3/2023, Art. 1 (1) (Indonesia).

¹⁸ SCR 3/2023, Art. 1 (2) (Indonesia).

¹⁹ SCR 3/2023, Art. 12 (1) (Indonesia).

²⁰ SCR 3/2023, Art. 16 (6) (Indonesia).

²¹ SCR 3/2023, Art. 6 (1) (Indonesia).

international/Sharia international arbitral awards, for which there is no specific registration timeframe.²² The registration of national/Sharia national arbitral awards by the Court Clerk also has a shorter timeframe compared to international/Sharia international arbitral awards, which is up to 14 days. Different provisions regarding time limits also emerge in the timeframe for filing and granting exequatur for international/Sharia international arbitral awards. Such timeframes are not applicable to national/Sharia national arbitral awards, given the absence of an exequatur procedure for these arbitral awards.

iii. Discussion on the registration process for arbitral awards.

The execution of an arbitral award begins with the registration of the arbitral award. Both the registration of national/Sharia national arbitral award and international/Sharia international arbitral award are mandatorily to be filed in court through the Court Clerk.²³ However, the registration of international arbitration and international Sharia arbitral awards is carried out at the Central Jakarta District Court and the Central Jakarta Religious Court, respectively.²⁴ The registration method for both types of awards is facilitated electronically via the Court Information System.²⁵ This provision is deemed an effort to ensure the registration process can be conducted effectively and efficiently to meet the registration deadline requirements.

The deadline for registration and the execution of registration by the Court Clerk are also emphasised in these provisions. While the registration of national and Sharia national arbitral awards is limited to 30 days from the date the award is made, the registration of international/Sharia international arbitral awards only mandates the Court Clerk to complete registration

²² SCR 3/2023, Art. 7 (7) (Indonesia).

²³ SCR 3/2023, Art. 6 (1) & 7 (1), (2) (Indonesia).

²⁴ SCR 3/2023, Art. 7 (1) (Indonesia).

²⁵ SCR 3/2023, Art. 6 (3) & Art. 7 (5) (Indonesia).

within a maximum of 14 days after the registration files are complete.²⁶ Meanwhile, the execution of registration by the Court Clerk for national/Sharia national arbitral awards is limited to 3 days from the submission of the award.

There is a difference in the consequences for the status of national and international arbitral awards if the registration deadline is exceeded. For national/Sharia national arbitral awards, failure to register results in the award being unregistrable. Thus, compliance with these regulations is crucial through the appointment of professional, credible, and experienced Arbitrators by the Arbitration Institution/Sharia Arbitration Institution, or the Chairman of the District Court, to carry out the registration process responsibly.²⁷ In case of violation of these provisions, accountability can be demanded from the party conducting the registration (arbitrator or their proxy), including the party appointing the arbitrator (national arbitration institution/Sharia national arbitration institution, or the Chairman of the District Court). Moreover, these provisions simultaneously ensure public trust in national and Sharia national arbitration.

Meanwhile, the consequence of an award's status being unregistrable does not apply to international arbitral awards. This regulation implicitly indicates that there is no time limit for registering with the Central Jakarta District Court or the Central Jakarta Religious Court, since the arbitral award is made.

Additionally, the obligation to create a registration deed and sign the end part of the arbitral award by the court clerk and the arbitrator or their agent, is seen as evidence that the submission and registration have been approved and acknowledged by both parties.²⁸ Not just these two parties, but the award to be registered must also be known to the disputing parties before

²⁶ SCR 3/2023, Art. 6 (1) & Art. 7 (4) (Indonesia).

²⁷ AADR Law, 1999, Art. 12 (1) (Indonesia).

²⁸ SCR 3/2023, Art. 6 (2) (Indonesia).

registration. As evidenced, the registration must include documents proving notification of the award to the parties.²⁹ Registration of an arbitral award that has been proven to be delivered to the parties helps the execution of the award to proceed synchronously, thereby, preventing potential conflicts and claims by parties who find out at a belated time. This provision is considered quite technical to ensure transparency and fairness in the arbitration process and to maintain the essence of peaceful dispute resolution.

