

Recognition and Enforcement of Foreign Titles. Interim measures. Debtor Insolvency - Indonesia

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1. What information can you find out about a judgment debtor before and during the recognition and enforcement proceedings?

Company information in Indonesia can be obtained on the website of the Directorate General of Administration of General Laws (*Administrasi Hukum Umum* or “**AHU**”). Their website can be accessed through their online platform, called AHU Online, via <https://ahu.co.id/>. AHU contains general information (“**General Profile**”) of companies, such as company name, their registered address, and their contact number. This information is provided for free.

Furthermore, information on previous local cases of a debtor can be looked up at the Directory of Decisions/Verdicts of the Supreme Court of Indonesia (*Mahkamah Agung* or “**MA**”) accessible online at <https://putusan3.mahkamahagung.go.id/>. If the Debtor is known to be involved in pending local litigation, information on the case can be found in the Public Service Information System (*Sistem Informasi Pelayanan Publik* or “**SIPP**”) accessible via the website at <http://sipp.pn-jakartapusat.go.id/>.

However, any data regarding a company’s or an Individual’s private assets is not available nor accessible via the public means. Practically, most creditors seeking recompense from an Indonesian debtor should procure private investigator to identify and assess the debtor’s assets, before submitting an application for asset confiscation/seizure to the court.

2. Do you need to have a foreign judgment recognized before enforcement steps are taken or interim measures are obtained?

a. **Foreign Judgment by Foreign Court:**

It is important to note that a foreign judgment issued by a foreign court is **not** executable in Indonesia. This is because Indonesia is **not** a party to any international conventions or bilateral agreements regarding the recognition of foreign judgments. Any party wishing to enforce the result of foreign proceedings on an Indonesian party must comply with the Memorandum of Understanding signed by MA and the Ministry of Foreign Affairs. Therefore, foreign judgments are **not** enforceable in Indonesia (*Article 436, Regulation on legal proceedings (Reglement op de Rechtsvordering)*). In practice, the enforcement of a foreign court order/judgment/decision requires the commencement of fresh proceedings in Indonesia, with the foreign order/judgment/decision used as evidence.

Based on the above positions, the process of enforcing a foreign court judgment in Indonesia does not merely involve a registration process, as opposed to that of a foreign arbitration award. We will explain about that further below.

Therefore, our responses afterward will only focus on enforcing Foreign Arbitration Awards in Indonesia, as Foreign Judgments by Foreign Courts cannot be recognized and enforced within Indonesian jurisdiction.

b. **Foreign Arbitration Award:**

Under Law No. 30 of 1999 on Arbitration and Alternative Dispute Settlement (“**Law No. 30/1999**”), the District Court of Central Jakarta (*Pengadilan Negeri Jakarta Pusat* or “**Central Jakarta District Court**”) holds the authority to administer the acknowledgement and execution of foreign arbitration award (*Article 6 of Law No. 30/1999*).

A foreign arbitration award can be acknowledged and executed within the Indonesian jurisdiction upon fulfilling the following conditions:

- a. The foreign arbitration award is decided by the arbiter or arbitration council of a country that is bound in a bilateral and multilateral agreement with Indonesia, with regard to the acknowledgment and execution of the Decision;
- b. The foreign arbitration award must be based on the provisions of Indonesian law specifically within the scope of trade laws;
- c. The foreign arbitration award does not contravene public order;
- d. The foreign arbitration award can be executed in Indonesia upon issuance of an executory order from the Chief of Central Jakarta District Court; and
- e. If the foreign arbitration award involves Indonesia as one of the parties to the dispute, it can be executed upon receipt of an executory order from *MA* to be delegated to the Central Jakarta District Court.

(*Article 66 of Law No. 30/1999*)

The scope of trade laws under point (b) above specifically refers to disputes that fall under the following categories:

- a. trading;
- b. banking;
- c. finance;
- d. capital investment;
- e. industry; and
- f. intellectual property rights.

3. What are the conditions and the process for having an EU judgment recognized?

In terms of enforcement of foreign arbitration award, the Indonesian Law does not differentiate between EU and non-EU judgments, as long as the parties are from countries that have signed the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (“**The New York Convention**”). The convention is implemented and ratified by Indonesia through Law No. 30/1999.

4. What are the conditions and the process for having a non-EU judgment recognized?

Same as above, Indonesia does not discriminate between EU and non-EU arbitration judgements.

