

ASSESSING THE IMPLICATIONS OF INDONESIA'S POTENTIAL ACCESSION TO THE 2019 HAGUE JUDGMENTS CONVENTION

Fatah Hidayatullah¹, Chairunniswah Yulindra², Zhafirah Estu Ramadhani³

¹Faculty of Law, Universitas Sriwijaya, Palembang. Email: fatah.hidayatullah.sh@gmail.com

²Faculty of Law, Universitas Sriwijaya, Palembang. Email: chairunniswah31@gmail.com

³Faculty of Law, Universitas Sriwijaya, Palembang. Email: firahramadhani9@gmail.com

Article	Abstract
<p>Keywords:</p> <p>Hague Judgments Convention, legal certainty, investor confidence, state sovereignty, Indonesia, private international law.</p> <p>DOI: 10.28946/scls.v3i2.5335</p>	<p>This article analyzes the potential impact of Indonesia's accession to the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague Judgments Convention). Addressing long-standing uncertainty stemming from Article 436 of the Reglement op de Rechtsvordering (RV), the study evaluates three key dimensions: legal certainty, investor confidence, and the implications for state sovereignty. Using a normative and comparative legal approach, the research finds that Indonesia's current framework, requiring a full fresh lawsuit to enforce foreign judgments, creates high transaction costs, inconsistent judicial outcomes, and diminished trust from foreign investors. The Hague Convention offers a predictable, efficient, and standardized multilateral system that can significantly strengthen Indonesia's cross-border enforcement regime. Accession would enhance legal reliability and improve the investment climate, provided that Indonesia undertakes legislative harmonization, strengthens judicial and institutional capacity, and maintains adequate safeguards through ordre public and sovereign-immunity protections. The article concludes that Indonesia should pursue accession through a phased and carefully designed approach to balance international judicial cooperation with the preservation of national sovereignty.</p>

This is an Open Acces Research distributed under the term of the Creative Commons Attribution Licence (<https://creativecommons.org/licenses/by/4.0>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original works is properly cited.

A. INTRODUCTION

In the early 2000s, a group of foreign creditors led by Morgan Stanley won a US\$70 million lawsuit against PT Indah Kiat Pulp & Paper Corporation in courts in New York and Singapore over a bond default¹². However, this victory marked the beginning of a lengthy legal process when the ruling could not be enforced in Indonesia, where the debtor's assets were located. The absence of a clear mechanism for recognizing and enforcing foreign court rulings forced creditors to file new lawsuits (relitigation), repeating the entire evidentiary process with uncertain results and taking years.³ The Indah Kiat case is not merely a dark chapter, but a reflection of systemic problems that threaten legal certainty and investor perceptions of the credibility of the Indonesian judicial system.

The issue of recognition and enforcement of foreign judgments is an important pillar of private international law to ensure the resolution of cross-border disputes.⁴ In the global era, parties often choose a specific forum through a choice of court agreement, but the effectiveness of this choice depends on whether the resulting judgment can be recognized and enforced in other countries, especially where the losing party's assets are located. Without an effective recognition mechanism, foreign judgments become mere "paper judgments" that have no executory power.⁵

Indonesia still relies on the colonial legal framework in Article 436 of the *Reglement op de Rechtsvordering* (RV), which stipulates that foreign court decisions cannot be enforced directly.⁶ In practice, parties wishing to enforce foreign judgments must file a new lawsuit in an Indonesian court, where the foreign judgment serves only as *prima facie* evidence.⁷ In addition to being time-consuming and costly, this mechanism opens the door for Indonesian courts to re-examine the substance of the case in its entirety and potentially issue a different ruling. The uncertainty of this practice has undermined the confidence of foreign investors, as seen in the Indah Kiat case, which was finally settled in Singapore and the United States but was difficult to implement in Indonesia.⁸

¹ Makarim and Taira S, "Noteworthy Case a Green Light for Recognition and Enforcement of Foreign Judgements in Indonesia | Benchmark Li," benchmarklitigation, June 19, 2024, <https://benchmarklitigation.com/NewsAndAnalysis/Noteworthy-Case-a-Green-Light-for-Recognition-and-Enforcement-of-Foreign-Judgements/Index/9858>.

² Arijit Ghosh and Bambang Dwi Djanuarto, "Indonesia Supreme Court Overturns Asia Pulp & Paper Debt Ruling | Eyes On The Forest," eyesontheforest, November 5, 2008, <https://www.eyesontheforest.or.id/news/indonesia-supreme-court-overturns-asia-pulp-and-paper-debt-ruling>.

³ Stefanus Haryanto, "Recognition and Enforcement of Foreign Judgments in Indonesia | CMS," cms.law, November 15, 2021, <https://cms.law/en/int/expert-guides/cms-expert-guide-to-recognition-and-enforcement-of-judgements/indonesia>.

⁴ Dinda Rizqiyatul Himmah and Justin Gabriel Wibisono, "Recognition and Enforcement of Foreign Court Judgments in Civil and Commercial Matters: An Indonesian Private International Law Perspective," *Indonesian Journal of International Law* 20, no. 3 (May 3, 2023): 4, <https://doi.org/10.17304/ijil.vol20.3.5>.

⁵ "Deutsche Bank AG and Another v Asia Pulp & Paper Co Ltd," elitigation.sg, April 29, 2003, https://www.elitigation.sg/gdviewer/s/2003_SGCA_19.

⁶ Dwi Satya Nugroho Aji, "A Brief Analysis on Indonesia's Law on Recognition & Enforcement of Foreign Judgments," dandapala, April 20, 2025, <https://dandapala.com/article/detail/a-brief-analysis-on-indonesias-law-on-recognition-enforcement-of-foreign-judgments>.

⁷ Haryanto, "Recognition and Enforcement of Foreign Judgments in Indonesia | CMS."

