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The Implementation of Anti-Suit Injunctions in Arbitration as a Preventive Mechanism to Avoid Jurisdictional Conflicts

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Abstract

Parallel proceedings in arbitration may generate jurisdictional conflicts, legal uncertainty, and inconsistent decisions, particularly when a party initiates or continues litigation before a national court despite the existence of a valid arbitration agreement. This study aims to examine the implementation of anti-suit injunctions in arbitration as a preventive mechanism against jurisdictional conflicts by analyzing their legal framework, procedural application, practical challenges, and comparative effectiveness in Indonesian and international arbitration. The study employs a normative legal method with a descriptive-qualitative approach, incorporating statutory, conceptual, and comparative analyses. Primary, secondary, and tertiary legal materials were collected through library research, literature review, and document analysis and examined through systematic interpretation and comparison of relevant legal norms and practices. The findings indicate that anti-suit injunctions are not explicitly regulated under Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. Instead, Indonesia primarily protects arbitration agreements through a passive and reactive mechanism whereby courts decline jurisdiction over disputes subject to arbitration. By contrast, international arbitration practice, particularly in common law jurisdictions, recognizes anti-suit injunctions as active and preventive measures for restraining parallel proceedings and safeguarding arbitral jurisdiction. Their application nevertheless faces substantial challenges arising from differences among legal systems, the absence of explicit regulatory harmonization, limited cross-border recognition and enforcement, and concerns relating to judicial sovereignty and access to justice. The study concludes that

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anti-suit injunctions may strengthen the effectiveness and legal certainty of arbitration by preventing jurisdictional conflicts and parallel proceedings. It further highlights the need for regulatory reform and harmonization of interim-measure frameworks in Indonesia to provide stronger protection for arbitration agreements and enhance the effectiveness of both national and international arbitration. This study contributes to arbitration law scholarship by clarifying the preventive function of anti-suit injunctions and identifying their potential relevance to the development of Indonesia's arbitration framework.

Keywords: Anti-Suit Injunction; Arbitration Agreement; Jurisdictional Conflict; Parallel Proceedings; International Arbitration

INTRODUCTION

Arbitration is a method of resolving civil disputes outside the general courts, based on an arbitration agreement made in writing by the disputing parties (Undang-Undang Republik Indonesia Nomor 30 Tahun 1999). The existence of arbitration and other alternative dispute resolution mechanisms is highly important within the justice system. The development of arbitration practices can reduce the caseload of courts and, ultimately, improve the effectiveness of judges in examining, considering, and deciding cases (Hakim, 2024). Arbitration is often chosen by business actors to resolve commercial disputes because it offers several advantages and conveniences, including the freedom of the parties to select their own arbitrators, who are typically chosen based on their integrity, honesty, expertise, and professionalism in the relevant field; the confidentiality of arbitration proceedings, which protects sensitive information and prevents unwanted publicity; the opportunity for arbitral awards to reflect the intentions and agreements of the parties in resolving their disputes; the final and binding nature of arbitral awards, which generally makes the process faster, more efficient, and less costly; and procedures that are more informal than court proceedings, thereby allowing flexible and amicable settlement mechanisms (Winarta, 2022).

Arbitration has become highly popular among business actors due to its relatively fast and efficient procedures. However, the existence of an arbitration agreement does not necessarily eliminate the possibility of intervention or interference by the parties in other legal forums. In practice, various forms of intervention may still occur in the arbitration process, potentially giving rise to jurisdictional conflicts between the parties. One common form of jurisdictional conflict in arbitration is known as parallel proceedings (Tan, 2023).

Parallel proceedings refer to situations in which cases are simultaneously conducted before national courts or other arbitral tribunals, involving the same parties and one or more issues that are identical or substantially similar to those being examined by the current arbitral tribunal (Sant, 2022). Such circumstances may undermine the effectiveness of arbitration agreements because disputes that have previously been entrusted to arbitration may nevertheless be brought before another judicial or arbitral forum.

For a dispute to be submitted to and decided by Badan Arbitrase Nasional Indonesia (BANI), the main contract concluded by the parties must include an arbitration clause or arbitration agreement. A generally accepted principle of arbitration agreements is that they are independent and separate from the main contract (Vlahna et al., 2020). Therefore, an arbitration agreement is also subject to the general principles and provisions of contract law, particularly the principle of freedom of contract as stipulated in Article 1338 of the Indonesian Civil Code, which provides that a valid agreement shall bind the parties as law (Diansari, 2021). The agreement of the parties in concluding an arbitration agreement is consistent with the Indonesian contract law system as regulated in the Indonesian Civil Code, which adopts an open system and embodies the principle of freedom of contract. In a contract, provisions regarding the choice of dispute resolution forum are usually stipulated, namely, the mechanism to be followed by the parties in the event of a future conflict or dispute. The essential agreements to be determined in arbitration include the choice of forum (choice of jurisdiction), the choice of law (choice of law), and the choice of domicile (choice of domicile) (Sangkay, 2021).

When the parties choose arbitration as their dispute resolution forum, national courts are required to respect the arbitration institution, as stipulated in Article 11 paragraph (2) of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. If the parties have previously concluded an arbitration agreement, the district court should declare that it lacks jurisdiction to adjudicate disputes between parties who are bound by such an agreement. This provision demonstrates that Indonesian law provides a legal basis for respecting the parties' choice of arbitration as the agreed dispute resolution forum. Nevertheless, the existence of such a provision does not necessarily prevent one of the parties from initiating proceedings before a national court, thereby creating the possibility of parallel proceedings and jurisdictional conflict.

