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ARBITRATOR CONFLICTS AND PUBLIC POLICY IN ENFORCING FOREIGN AWARDS IN INDONESIA

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Abstract: *This article examines the disclosure of arbitrator conflicts of interest in international commercial arbitration involving Indonesian parties. It addresses two issues: (1) the degree of synchronization between Indonesian arbitration law and the IBA Guidelines on Conflicts of Interest in International Arbitration, and (2) the implications of a breach of disclosure obligations for the recognition and enforcement of foreign arbitral awards in Indonesia. This normative legal study applies statutory, conceptual, case, and comparative approaches. The findings show that Law Number 30 of 1999 recognizes disclosure duties and challenge procedures but does not provide the conflict classifications, look-back periods, or objective parameters contained in the 2024 IBA Guidelines' Traffic Light System. A failure to disclose does not automatically annul an award or bar its enforcement. Nevertheless, when the non-disclosure is material and creates justifiable doubts concerning the arbitrator's independence or impartiality, it may support refusal of enforcement on due-process and public-policy grounds under the 1958 New York Convention and Law Number 30 of 1999.*

Keywords: *Foreign Arbitral Awards; Arbitrator Disclosure; Conflict of Interest; Public Policy; IBA Guidelines.*

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Introduction

Cross-border commerce requires a dispute-resolution mechanism that is efficient, neutral, and capable of operating beyond the territorial limits of national courts. International commercial arbitration serves that function because the parties may select the seat, applicable rules, language, and decision makers, while the resulting award is generally final and enforceable across jurisdictions (Born, 2021; Moses, 2017). Indonesian parties therefore frequently choose institutional arbitration, including proceedings administered by the International Chamber of Commerce (ICC) or the Singapore International Arbitration Centre (SIAC), for disputes arising from international contracts.

The effectiveness of arbitration is ultimately tested at the recognition and enforcement stage. In Indonesia, foreign arbitral awards are governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), Presidential Decree Number 34 of 1981, Supreme Court Regulation Number 1 of 1990, and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Indonesian Arbitration Law). This framework reflects the Convention's pro-enforcement orientation: courts may refuse enforcement only on the limited grounds set out in Article V of the Convention and the corresponding provisions of Indonesian law (United Nations Commission on International Trade Law [UNCITRAL], 2016; van den Berg, 1981). One of those grounds is public policy, a concept that must be applied carefully so that judicial control does not become a review of the merits.

Finality and limited court intervention are central features of arbitration. Article 60 of the Indonesian Arbitration Law states that an arbitral award is final and binding. Those features, however, depend on confidence in the tribunal's independence and impartiality. Party autonomy cannot justify a process conducted by a decision maker whose financial, professional, or personal relationships create a material risk of bias (Blackaby et al., 2015; Lew et al., 2003). Disclosure is therefore not a formality; it enables the parties and the administering institution to assess potential conflicts before they affect the legitimacy of the proceedings.

International standards provide increasingly specific disclosure requirements. The International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration were revised in 2024 and retain the General Standards and the Red, Orange, and Green Lists. Comparable continuing duties of independence, impartiality, and disclosure are contained in the 2026 Rules of Arbitration of the International Chamber of Commerce (ICC), the 2025 Rules of the Singapore International Arbitration Centre (SIAC), and the 2020 Rules of the London Court of International Arbitration (LCIA) (ICC, 2026; IBA, 2024; LCIA, 2020; SIAC, 2025). Indonesian law recognizes the same general values but does not contain an equivalent conflict matrix. This difference creates uncertainty regarding which relationships must be disclosed, when disclosure must be made, and what legal consequence follows from non-disclosure.

Previous Indonesian research has primarily examined domestic arbitration or the general public-policy exception. Sinaga and Susanti (2025) analyzed the annulment of BANI Award Number 45055/VII/ARB-BANI/2022, in which an arbitrator allegedly failed to disclose a prior professional relationship involving counsel for one of the parties. Their study treated non-neutrality as a possible basis for annulment under Article 70 of the Indonesian Arbitration Law. The study is important for domestic arbitration, but its legal construction cannot be transferred directly to a foreign award because Indonesian courts do not have authority to set aside an award made at a foreign seat.