⁸ Afifah Kusumadara, "Jurisdiction of Courts Chosen in the Parties' Choice of Court Agreements: An Unsettled Issue in Indonesian Private International Law and the Way-Out," *Journal of Private International Law* 18, no. 3 (September 2, 2022): 424–49, <https://doi.org/10.1080/17441048.2022.2148905>.

This uncertainty has broad implications for Indonesia's investment climate and competitiveness. Foreign investors tend to avoid jurisdictions that do not guarantee the enforcement of judgments because of the increased transaction risks and costs. In the global competition to attract foreign direct investment (FDI), a consistent, transparent legal system that is in line with international standards is a competitive advantage. Indonesia, with its enormous economic potential and strategic position in Southeast Asia, has an urgent need to strengthen its legal framework for the recognition of foreign judgments to be more adaptive to cross-border economic dynamics.

At the international level, the global community has adopted the July 2, 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters or the 2019 Hague Convention.⁹ This convention provides a multilateral framework to increase certainty, reduce costs, and accelerate the process of cross-border recognition and enforcement of judgments.¹⁰ The Convention entered into force on September 1, 2023, for the European Union (27 member states) and Ukraine, and has attracted interest from other countries, including the United States, which signed it in March 2022.¹¹ Access to this Convention opens up opportunities for Indonesia to modernize its legal system, strengthen its investment attractiveness, and enhance its legal diplomacy position at the global level.

However, accession cannot be separated from considerations of national legal sovereignty and the readiness of Indonesia's judicial system. A crucial question arises: to what extent can foreign judgments be recognized without violating the fundamental principles of Indonesian law (*ordre public*)? Furthermore, are Indonesia's legal and institutional infrastructures ready to implement the international standards set by the 2019 Hague Convention?

Based on these issues, the research gap lies in the absence of a comprehensive study in Indonesia that assesses the potential impact of accession to the 2019 Hague Convention simultaneously on three main dimensions: legal certainty, investor confidence, and sovereignty challenges. Previous literature generally discusses the issue of foreign judgment recognition partially, both from a normative perspective and through case studies, without integrating these three strategic aspects into a national policy framework.

This article seeks to fill this gap by analyzing the potential impact of accession to the 2019 Hague Convention on Indonesia through a legal and comparative approach, in order to provide comprehensive policy recommendations for Indonesian policymakers.

B. RESEARCH METHODS

This study uses a normative legal research approach supported by a comparative approach. The normative approach is used to examine the principles of positive law governing the recognition and enforcement of foreign judgments in the Indonesian legal

⁹ "Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters," *hcch.net*, July 2, 2019, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=137>.

¹⁰ "HCCH | Judgments Section," *hcch.net*, accessed October 2, 2025, <https://www.hcch.net/en/instruments/conventions/specialised-sections/judgments>.

¹¹ Client Alert, "The United States Becomes the Sixth Signatory to the 2019 Hague Judgments Convention on the Recognition and Enforcement of Foreign Judgments - Gibson Dunn," *gibsondunn.com*, March 18, 2022, <https://www.gibsondunn.com/the-united-states-becomes-the-sixth-signatory-to-the-2019-hague-judgments-convention-on-the-recognition-and-enforcement-of-foreign-judgments/>.

system and the provisions set out in the 2019 Hague Convention. Normative analysis is conducted through grammatical, systematic, and teleological interpretation of the articles of the Convention and relevant national legal provisions.

The comparative approach is used to assess the compatibility, differences, and potential for harmonization between the Indonesian legal framework and the jurisdictions that have acceded to the Convention. The selection of the European Union, Uruguay, and Ukraine as comparative countries is based on three methodological considerations:

- (1) The European Union is the largest bloc to have ratified the Convention and has extensive experience in the regime of cross-border recognition of judgments;
- (2) Uruguay represents a developing country with a civil law system that is closer to Indonesia's; and
- (3) Ukraine is a country with legal transition dynamics that are relevant to the context of institutional readiness.

Through this selection, the comparison is expected to provide a proportional picture of both developed and developing countries' experiences.

The types of legal materials used consist of:

- (1) Primary legal materials, including the 2019 Hague Convention, *Reglement op de Rechtsvordering* (RV), national legislation, and Supreme Court decisions related to the recognition of foreign judgments.
- (2) Secondary legal materials, including academic literature, international law journals, official reports of the Hague Conference on Private International Law (HCCH), and policy publications from the Ministry of Investment/BKPM.
- (3) Tertiary legal materials, such as legal dictionaries and international law encyclopedias.

Legal materials were collected through literature studies, searches of international journal databases, and official HCCH documents. The analysis was conducted qualitatively using a deductive approach, beginning with the identification of general norms, which were then compared with national practices and comparative jurisdictions. The comparative analysis was conducted in three stages:

- (1) identifying the normative structure in the Convention and national law;
- (2) evaluating the effectiveness of foreign judgment recognition mechanisms in comparative jurisdictions;
- (3) examining the implications for Indonesia's needs in terms of legal certainty, investment climate, and protection of sovereignty.

As a limitation of the method, this study relies on doctrinal analysis and comparative studies without involving empirical data related to the frequency of requests for the enforcement of foreign judgments or the direct perceptions of investors. Thus, the results of the study focus on normative feasibility and institutional readiness, rather than on empirical measurements of market behavior or judicial practices in quantitative terms.

C. ANALYSIS AND DISCUSSION

1. Structure, Principles, and Mechanisms of the 2019 Hague Convention

The 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters is a multilateral instrument drafted by the Hague Conference on Private International Law (HCCH) to create global standards for the

recognition of foreign judgments.¹² This convention was created to address the fragmentation of the previous regime, which relied on bilateral agreements or inconsistent national mechanisms, thereby creating uncertainty in the resolution of cross-border disputes.¹³ Unlike the 1958 New York Convention, which regulates international arbitration, the 2019 Hague Convention focuses on court judgments and complements the 2005 Choice of Court Convention.¹⁴ This convention has been in force since September 1, 2023 for the European Union and Ukraine, while the United States signed it in 2022.