Technical obligations are also directed to the court clerk to execute the registration within a maximum of 3 days from the delivery of the arbitral award by the arbitrator or their agent.

iv. Examination of requests for the enforcement of arbitral awards

SCR 3/2023 delineates the procedure for enforcing arbitral awards in Indonesia – whether it is national (including Sharia national arbitration) or international (including Sharia international arbitration). For enforcement actions to commence, the relevant arbitral award must first be registered with the appropriate court: domestic awards with the District Court or Religious Court and international awards with the Central Jakarta District Court or Central Jakarta Religious Court.

Enforcement proceedings are initiated when an arbitral award is not complied with voluntarily. In such cases, the aggrieved party may seek an enforcement order for a national award from the Chairman of the District Court, or pursue an *exequatur* from the Supreme Court for international awards facilitated through the Central Jakarta District Court.³⁰ Notably, parties are permitted to request the enforcement of specific portions of an arbitral award,³¹ a flexibility that extends across all categories of arbitration.

²⁹ SCR 3/2023, Art. 6 (6) (Indonesia).

³⁰ SCR 3/2023 Art. 8 (1) and Art. 16 (1) (Indonesia).

³¹ SCR 3/2023, Art. 8 (2) and Art. 16 (2) (Indonesia).

It is worth noting that this is not in line with Article 66 of the AADR Law which regulates that international arbitral awards can only be recognised and implemented in Indonesia after being registered by fulfilling the conditions specified in that article.

Submissions for enforcement are to be made electronically via the court information system. Upon filing, a national arbitration or Sharia national arbitration enforcement order must be communicated to the concerned parties within 30 days, whilst the decision to grant *exequatur* for international awards must be rendered within 14 days; followed by enforcement in line with civil decision procedures.³²

Should an enforcement request be denied – on the grounds of non-compliance with the AADR Law, violation of public order, or because the matter falls outside the purview of commerce³³ – the avenues for legal recourse differ by the type of arbitration. Rejection is final for national and Sharia national arbitral awards, leaving no option for appeal. Conversely, denials of enforcement for international and Sharia international arbitral awards may be contested through a cassation appeal to the Supreme Court, offering a layer of judicial review for these decisions.³⁴

v. Guidelines for annulment of arbitral awards

The annulment of domestic/share arbitral award starts with the registration of an annulment request, which can be submitted electronically or non-electronically. There are specific criteria based on which an award can be annulled, which are:

1. After the award is rendered, a letter or document submitted in evidence is admitted or is declared to have been forged;

³² SCR 3/2023, Art. 23 (Indonesia).

³³ SCR 3/2023, Art. 11 & Art. 21 (Indonesia).

³⁴ SCR 3/2023, Art. 21 (Indonesia).

2. After the award is rendered, documents of a decisive nature hidden by the opposing party are discovered; or
3. The award was rendered as a result of deception by one of the parties to the dispute proceedings.

Only one of these criteria is needed to register for the annulment of an award, supported by a letter or documents proving the alleged ground for annulment.³⁵

The registration for an arbitral award becomes a requirement for filing an annulment. The submission period is limited to 30 days from registration and must be known to the parties within a maximum of 3 days after the application is registered. Registrations that do not meet these requirements will be immediately responded to with a certificate from the Clerk of the Court and a decision by the Chairman of the Court for violating formal requirements.³⁶

The annulment of arbitration/sharia arbitral awards is then submitted to the District Court/Religious Court and undergoes a legal process like civil petition proceedings. Thus, the legal process also adheres to the Civil Procedure Law provisions in the Indonesian Civil Procedure Code, and the *Herzjen Inlandsch Reglement (HIR)*. The order of the petition process is as follows: the *first* hearing with the agenda of reading the petition, the *second* hearing for responses, the *third* for interim decisions (if any), the *fourth* for evidence proceedings, and *finally*, the reading of the decision.³⁷ However, this legal process does not accommodate counterclaims or reconvention, as affirmed in the SCR 3/2023 provisions, which limit the Respondent to only submit a response.³⁸

³⁵ SCR 3/2023 Art. 24 (4) & (5) (Indonesia).

³⁶ SCR 3/2023, Art. 24 (1), (2), & (3) (Indonesia).

³⁷ SCR 3/2023, Art. 26 (2) (Indonesia).

³⁸ SCR 3/2023, Art. 26 (Indonesia).