To prevent such situations, an anti-suit injunction may serve as a mechanism for restraining parties from initiating or continuing proceedings before another forum. An anti-suit injunction is an order issued by a court or tribunal that has personal jurisdiction over a party, directing that party not to initiate or continue legal proceedings in another jurisdiction (Sant, 2022; Strong, 2018). In the context of arbitration, an anti-suit injunction may be issued by an arbitral tribunal upon the application of one of the parties. The grounds for granting such an application are based on the existence of concurrent proceedings concerning the same dispute. The primary purpose of an anti-suit injunction is to preserve the jurisdiction of the arbitral tribunal and to prevent the risk of inconsistent or conflicting decisions. Accordingly, this mechanism may function as a preventive instrument to protect the parties' agreement regarding the choice of arbitration as the dispute resolution forum.

An example of an arbitration dispute in Indonesia involving the application of an anti-suit injunction can be found in Supreme Court Decision Number 67 PK/Pdt.Sus-Arbt/2016. This decision rejected the petition for judicial review between Astro Nusantara International BV and PT Ayunda Prima Mitra. The case concerned the refusal to enforce a foreign arbitral award in Indonesia. The foreign arbitral award in question was issued by the Singapore International Arbitration Centre (SIAC) under Award Number 062 of 2008 (ARB062/08/JL), which provided, among others, that: (1) the Indonesian proceedings (Case No. 1100/Pdt.G/2008/PN.Jkt.Sel) must be discontinued insofar as they relate to C.6 (Astro All Asia Network plc), C.7 (Measat Broadcast Network System Sdn Bhd), and C.8 (All Asia Multimedia Networks Fz-LLC); (2) no further steps shall be taken in the Indonesian proceedings, except for their discontinuation as stated in point (i), with respect to C.6, C.7, C.8, and Mr. Marshall; and (3) the parties are restrained from initiating further actions against C.6, C.7, C.8, and Mr. Marshall in relation to the joint venture, except through arbitration in accordance with paragraph 17.4 of the SSA, until further order.

The arbitral award issued by the Singapore International Arbitration Centre ordered the application of an anti-suit injunction, namely, the termination of the lawsuit filed by PT Ayunda Prima Mitra before the South Jakarta District Court, on the grounds that the dispute fell within the jurisdiction of arbitration. This was in line with Article 17.4 of the Subscription and Shareholders Agreement (SSA) between the parties, which provides that:

"If the parties in dispute are unable to resolve the subject matter of the dispute amicably within thirty (30) days, then any party in dispute may commence binding arbitration

through the Singapore International Arbitration Centre (SIAC), and, except as otherwise stated herein, in accordance with all SIAC Rules. The arbitration shall take place at the Singapore International Arbitration Centre, and the award of the arbitrators shall be final and binding upon the parties."

This clause confirms that arbitration under SIAC is the agreed forum for dispute resolution and that any arbitral award rendered shall be final and binding upon the parties. The provision therefore demonstrates the parties' explicit agreement to submit disputes arising under the relevant contractual relationship to arbitration rather than to national courts.

However, the Central Jakarta District Court provided the following considerations. First, it held that the substance of the international arbitral award issued under the Singapore International Arbitration Centre Rules No. 062 of 2008 (ARB062/08/JL) exceeded its authority because it interfered with ongoing judicial proceedings in Indonesia that were being conducted in accordance with applicable laws and legal order. Therefore, the arbitral award could not be enforced (non-executable). Second, upon examining and reviewing the case file, the Court found that the international arbitral award rendered on 7 May 2009 was not a final award. Third, based on these considerations, the Central Jakarta District Court was of the opinion that, in order to prevent future legal uncertainty, the application for exequatur should not be granted. Accordingly, the Court declared that the SIAC arbitral award No. 062 of 2008 (ARB062/08/JL) could not be enforced (non-exequatur).

As a result, the decision rejected the application submitted by Astro Group and reaffirmed the earlier ruling of the Central Jakarta District Court. The case illustrates that the implementation of anti-suit injunctions is not straightforward. This is consistent with the fact that anti-suit injunctions originate from jurisdictions applying the common law system, while countries adhering to the civil law system often consider such measures to be overly intrusive or offensive. This difference in legal traditions leads to varying judicial considerations in granting anti-suit injunctions, as well as challenges in their enforcement as a preventive mechanism against jurisdictional conflicts in arbitration proceedings.

The foregoing issue demonstrates that the existence of an arbitration agreement does not always suffice to prevent parallel legal proceedings. From the researcher's perspective, this condition indicates the need for a mechanism that is not merely reactive, namely, one that operates after a dispute has been brought before an unauthorized forum, but also

preventive, by preventing violations of the arbitration agreement from occurring in the first place. In this context, an anti-suit injunction becomes particularly relevant because this instrument is intended to restrain parties from attempting to bring a dispute before another forum in violation of an arbitration agreement. Accordingly, the application of an anti-suit injunction should be examined not only in terms of its existence as a legal instrument but also with regard to its legitimacy, procedural requirements, effectiveness, and compatibility with the principle of national judicial sovereignty.

A number of previous studies have examined anti-suit injunctions in the context of international arbitration. Sant (2022), for instance, examined anti-suit injunctions as a preventive measure against the initiation of proceedings before foreign courts in international arbitration. Strong (2018) discussed the application of anti-suit injunctions in judicial and arbitral proceedings in the United States, while Arzandeh (2025) examined anti-suit injunctions in support of foreign dispute resolution clauses. Studies on arbitration in Indonesia have also addressed issues concerning absolute jurisdiction, the enforcement of arbitral awards, and public policy in relation to national courts (Memi, 2017; Hariyudi, 2021). These studies provide an important foundation for understanding the development of anti-suit injunctions and the relationship between arbitration and judicial authority.