The scope of the Convention covers civil and commercial judgments, including consumer and labor disputes, but excludes 17 categories of cases that are considered sensitive or have their own regimes.¹⁵ Article 2 excludes personal status, family law, inheritance, bankruptcy, privacy, intellectual property rights, certain business competition, and state debt. The definition of "judgment" in Article 3 covers final judgments on the merits of a case and the determination of legal costs, but excludes interlocutory judgments and interim measures. Article 19 provides room for participating states to exclude cases involving the state or its government agencies.

The recognition mechanism is based on the principle of indirect jurisdiction, whereby the court of the state requested to recognize the judgment does not reassess the jurisdiction of the court of origin as long as one of the 13 grounds for jurisdiction in Article 5 is fulfilled. These grounds include the domicile or habitual residence of the defendant, the principal place of business, consent to jurisdiction, the place of performance of the contract, the location where the unlawful act occurred, and the forum chosen by the parties. Article 4(2) expressly prohibits review of the merits of the case. For judgments relating to property rights over land, Article 6 follows the *lex rei sitae* principle, so that recognition is only possible if the land is located in the country of origin of the judgment.

The Convention provides a limited list of grounds for refusal of recognition, which are regulated in a restrictive manner in Article 7. These grounds include inadequate notification of the defendant, fraud, violation of public policy (*ordre public*), inconsistency with the choice of forum agreement, conflict with an earlier judgment from another country, or the existence of a different judgment between the same parties in the country where recognition is sought. Article 10 specifically rejects the recognition of punitive or exemplary judgments that are inconsistent with the principle of compensation adopted by many civil law jurisdictions. Article 8 confirms that preliminary questions outside the scope of the Convention do not automatically preclude recognition as long as they are not the main subject matter of the case.

The procedures for recognition and enforcement are set out in Articles 13–15, which allow flexibility to national law but still set minimum standards, such as the obligation of courts to act expeditiously and the prohibition on requiring financial security solely because the applicant is a foreign national. The applicant must attach an official copy of the final judgment and proof of notification if the judgment was rendered in absentia. The HCCH also

¹² "Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters."

¹³ *Ibid.*

¹⁴ Alert, "The United States Becomes the Sixth Signatory to the 2019 Hague Judgments Convention on the Recognition and Enforcement of Foreign Judgments - Gibson Dunn."

¹⁵ "Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters."

provides a standard form to facilitate administrative verification. Article 15 emphasizes the minimum standard nature of the Convention, namely that participating countries may still recognize foreign judgments based on more liberal national laws, as long as they do not violate the exclusive rules of the Convention, especially those related to property rights over land.

Thus, the 2019 Hague Convention provides a relatively flexible framework based on minimum standards, while also serving as an instrument that promotes global consistency in the recognition of foreign judgments. The existence of this Convention has significant implications for developing countries such as Indonesia, particularly in the context of legal system reform, improving the reliability of judicial cooperation, and strengthening the attractiveness of international investment.

2. The Impact of Accession on Legal Certainty in Indonesia

a. Diagnosis of Current Legal Uncertainty

The Indonesian legal system in recognizing and enforcing foreign judgments still shows structural uncertainty stemming from its dependence on colonial provisions that are more than a century old. Article 436 RV expressly prohibits the enforcement of foreign court judgments unless otherwise provided by law.¹⁶ This principle originally reflected the protection of sovereignty, but in modern practice it has become a serious obstacle for parties who have obtained final and binding judgments abroad. Applicants for enforcement must file a fresh lawsuit in an Indonesian court, while foreign judgments only serve as written evidence that can be corroborated or refuted.¹⁷ This mechanism creates the risk of duplication of disputes, differences in the substance of judgments, and high litigation costs.

The uncertainty is exacerbated by the absence of a specific legal framework that systematically regulates the procedures and requirements for the recognition of foreign judgments. The HIR and RBg do not contain provisions regarding the enforcement of foreign judgments,¹⁸ so practice is highly dependent on limited and inconsistent jurisprudence. Supreme Court Decision No. 198 K/Sip/1953, for example, rejected the enforcement of a Dutch judgment without a basis in a reciprocal agreement.¹⁹ Even in international arbitration—which already has a legislative basis through the 1958 New York Convention and Law 30/1999—implementation still faces obstacles such as slow execution processes and varying interpretations by judges.²⁰ The lack of reciprocal agreements with major trading partners such as Japan, South Korea, China, and the United States further exacerbates this uncertainty.

¹⁶ Bosni Gondo Wibowo, "Eksekusi Putusan Pengadilan Asing Di Indonesia, Ini Aturannya | Klinik Hukumonline," *hukumonline*, March 14, 2023, <https://www.hukumonline.com/klinik/a/eksekusi-putusan-pengadilan-asing-di-indonesia--ini-aturannya-lt4d48c7e08e001/>.

¹⁷ Himmah and Wibisono, "Recognition and Enforcement of Foreign Court Judgments in Civil and Commercial Matters: An Indonesian Private International Law Perspective."

¹⁸ NURHADI, "PELAKSANAAN PUTUSAN ARBITRASE INTERNASIONAL DI INDONESIA" (Universitas Airlangga, 2005), <http://repository.unair.ac.id/id/eprint/35646>.

¹⁹ Adeline CHONG, "Recognition and Enforcement of Foreign Judgments in Asia," *Research Collection Yong Pung How School Of Law*, December 1, 2017, https://ink.library.smu.edu.sg/sol_research/2496.