Parties referred to as the Claimant (*Pemohon*) and Respondent (*Termohon*). There are different legal consequences for each party if they neglect the court summons. If the Applicant does not attend the first hearing despite being properly and reasonably summoned, the application will be declared void.³⁹ Meanwhile, if the Respondent does not attend the first hearing with a valid reason, the hearing will proceed, a final court summons will be made, and they would be informed to attend the second hearing to submit a response.⁴⁰ However, if the Respondent does not attend the second hearing to give a response, they will not be called upon again for the same agenda. Likewise, the evidence proceeding must be fully utilised by both the Applicant and Respondent to submit evidence, as the evidence proceeding is only given one opportunity.⁴¹ The entire process, from the first hearing to the final hearing with the decision reading agenda, must be completed within 30 days.⁴²

If the decision grants the annulment request for arbitration/sharia arbitration, the opposing party can only take the final legal recourse – which is an appeal to the Supreme Court – and must be submitted within a maximum of 14 days from the decision reading, or when the decision is informed to the parties.⁴³ Meanwhile, if the decision is rejected there will be no legal recourse.⁴⁴

The appeal processes are the same as the proceeding civil procedure law for the appeal level, except SCR 3/2023 sets a deadline for each stage. For example, there is a 3-day deadline from recording the appeal for the Court to notify the Respondent Appeal about the appeal, a 7-day deadline from notification for the Respondent Appeal to send a counter-memorandum, and a deadline for examining each party's file completeness. The appeal

³⁹ SCR 3/2023, Art. 26 Para. (3) & HIR, Art. 124 (Indonesia).

⁴⁰ SCR 3/2023, Art. 26 (5) & HIR, Art. 126 (Indonesia).

⁴¹ SCR 3/2023, Art. 26 (6), (7), & (8) (Indonesia).

⁴² SCR 3/2023, Art. 26 (1) (Indonesia).

⁴³ SCR 3/2023, Art. 27 (1) & (4) (Indonesia).

⁴⁴ SCR 3/2023, Art. 27 (3) (Indonesia).

process is determined to be completed within 30 days from the appeal registration, so on the 30th day, according to SCR 3/2023 provisions, the parties will have received the appeal decision.

B. Assessing the impact of SCR No. 3/2023

i. Efficiency in the arbitration process

The introduction of a new arbitration framework undoubtedly brings several changes or developments that refine the previous framework. The presence of both old and new frameworks is considered to enable a more efficient arbitration practice. Yet, the efficiency of a framework is discernible through three factors. First, the extent to which a framework can cover legal processes and practices that may occur. Efficiency is also seen in how a framework can provide guidance down to address technical issues, thereby avoiding disputed practices. Lastly, efficiency is determined by the framework's ability to adapt to changing times and ongoing general practices, especially international practices. All these points are needed to ensure that the underlying regulations are in favour of arbitration.

There are several changes in SCR 3/2023 which occur in various aspects, such as:

1. The appointment of arbitrators and the right of recusal –

When comparing the aspect of arbitrator appointments, the new framework can complement the old, especially when parties do not reach an agreement on the arbitrator's selection.⁴⁵ Under SCR 3/2023, the parties or one of the parties can submit a request to the Chairman of the District Court, to appoint the arbitrator or arbitration panels.⁴⁶ The provisions for the appointment of arbitrators or arbitration panels, and the right of recusal

⁴⁵ AADR Law, 1999, Art. 13 (1) (Indonesia).

⁴⁶ SCR 3/2023, Art. 4 (1), (2), (3) (Indonesia).

in SCR 3/2023, focuses more on court procedures in handling both applications. This indicates that both AADR Law and SCR 3/2023 efficiently serve disputing parties in appointing arbitrators, and the right to challenge. However, when these aspects require court involvement, SCR 3/2023 is undoubtedly more efficient as a guideline.

2. Registration of arbitral award –

Regarding the registration of arbitral awards, SCR 3/2023 provides more detailed provisions, including the registration deadline and the conditions and procedures for registering arbitral awards, along with more specific technical provisions at every stage. One such requirement is the mandatory registration of national/Sharia national arbitral awards along with proof of decision notification to the parties.⁴⁷ This requirement in SCR 3/2023, complementing the old framework in AADR Law, anticipates potential conflicts, thus maintaining the spirit of peaceful dispute resolution. This example is just one representation of how SCR 3/2023 accommodates registration provisions more meticulously than AADR Law. Therefore, the new framework is considered more efficient for filing arbitral award registrations.