Nevertheless, previous research reveals several gaps that warrant further investigation. Some studies have primarily focused on the application of anti-suit injunctions within particular jurisdictions or on specific aspects of international arbitration, whereas studies specifically comparing mechanisms for protecting arbitration agreements between the Indonesian legal system and international arbitration practices remain limited. Furthermore, relatively few studies have systematically connected regulatory aspects, application procedures, the authority of arbitral tribunals, the role of national courts, and the challenges associated with the recognition and enforcement of anti-suit injunctions within a single analytical framework. This gap is particularly significant because Indonesia has yet to establish explicit legal provisions governing anti-suit injunctions under Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.

This study offers novelty by analyzing anti-suit injunctions not merely as an instrument in international arbitration but also as a preventive mechanism that is normatively compared with the system for protecting arbitration agreements under Indonesian law. The novelty of this study lies in mapping the differences between the Indonesian mechanism,

which tends to be passive and reactive through the rejection of court jurisdiction, and international mechanisms, which are more active and preventive through the use of anti-suit injunctions. This study also examines, in an integrated manner, the procedures for applying anti-suit injunctions, the legal basis for the authority of courts and arbitral tribunals, cross-jurisdictional challenges, and the potential development of such mechanisms within the Indonesian legal system.

Theoretically, this study is grounded in the principle of party autonomy, namely, the freedom of parties to determine the dispute resolution forum agreed upon in an arbitration agreement. This principle is closely related to the doctrine of pacta sunt servanda, which establishes that legally valid agreements are binding upon the parties. In addition, this study employs the doctrine of Kompetenz-Kompetenz, which grants an arbitral tribunal the authority to determine its own jurisdiction. These three principles provide the basis for assessing the extent to which an anti-suit injunction may be employed as an instrument to protect the parties' choice of forum while simultaneously preventing parallel legal proceedings. In the context of differences between legal systems, this study also considers the principles of state sovereignty and international comity, as the application of an anti-suit injunction may potentially intersect with the authority of courts in other jurisdictions.

Based on the foregoing discussion, this study focuses on three principal aspects. First, it analyzes the regulation of anti-suit injunctions in Indonesian national arbitration and international arbitration. Second, it examines the procedures and challenges involved in applying anti-suit injunctions as a preventive mechanism for avoiding jurisdictional conflicts. Third, it compares the effectiveness of mechanisms for protecting arbitration agreements in Indonesia with international practices and analyzes the prospects for their application within the Indonesian legal system. Through this focus, the study is expected to contribute to the development of arbitration law scholarship, particularly with regard to strengthening legal certainty and the effectiveness of protection afforded to arbitration agreements in addressing cross-jurisdictional disputes.

METHODS

This study employs a normative legal research method, which focuses on the analysis of applicable legal norms through the examination of statutory regulations, legal theories,

and scholarly opinions. This approach is used to comprehensively assess the implementation of anti-suit injunctions in arbitration as a measure to prevent jurisdictional conflicts.

The research adopts a descriptive-qualitative design aimed at systematically describing the regulatory framework, procedures, and challenges in the application of anti-suit injunctions in both national and international arbitration contexts. The study applies several approaches, namely: the statute approach, the conceptual approach, and the comparative approach. This research does not involve human participants; instead, it relies on legal materials as data sources, consisting of: 1) Primary legal materials: statutory regulations such as Law Number 30 of 1999, the Indonesian Civil Code, the New York Convention 1958, and the UNCITRAL Model Law on International Commercial Arbitration. 2) Secondary legal materials: books, academic journals, and previous research. 3) Tertiary legal materials: legal dictionaries and other supporting sources.

The sampling technique used is purposive sampling, referring to the selection of legal materials relevant to the research issue. The research instrument consists of document study (library research). Data are collected through: legal literature review, library research, and digital source exploration (journals and legal databases).

Data are analyzed using descriptive qualitative analysis by systematically organizing legal materials, interpreting relevant legal norms, and comparing various legal regulations and practices. Data processing is conducted through the following stages: description (presenting the data), editing (checking completeness and relevance), and evaluation (assessing consistency with the research problem). This research is conducted from the proposal stage to the completion of the thesis over approximately 6–12 months, including: collection of legal materials, data analysis, and preparation of the research report.

RESULTS

1. Regulation of Applications for Anti-Suit Injunctions by Disputing Parties in National and International Arbitration

The analysis shows a significant regulatory and functional difference between the Indonesian arbitration system and international arbitration practices concerning the implementation of anti-suit injunctions. In Indonesia, anti-suit injunctions are not explicitly regulated under Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. The protection of arbitration agreements is primarily implemented through a jurisdictional

mechanism, whereby district courts are required to decline jurisdiction over disputes that are subject to a valid arbitration agreement. This mechanism is essentially passive and reactive because it operates after a dispute has been brought before a national court.

In contrast, international arbitration practices, particularly in common law jurisdictions, recognize anti-suit injunctions as an active and preventive mechanism. The instrument is intended to restrain a party from initiating or continuing proceedings before another forum when such proceedings conflict with an existing arbitration agreement. The international approach therefore provides broader preventive protection because it seeks to avoid parallel proceedings before jurisdictional conflicts become more serious. The comparison of the two systems is presented in Table 1.