²⁰ Panusunan HARAHAHAP Pengadilan Tinggi Pontianak Jl Ahmad Yani No and Kalimantan Barat, "EKSEKUTABILITAS PUTUSAN ARBITRASE OLEH LEMBAGA PERADILAN / THE EXECUTABILITY OF ARBITRATION AWARD BY JUDICIAL INSTITUTIONS," *Jurnal Hukum Dan Peradilan* 7, no. 1 (March 21, 2018): 127-50, <https://doi.org/10.25216/JHP.7.1.2018.127-150>.

Legislative efforts through the HPI Bill have been ongoing since the 1980s, including the drafting of provisions on the recognition of foreign judgments in Articles 43–44 of the 1997/1998 version of the Bill.²¹²² However, to date, the legislative process has not been completed, and the draft Civil Procedure Bill, which is supposed to regulate technical procedures, has not yet been enacted. This delay has a direct impact on investors' perception of the credibility of the Indonesian legal system, because without certainty of enforcement, foreign court decisions do not provide adequate protection of rights. This reduces the predictability of transactions and increases the risk premium for foreign investors.

b. Harmonization of National Law with the 2019 Hague Convention

An analysis of the compatibility between the Indonesian legal system and the 2019 Hague Convention shows both common ground and fundamental differences. In terms of compatibility, Indonesia and the Convention both place *ordre public* as the main filter for rejecting the recognition of foreign judgments. Article 7 paragraph (1)(c) provides room for countries to refuse recognition of judgments that are "manifestly incompatible with the public policy of the requested State," in line with a principle that has long been embraced by Indonesia, although not explicitly codified. Similarly, the principle of due process in Article 7 paragraph (1)(a) is in line with the principle of procedural justice in Indonesian procedural law.

However, the most fundamental difference lies in the recognition mechanism. The Convention adopts a quasi-automatic recognition system based on indirect jurisdiction, which prohibits a review of the merits of the case and only requires verification of one of the 13 grounds for jurisdiction in Article 5. In contrast, the Indonesian system requires *action au fond*, whereby Indonesian courts review all facts and laws. This difference is not only technical, but reflects a difference in philosophy regarding the relationship between judicial sovereignty and international cooperation.

In order to comply with the standards of the Convention, Indonesia needs to make structural changes to Article 436 RV or replace it with a new law that:

- (1) adopting the principle of indirect jurisdiction with clear criteria;
- (2) prohibiting substantive review of cases;
- (3) providing simple and expeditious procedures for recognition and enforcement; and
- (4) establishing limited grounds for refusal.

Adjustments at the implementing regulation level are also crucial. The Supreme Court can issue a Supreme Court Regulation governing document verification, standards of proof, *ordre public* mechanisms, and the format of enforcement.²³ The establishment of a centralized foreign judgment registration system will increase transparency and consistency. The experience of the European Union through the Brussels I bis Regulation shows that procedural

²¹ "NASKAH AKADEMIK RUU TENTANG HUKUM PERDATA INTERNASIONAL" (Jakarta, November 2014), https://bphn.go.id/data/documents/na_tentang_hpi.pdf.

²² Himmah and Wibisono, "Recognition and Enforcement of Foreign Court Judgments in Civil and Commercial Matters: An Indonesian Private International Law Perspective."

²³ Wigati Pujiningrum, "Mahkamah APEMBANGUNAN HUKUM PERDATA MELALUI YURISPRUDENSI", *Igung Republik Indonesia*, Mahkamah Agung, July 21, 2020, <https://www.mahkamahagung.go.id/id/artikel/4206/pembangunan-hukum-perdata-melalui-yurisprudensi>.

harmonization and digitization of registration can reduce the time and cost of cross-border enforcement of judgments.²⁴

c. Benefits of Legal Certainty from Accession

Accession to the 2019 Hague Convention offers several significant benefits in terms of improving legal certainty in Indonesia. First, the existence of 13 grounds of jurisdiction in Article 5 provides clear standards regarding the situations in which foreign judgments can be recognized. This standardization increases predictability for parties in formulating dispute strategies, including in contract negotiations and risk management.²⁵

Second, the prohibition on re-examining the substance of a case will reduce disparities between Indonesian court decisions. The current uncertainty stems largely from variations in judges' interpretations. Under the Convention, grounds for refusal are limited to those in Article 7, thereby reducing the potential for forum shopping and attempts to avoid enforcement on irrelevant grounds.

Third, accession has the potential to drastically reduce litigation costs and duration. Fresh lawsuit proceedings, which can take 3–7 years and incur significant costs²⁶, can be replaced with a simpler and faster recognition process, usually within 6–18 months. These savings not only benefit the winning party, but also ease the burden on the national court system.

Fourth, accession increases the effectiveness of choice of court agreements. Currently, forum selection clauses often lose their practical value due to uncertainty regarding enforcement in Indonesia. By becoming part of the Convention, these clauses gain greater legal certainty because decisions from the forum chosen by the parties are more easily recognized and enforced.

d. Comparative Study: Experiences of Countries that Have Acceded

The experiences of countries that have acceded to the Convention provide important insights for Indonesia. The European Union adopted the Convention collectively through Council Decision (EU) 2023/2049 after conducting an in-depth impact assessment.²⁷ The study showed that the economic benefits and legal certainty for business actors, including MSMEs, far outweigh the risks to legal sovereignty. The European Union also did not make many restrictive declarations, demonstrating its confidence in the Convention's safeguard mechanisms. Uruguay, as the first developing country to ratify the Convention, integrated it smoothly due to its long tradition of judicial cooperation through the Montevideo Treaties. Accession sent a positive signal to investors that Uruguay consistently supports the enforcement of cross-border contracts.

²⁴ Michael Wilderspin and Lenka Vysoka, "The 2019 Hague Judgments Convention through European Lenses," *Nederlands Internationaal Privaatrecht* 1 (2020): 34–49, <https://www.nipr-online.eu/pdf/2020-138.pdf>.