3. Applications for the enforcement of arbitral award –

The same efficiency is demonstrated in the aspect of enforcing arbitral awards, where SCR 3/2023 emphasises provisions related to the application process for enforcing arbitral awards in court, including deadlines for each stage. This indicates that the new framework is a more detailed complement to the old framework. For instance, SCR 3/2023 provides for the potential of simultaneous applications for the enforcement of national/Sharia national arbitral awards and the annulment of such awards, an aspect not addressed by AADR Law.

⁴⁷ SCR 3/2023, Art. 6 (6) (Indonesia).

4. Applications for the annulment of arbitral award –

The annulment of arbitral awards also provides a more detailed framework for the court and disputing parties, from the process of registering applications for annulment, examining applications, legal remedies against court decisions from applications, and deadlines for several stages. SCR 3/2023 governs these stages in four comprehensive articles, compared to AADR Law's three articles that merely outline criteria for awards that can be annulled and general regulations on the application for annulment. Given that applications for the annulment of arbitral awards are directed to the Chairman of the District Court,⁴⁸ the procedural law for rendering decisions accordingly matches court procedures. Therefore, in this regard, the SCR 3/2023 framework is far more efficient to implement.

For all stages – the registration of arbitral awards, applications for the enforcement of awards, and applications for annulment – SCR 3/2023 provides new directives for electronic submissions using the court information system (SIP). This adaptation of the arbitration law with the times, demanding acceleration and technological progress, aligns with global arbitration practices. The implementation of electronic services also aims to facilitate parties' submissions to the court, unrestricted by territory and time (if they comply with regulations).

From the comparison of the two frameworks, it can be concluded that SCR 3/2023 is more efficient to implement once the three aspects of an efficient framework are met. Although courts do not have jurisdiction to adjudicate in arbitration dispute resolutions, post-award stages such as the registration of arbitral awards, involuntary applications for enforcement, and annulment of awards still require court involvement to command, decide,

⁴⁸ AADR Law, 1999, Art. 72 (1) (Indonesia).

and issue orders. Thus, the Supreme Court's provisions in the form of SCR 3/2023 offer higher implementation efficiency.

ii. Clarity in legal standards and procedures

The detailed provisions and framework outlined in SCR 3/2023 provide clarity on legal standards and procedures in the current practice of arbitration law.

1. New definition of public order –

From a legal standards perspective, clarity is found in the delineation of the scope of public order, which serves as a reference for the applicability of an arbitral award in Indonesia. Before enacting SCR 3/2023, there was no definition related to public order as a benchmark standard.⁴⁹ In the AADR Law, public order lacked a formal definition, making its boundaries somewhat subjective.⁵⁰ Although the definition of public order is still quite broad, SCR 3/2023 attempts to provide definition which explains that public order comprises fundamental principles essential to the legal, economic, and socio-cultural system.

2. Specific procedures regarding sharia arbitration –

Recognition of the Sharia legal system, especially Sharia arbitration, is also included in the new framework. The AADR Law, as the older arbitration framework, did not differentiate the treatment of such arbitration from the

⁴⁹ Prior to SCR 3/2023, the definition of public order was referred to in Supreme Court Regulation Number 1 of 1990 on the Procedures for Enforcement of Foreign Arbitral Awards (SCR 1/1990). Art. 4 Para. (2) of SCR 1/1990 stated that an exequatur would not be granted if the foreign arbitral decision was in clear contradiction with the fundamental principles of the entire legal and societal system in Indonesia, implying a broad and foundational scope of public order. SCR 3/2023 provides a different definition of public order which encompasses fundamental principles necessary for the functioning of the legal, economic, and socio-cultural systems of the Indonesian nation and society (Indonesia).

⁵⁰ AADR Law, 1999, Art. 1 (Indonesia).

conventional arbitration, despite the National Sharia Arbitration Board (Basyarnas), formerly known as the Arbitration Board of the Indonesian Ulema Council (BAMUI), being established in October 1993;⁵¹ six years prior to the enactment of the AADR Law. As a result, the practice of Sharia arbitration has come to a new beginning as the SCR 3/2023 is issued. In this new framework, Sharia arbitration is given a specific footing in arbitration dispute resolution, specifically within the scope of Sharia trade or business.