Table 1. Comparison of the Regulation and Procedures of Anti-Suit Injunctions between Indonesian National Arbitration and International Arbitration

Aspect	Indonesia Arbitration	Internasional Arbitration
Regulation	Not explicitly regulated under Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution	Recognized in practice, particularly in jurisdictions applying the common law system
Nature of Protection	Passive (defensive)	Active (preventive)
Mechanism	Jurisdictional objection (exception)	Anti-suit injunction
Procedural Nature	Reactive	Preventive
Tribunal Authority	Limited	Broad (through interim measures, e.g., under UNCITRAL Model Law on International Commercial Arbitration)
Role of Courts	Passive	Active (particularly in common law jurisdictions)
Effectiveness	Relatively limited	More effective

Table 1 demonstrates a substantial difference between the Indonesian and international arbitration systems in regulating anti-suit injunctions. In Indonesia, anti-suit injunctions are not explicitly regulated under Law Number 30 of 1999, and protection of arbitration agreements remains primarily passive and reactive through jurisdictional objections. In contrast, international arbitration practice, particularly in common law jurisdictions, recognizes anti-suit injunctions as an active and preventive mechanism. International practice also provides broader authority for arbitral tribunals and courts to prevent parallel proceedings. These differences indicate that the international approach offers relatively stronger preventive protection against jurisdictional conflicts, while the Indonesian system remains limited by the absence of explicit regulation.

2. Supporting Findings: Legal Basis and Procedure for Anti-Suit Injunctions

The research further identifies several elements that form the basis for the application of anti-suit injunctions in international arbitration. First, the application must be connected to a valid arbitration agreement that establishes the parties' choice of dispute-resolution forum. Second, the aggrieved party submits an application containing relevant information concerning the parties, the dispute, the arbitration agreement, the parallel proceedings, and the potential risk of conflicting jurisdiction or decisions. Third, the relevant court or arbitral tribunal examines its jurisdiction and the relationship between the arbitration agreement and the proceedings in another forum.

The substantive assessment subsequently considers the existence of an arbitration agreement, an actual or threatened violation of that agreement, the potential for serious harm, and the balance of interests. Where the requirements are satisfied, an order may be issued directing the relevant party to refrain from continuing proceedings in another forum. The effectiveness of such an order depends substantially on compliance and the availability of sanctions or other procedural consequences.

These findings indicate that anti-suit injunctions operate through a preventive sequence consisting of the identification of a valid arbitration agreement, submission of an application, examination of jurisdiction, substantive assessment, issuance of an order, and enforcement of the order.

Table 2. General Procedure for Applying an Anti-Suit Injunction

Stage	Main Activity	Purpose
1. Legal basis and legitimacy	Verification of the arbitration agreement and applicable legal authority	Establish the legitimacy of the application
2. Submission of application	Submission of dispute details, arbitration clause, evidence of parallel proceedings, and potential risks	Demonstrate the need for preventive protection
3. Jurisdictional examination	Examination of the validity and scope of the arbitration agreement	Determine the authority of the forum
4. Substantive assessment	Assessment of breach, potential harm, proportionality, and balance of interests	Determine whether the injunction is justified
5. Issuance of order	Direction to refrain from or terminate proceedings in another forum	Prevent jurisdictional conflict
6. Enforcement	Compliance and possible sanctions or procedural consequences	Ensure effectiveness of the order

Table 2 illustrates that the application of an anti-suit injunction consists of six sequential stages: establishing the legal basis, submitting the application, examining jurisdiction, assessing substantive requirements, issuing the order, and enforcing the decision. The process begins with verification of a valid arbitration agreement and evidence of parallel

proceedings. The competent court or arbitral tribunal then examines its jurisdiction and assesses the existence of a potential breach, risk of harm, and proportionality. If the requirements are satisfied, an in personam order may be issued to prevent or terminate proceedings in another forum. The final stage concerns enforcement, which determines the practical effectiveness of the injunction in preventing jurisdictional conflicts.

3. Anti-Suit Injunctions as a Preventive Mechanism

Another important finding is that anti-suit injunctions can function as a preventive mechanism for reducing jurisdictional conflicts caused by parallel proceedings. Such conflicts may arise when a party initiates litigation before a national court despite the existence of an arbitration agreement. The resulting parallel proceedings may create legal uncertainty, procedural inefficiency, and the possibility of inconsistent decisions. Anti-suit injunctions seek to prevent these consequences by restraining the party from continuing proceedings before an unauthorized forum.

The findings further show that the preventive function of anti-suit injunctions is closely associated with the principles of party autonomy, pacta sunt servanda, and Kompetenz-Kompetenz. These principles support the parties' freedom to determine their dispute-resolution forum, require compliance with valid agreements, and recognize the authority of arbitral tribunals to determine their own jurisdiction.

4. Negative Findings and Normative Anomalies

The research identifies several normative gaps that limit the implementation of anti-suit injunctions, particularly in Indonesia. The first and most significant finding is the absence of explicit statutory regulation governing anti-suit injunctions under Law Number 30 of 1999. The second is the lack of a clear cross-border recognition and enforcement mechanism, because anti-suit injunctions are generally personal orders directed at the parties rather than final arbitral awards. The third is the difference between legal systems, with common law jurisdictions generally more receptive to anti-suit injunctions while civil law jurisdictions tend to restrict or reject them because of concerns regarding judicial sovereignty and access to justice.

These findings do not represent statistical anomalies because the research is normative and does not involve human participants or quantitative observations. Instead, the relevant anomaly is a normative inconsistency or regulatory gap between the need to protect arbitration agreements from parallel proceedings and the absence of an explicit legal

mechanism in the Indonesian arbitration framework. The principal challenges identified in the research can therefore be summarized as follows:

Table 3. Main Regulatory Gaps and Challenges

No.	Finding	Implication
1	Anti-suit injunctions are not explicitly regulated in Indonesian arbitration law	Legal uncertainty regarding their application
2	Indonesian protection is predominantly reactive	Limited ability to prevent parallel proceedings at an early stage
3	Cross-border recognition and enforcement remain unclear	Reduced effectiveness of injunctions across jurisdictions
4	Common law and civil law systems adopt different approaches	Difficulties in achieving international harmonization
5	Potential conflict with judicial sovereignty and access to justice	Need for careful balancing between arbitration protection and national judicial authority

Table 3 highlights the main regulatory gaps and challenges in implementing anti-suit injunctions, particularly in Indonesia. The findings indicate that the absence of explicit regulation, the reactive nature of the Indonesian arbitration system, limited cross-border recognition and enforcement, differences between legal systems, and concerns regarding judicial sovereignty and access to justice remain significant obstacles. These gaps may reduce the effectiveness of anti-suit injunctions in preventing parallel proceedings and jurisdictional conflicts. Therefore, clearer regulatory provisions and greater legal harmonization are needed to strengthen the protection and effectiveness of arbitration agreements.