²⁵ "Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2019 Judgments Convention) | EUR-Lex," accessed October 3, 2025, <https://eur-lex.europa.eu/EN/legal-content/summary/convention-on-the-recognition-and-enforcement-of-foreign-judgments-in-civil-or-commercial-matters-hcch-2019-judgments-convention.html>.

²⁶ Himmah and Wibisono, "Recognition and Enforcement of Foreign Court Judgments in Civil and Commercial Matters: An Indonesian Private International Law Perspective."

²⁷ "COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT" (Brussels, March 17, 2016), <https://edz.bib.uni-mannheim.de/edz/pdf/swd/2016/swd-2016-0064-2-en.pdf>.

Ukraine acceded to the Convention in a complex geopolitical context as part of its strategy of legal modernization and European integration. Its declaration under Article 18 shows that the Convention provides flexibility to accommodate national interests.

From these three examples, there are several lessons for Indonesia:

- (1) a comprehensive impact assessment is essential prior to accession;
- (2) declarations can be used to accommodate national needs;
- (3) harmonization can be carried out gradually through implementing regulations; and
- (4) inter-agency coordination is a prerequisite for effective implementation.

3. The Impact of Accession on Investor Confidence and the Investment Climate

a. Correlation between Legal Certainty and Investment

From the perspective of institutional economics theory (Douglass C. North), legal certainty is a formal institution that reduces transaction costs and mitigates risk in cross-border economic relations. Contract enforcement efficiency is a key variable because it determines the level of predictability of a jurisdiction. In this context, Doing Business 2020 data shows that contract dispute resolution in Indonesia takes 403 days, much longer than in Singapore (164 days). This difference illustrates that obstacles to contract enforcement have the potential to increase risk premiums and ex-ante costs for investors.²⁸

In addition to these global indicators, regular surveys by AmCham Indonesia and EuroCham show that "legal uncertainty"—particularly regarding the interpretation of regulations and the effectiveness of dispute resolution mechanisms—is one of the biggest investment risk factors in Indonesia. By acceding to the 2019 Hague Convention, Indonesia can reduce this uncertainty through the standardization of foreign judgment recognition, thereby sending a strong signal that cross-border dispute resolution has credible and predictable mechanisms.²⁹

b. Current Investment Conditions in Indonesia

Indonesia recorded a significant increase in investment in 2024 with a total realization of Rp 1,714.2 trillion (growing by 20.8%).³⁰ In the fourth quarter of 2024, investment amounted to Rp 452.8 trillion, with Foreign Direct Investment (FDI) amounting to Rp 245.8 trillion or 54.3% of the total.³¹ This trend shows that Indonesia remains a major investment destination in the region, especially for investors from Singapore, Hong Kong/China, China, the United States, and other Asian countries.

However, the attractiveness of these investments is still overshadowed by fundamental issues related to contract enforcement and dispute resolution. Without a standardized mechanism, investors face uncertainty regarding the effectiveness of the execution of foreign court decisions in Indonesia—especially when transactions use foreign litigation forums.

²⁸ "Ease of Doing Business in Indonesia," 2020, <https://archive.doingbusiness.org/content/dam/doingBusiness/country/i/indonesia/IDN-LITE.pdf?utm>.

²⁹ Ernst & Young Indonesia, "US INVESTMENT: A PARTNER IN INNOVATION FOR INDONESIA," 2024, https://www.amcham.or.id/document/material/Amcham_Report_2024_12B_Pages_67444f9811e05.pdf.

³⁰ Khoirifa Argisa Putri, "Realisasi Investasi Triwulan IV 2024 Tembus Rp452,8 Triliun, Masih Didominasi Asing | Infobanknews," infobanknews.com, January 31, 2025, <https://infobanknews.com/realisasi-investasi-triwulan-iv-2024-tembus-rp4528-triliun-masih-didominasi-asing/>.

³¹ "Investment Realization Reaches IDR 1,714 Trillion, Absorbs 2.4 Million Workers," bkpm.go.id, January 31, 2025, <https://www.bkpm.go.id/en/info/press-release/investment-realization-reaches-idr-1-714-trillion-absorbs-2-4-million-workers?>

Thus, the attractiveness of investing in Indonesia is not yet fully supported by adequate legal certainty.

c. Economic Risk & Mitigation

One potential risk that is often raised in discussions regarding the recognition of foreign judgments is the possibility of enforcement against strategic state assets, including state-owned enterprises. The case of *NML Capital v. Argentina* is often used as an extreme example of how foreign creditors can target state assets outside their jurisdiction. Similar concerns could arise in Indonesia if the mechanism for recognizing foreign judgments is implemented without adequate restrictions and protections.³²

However, the 2019 Hague Convention provides built-in safeguards, including:

- (1) Article 7 (*ordre public*): countries may still reject judgments that threaten public interests or economic sovereignty;
- (2) Articles 18 and 19: allow for certain declarations or exceptions, including in cases involving the state or state-owned enterprises;
- (3) Prohibition on the recognition of punitive damages that are not in accordance with the principle of compensation in civil law systems.

To properly manage these risks, several mitigation strategies are needed:

- (1) Selective declarations based on risk assessment
Indonesia can use Articles 18–19 to issue limited declarations regarding decisions involving state assets, strategic sectors, or certain disputes.
- (2) Clear normative amendments and implementing regulations
Revisions to national norms are needed, including updates to Article 436 RV, as well as the drafting of a Supreme Court Regulation (*Perma*) governing document verification procedures, standards of proof, and objective *ordre public* testing.
- (3) Integrated multi-agency coordination
The Ministry of Law and Human Rights, the Supreme Court, the Ministry of Finance, the Investment Coordinating Board (BKPM), Bank Indonesia, and sectoral ministries need to develop integrated guidelines so that the implementation of the Convention does not conflict with national economic defense policies.