3. Affirmation of registration timeframe –

This new framework also clarifies legal procedures as seen from the provisions regarding the absence of a valid timeframe for the submission and registration of international arbitral awards. In the AADR Law, this was not explicitly affirmed. Provisions on the registration of arbitral awards were merely stated as a requirement for filing applications for enforcement and annulment of international arbitral awards, without a timeframe within which the awards must be registered. In contrast, SCR 3/2023 mentions the timeframe for arbitral award registration, indicating that the registration of international arbitral awards does not follow the timeframe for national arbitral award registration.⁵²

4. Clarification on some procedures –

Another clarity is also achieved in the provisions for the appointment process of arbitrators and the right to challenge, registration of arbitral awards, applications for the enforcement of arbitral awards, and applications for the annulment of arbitral awards. From the moment of filing, the detailed explanation regarding the order of procedures, the parties involved, the applicable timeframes, and the legal remedies to respond to

⁵¹ Basyarnas-MUI, *Majelis Ulama Indonesia*, (March 22, 2023) <https://basyarnas-mui.org/sejarah/>.

⁵² SCR 3/2023, Art. 7(7) (Indonesia).

court decisions is meticulously outlined. An example of procedural clarity in SCR 3/2023 not found in the AADR Law is the process for filing for exequatur. In the new arbitration framework, the process for applying for exequatur is detailed from the submission to the Central Jakarta District Court/Central Jakarta Religious Court, to the Supreme Court granting exequatur, and up to the execution of international/Sharia international arbitral awards.⁵³ A detailed process is also found in the provisions for examining applications for annulment of arbitral awards and legal remedies against the granting of applications for annulment of arbitral awards not included in the AADR Law. These provisions regulate the stages of trial examination, courtroom procedures, and detailed legal provisions for filing legal remedies, covering various potential scenarios and time limits for these stages.⁵⁴

iii. Impact on enforceability of arbitral award

The impact of enforcing an arbitral award varies depending on the type of application submitted by one of the disputing parties; whether it is an application for the enforcement of the arbitral award or an application for the annulment of the arbitral award.

If an arbitral award is upheld in an application for the enforcement of a national/Sharia national arbitral award, this leads to the possibility of legal remedies being filed by the party objecting to the order to enforce the arbitral award from the Chairman of the District Court/Chairman of the Religious Court. The prohibition on taking legal action against the order to enforce the arbitral award is not regulated in SCR 3/2023. Therefore, as far as SCR 3/2023 is concerned, there is no prohibition on taking legal remedies by the party objecting to such an order. The same impact applies to the enforcement of international/Sharia international arbitral awards in the application for the enforcement of the arbitral award. However, in this

⁵³ SCR 3/2023, Art. 18 (Indonesia).

⁵⁴ SCR 3/2023, Chapter VII (Indonesia).

case, the legal remedies that can be taken by the party objecting to the enforcement of the arbitral award are limited to the cassation appeal to the Supreme Court, as the level of legal remedies available in the provisions of international/Sharia international arbitration is only the cassation level.⁵⁵

In the application for the annulment of an arbitral award, an arbitral award upheld by the District Court/Religious Court results in no legal remedies.⁵⁶ This applies to both national/Sharia national arbitral awards and international/Sharia international arbitral awards.

C. Legal implications of SCR 3/2023

i. Implications of SCR 3/2023 for the enforcement of arbitral awards

The legal basis for the execution of an arbitral award is that the arbitral award does not conflict with the morality and/or public order, and is within the scope of commerce.⁵⁷ In this context, the Chairman of the Court is authorised to assess whether an arbitral award meets these criteria. Such assessment action in SCR 3/2023 is only found in the chapter regulating the enforcement of arbitral awards.⁵⁸ This means that the Chairman of the Court is only authorised to evaluate arbitral award when there is an application for exequatur, if the arbitral award is not voluntarily implemented. The result is in the form of exequatur allowing parties to enforce the award or a refusal to enforce the arbitral award due to non-compliance with morality/public order or arbitrability of the substance.