Other studies have mapped the inconsistent interpretation of public policy in Indonesian enforcement practice (Hikmah, 2013; Saraswati & Hidayat, 2019; Wijaya, 2021). More recent scholarship likewise identifies the absence of a stable and restrictive public-policy standard as a source of legal uncertainty (Sitorus et al., 2026; Sugianto et al., 2025).

These studies do not specifically integrate the 2024 IBA disclosure framework with the distinction between annulment at the seat and refusal of enforcement in Indonesia. That unresolved issue forms the principal research gap addressed in this article.

This article analyzes the relationship between Indonesian disclosure rules and the IBA Guidelines and then determines the legal relevance of material non-disclosure when a foreign award is presented for enforcement in Indonesia. The analysis preserves the distinction between three separate questions: whether disclosure was required, whether the undisclosed circumstance establishes justifiable doubts about the arbitrator's independence or impartiality, and whether the defect meets a statutory ground for refusing enforcement.

Accordingly, the research asks: (1) to what extent are the Indonesian Arbitration Law and the IBA Guidelines synchronized regarding disclosure of arbitrator conflicts of interest; and (2) what legal consequences may arise when an international arbitrator breaches a disclosure obligation and the resulting award is sought to be enforced in Indonesia? The article argues that non-disclosure is legally relevant but should not be treated as an automatic public-policy violation. Refusal is justified only when the undisclosed circumstance is material, affects the integrity or fairness of the proceedings, and falls within a ground recognized by the New York Convention and Indonesian law.

Method

This study uses normative or doctrinal legal research to examine the consistency and interaction of legal norms governing arbitrator disclosure and foreign-award enforcement. The approaches comprise statutory, conceptual, case, and comparative analysis. Primary legal materials include the New York Convention 1958, Law Number 30 of 1999, Presidential Decree Number 34 of 1981, Supreme Court Regulation Number 1 of 1990, the UNCITRAL Model Law, the IBA Guidelines 2024, and the current arbitration rules of the ICC, SIAC, and LCIA. Secondary materials include books, peer-reviewed journal articles, and published judicial decisions concerning arbitrator independence, impartiality, disclosure, annulment, enforcement, and public policy.

Legal materials were selected according to their authority, direct relevance to the two research questions, and capacity to explain Indonesian or comparative arbitration practice. The analysis proceeded in four stages: identifying the disclosure and challenge norms in Indonesian law; comparing those norms with the General Standards and Application Lists of the IBA Guidelines; distinguishing annulment at the seat from refusal of enforcement; and interpreting the available refusal grounds in light of the New York Convention's pro-enforcement purpose. The study does not claim empirical frequency from the limited published decisions; case materials are used to test and illustrate the normative construction.

Discussion

Synchronization of Arbitrator Disclosure Standards between Indonesian Law and the IBA Guidelines

Arbitration rests on the parties' confidence in the decision-making tribunal. Independence and impartiality are related but distinct requirements. Independence concerns objective relationships between an arbitrator and the parties, counsel, affiliates, or the dispute, whereas impartiality concerns the absence of predisposition or bias in deciding the case (Born, 2021; Daele, 2012). Both requirements continue throughout the proceedings. Disclosure supports these requirements by allowing the parties to evaluate relevant circumstances, but the existence of a disclosure duty does not necessarily establish that the arbitrator is disqualified. The practical and regulatory literature likewise treats disclosure as central to the integrity of arbitrator appointment and challenge procedures (Bishop & Reed, 1998; Rogers, 2005).

Indonesian law regulates disclosure and challenge through separate provisions. Article 18(1) of the Indonesian Arbitration Law requires a prospective arbitrator to inform the parties of circumstances that may affect independence or create bias. Articles 22 to 26 regulate the right to challenge an arbitrator when sufficient grounds and authentic evidence create doubts about independence or impartiality. The statute therefore recognizes disclosure as an ex-ante safeguard and challenge as a procedural remedy. Nevertheless, it does not specify detailed categories of relationships, look-back periods, continuing disclosure procedures, or a standardized test for waiver.

