



Implementation of International Arbitration Awards in Indonesia: Is it Final and Binding?

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ABSTRACT

International Arbitration is one of the popular dispute resolutions used by disputing parties because it has several advantages such as confidentiality, fast decision-making and in principle is final and binding. However, in Indonesia, there are still other efforts that must be carried out before the award is executed or implemented so that international arbitration awards in Indonesia are not directly executed or implemented. Therefore, the objectives of this study are: 1), to know and analyse how the implementation of international arbitration awards in Indonesia; 2) to examine how the nature of international arbitration awards in Indonesia. This research was conducted using normative juridical research methods. The results of this study are First, the Implementation of International Arbitration Awards in Indonesia can be recognised and implemented if they are registered with the Registrar of the Central Jakarta District Court, and have fulfilled the requirements in Article 66 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Second, International Arbitration Awards in Indonesia are final because there is no appeal at the High Court level in any province in Indonesia, and cassation or review to the Supreme Court. International Arbitration Awards are binding or enforceable/executable as long as they do not conflict with the provisions of Indonesian national laws and regulations and fulfil the provisions and stages stipulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, hence international arbitration awards.

INTRODUCTION

Relations between countries today are becoming more intense, complex and close. The increase in relations between countries can be seen from the increasing number of international treaties that have been registered with the United Nations (UN). There are 68 international treaties kept by the UN Secretary-General between 1959-2009 (UNTC, *Past Volume of the Publication Multilateral Treaties Deposited with the Secretary General* 2024). The data continues to increase, so that by July 2023 - February 2024, 500 records (including subsequent treaty actions, reservation texts, declarations and objections) have been stored (UNTC, *Monthly Statements of Treaties Registered with the Secretariat* 2024). These international agreements often lead to international disputes that cannot be avoided. International disputes are disputes that occur between states and states, states and other legal subjects, and non-state legal subjects with non-state legal subjects (Lidia, 2021).

International disputes must be resolved through peaceful means and using similar methods so that peace, security and justice are not threatened, as stated in the UN Charter Article 2 paragraph (3). Peaceful dispute resolution according to Walter Peoggel and Edith Oeser can be done in the following ways (Walter, 1991):

1. Diplomatic ways

Diplomatic dispute settlement consists of (Aceng, 2024):

- a) Negotiation, which is the most effective dispute resolution and produces a win win solution.
- b) Fact-finding (inquiry), which involves a third party by conducting an investigation aimed at establishing facts that may be resolved by involving a third party as a fact-finder.
- c) Good offices, which involves a third party that seeks to facilitate the parties to settle the dispute by negotiation.
- d) Mediation, which involves a third party providing recommendations on dispute resolution solutions.
- e) Conciliation, which involves a third party providing recommendations on dispute resolution solutions but is more formal than mediation.

2. International Organization ways

a) UN international organisations or specialised organisations within the UN system and regional organisations such as ASEAN.

3. Through The Law

- a) The International Court of Justice, which is a way of settlement if the existing settlement methods are not successful.
- b) Arbitration, which is the voluntary submission of a dispute to a neutral third party and the decision issued is final and binding (Belardo, 2024).

The popular and often used peaceful dispute resolution is arbitration, the popularity of arbitration can be seen from international arbitration institutions such as the International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), Hong Kong International Arbitration Centre (HKIAC), China International Economic and Trade Arbitration Commission (CIETAC), and Singapore International Arbitration Centre (SIAC) (Sip Law Firm, 2024). Arbitration according to H.M.N Poewosutjipto is a court of peace in which the parties agree that disputes regarding personal rights that they can fully control, be examined and adjudicated by neutral judges appointed by the parties and their decisions are binding (Zaini Asyhadie, 2012).

Arbitration is chosen by the disputing parties because it promises advantages such as confidentiality and speed of decision-making (Rahmadi, 2011). Another advantage of arbitration is that the parties can customise the rules and procedures according to their needs, which can speed up dispute resolution (Rini, 2024). The submission of a dispute to arbitration can be done by the creation of a compromis, i.e. the submission of a dispute to arbitration that has already been born or through the creation of an arbitration clause in an agreement before the dispute is born (Huala Adolf, 2006).