⁵⁵ SCR 3/2023, Art. 21 (Indonesia).

⁵⁶ SCR 3/2023, Art. 27 (3) (Indonesia).

⁵⁷ AADR Law, AADR Law Art. 5 (1) requires that the scope of disputes that can be resolved through arbitration are only trade disputes along with conditions related to the rights controlled by the parties to the dispute. Art. 5 (2) requires that disputes which according to statutory regulations cannot be reconciled cannot be resolved through arbitration (Indonesia).

⁵⁸ SCR 3/2023, Art. 9 & Art. 17 (Indonesia).

ii. Revised grounds for annulment

The reasons for granting an arbitral award annulment are limited to the elements in Article 70 of the AADR Law.⁵⁹ In practice, however, there are evidence of parties using reasons for the annulment of arbitral awards not solely from Article 70 of the AADR Law.⁶⁰ In practice, courts have granted annulments of arbitral awards based on three types of reasons: applications that utilise Article 70, applications that use reasons beyond Article 70, and a combination of both.⁶¹ On this note, the courts have also issued decisions considering various elements within and outside of Article 70 of the AADR Law as a basis for reasons for annulment,⁶² even though the article specifically mandates that the reasons for annulment only need to satisfy one of the three elements.⁶³

⁵⁹ AADR Law, 1999, Art. 70 stipulates that for an arbitral award to be annulled, one of the following elements must be met: a document submitted during the examination is recognized as counterfeit or declared counterfeit after the award is rendered; a document that was concealed by the opposing party and is decisive is discovered after the award is made; or the award is based on the deceit of one party during the dispute examination (Indonesia).

⁶⁰ Setyawati Fitrianggraeni, Eva Fatimah Fauziah, and Sri Purnama, *Dealing with Unsatisfactory Arbitral Awards: Observing the Grounds of Annulment of Arbitral Awards in Indonesia*, 40(6) JOURNAL OF INTERNATIONAL ARBITRATION 747, (2023).

⁶¹ The data is a record of court decisions that consider elements in Article 70 AADR Law, reasons outside Article 70 AADR Law, and a combination of the two in the 2019-2022 period. There are 68% of decisions that consider elements in Article 70 AADR Law, 24% of decisions that consider reasons outside Article 70 AADR Law, and 8% of decisions that consider a combination of both.

⁶² The data is a record of court decisions which consider several elements at once in Art. 70 AADR Law during the 2019-2022 period. As many as 3% of the total annulment decisions consider Art. 70(a), 9% of the total decisions consider Art. 70(b), 37% of the total decisions consider Art. 70(c), and 51% of the total decisions consider various elements simultaneously in Art. 70; *see, Id.*, 747-748.

⁶³ While courts are indeed obligated to address the grounds presented by the parties for annulment, the overarching legal framework mandates that any ground for annulment must strictly conform to the stipulations of Article 70. This obligation reflects the judiciary's responsibility to interpret the law based on the evidence and arguments presented and to ensure legal decisions align with established legal standards. However, in practice, judges have sometimes granted annulments based on grounds beyond those

The criteria for the reasons for the annulment of arbitral awards have undergone changes since SCR 3/2023. In SCR 3/2023, an arbitral award submitted for annulment must contain at least one of the three elements identical to points a, b, and c in Article 70 of the AADR Law.⁶⁴

This provision serves as a more concrete guideline that must be adhered to by judges when considering the annulment of an arbitral award. The addition of the requirement ‘containing one of the elements’ in the article thus closes the option for judges to apply considerations to a combination of various reasons in Article 24 paragraph (4) of SCR 3/2023 or the option to apply considerations to reasons beyond that article.

iii. Procedural changes in SCR 3/2023 and their significance

The amended procedural provisions in SCR 3/2023 certainly introduce new legal implications. First, it appears that legal provisions related to filings or applications to the Court under the AADR Law have the potential to be superseded, or at the very least, be a trigger for the AADR Law to be amended.⁶⁵ As explained in the sub-section “*Key points of SCR 3/2023*,” these provisions bring forth more detailed legal procedures than those found in the AADR Law. SCR 3/2023 essentially acts as an implementing

specified in Article 70, reflecting a broader judicial assessment of each case’s circumstances. While intended to ensure equitable justice, this approach underscores the need for more straightforward guidelines to prevent discrepancies in the application of the law.