The open wording of the statute gives arbitrators and courts substantial interpretive discretion. General clauses are not inherently defective, because conflict assessment is fact-sensitive. The difficulty arises when general clauses operate without supplementary guidance. An arbitrator may regard a past professional connection as too remote to disclose, while a party may view the same connection as material. The absence of objective indicators increases the risk that the issue will be raised only after the award, when the parties have already incurred the time and cost that arbitration is intended to reduce (Adolf, 2002; Junita, 2022).

The BANI dispute examined by Sinaga and Susanti (2025) illustrates this risk in a domestic setting. The alleged prior relationship was addressed after the award through annulment proceedings, and the court treated concealment as deceit within Article 70. Regardless of the final characterization of that case, it demonstrates a structural problem: a relationship that could have been examined at the appointment stage became a post-award challenge because the governing law did not provide a detailed disclosure matrix. The lesson is preventive rather than merely punitive.

Legal certainty in arbitration requires more than the existence of a written rule. It also requires a reasonably predictable process for identifying, disclosing, and assessing conflicts. Radbruch's account of legal certainty is useful as an analytical lens, but certainty must be balanced with fairness and the fact-specific character of impartiality review (Radbruch, 1950). Harmonization in this context does not require transforming the IBA Guidelines into binding legislation in every case. It requires Indonesian law and judicial practice to use transparent criteria that are compatible with internationally recognized standards while retaining the court's authority to assess the facts.

The IBA Guidelines are soft law rather than a treaty or statute. They become binding only when incorporated by party agreement, institutional rules, or applicable law. Even when they are not formally binding, courts and tribunals frequently use them as persuasive evidence of international arbitral practice. The 2024 revision confirms that Part I General Standards govern the analysis and that the Application Lists are illustrative rather than exhaustive (IBA, 2024). The United Kingdom Supreme Court has also recognized the Guidelines as useful evidence of accepted arbitral practice, while emphasizing that the applicable law remains controlling (Halliburton Company v. Chubb Bermuda Insurance Ltd., 2020).

Institutional rules reinforce the same approach. The ICC Rules require prospective and appointed arbitrators to disclose circumstances that may call independence into question or create reasonable doubts about impartiality, and the 2026 Rules expressly direct that doubts concerning disclosure be resolved in favor of disclosure (ICC, 2026). SIAC Rule 20 imposes continuing independence, impartiality, and disclosure duties, while Articles 5.3 to 5.5 of the LCIA Rules contain comparable obligations (LCIA, 2020; SIAC, 2025). These instruments show that disclosure is an ongoing procedural duty, not a one-time declaration at appointment.

The IBA Guidelines operationalize the General Standards through the Traffic Light System. The system does not mechanically determine every challenge; instead, it classifies recurring circumstances to support consistent assessment. It contains four categories:

Non-Waivable Red List

The Non-Waivable Red List covers conflicts of such gravity that the arbitrator cannot serve even with party consent. These situations generally involve identity between the arbitrator and a party or a direct and significant financial interest in the outcome. The category reflects the principle that no person may adjudicate their own cause.

Waivable Red List

The Waivable Red List covers serious conflicts in which the arbitrator may serve only after full disclosure and the express agreement of all parties. The list includes relationships that objectively create justifiable doubts but are capable of informed waiver under the conditions stated in the Guidelines.

Orange List

The Orange List identifies circumstances that may, depending on the facts, give rise to doubts regarding independence or impartiality and therefore ordinarily require disclosure. Examples include specified recent appointments, professional relationships, or connections with parties or counsel. Failure to object within the applicable period after disclosure may amount to waiver, but non-disclosure itself does not automatically prove bias or require disqualification.

Green List

The Green List contains circumstances that ordinarily do not create an appearance of conflict and therefore do not require disclosure. An example is an arbitrator's previously expressed general academic opinion on an issue that also arises in the dispute, provided the opinion was not directed to the particular case.

The principal contribution of this research is the distinction between preventive conflict management and post-award remedies. Sinaga and Susanti (2025) focused on an ex-post annulment mechanism in domestic arbitration. This article shows that the same factual allegation has a different procedural consequence when the award is foreign. The appropriate inquiry is not whether an Indonesian court should annul the award, but whether the alleged defect satisfies a Convention ground for refusing recognition or enforcement.