5. Future Regulatory Direction

The results also indicate that the future implementation of anti-suit injunctions in Indonesia depends on regulatory reform and the development of judicial interpretation concerning interim or provisional measures. Reform of Law Number 30 of 1999, the development of judicial guidelines, or a clearer interpretation of provisional measures could provide greater legal certainty concerning the protection of arbitration agreements. At the international level, the UNCITRAL Model Law provides a potential framework for developing recognition of preventive measures through the broader concept of interim measures.

Overall, the results establish that the Indonesian arbitration system currently relies on a passive and reactive mechanism, whereas international arbitration practice provides a relatively active and preventive mechanism through anti-suit injunctions. The principal finding is therefore the existence of a regulatory and functional gap that needs to be

addressed if Indonesia seeks to strengthen the protection, certainty, and effectiveness of arbitration agreements in disputes involving multiple jurisdictions.

DISCUSSION

1. Regulation of Applications for Anti-Suit Injunctions by Disputing Parties in National and International Arbitration

a. Regulation of Applications for Anti-Suit Injunctions by Disputing Parties in Indonesian National Arbitration

The regulation of anti-suit injunctions in Indonesian national arbitration has distinctive characteristics shaped by the national legal system. Although not explicitly regulated in statutory law, its existence is reflected in arbitration norms and practices. Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution serves as the primary legal basis; however, it does not provide definitions, procedures, or authority concerning anti-suit injunctions. This indicates that Indonesia does not adopt the concept in the same manner as jurisdictions applying the common law system, although it still protects arbitration agreements by limiting judicial intervention Undang-Undang Nomor 30 Tahun 1999.

Articles 3 and 11 of the Arbitration Law emphasize that district courts lack jurisdiction to adjudicate disputes bound by an arbitration agreement. Consequently, any claim brought before the court should be declared inadmissible. This form of protection is passive in nature, as it operates through the refusal of jurisdiction rather than through an active prohibition such as an anti-suit injunction (Memi, 2017). In practice, an aggrieved party may raise an objection based on absolute competence (jurisdictional objection), yet this mechanism is reactive.

Furthermore, arbitral tribunals are authorized to determine their own jurisdiction under the principle of Kompetenz-Kompetenz. However, they do not have a strong legal basis to issue anti-suit injunctions. The role of the district courts is therefore limited to maintaining the consistency of arbitration by declining jurisdiction over disputes that violate arbitration clauses, rather than issuing direct prohibitive orders.

b. Regulation of Applications for Anti-Suit Injunctions by Disputing Parties in International Arbitration

1) The Concept of Anti-Suit Injunctions in International Arbitration

An anti-suit injunction is an order issued by a court or arbitral tribunal to restrain a party from initiating or continuing proceedings in another forum that are inconsistent with

an arbitration agreement (Margono, 2026). This instrument has developed primarily within jurisdictions applying the common law system, with the aim of upholding arbitration clauses and preventing parallel proceedings. In cross-border disputes, anti-suit injunctions function to preserve the exclusivity of the arbitral forum, as well as to prevent forum shopping and jurisdictional conflicts.

2) Legal Basis of Anti-Suit Injunctions

There is no single international instrument that explicitly regulates anti-suit injunctions. Their legal basis is derived from national laws, arbitration procedural rules, and general principles of international arbitration. Common law jurisdictions, such as England and Singapore, recognize the authority of courts to issue such orders on the grounds that they are directed at the parties rather than foreign courts. At the arbitral level, this authority is generally linked to the power to grant interim measures in order to protect the integrity of the arbitration process (Briggs, 2019).

3) Regulation in International Instruments

Instruments such as the UNCITRAL Model Law on International Commercial Arbitration grant arbitral tribunals the authority to order interim measures. Although anti-suit injunctions are not expressly mentioned, these provisions are often interpreted as encompassing orders that restrain parties from pursuing litigation in other forums, in order to safeguard the effectiveness of arbitration (Binder, 2019).

4) The Role of National Courts

National courts in certain jurisdictions support the use of anti-suit injunctions as a means of protecting arbitration agreements. However, countries adhering to the civil law system tend to reject or limit their application due to concerns related to state sovereignty and the right of access to courts. As a result, there is currently no global harmonization regarding the acceptance and enforcement of anti-suit injunctions in international arbitration (Hariyudi, 2021).

c. Comparison of the Regulation and Procedures of Anti-Suit Injunctions between Indonesian National Arbitration and International Arbitration

1) Normative Regulatory Aspects

In Indonesian national arbitration, anti-suit injunctions are not regulated under Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution and, therefore, are not explicitly adopted. In contrast, in international arbitration, the concept is recognized

through practice and arbitral rules, particularly in jurisdictions applying the common law system, with its legal basis derived from lex fori, arbitration rules, and general principles (Born, 2021). Indonesia may thus be characterized as adopting a non-recognition approach, whereas international arbitration reflects a form of functional recognition.

2) Nature of Protection of Arbitration Agreements

Indonesia protects arbitration agreements by excluding the jurisdiction of courts, as provided under Articles 3 and 11 of the Arbitration Law. This protection is passive in nature. By contrast, international arbitration employs anti-suit injunctions as an active mechanism to prevent parallel proceedings at an early stage.