The provisions regarding international arbitration are regulated in the New York Convention which was ratified on 10 June 1958. The New York Convention basically regulates 2 (two) matters, namely (Nirmala, 2024): 1) Validity of the arbitration agreement; 2) Recognition and enforcement of arbitral awards. The New York Convention has been ratified by 157 countries, including Indonesia. Indonesia has regulated arbitration provisions in Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. The law provides that arbitration is a way of resolving civil disputes outside the public courts based on an arbitration agreement made in writing by the parties to the dispute (Prasetya, 2013).

Arbitration regulated in Law No. 30/1999 has three principles, namely the principle of agreement, the principle of musyarakah, and the principle of final and binding. The origin of final and binding is also stated in Article VIII of the acta compromis between the United States and the Queen of the Netherlands

which states that the arbitral award is final, binding, and there is no appeal and all disputes regarding the interpretation and implementation of the award must be submitted to the Arbitrator. Although Article 60 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution states that arbitration awards are final and binding, in practice the implementation of international arbitration awards in Indonesia still has problems in the execution of the award so that it cannot be directly implemented or executed.

One of the cases of arbitral awards that cannot be implemented or executed is the case between PT PLN Persero and Pertamina against Karaha Bodas Company LLC (KBC) which has been researched in a study entitled "Execution of Arbitral Awards by Judicial Institutions". The case was decided by the International Arbitration Board in Geneva, Switzerland on 18 December 2000. The International Arbitration Body stated that PT PLN (Persero) and Pertamina were guilty, so both had to pay compensation in the amount of money, but until 2017 the verdict has not been implemented by PT PLN (Persero) and Pertamina. The decision was overturned by the Central Jakarta Court. The implementation of the award in Indonesia requires conditions and stages that must be taken by the parties. In addition, arbitral awards can be cancelled by the district court, which raises the question of how to enforce the award and the nature of international arbitral awards.

Based on these problems, the author is interested in examining and analysing how the implementation of international arbitration awards in Indonesia; 2) to examine how the nature of international arbitration awards in Indonesia. There are several previous studies on international arbitration, such as research conducted by Rini Eka Agustina which discusses the effectiveness of arbitration dispute resolution, knowing how and the process of resolving disputes with arbitration and studying the advantages and disadvantages of arbitration. Furthermore, there is also research conducted by Alfaruq Shah Ghulfron Fath, discussing the effectiveness of arbitration in resolving investment disputes in Indonesia (RINI,2024). The originality or novelty of this research compared to previous research (State of the Art) is that the author discusses how the implementation of international arbitration awards in Indonesia and examines the nature of international arbitration awards in Indonesia.

METHOD

The research method used in this research is normative juridical. This research uses the normative juridical method, which is a legal research method carried out by researching using various legal materials (Belardo,2023) The distinctive feature of normative legal research in conducting legal research lies in its data sources (Belardo,2024). The data sources consist of primary legal materials, secondary legal materials, and tertiary legal materials (Belardo,2023). Primary legal materials used in this research are international conventions, Indonesian national laws and regulations, and court decisions. Secondary legal materials are literature in the form of books and articles, journals, papers, and related data, while tertiary legal materials are internet access related to the research (Benny Irawan,2024). The focus of this research is the implementation of positive law, positive law is a law that applies at a certain time and in a certain place, namely a written rule that is officially formed and then promulgated by the authorities (Belardo, 2018).

RESULTS AND DISCUSSION

A. Implementation of International Arbitration Awards in Indonesia

Arbitration as an alternative to dispute resolution is often an alternative for disputing parties who are reluctant to resolve their disputes through litigation. Dispute resolution through litigation often creates new problems because it is win and lose, less responsive, takes a lot of time in the process of resolving the case, and is open to the public (Frans Hendra, 2011). Arbitration is in demand by various parties, especially business people. The utilisation of arbitration as a dispute resolution model is increasing, especially for the resolution of international trade disputes where it involves parties subject to different jurisdictions or the execution of the contract involves foreign jurisdictions (Supriyadi, 2015). From the series of arbitration proceedings, the arbitrators will issue an international arbitration award. The arbitral award is final and binding, so it cannot be appealed, cassation, or judicial review. Thus an arbitral award cannot be appealed, cassated, or reviewed (Suyud, 2014).

An arbitral award to be said to be an international arbitral award or not needs to be considered where the arbitral award is issued as stipulated in Article 1 Point 9 of the Arbitration Law formulating the definition of international arbitration, namely: "An international arbitral award is an award rendered by an arbitration forum or individual arbitrator outside the jurisdiction of Indonesia, or an

award of an arbitration forum or individual arbitrator which under the provisions of Indonesian law is considered as an international arbitral award". International arbitral awards are expected by the parties to the dispute to be enforceable in a country other than the country where the award has been rendered. Therefore, Indonesia ratified international conventions relating to the enforcement of international arbitral awards, namely: Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 or hereinafter will be referred to as the New York Convention 1958 (Yuanita, 2017).