The comparison reveals partial, rather than complete, disharmony. Indonesian law and the IBA Guidelines share the fundamental requirements of independence, impartiality, disclosure, and challenge. The difference lies in regulatory precision. Article 18 and Articles 22 to 26 of the Indonesian Arbitration Law establish general duties and remedies, while the IBA Guidelines provide structured categories, temporal indicators, and waiver principles. The normative gap therefore concerns operational standards, not the absence of a disclosure obligation.

Applying that distinction to the relationship described in the BANI study, Indonesian law requires disclosure when the circumstance may affect independence or create bias, but it does not identify the precise category or relevant period. Under the IBA framework, the relationship would be assessed against the General Standards and the appropriate Application List. The comparison illustrates why the IBA framework can function as persuasive supplementary guidance, but the final assessment must still consider the exact facts, the parties' knowledge, any waiver, and the applicable procedural rules.

For Indonesian parties using ICC, SIAC, LCIA, or other international institutions, compliance with the applicable institutional rules is essential regardless of whether the Indonesian Arbitration Law is amended. A practical harmonization measure would be a Supreme Court regulation or interpretive guidance stating that internationally recognized disclosure standards may be considered when assessing independence, impartiality, due process, and public policy. Such guidance should also state that the lists are not automatic rules of invalidity and that materiality and procedural prejudice remain necessary considerations.

Legal Implications of Breaching Disclosure Obligations for the Enforcement of Foreign Arbitral Awards in Indonesia

A foreign arbitral award is an award rendered outside Indonesia or otherwise classified as international under Indonesian law. Under the territorial principle, a challenge seeking to set aside the award ordinarily belongs to the courts at the arbitral seat. The enforcing court performs a different function: it decides whether the award should be recognized and executed within its territory (Born, 2021; UNCITRAL, 2016; van den Berg, 1981). Indonesian courts therefore cannot use Article 70 of the Indonesian Arbitration Law to annul a foreign award. They may only apply the refusal grounds contained in the New York Convention and Articles 65 to 69 of the Indonesian Arbitration Law.

Article 66 of the Indonesian Arbitration Law requires, among other matters, that an international award fall within the relevant commercial scope, originate from a state bound by the applicable enforcement framework, and not conflict with public policy. Arbitrator non-disclosure may also engage Article V(1)(b) of the New York Convention if it deprived a party of a fair opportunity to present its case, Article V(1)(d) if the tribunal's composition or procedure departed from the parties' agreement or the law of the seat, or Article V(2)(b) when the defect is so serious that enforcement would violate the forum's fundamental principles. The correct ground depends on the facts; public policy should not be used as a substitute for every procedural complaint.

A critical distinction must be maintained between non-disclosure and disqualifying conflict. International jurisprudence generally treats failure to disclose as a relevant factor, not conclusive proof of bias. In Halliburton, the United Kingdom Supreme Court held that a failure to disclose may contribute to an assessment of apparent bias, but the ultimate question remains whether a fair-minded and informed observer would find a real possibility of bias. Singaporean decisions similarly recognize the IBA Guidelines as helpful while rejecting the proposition that every failure to disclose requires disqualification or invalidates an award (BYL v. BYN, 2020). This distinction is necessary to prevent tactical post-award challenges based on immaterial omissions.

The domestic BANI case and the foreign-award context therefore require different legal routes. In domestic arbitration, the applicant may seek annulment under the limited grounds in Article 70, subject to the statutory requirements and time limits. For a foreign award, the Indonesian court does not revisit validity at the seat. It determines only whether recognition or enforcement should be refused. The same factual circumstance may be relevant in both proceedings, but the jurisdiction, legal basis, burden of proof, and consequence are different.

The first doctrinal shift is from annulment to refusal of enforcement. Annulment removes or suspends the award's legal effect under the law of the seat, whereas refusal limits the award's effect in the enforcing state. A foreign award refused in Indonesia may remain valid and enforceable elsewhere. This distinction follows the architecture of the New York Convention and prevents an enforcing court from exercising supervisory jurisdiction that belongs to the courts of the seat.