3) Procedural Mechanisms

In Indonesia, the mechanism takes the form of an objection based on absolute competence, which is reactive and raised after judicial proceedings have commenced. In international arbitration, applications for anti-suit injunctions may be submitted preventively to courts or arbitral tribunals to restrain parallel proceedings at an earlier stage.

4) Authority of Arbitral Tribunals

Arbitral tribunals in Indonesia have limited authority and lack a clear legal basis to issue anti-suit injunctions. Conversely, in international arbitration, tribunals possess broader authority through interim measures, which may function similarly to anti-suit injunctions (Brekoulakis, 2017).

5) Role of National Courts

Indonesian courts act primarily as guardians of jurisdictional boundaries by declining to hear disputes subject to arbitration. In international practice, however, courts—especially in common law jurisdictions—may actively issue anti-suit injunctions, although courts in civil law system jurisdictions tend to reject or limit their application.

6) Implications for the Effectiveness of Arbitration

These differences affect the overall effectiveness of arbitration. The international system is generally more effective due to its preventive approach in addressing forum shopping and jurisdictional conflicts (Rohaini & Sepriyadi, 2024). In contrast, the reactive nature of the Indonesian system may lead to parallel proceedings, legal uncertainty, and procedural inefficiency.

2. Procedures and Challenges in the Implementation of Anti-Suit Injunctions in Arbitration as a Preventive Measure Against Jurisdictional Conflicts

a. Procedures for Anti-Suit Injunctions

1) Legal Basis and Legitimacy

Applications for anti-suit injunctions are grounded in a valid arbitration agreement as the basis for respecting the parties' choice of forum (Jemielniak, 2018). In national courts, such authority is derived from procedural law and principles of equity, particularly within jurisdictions applying the common law system (Briggs, 2019). In arbitral tribunals, the authority stems from the arbitration clause, institutional rules, and powers related to provisional or interim measures (Born, 2021).

2) Submission of Application

The application is submitted by the aggrieved party in the form of a formal request containing the identity of the parties, a description of the dispute, evidence of the arbitration clause, proof of proceedings in another forum, and potential risks such as jurisdictional conflict and inconsistent decisions.

3) Examination of Jurisdiction

The forum will assess its competence by examining the validity of the arbitration agreement, the scope of the dispute, and its connection with proceedings in another forum (Blackaby et al., 2023). The principle of Kompetenz-Kompetenz grants arbitral tribunals the authority to determine their own jurisdiction (Moses, 2017; Born, 2020).

4) Substantive Assessment

The forum evaluates the requirements for granting the injunction, including the existence of an arbitration agreement, an actual or threatened breach, the risk of serious harm, and the balance of interests. Principles such as good faith and proportionality are also taken into account (Bantekas & Ullah, 2022).

5) Issuance of the Order

If granted, an in personam order is issued directing the party to refrain from continuing litigation in another forum and to terminate such proceedings (Briggs, 2024).

6) Enforcement and Consequences

The effectiveness of the order depends on the parties' compliance, with potential sanctions including fines, damages, or procedural consequences. Overall, this procedure seeks to maintain a balance between the protection of arbitration agreements and respect for national legal sovereignty.

b. Anti-Suit Injunctions as a Preventive Measure Against Jurisdictional Conflicts

Jurisdictional conflicts arise when one party brings a claim before a national court despite the existence of an arbitration clause, thereby potentially obstructing arbitration, creating legal uncertainty, and resulting in conflicting decisions. Anti-suit injunctions function as a preventive mechanism to address such situations by restraining parties from continuing litigation in other forums, while also protecting the parties' agreement in accordance with the principle of pacta sunt servanda (Moses, 2017). This instrument places courts in a supportive role toward arbitration, rather than as competing forums.

In international law, anti-suit injunctions serve to maintain efficiency and consistency in cross-border dispute resolution, as well as to prevent parallel proceedings. Their legitimacy is based on the principle of party autonomy and the doctrine of Kompetenz-Kompetenz, which grants arbitral tribunals the authority to determine their own jurisdiction (Harahap, 2019; Binder, 2019). In practice, this mechanism has developed in jurisdictions applying the common law system, such as England and Singapore, particularly in cases involving breaches of arbitration clauses or forum selection clauses (Born, 2021). Moreover, anti-suit injunctions support the principle of comity among states by preventing overlapping judicial proceedings, although they must be applied carefully to avoid infringing state sovereignty (Arzandeh, 2025).

However, the acceptance of anti-suit injunctions is not uniform. Jurisdictions adhering to the civil law system tend to reject or limit their use, whereas common law systems are generally more receptive. In Indonesia, this concept is not explicitly regulated, although the principle of limiting court intervention in arbitration disputes is recognized under Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (Rahmiko, 2024). As a result, the protection of arbitration forums remains limited and not yet optimal. Overall, anti-suit injunctions constitute an important instrument for preventing jurisdictional conflicts, ensuring consistency of decisions, and upholding party agreements, thereby highlighting the need for future regulatory harmonization.

c. Challenges in the Implementation of Anti-Suit Injunctions

The primary challenge in the implementation of anti-suit injunctions lies in the differing approaches adopted by national courts. Certain jurisdictions, particularly those emphasizing judicial sovereignty, regard such injunctions as an interference with the authority of domestic courts. Furthermore, from an enforcement perspective, anti-suit

injunctions are personal in nature (in personam) and do not constitute final arbitral awards. As a result, they lack a clear mechanism for cross-border recognition, which limits their overall effectiveness.