⁶⁴ SCR 3/2023, Art. 24 (4) (Indonesia).

⁶⁵ While SCR 3/2023 introduces significant procedural updates, it cannot supersede the AADR Law, given the hierarchy of laws where statutory laws hold higher authority over judicial regulations, *see*, Law Number 12 of 2012 in conjunction with Law Number 15 of 2019 in conjunction with Law Number 13 of 2022 on Lawmaking. SCR 3/2023 primarily serves as guidelines for judicial practice rather than amending statutory provisions. However, its enactment highlights the urgency and potential necessity for revising the outdated AADR Law to resolve existing ambiguities and align with contemporary arbitration practices (Indonesia).

regulation of the AADR Law, though not explicitly mentioned, capable of addressing the gaps and shortcomings within the AADR Law.

This makes the provisions of SCR 3/2023 more likely to be chosen as a reference, both for parties needing the court's role in deciding the appointment of arbitrators, the right to challenge, and arbitral awards, and as a guideline for conducting their legal processes. In this context, the AADR Law obviously remains obligatory to follow outside of provisions related to the Court, such as those concerning arbitration requirements, applicable procedural law in arbitration processes, opinions and arbitral awards, the termination of arbitrators' duties, and provisions about costs.

Among the many detailed procedural provisions explained in SCR 3/2023, there is one concerning the granting of exequatur to international arbitral awards, which marks a change from the exequatur provisions in the AADR Law. This change indicates that SCR 3/2023 still has weaknesses, namely the presence of provisions that conflict with higher provisions (AADR Law). This carries the potential impact on SCR 3/2023 itself that might warrant an evaluation of this provision, suggesting a need for revision to avoid conflicts with the AADR Law, and to provide procedural provisions that are in alignment.

However, despite its shortcomings, SCR 3/2023 offers greater legal certainty that safeguards the interests of the parties to execute arbitral awards as soon as possible, especially when considering the nature of SCR that directly affects how the courts operate and use them as judges' guidelines. The detailed order of procedural stages clearly stated parties interested in a particular stage, and limited timeframes are aspects so clearly regulated in these provisions, preventing multiple interpretations and able to form a system of norms that do not conflict with other norms.⁶⁶

⁶⁶ R. Tony Prayogo, *The Implementation Of Legal Certainty Principle In Supreme Court Regulation Number 1 Of 2011 On Material Review Rights And In Constitutional Court Regulation Number*

Moreover, SCR 3/2023 removes arbitral institutions from parties when there are annulment requests, and it is different from the practice and not regulated in the AADR Law. Simply, SCR 3/2023 brings clarity of regulation that leads to legal certainty, thus also providing certainty for the parties to accurately determine their next steps.

IV. Case studies and practical applications

To ascertain the actual effectiveness of SCR 3/2023 provisions in dispute resolution efforts, it is imperative to examine a case study that applies these provisions. Regrettably, no arbitration case has emerged following the enactment of SCR 3/2023 on October 17, 2023. The closest cases are those decided after the SCR 3/2023 enactment date, which had already undergone trial processes before the SCR 3/2023 enactment.

One such instance is the Supreme Court Decision Number 1212 B/Pdt.Sus/Arbt/2023, rendered on November 13, 2023, which issued a judgment on the appeal in the matter of *PT Asuransi Jasa Indonesia v. PT Lintas Teknologi Indonesia and Anr.*⁶⁷ In summary, this appeal was lodged against the decision of the Central Jakarta District Court Number 202/Pdt.Sus-Arb/2023/PN Jkt. Pst, which rejected the application for the annulment of an arbitral award by the applicant. It is noteworthy that in this case, the appellant was previously positioned as the applicant for the annulment of the arbitral award against the arbitral award Number 45072/IX/ARB-BANI/2022 issued by the Indonesian National Arbitration Board (BANI).

06/Pmk/2005 On Guidelines For The Hearing In Judicial Review, 13(2) JURNAL LEGISLASI INDONESIA 190, 191-202 (2016).