Through these steps, Indonesia can ensure that accession does not weaken economic sovereignty, while maintaining its credibility as a jurisdiction that is friendly to contract enforcement and investment.

d. Positive Impact on Investor Confidence

By reducing legal uncertainty, accession to the 2019 Hague Convention will have a direct impact on investor confidence through:

- (1) Predictability of cross-border contract enforcement, especially in transactions that choose a foreign litigation forum.
- (2) Reduced litigation costs and transaction risks, as investors can avoid lengthy and costly retrial processes in Indonesia.
- (3) Enhanced credibility of Indonesia in the global legal regime as a country that adopts international standards in the recognition of foreign judgments.

³² "*Republic of Argentina v. NML Capital, Ltd.* 573 U.S. 134 (2014)," JUSTIA U.S. Supreme Court, 2014, https://supreme.justia.com/cases/federal/us/573/134/?utm_source=chatgpt.com.

- (4) Strengthened position of Indonesia in attracting FDI, especially compared to other ASEAN jurisdictions that already have more modern mechanisms for the recognition of foreign judgments (e.g., Singapore and Malaysia).

Thus, accession is not only relevant in the context of legal harmonization, but also a strategic instrument for improving the investment ecosystem and increasing the confidence of international investors.

4. Challenges to the Rule of Law and the Readiness of the Judicial System

The concept of sovereignty in contemporary international law has undergone a significant transformation from the classical understanding of absolute sovereignty to a modern conception that is more relational, functional, and oriented toward the effectiveness of interactions between states. Traditional theories of sovereignty, as espoused by Jean Bodin and the 1648 Westphalia model, view sovereignty as the highest power that cannot be divided and is not subject to external authority. However, the realities of globalization, economic integration, and the intensity of cross-jurisdictional interactions mean that modern sovereignty is understood not as complete isolation, but as the ability of states to manage international connectivity while still protecting fundamental national interests. In the framework of private international law, the recognition of foreign judgments is often seen as creating tension between sovereignty and judicial cooperation, as it involves the acceptance of the judicial authority of another state within the domestic jurisdiction. The 2019 Hague Convention seeks to balance these tensions through the *ordre public* mechanism, which gives participating states the authority to refuse foreign judgments that are "manifestly incompatible with the public policy of the requested State," including when such judgments violate fundamental procedural justice or threaten the security and sovereignty of the state.³³

In the Indonesian context, the fundamental values that serve as parameters for *ordre public* are rooted in Pancasila as the grundnorm and the 1945 Constitution as the constitutional framework. Pancasila, which encompasses Belief in One God, Just and Civilized Humanity, Indonesian Unity, Democracy Led by the Wisdom of Deliberation/Representation, and Social Justice for All Indonesian People, is the source of all sources of law and the philosophical orientation that informs the entire formulation of norms.³⁴ In judicial practice, these values are articulated in the principles of the supremacy of just law, proportional protection of human rights, respect for diversity within the framework of unity, and socio-economic justice. Foreign judgments that contradict these principles—for example, those that contain racial or religious discrimination, or those that could threaten social harmony—should be rejected on the basis of *ordre public* even if they meet the formal requirements of the Convention. In addition, the 1945 Constitution, including Articles 28A–28J on human rights, Article 33 on the national economy, and Article 18B on the recognition of customary law communities, provides important constitutional parameters for assessing the compatibility of

³³ "Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters."

³⁴ Renata Christha Auli, "Pancasila Sebagai Sumber Hukum Tertinggi Di Indonesia | Klinik Hukumonline," *hukumonline.com*, May 9, 2025, <https://www.hukumonline.com/klinik/a/pancasila-sebagai-sumber-hukum-lt5cdbb96764783/>.

foreign judgments.³⁵ In certain cases involving Muslim family law, the principles of sharia as an integral part of Indonesian positive law also constitute an element of ordre public, even though the Convention itself excludes family law matters.

The next challenge relates to the readiness of the national judicial system. Empirical assessments show three main obstacles: judge competence, institutional infrastructure, and inter-agency coordination. In terms of competence, judges' understanding of international civil law is still limited. The curriculum of the Integrated Judge Candidate Education and Training Program (MA) tends to focus on domestic law, while international civil law material only receives minimal attention.³⁶ Accession to the 2019 Hague Convention requires higher technical capabilities, including verification of the 13 grounds for jurisdiction in Article 5, proof of grounds for refusal in Article 7, understanding of preliminary questions in Article 8, and administrative standards for foreign documents. Without systematic and continuous capacity building, the implementation of the Convention risks being inconsistent.

In terms of institutional infrastructure, Indonesia does not yet have a centralized registration system for foreign judgments that are recognized or rejected. The absence of a jurisprudence database, a special handling unit, or a specialized chamber such as those in Singapore (SICC) or the United Kingdom (Commercial Court) has led to diversity in practices between courts and opened up opportunities for forum shopping. The lack of standard operating procedures (SOPs) on document verification, translation requirements, and examination procedures also results in disparities in examination times and standards of proof. To fill these institutional gaps, it is necessary to digitize the court system, develop a national electronic platform for foreign judgment recognition applications, and establish a jurisprudence database that is accessible to all judges to ensure consistency.

To mitigate sovereignty challenges and ensure readiness for the implementation of the Convention, Indonesia needs a comprehensive strategy that includes normative safeguards and institutional capacity building. In terms of safeguards, Indonesia can utilize the declaration mechanism in the Convention. First, a declaration under Article 18 to exclude highly sensitive cases, such as disputes over strategic natural resources, customary land, or cases related to certain public policies. Second, a declaration under Article 19 to exclude cases involving the state or strategic state-owned enterprises, with the proviso that the scope must be formulated proportionally. Third, the drafting of a Supreme Court Regulation (Perma) as a technical guideline containing substantive ordre public criteria, case examples, standards of proof, and document verification procedures, compiled through consultation with academics, practitioners, and relevant institutions such as the Ministry of Foreign Affairs, the Ministry of Law and Human Rights, and the BPIP.