From a normative standpoint, there is no explicit regulation governing anti-suit injunctions, either under the New York Convention 1958 or within national laws such as Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. Although the concept of interim measures is recognized, including in the UNCITRAL Model Law on International Commercial Arbitration, anti-suit injunctions remain largely interpretative. This creates a normative gap regarding their recognition and enforcement (Moses, 2017).

Differences between legal systems also constitute a significant barrier. Jurisdictions adhering to the civil law system tend to reject or restrict the use of anti-suit injunctions, whereas those following the common law system are generally more receptive and have further developed this instrument. In addition, there is potential conflict with the principles of access to justice and judicial sovereignty, as restricting a party's right to initiate legal proceedings may be perceived as infringing constitutional rights.

Accordingly, the main challenges include: (1) the absence of explicit regulation, (2) divergent approaches across legal systems, (3) the lack of cross-jurisdictional recognition mechanisms, and (4) potential conflicts with the principles of access to justice and judicial sovereignty.

3. Future Implementation of Anti-Suit Injunctions

From a normative perspective, the future of anti-suit injunctions is strongly influenced by how legal systems perceive party autonomy and the doctrine of Kompetenz-Kompetenz. Jurisdictions applying the common law system tend to maintain and even expand their use as a means of protecting arbitration agreements, viewing them as in personam orders rather than as interference with foreign courts (Shaw, 2017). In contrast, jurisdictions adhering to the civil law system remain cautious, taking into account principles such as international comity and state sovereignty, although alternative approaches—such as declinatory judgments and the strengthening of interim measures—are gradually emerging.

In Indonesia, the development of anti-suit injunctions depends on regulatory reform of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution or on progressive judicial interpretation concerning provisional measures and the principle of good

faith. Legislative reform or guidelines issued by the Supreme Court could enhance legal certainty while preventing the abuse of judicial processes.

At the international level, harmonization through the UNCITRAL Model Law on International Commercial Arbitration provides an opportunity for indirect recognition through the framework of interim measures. From a theoretical perspective, anti-suit injunctions are supported by the theory of party autonomy as a means of protecting contractual intent, as well as by the legal system theory of Lawrence M. Friedman, which emphasizes the roles of legal structure, substance, and culture. Differences in legal culture help explain the more progressive stance of common law systems and the cautious approach of civil law systems.

Furthermore, from the perspective of state sovereignty, judicial authority constitutes an essential attribute of the state, making the use of anti-suit injunctions a sensitive issue. Nevertheless, in common law practice, such measures are not considered to violate comity because they are directed at the parties rather than foreign courts. In Indonesia, the absence of explicit regulation creates space for rechtsvinding (judicial law-finding) through judicial interpretation based on the principle of good faith.

Accordingly, there remains a significant difference between Indonesia and international practice: the international system is more adaptive, whereas Indonesia remains relatively conservative. This divergence presents a challenge in addressing cross-border disputes in the future.

The findings have several important implications for the development of arbitration law. Theoretically, the study reinforces the relevance of party autonomy, pacta sunt servanda, and Kompetenz-Kompetenz in protecting the parties' agreed arbitration forum. The comparison between Indonesian and international practices further demonstrates that the effectiveness of arbitration protection depends not only on the recognition of arbitration agreements but also on the availability of preventive mechanisms to address parallel proceedings.

Practically, the findings indicate the need for clearer mechanisms to prevent parties from circumventing arbitration agreements by initiating proceedings before national courts. For Indonesia, regulatory reform of Law Number 30 of 1999 or the development of judicial guidelines concerning interim measures could provide greater legal certainty. From a policy perspective, greater harmonization with international arbitration practices could strengthen

the effectiveness of arbitration while maintaining respect for judicial sovereignty and access to justice.

This study has several limitations. First, it employs a normative legal research approach and relies primarily on statutory regulations, legal literature, scholarly studies, and relevant legal documents; therefore, it does not empirically examine the experiences of arbitrators, judges, lawyers, or disputing parties. Second, the analysis focuses primarily on the comparison between the Indonesian legal framework and international arbitration practices, particularly those influenced by common law jurisdictions. Consequently, the findings may not fully represent the diverse approaches adopted across all jurisdictions. Third, the absence of explicit regulation on anti-suit injunctions in Indonesia limits the availability of directly comparable national cases. Therefore, the analysis primarily identifies normative gaps and potential legal developments rather than measuring the empirical effectiveness of anti-suit injunctions. Future research should complement this normative analysis with empirical studies and comparative case-law analysis involving additional jurisdictions to examine how anti-suit injunctions can be effectively implemented while balancing arbitration protection, judicial sovereignty, and access to justice.

CONCLUSION

This study concludes that anti-suit injunctions have significant potential as a preventive mechanism for avoiding jurisdictional conflicts in arbitration. The findings demonstrate a substantial difference between the Indonesian and international arbitration systems. Indonesian law, particularly Law Number 30 of 1999, does not explicitly regulate anti-suit injunctions and primarily protects arbitration agreements through a passive and reactive mechanism by limiting the jurisdiction of national courts. In contrast, international arbitration practices, particularly in common law jurisdictions, provide a more active and preventive mechanism through anti-suit injunctions to restrain parallel proceedings and protect the parties' agreed arbitration forum.

The study contributes to arbitration law scholarship by providing a comparative normative framework that connects the protection of arbitration agreements, anti-suit injunction procedures, arbitral authority, and the role of national courts. The findings highlight that the absence of explicit regulation, limited cross-border recognition and enforcement, differences between legal systems, and concerns regarding judicial sovereignty

and access to justice remain important challenges to the implementation of anti-suit injunctions.

For future development, Indonesia should consider regulatory reform of Law Number 30 of 1999 or the development of clearer judicial guidelines concerning interim and preventive measures in arbitration. Future research should also expand the comparative analysis to additional jurisdictions and incorporate empirical or case-based approaches to assess how anti-suit injunctions can be implemented effectively while maintaining a balance between the protection of arbitration agreements, judicial sovereignty, and access to justice.