The second shift concerns legal characterization. In the domestic BANI dispute, the alleged concealment was framed as deceit under Article 70. For a foreign award, the more appropriate analysis is whether the non-disclosure produced a tribunal-composition defect, denied procedural fairness, or violated fundamental public policy. A Red or Orange List classification may support that analysis, but it cannot replace proof of the relationship, materiality, absence of waiver, and its effect on the integrity of the proceedings.

The public-policy exception must remain narrow. The New York Convention is designed to facilitate enforcement, and Article V is exhaustive rather than an invitation to review the merits (UNCITRAL, 2016; van den Berg, 1981). Comparative scholarship likewise treats public policy as a safeguard for fundamental principles, not ordinary legal error (Nam, 2025). A restrictive approach is particularly important in Indonesia, where studies have documented broad and inconsistent uses of public policy in foreign-award cases (Saraswati & Hidayat, 2019; Sugianto et al., 2025; Wijaya, 2021). This restrained approach is also supported by Indonesian scholarship on the public-policy exception and by the IBA's comparative report on Article V(2)(b) of the Convention (Junita, 2022; International Bar Association, Subcommittee on Recognition and Enforcement of Arbitral Awards, 2015). The same enforcement-oriented interpretation is reflected in the International Council for Commercial Arbitration (ICCA, 2024) judges' guide to the Convention.

Indonesian scholarship and case analysis show that public-policy reasoning has been used in several enforcement disputes, including the Astro litigation, but published decisions expressly refusing enforcement solely because of an arbitrator's non-disclosure remain limited (Hikmah, 2012, 2013). This evidentiary gap requires caution. The conclusion of this article is therefore normative: a material and substantiated conflict may justify refusal when it undermines an impartial tribunal or basic procedural fairness, but current Indonesian jurisprudence does not support a categorical rule that every breach of the IBA Guidelines is automatically contrary to public policy.

The practical consequences are two-sided. An Indonesian respondent may invoke a serious undisclosed conflict when resisting enforcement, but it must identify the relevant Convention ground and prove the material facts rather than rely on the label of public policy alone. Conversely, an Indonesian claimant seeking to enforce an award should conduct conflict checks at appointment, request continuing disclosures, document any waiver, and raise objections promptly. These measures protect the award from later challenges and reduce the risk that disclosure issues will be used strategically after an unfavorable result.

Conclusion

This research reaches two principal conclusions. First, Indonesian law and the IBA Guidelines are synchronized at the level of principle because both require arbitrator independence, impartiality, disclosure, and access to a challenge procedure. They are not fully synchronized at the operational level. The Indonesian Arbitration Law uses general clauses and does not provide the conflict categories, temporal parameters, continuing-disclosure details, or waiver structure set out in the IBA Guidelines' Traffic Light System. The Guidelines can therefore provide persuasive supplementary criteria without displacing the governing statute, institutional rules, or law of the seat. Second, a breach of disclosure by an international arbitrator does not automatically annul a foreign award or require an Indonesian court to refuse enforcement. Indonesian courts lack jurisdiction to set aside foreign awards and must apply the limited refusal grounds in the New York Convention and the Indonesian Arbitration Law. Refusal may be justified when the undisclosed circumstance is proven, material, unwaived, and sufficiently serious to establish a defective tribunal composition, denial of procedural fairness, or violation of fundamental public policy. This calibrated test protects arbitral integrity without undermining the Convention's pro-enforcement orientation. The article recommends that the Supreme Court or the legislature issue interpretive guidance on arbitrator disclosure and the public-policy exception. The guidance should recognize international standards such as the IBA Guidelines, require a fact-specific assessment of materiality and prejudice, distinguish non-disclosure from actual or apparent bias, and reaffirm that public policy is exceptional. Contract drafters, counsel, arbitral institutions, and parties should also incorporate conflict-checking and continuing-disclosure procedures into the appointment process. A limitation of this study is the scarcity of published Indonesian decisions dealing specifically with non-disclosure in the enforcement of foreign awards; future research should examine court files and enforcement orders to test the proposed framework against judicial practice.

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