From an institutional perspective, increasing the capacity of judges must be a priority through intensive and collaborative training with international institutions such as the Hague Academy of International Law, UNCITRAL, and bilateral cooperation with the Netherlands, Singapore, or Germany. The establishment of specialized chambers for international

³⁵ Ali Taher Parasorong, "Internalisasi Nilai-Nilai Pancasila Dalam Pembentukan Peraturan Perundang-Undangan," fh.umj.ac.id, accessed October 4, 2025, <https://fh.umj.ac.id/internalisasi-nilai-nilai-pancasila-dalam-pembentukan-peraturan-perundang-undangan/>.

³⁶ Willa Wahyuni, "Pendidikan Dan Pelatihan Hakim," hukumonline.com, February 20, 2023, <https://www.hukumonline.com/berita/a/pendidikan-dan-pelatihan-hakim-lt63f34ffa82029/>.

commercial cases in several high courts (Jakarta, Surabaya, Medan) can be used as a pilot project to produce best practices. In addition, the formation of a cross-ministerial task force—involving the Supreme Court, the Ministry of Foreign Affairs, the Ministry of Law and Human Rights, the Ministry of Finance, the Investment Coordinating Board (BKPM), and legal professional associations—is necessary to ensure that accession does not stop at normative commitments, but is implemented through a measurable, consistent, and credible judicial process.

D. CONCLUSION

Indonesia's accession to the 2019 Hague Convention on the Recognition and Enforcement of Foreign Court Judgments in Civil or Commercial Matters has the potential to have a strategic impact on national legal reform. From the perspective of legal certainty, the Convention provides a more standardized, predictable, and efficient mechanism for the recognition of foreign judgments, thereby addressing fundamental problems that have long been associated with the fresh lawsuit model in Indonesia—namely, uncertainty of outcomes, lengthy proceedings, and high litigation costs. Standardization through 13 jurisdictional bases, restrictions on grounds for refusal in Article 7, and the prohibition of review on the merits make the Convention mechanism more in line with the needs of the business world and cross-border transactions. From an economic and investment perspective, increased legal certainty in the enforcement of cross-jurisdictional contracts will reduce transaction costs and risk premiums, which have been one of the main obstacles for foreign investors. With a faster and more predictable recognition model, Indonesia will be more competitive in the FDI competition in the Southeast Asian region, while strengthening its credibility as a jurisdiction that supports the enforcement of international contracts. Meanwhile, from the sovereignty dimension, accession to the 2019 Hague Convention does not mean surrendering national jurisdiction. The Convention still provides protection through the *ordre public* mechanism and allows participating countries to make certain declarations to protect their strategic national interests, including those related to state assets, strategic state-owned enterprises, or sensitive sectors. Thus, this instrument complements, rather than replaces, the authority of the Indonesian judiciary.

For accession to be effective, Indonesia needs to harmonize its laws and reform its institutions through: (1) revising or replacing Article 436 of the *Reglement op de Rechtsvordering* (RV), (2) issuing a Supreme Court Regulation (Perma) as a technical guideline for the recognition of foreign judgments, (3) conducting inter-ministerial impact assessments to ensure the readiness of the legal and economic sectors, and (4) increasing the capacity of judges and judicial officials in international civil law and the technical standards of the Convention. These steps will ensure that the accession is not merely declarative, but is actually translated into credible, consistent, and legally certain judicial practice. Thus, Indonesia's accession to the 2019 Hague Convention can be an important momentum in building a modern, investment-friendly legal system that remains rooted in national legal sovereignty—a combination necessary to strengthen Indonesia's position in the global economic and legal architecture.

REFERENCES

- Alert, Client. "The United States Becomes the Sixth Signatory to the 2019 Hague Judgments Convention on the Recognition and Enforcement of Foreign Judgments - Gibson Dunn." *gibsondunn.com*, March 18, 2022. <https://www.gibsondunn.com/the-united-states-becomes-the-sixth-signatory-to-the-2019-hague-judgments-convention-on-the-recognition-and-enforcement-of-foreign-judgments/>.
- Argisa Putri, Khoirifa. "Realisasi Investasi Triwulan IV 2024 Tembus Rp452,8 Triliun, Masih Didominasi Asing | Infobanknews." *infobanknews.com*, January 31, 2025. <https://infobanknews.com/realisasi-investasi-triwulan-iv-2024-tembus-rp4528-triliun-masih-didominasi-asing/>.
- bkpm.go.id. "Investment Realization Reaches IDR 1,714 Trillion, Absorbs 2.4 Million Workers," January 31, 2025. <https://www.bkpm.go.id/en/info/press-release/investment-realization-reaches-idr-1-714-trillion-absorbs-2-4-million-workers?>
- CHONG, Adeline. "Recognition and Enforcement of Foreign Judgments in Asia." *Research Collection Yong Pung How School Of Law*, December 1, 2017. https://ink.library.smu.edu.sg/sol_research/2496.
- Christha Auli, Renata. "Pancasila Sebagai Sumber Hukum Tertinggi Di Indonesia | Klinik Hukumonline." *hukumonline.com*, May 9, 2025. <https://www.hukumonline.com/klinik/a/pancasila-sebagai-sumber-hukum-lt5cdbb96764783/>.
- "COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT." Brussels, March 17, 2016. <https://edz.bib.uni-mannheim.de/edz/pdf/swd/2016/swd-2016-0064-2-en.pdf>.
- "Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2019 Judgments Convention) | EUR-Lex." Accessed October 3, 2025. <https://eur-lex.europa.eu/EN/legal-content/summary/convention-on-the-recognition-and-enforcement-of-foreign-judgments-in-civil-or-commercial-matters-hcch-2019-judgments-convention.html>.
- "Ease of Doing Business in Indonesia," 2020. <https://archive.doingbusiness.org/content/dam/doingBusiness/country/i/indonesia/IDN-LITE.pdf?utm>.
- elitigation.sg. "Deutsche Bank AG and Another v Asia Pulp & Paper Co Ltd," April 29, 2003. https://www.elitigation.sg/gdviewer/s/2003_SGCA_19.
- Ghosh, Arijit, and Bambang Dwi Djanuarto. "Indonesia Supreme Court Overturns Asia Pulp & Paper Debt Ruling | Eyes On The Forest." *eyesontheforest*, November 5, 2008. <https://www.eyesontheforest.or.id/news/indonesia-supreme-court-overturns-asia-pulp-and-paper-debt-ruling>.
- Gondo Wibowo, Bosni. "Eksekusi Putusan Pengadilan Asing Di Indonesia, Ini Aturannya | Klinik Hukumonline." *hukumonline*, March 14, 2023. <https://www.hukumonline.com/klinik/a/eksekusi-putusan-pengadilan-asing-di-indonesia--ini-aturannya-lt4d48c7e08e001/>.
- HARAHAP Pengadilan Tinggi Pontianak Jl Ahmad Yani No, Panusunan, and Kalimantan Barat. "EKSEKUTABILITAS PUTUSAN ARBITRASE OLEH LEMBAGA PERADILAN / THE EXECUTABILITY OF ARBITRATION AWARD BY JUDICIAL INSTITUTIONS." *Jurnal Hukum Dan Peradilan* 7, no. 1 (March 21, 2018): 127-50. <https://doi.org/10.25216/JHP.7.1.2018.127-150>.
- Haryanto, Stefanus. "Recognition and Enforcement of Foreign Judgments in Indonesia | CMS." *cms.law*, November 15, 2021. <https://cms.law/en/int/expert-guides/cms-expert-guide-to-recognition-and-enforcement-of-judgements/indonesia>.
- hcch.net. "Convention of 2 July 2019 on the Recognition and Enforcement of Foreign