Although Indonesia is bound by the 1958 New York Convention to enforce international arbitral awards. However, not all international arbitral awards can be recognised and enforced in Indonesia, only international arbitral awards that have been registered with the Registrar of the Central Jakarta District Court, and have met the requirements of Article 66 of Law No. 30 Year 1999 or the Arbitration Law to be recognised and enforced in Indonesia. These conditions are set out in Article 66 of the Arbitration Law, namely:

- a. International Arbitral Awards are rendered by arbitrators or arbitral tribunals in a country with which the State of Indonesia is bound to an agreement, either bilaterally or multilaterally, regarding the recognition and enforcement of International Arbitral Awards;
- b. International Arbitral Awards as referred to in letter a shall be limited to awards which according to the provisions of Indonesian law fall within the scope of trade law;
- c. International Arbitral Awards as referred to in letter a may only be enforced in Indonesia limited to awards that are not contrary to public order;
- d. International Arbitration Awards may be enforced in Indonesia after obtaining execution from the Chairman of the Central Jakarta District Court; and.
- e. International Arbitration Awards as referred to in letter a involving the State of Indonesia as one of the parties to the dispute, can only be implemented after obtaining execution from the Indonesian Supreme Court which is then delegated to the Central Jakarta District Court.

International Arbitration Awards require execution in order to be applied in Indonesia. In accordance with Law Number 30 Year 1999, international arbitration awards that wish to be executed in Indonesia must go through several stages. Based on Article 65 - Article 69 of Law Number 30 Year 1999, these stages include (Intan,2020):

- a. A request for enforcement of an international arbitral award shall be registered and submitted to the Registrar of the Central Jakarta District Court by the arbitrator or his/her attorney accompanied by the following files: a) The original or an authentic copy of the International Arbitral Award, in accordance with the provisions regarding the authentication of foreign documents, and its official translation in Indonesian language; b) The original sheet or authentic copy of the agreement on which the International Arbitration Award is based, in accordance with the provisions regarding the authentication of foreign documents, and its official translation in Indonesian; and A statement from the diplomatic representative of the Republic of Indonesia in the country where the International Arbitration Award is enacted, stating that the applicant country is bound by an agreement, either bilaterally or multilaterally with the Republic of Indonesia.
- b. After registration of the request for enforcement, the Central Jakarta District Court will issue an order for enforcement of the international arbitral award;
- c. Furthermore, the execution will be delegated to the Chairman of the District Court which is relatively authorised to execute it. The procedure for execution follows the procedure in the Civil Procedure Law applicable in Indonesia.

Article 67 of Law No. 30 Year 1999 on Arbitration and Alternative Dispute Resolution states, "Application for enforcement of an International Arbitration Award shall be made after the award has been submitted and registered by the arbitrator or his/her attorney to the Registrar of the Central Jakarta District Court", Submission of the application file for enforcement shall be accompanied by:

- a. the original sheet or authentic copy of the International Arbitration Award, in accordance with the provisions regarding the authentication of foreign documents, and its official translation in Indonesian;
- b. The original sheet or authentic copy of the agreement on which the International Arbitration Award is based, in accordance with the provisions regarding the authentication of foreign documents, and its official translation in Indonesian; and
- c. A statement from the diplomatic representative of the Republic of Indonesia in the country where the International Arbitral Award was made, stating that the applicant country is bound by an agreement, either bilaterally or multilaterally with

the Republic of Indonesia regarding the recognition and enforcement of the International Arbitral Award.

Based on these provisions, if an arbitration award is to be implemented or executed, it must fulfil these requirements and stages. The implementation of an International Arbitral Award in Indonesia can be recognised and executed if it is registered with the Registrar of the Central Jakarta District Court, and has fulfilled the requirements in Article 66 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution along with the files in Article 67. Even an International Arbitral Award can also be cancelled as contained in the provisions in Article 70 if the international arbitral award is alleged to contain the following:

- a. letter or document submitted in the examination, after the judgement is rendered, is recognised as false or declared as false;
- b. decisive document is found after the judgement has been rendered, which has been concealed by the opposing party; or
- c. the decision is made as a result of deceit committed by one of the parties to the dispute examination (Article 70, Law No. 30 Year 1999).