REFERENCES

Arzandeh, A. (2025). Anti-suit injunctions in support of foreign dispute-resolution clauses. *International & Comparative Law Quarterly, 74*(3), 723–739. https://doi.org/10.1017/S0020589325100997

Bantekas, I., & Ullah, I. (2023). Court-ordered interim measures in international arbitration: A comparative approach. *Journal of Law and Commerce, 41*(2), 251–283. https://doi.org/10.5195/jlc.2023.257

Binder, P. (2019). *International commercial arbitration and mediation in UNCITRAL Model Law jurisdictions* (4th ed.). Kluwer Law International.

Blackaby, N., Partasides, C., & Redfern, A. (2023). *Redfern and Hunter on international arbitration: Student version* (7th ed.). Oxford University Press. https://www.oup.com.au/books/higher-education/law/9780192869913

Born, G. B. (2001). *International commercial arbitration: Commentary and materials*. Brill | Nijhoff. https://www.degruyterbrill.com/document/isbn/9789004502222/html

Born, G. B. (2021). *International commercial arbitration* (3rd ed.). Kluwer Law International. https://www.wolterskluwer.com/en/solutions/kluwerarbitration/born

Brekoulakis, S. (2009). The negative effect of compétence-compétence: The verdict has to be negative. *Austrian Arbitration Yearbook*, 238–258. https://ssrn.com/abstract=1414325

Briggs, A. (2019). *The conflict of laws* (4th ed.). Oxford University Press. https://doi.org/10.1093/oso/9780198838500.001.0001

Briggs, A. (2024). *The conflict of laws* (5th ed.). Oxford University Press. https://doi.org/10.1093/oso/9780198895527.001.0001

Diansari, T. (2021). Permasalahan Pelaksanaan Klausula Arbitrase dalam Upaya Menyelesaikan Sengketa Perjanjian Pilihan Forum. *Dharmasisya: Jurnal Program Magister Hukum FHUI, 1*(3), Article 30. https://scholarhub.ui.ac.id/dharmasisya/vol1/iss3/30

Hakim, M. N. (2024). Peranan Pengadilan dalam Pelaksanaan Putusan Arbitrase. *Ethics and Law Journal: Business and Notary, 2*(1), 205–209. https://doi.org/10.61292/eljbn.114

Harahap, M. Y. (2018). *Hukum Arbitrase*. Sinar Grafika.

Hariyudi, M. G. (2021). Pelaksanaan Asas Ketertiban Umum dalam Penetapan Arbitrease Internasional di Indonesia: Studi Kasus Putusan Mahkamah Agung Nomor 67

PK/Pdt.Sus-Arbt/2016. *Journal of Legal Research, 3*(2), 273–286. https://doi.org/10.15408/jlr.v3i2.20301

Jemielniak, J. (2018). Comparative analysis as an autonomization strategy in international commercial arbitration. *International Journal for the Semiotics of Law, 31*(1), 155–173. https://doi.org/10.1007/s11196-017-9530-0

Margono, R. (2026). *Penyelesaian Sengketa Bisnis melalui Lembaga Arbitrase Nasional dan Internasional: Analisis Yuridis terhadap Dinamika Regulasi, Efisiensi Prosedural, dan Eksekusi Putusan di Indonesia*. Profesor Rudi Margono.

Memi, C. (2017). Penyelesaian Sengketa Kompetensi Absolut antara Arbitrase dan Pengadilan. *Jurnal Yudisial, 10*(2), 115–134. https://doi.org/10.29123/jy.v10i2.142

Moses, M. L. (2017). *The principles and practice of international commercial arbitration* (3rd ed.). Cambridge University Press. https://doi.org/10.1017/9781316585245

Rahmiko, E. (2024). Alternative dispute resolution in common and civil law countries. *International Conference on Construction Law and Infrastructure Governance (ICCLIG), 1*(1), 505–514.

Rohaini, & Adhnan, S. (2024). *Masa Depan Arbitrase Indonesia: Efektivitas dan Kepastian Hukum*. Uwais Inspirasi Indonesia.

Sangkay, I. J. A. (2021). Penyelenggaraan Kedaulatan Negara atas Wilayah Udara Negara Kesatuan Republik Indonesia. *Lex Et Societatis, 9*(1), 46–54. https://doi.org/10.35796/les.v9i1.32055

Sant, C. S. (2022). Penerapan Anti-Suit Injunctions sebagai Langkah Pencegahan Diajukannya Sengketa ke Pengadilan Asing dalam Arbitrase Internasional. *Belli Ac Pacis (Jurnal Hukum Internasional), 8*(1), 12–50. https://doi.org/10.20961/belli.v8i1.74409

Shaw, M. N. (2017). *International law* (8th ed.). Cambridge University Press. https://doi.org/10.1017/9781316979815

Strong, S. I. (2018). Anti-suit injunctions in judicial and arbitral procedures in the United States. *The American Journal of Comparative Law, 66*(suppl_1), 153–179. https://doi.org/10.1093/ajcl/avy023

Tan, D. I. (2026, February 17). *Parallel proceedings*. Jus Mundi. https://jusmundi.com/en/document/publication/en-parallel-proceedings

Vlahna, K., Krasnıqı, D., Krasnıqı, B., & Vlahna, D. (2020). Arbitration and the importance of the arbitration agreement. *European Journal of Educational and Social Sciences, 5*(2), 160–169. https://dergipark.org.tr/en/pub/ejees/article/822076

Winarta, F. H. (2022). *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional* (Edisi ke-2). Sinar Grafika.