- Judgments in Civil or Commercial Matters," July 2, 2019. <https://www.hcch.net/en/instruments/conventions/full-text/?cid=137>.
- hcch.net. "HCCH | Judgments Section." Accessed October 2, 2025. <https://www.hcch.net/en/instruments/conventions/specialised-sections/judgments>.
- Himmah, Dinda Rizqiyatul, and Justin Gabriel Wibisono. "Recognition and Enforcement of Foreign Court Judgments in Civil and Commercial Matters: An Indonesian Private International Law Perspective." *Indonesian Journal of International Law* 20, no. 3 (May 3, 2023): 4. <https://doi.org/10.17304/ijil.vol20.3.5>.
- Indonesia, Ernst & Young. "US INVESTMENT: A PARTNER IN INNOVATION FOR INDONESIA," 2024. https://www.amcham.or.id/document/material/Amcham_Report_2024_12B_Pages_67444f9811e05.pdf.
- JUSTIA U.S. Supreme Court. "Republic of Argentina v. NML Capital, Ltd. 573 U.S. 134 (2014)," 2014. https://supreme.justia.com/cases/federal/us/573/134/?utm_source=chatgpt.com.
- Kusumadara, Afifah. "Jurisdiction of Courts Chosen in the Parties' Choice of Court Agreements: An Unsettled Issue in Indonesian Private International Law and the Way-Out." *Journal of Private International Law* 18, no. 3 (September 2, 2022): 424-49. <https://doi.org/10.1080/17441048.2022.2148905>.
- Makarim, and Taira S. "Noteworthy Case a Green Light for Recognition and Enforcement of Foreign Judgements in Indonesia | Benchmark Li." benchmarklitigation, June 19, 2024. <https://benchmarklitigation.com/NewsAndAnalysis/Noteworthy-Case-a-Green-Light-for-Recognition-and-Enforcement-of-Foreign-Judgements/Index/9858>.
- "NASKAH AKADEMIK RUU TENTANG HUKUM PERDATA INTERNASIONAL." Jakarta, November 2014. https://bphn.go.id/data/documents/na_tentang_hpi.pdf.
- NURHADI. "PELAKSANAAN PUTUSAN ARBITRASE INTERNASIONAL DI INDONESIA." Universitas Airlangga, 2005. <http://repository.unair.ac.id/id/eprint/35646>.
- Pujiningrum, Wigati. "Mahkamah APEMBANGUNAN HUKUM PERDATA MELALUI YURISPRUDENSIgung Republik Indonesia." Mahkamah Agung, July 21, 2020. <https://www.mahkamahagung.go.id/id/artikel/4206/pembangunan-hukum-perdata-melalui-yurisprudensi>.
- Satya Nugroho Aji, Dwi. "A Brief Analysis on Indonesia's Law on Recognition & Enforcement of Foreign Judgments." dandapala, April 20, 2025. <https://dandapala.com/article/detail/a-brief-analysis-on-indonesias-law-on-recognition-enforcement-of-foreign-judgments>.
- Taher Parasorong, Ali. "Internalisasi Nilai-Nilai Pancasila Dalam Pembentukan Peraturan Perundang-Undangan." fh.umj.ac.id. Accessed October 4, 2025. <https://fh.umj.ac.id/internalisasi-nilai-nilai-pancasila-dalam-pembentukan-peraturan-perundang-undangan/>.
- Wahyuni, Willa. "Pendidikan Dan Pelatihan Hakim." hukumonline.com, February 20, 2023. <https://www.hukumonline.com/berita/a/pendidikan-dan-pelatihan-hakim-lt63f34ffa82029/>.
- Wilderspin, Michael, and Lenka Vysoka. "The 2019 Hague Judgments Convention through European Lenses." *Nederlands Internationaal Privaatrecht* 1 (2020): 34-49. <https://www.nipr-online.eu/pdf/2020-138.pdf>.