International arbitral awards must also not be contrary to public order. The principle of public order is stipulated in Article 5 of the 1958 New York Convention: "an arbitral award may be refused recognition or enforcement if it becomes contrary to the public order of the country". This is also regulated in Article 3 of Supreme Court Regulation No. 1 of 1990 on the Procedure for the Implementation of Foreign Arbitral Awards. which states that "foreign arbitral awards may be implemented in Indonesia if they are not contrary to public order", and is emphasised in Article 4 paragraph (2): "enforcement will not be imposed if the award is contrary to the principles of the entire legal system and society in Indonesia". The principle of public order is one of the fundamental principles and plays an important role in the enforcement of international arbitral awards. The enforcement of the arbitral award must not result in the violation or erasure of the principles and laws of Indonesia, it is not clear what kind of public order will be violated if the award is executed.

B. Analysing the Nature of International Arbitration Awards in Indonesia

In accordance with international and national regulations, the nature of an international arbitration award is final and binding. Final means that none of the provisions can be appealed or challenged in the High Court in any province in Indonesia, and

cassation or judicial review to the Supreme Court. Binding means that any award of the arbitrator is binding on the parties to the dispute and the parties shall endeavour to implement the award without delay. The final and binding nature also means that there is an obligation for the parties to implement the award immediately (Ina, 2021). The Tribunal may set a time limit for the offending party to comply with the arbitral award and impose fines and/or interest at commercial rates for failure to do so (Heru, 2020).

International Arbitration Awards in Indonesia are final because there is no appeal at the High Court level in any province in Indonesia, and cassation or review to the Supreme Court. However, the implementation of international arbitration awards in Indonesia also encounters problems when one of the parties does not make a good faith effort to implement the award and files for cancellation. International arbitral awards can be cancelled if they meet the provisions of Article 70 as explained in the previous discussion. There is a lack of uniformity of understanding in the practice of cancelling international arbitral awards through courts in Indonesia. In addition to the non-uniformity of understanding regarding the application of Article 70 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, there are also differences in understanding regarding the authority of the court in cancelling international arbitral awards.

An international arbitral award may also be annulled if it is contrary to public order as stipulated in Article 5 of the 1958 New York Convention and Article 3 & Article 4 paragraph (2) of Supreme Court Regulation Number 1 of 1990 concerning Procedures for the Implementation of Foreign Arbitral Awards. The principle of public order is one of the fundamental principles and plays an important role in the enforcement of international arbitral awards. This is one of the obstacles in the enforcement of international arbitral awards, because the 1958 New York Convention, Supreme Court Regulation No. 1/1990 on the Procedure for the Enforcement of Foreign Arbitral Awards do not provide clear limitations on the meaning of public order that applies in the territory of Indonesia, while the meaning of public order itself is very broad and can be interpreted differently. This difference in interpretation will cause problems and legal uncertainty.

Furthermore, International Arbitration Awards in Indonesia are binding or enforceable/executable as long as they do not conflict with the provisions of Indonesian national laws and regulations and fulfil the provisions and stages stipulated in Law No. 30

Year 1999 on Arbitration and Alternative Dispute Resolution. International arbitration awards are analogous to foreign judicial decisions so it can be concluded that arbitration awards rendered outside the territory of Indonesia cannot be directly executed in Indonesia. In order for an arbitral award to be recognised and enforced in Indonesia, the arbitral award must first obtain enforcement (Yuanita,2017).

International arbitration awards that have been successfully enforced or executed include the Stipulation of the Chairman of the Central Jakarta District Court dated 2 April 2014 Number 28/2014. Ex juncto International Arbitration Award - Singapore International Arbitration Centre (SIAC) Number 005 of 2011 dated 23 September 2012 juncto Number 13/Pdt/ARB-INT/2013/PN Jkt.Pst. In this decision, the applicants, namely Standart Chartered Bank and PT Jembo Cable Company Tbk, registered the SIAC arbitration award Number 005 of 2011 by fulfilling all the requirements needed at the registration stage.

Standart Chartered Bank and PT Jembo Cable Company Tbk have submitted all documents as required by the Arbitration Law and the stages of implementation of the Arbitral Award as stipulated by the applicable regulations and laws have been carried out by Standart Chartered Bank and PT Jembo Cable Company Tbk, the Central Jakarta District Court then issued an Execution on 2 April 2014. In the enforcement order, the panel of judges considered that the SIAC Arbitration Award Number 005 of 2011 could be implemented in Indonesia because it was not contrary to public order, in accordance with the provisions stipulated in Article 63 juncto 62 paragraph (1) of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution. The award is an example of international arbitration in Indonesia being enforced in accordance with Law No. 30/1999 on Arbitration and Alternative Dispute Resolution.