⁶⁷ PT Asuransi Jasa Indonesia v. PT Lintas Teknologi Indonesia & Ors., Putusan Mahkamah Agung Nomor 1212 B/Pdt.Sus-Arbt/2023, Direktori Putusan Mahkamah Agung Republik Indonesia, (Nov. 11, 2023) <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaecca00be8c86885b231335303236.html>.

The judges stated the appeal must consider the provisions of Article 72 paragraph (1) and paragraph (4) of the AADR Law along with the explanation of Article 72 paragraph (4) of the AADR Law. The requirement for filing an appeal is most clearly present in the explanation of Article 72 paragraph (4) of the AADR Law, where an appeal can only be made against the annulment of the arbitral award referred to in Article 70 of the AADR Law.⁶⁸

This judicial consideration also constitutes the implementation of the provisions on the rejection of the application for the annulment of the arbitral award. In SCR 2023, the consequences of rejecting the application for the annulment of an arbitral award are explicitly stated in Article 27 paragraph (3) of SCR 3/2023, which clarifies that no legal remedy can be pursued against the rejection of an application for the annulment of an arbitration/sharia arbitral award by the Court. Therefore, for parties that still file an appeal, such action creates a formal defect in the application, making the appeal inadmissible. This consideration led the judges in the case to declare the appeal inadmissible or NO (*Niet Ontvankelijke Verklaard*).

Through this illustration, it can be concluded that the regulations in SCR 3/2023 fills in the gap on dealing with disputes arising post-arbitral award. The technical procedural provisions on various aspects of filing related to arbitral awards, as clearly stipulated in SCR 3/2023, indeed assist disputing parties in determining the legal steps that can be taken to avoid potential court disputes that could result in unfavourable judgments against them.

V. Critique and recommendations

Critical points of this regulation also emerge in several aspects, especially the inconsistencies that may pose issues when applied. First, the application

⁶⁸ AADR Law, 1999, Art: 70 emphasizes that the conditions for cancelling an arbitral award must meet the elements of a fake document, concealment of documents, or fraud in the examination (Indonesia).

for the exequatur of international arbitration/international sharia arbitral awards necessitates attention from legal practitioners, particularly the entire judiciary under the Supreme Court involved in the registration process and the granting of the exequatur. The positioning of the exequatur as an order to enforce an arbitral award executed without the voluntary compliance of one of the disputing parties represents a new norm that does not clarify and is even inconsistent with the exequatur provisions in the AADR Law. This requires rectification by the SCR drafters to avoid confusion for those engaged in the resolution of international arbitration/international sharia arbitration disputes. Besides preventing such issues, reconsidering this exequatur provision also provides clarity for parties to commence the enforcement of international arbitration/international sharia arbitral awards. Such efforts also need to be enforced by the SCR drafters to ensure judicial practice in judicial institutions complies with the laws applicable in Indonesia.

SCR 3/2023 has tightened up the grounds for arbitral award annulment that must be based on one of the three existing elements. This aims to further close the potential for the submission and granting of annulment applications based on conditions outside those annulment requirements. This provision can also be used as a reference for lawyers in providing advice to clients to focus on the three reasons for arbitral award annulment that stated in SCR 3/2023. Thus, the enforcement of SCR 3/2023 becomes more comprehensive and capable of suppressing the use of annulment requirements that do not comply with the latest provisions.

VI. Conclusion

As a framework focused on providing technical procedural provisions, SCR 3/2023 has enhanced clarity in the process and enforcement of arbitral awards for various parties. This framework sufficiently and comprehensively provides provisions that guide the parties when the appointment of arbitrators faces a deadlock, including the right to refuse,

directing and clarifying the procedures for registration, enforcement, and annulment of arbitral awards, offering a significant procedural difference between domestic and international arbitral awards, and effectively including sharia arbitration as a key player in arbitration practice in Indonesia.

The introduction of SCR 3/2023 has filled a gap within the main arbitration law regulation, the AADR Law. This signifies that SCR 3/2023 is a part of important development in Indonesian arbitration, striving to align with global arbitration advancements. Simultaneously, SCR 3/2023 also further promotes the effectiveness and efficiency of arbitration as an alternative dispute resolution method. The potential for arbitration as a favoured and considered dispute resolution method is highly likely to increase, hoping that the resolution of disputes peacefully will become more widespread.