5. How long will this take?

Regarding enforcing foreign arbitration awards, Indonesian Law does not set a time limit for registration of such awards. In practice, the overall process could take up to two years depending on the “host” factors, such as amendments to the applicable regulations, availability of government officials, location of the assets, and other related factors.

6. How much will it cost?

Indonesian Law is silent on the applicable cost when registering the foreign arbitration award to be enforced in Indonesian jurisdiction. However, administrative fees may apply to the registration and enforcement of the award.

7. On what grounds can recognition of an EU judgment be challenged?

All types of arbitration awards (including local and foreign ones) can be challenged by filing an annulment application by one of the parties within 30 days after the delivery and registration of the foreign arbitration award to the Registrar of Central Jakarta District Court, under the following conditions:

- a. One or more documents submitted in the investigation are falsified or declared to be falsified;
- b. Undisclosed documents, which have a decisive effect on the verdict, are discovered; and/or
- c. The decision was a result of deception carried out by one of the parties during the examination of the dispute.

(Article 70 of Law No. 30/1999)

8. On what grounds can recognition of a non-EU judgment be challenged?

As already mentioned, Indonesia does not discriminate between EU and non-EU arbitration awards. If the foreign arbitration award is rendered from a state that is not a signatory to the New York Convention, the award cannot be registered and executed in Indonesia.

9. Is there a time limit for having a foreign judgment recognized?

Indonesian Law is silent on the time limit for having a foreign arbitration award recognized.

10. Can the legal costs of the recognition proceedings be added to the judgment?

In terms of enforcing a foreign arbitration award, Law No. 30/1999 does not comment on the costs of recognition proceedings, or for such submission. As such, they cannot be added to the judgment. This is because recognition proceeding is not a dispute, while a dispute determined and settled by a foreign arbitration award cannot be put to trial. Court fees can generally be added to the judgment when both parties commence a fresh proceeding or when one party files a lawsuit in an Indonesian court. But this does not apply to the enforcement of a foreign arbitration award.

For further context, the plaintiff is required to pay the advance court fees when filing a case in an Indonesian court, as all costs incurred are charged to the plaintiff. The losing party is usually ordered to cover these court fees.

11. What enforcement steps can be taken once recognition is obtained?

Confiscation/seizure of assets as well as properties owned by the defendant in the foreign arbitration award is part of the duties of the Central Jakarta District Court that follows automatically upon recognition and issuance of an execution order by the Chief of Central Jakarta District Court (*Articles 64 and 69 of Law No. 30/1999*).

12. How does this interact with insolvency processes?

Where required, the Indonesian Commercial Court (*Pengadilan Niaga* or "**Commercial Court**") is authorized to examine and resolve applications for the declaration of bankruptcy of the parties bound by agreements containing arbitration clauses (*Article 303 of Law No. 37 of 2004 on Bankruptcy*). In this regard, the Commercial Court may render the bankruptcy status of a company based on the agreement, despite the agreement stipulating that dispute resolution should be settled by foreign arbitration.

13. What are the conditions and the process for having a (foreign) arbitration award recognized?

An application for the execution of the foreign arbitration award requires the submission and registration of the award to the Registrar of Central Jakarta District Court. The procedure is done by the arbiter or attorney. The delivery of the foreign arbitration award is accompanied with the following documents:

- a. The original version or authentic copy of the foreign arbitration award, which must also include an Indonesian translation made by a sworn translator;
- b. The original version or authentic copy of the agreement between the Parties that forms the basis of the foreign arbitration award, which must also include an Indonesian translation made by a sworn translator; and
- c. Information/Notice from the Indonesian Consulate located in the country where the foreign arbitration award is rendered, stipulating that the plaintiff's country is bound by the agreement with Indonesia regarding the acknowledgement and execution of the foreign arbitration award.

(Article 67 of Law No. 30/1999)

Once the application is acknowledged, the Chief of Central Jakarta District Court issues an execution order and assigns the matter to the relevant District Court within the country that is authorized under relative competency to execute it *(Article 69 of Law No. 30/1999)*.

Relative competency is a term in Indonesian Law wherein the District Court over a specified region (**i.e.** Regencies or Cities) holds jurisdiction in the following conditions:

- a. The Defendant (or one of them) is domiciled in the region; or
- b. If the lawsuit is filed concerning an immovable object, then it is filed at the region where the object is located.

(Article 118 paragraph 1 of the Indonesian Civil Procedural Law)

This means that seizure of the assets will take place within the region and by the District Court of the region where the Defendant of the foreign arbitration award resides or where their immovable assets are located (if applicable).