However, in practice there are international arbitration awards that are not executed because they are deemed contrary to the provisions of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution. For example, in the decision of the Central Jakarta District Court No. 05/Pdt/ARB-INT/2009 which contains the determination of an International Arbitration Award based on SIAC Regulation Number: 062 of 2008. In this decision, the applicant, PT Astro Nusantara International BV, registered the SIAC Arbitration Award No. 062/08 at the Central Jakarta District Court, and the Central Jakarta District Court on 1 September 2009 issued a Deed of Registration of International Arbitration Award No. 05/PDT/ARB.INT/2009/PN.JKT.PST. The

registration of the award has also attached the necessary documents as in Article 67 paragraph (2) of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution. Therefore, the registration of the SIAC Arbitration award No.062/08 has fulfilled the formal requirements as required by the Arbitration Law and subsequently can be requested for execution by the Chairman of the Central Jakarta District Court.

In accordance with the applicable legal provisions, the Claimants in SIAC Arbitration Award No.062/08 then filed a request for enforcement to the Central Jakarta District Court. This request for an ex parte examination is an examination that is ex parte or does not involve parties other than the requesting party. The Chairman of the Central Jakarta District Court then determined that the dispute in SIAC Arbitration Award No.062/08 was not a dispute within the scope of trade as stipulated in Article 66 paragraph b of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution. Then, the dispute in the SIAC Arbitration Award No.062/08 is an intervention into the orderly application of civil procedure law in Indonesia, which can be seen in its ruling which reads: "Immediately stop the judicial process in Indonesia". Based on the above considerations, the Central Jakarta District Court deems it necessary to declare that the SIAC Arbitration Award No.062/08 is not enforceable (non-executable).

Based on these two examples of awards, the author concludes that the binding nature of an International Arbitration Award depends on the substance of the award. Arbitral awards will be binding and can be executed or implemented if they are in accordance with the provisions of Indonesian national legislation and fulfil the provisions and stages stipulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, hence international arbitration awards. However, if it does not fulfil, the award cannot be executed or implemented.

Furthermore, it should be noted that arbitral awards are final and binding. This nature means that there is an obligation for the parties to execute the award immediately (Ina, 2021). Based on this interpretation of final and binding, the implementation of International Arbitration Awards in Indonesia is interpreted differently because in practice international arbitration awards that have been decided in international arbitration courts must not be immediately executed or implemented but must obtain execution from the Supreme Court which

is then delegated to the Central Jakarta District Court.

The problem is also due to the absence of a time limit for the Central Jakarta District Court in determining the executor. Against this article there is legal uncertainty because it does not regulate the time limit given by the Law to the arbitrator or his attorney against the submission of registration of international arbitration awards, if examined in Article 5 paragraph (3) of Perma No. 1 of 1990 only regulates the period of sending the file of application for execution from the Central Jakarta District Court to the Supreme Court which is carried out no later than 14 (fourteen) days from the date of receipt of the application, to the process of examining international arbitration awards by the Chairman of the Central Jakarta District Court is not given a time limit in the determination of execution. The consequences of these problems cause the execution of international arbitration awards to be delayed due to the unclear time period given by the Law to the Central Jakarta District Court to determine enforcement, even though the determination of enforcement is a mandatory requirement in the implementation of an international arbitration award in Indonesia, besides that the absence of a period of determination of enforcement creates legal uncertainty for the opposing party because efforts to challenge international arbitration awards can only be made after the determination of enforcement is given by the Chairman of the Central Jakarta District Court.

CONCLUSION

The implementation of International Arbitration Awards in Indonesia can be recognised and implemented if they are registered with the Registrar of the Central Jakarta District Court, and have fulfilled the requirements in Article 66 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. International Arbitration Awards in Indonesia are final because there is no appeal at the High Court level in any province in Indonesia, and cassation or review to the Supreme Court. International Arbitration Awards are binding or enforceable/executable as long as they do not conflict with the provisions of Indonesian national laws and regulations and fulfil the provisions and stages stipulated in Law No. 30/1999 on Arbitration and Alternative Dispute Resolution.

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