



Volume 34 No 1, January 2019  
DOI: 10.20473/ydk.v34i1.11402

Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan  
Surabaya, 60286 Indonesia, +6231-5023151/5023252  
Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id  
Yuridika (ISSN: 0215-840X | e-ISSN: 2528-3103)

FAKULTAS HUKUM UNIVERSITAS AIRLANGGA

by <http://e-journal.unair.ac.id/index.php/YDK/index> under a Creative  
Commons Attribution-NonCommercial-ShareAlike 4.0  
International License.



Article history: Submitted 28 January 2018; Accepted 18 April 2018; Available Online 1 January 2019

## **The Enforcement of International Arbitration Award in Indonesia : a Comparative Study with United States, Netherlands and Singapore**

**Panusunan Harahap**

panusunanharahapht@gmail.com

High Court Pontianak

### **Abstract**

An international arbitration award handed down in a territory of a given country may be applied for in another territory, provided that it is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Award and between those countries there are bilateral or multilateral agreements on the recognition and execution of international arbitration award. An arbitral award, as well as a judge's decision, may actually be voluntary by the loser or debtor. If the award has been executed in good faith by the losing party, or in other words, his accomplishments have been met with good faith, then the problem is solved. It is not uncommon, however, that although the award is already in place, the losing party does not want to execute the award voluntarily. In this case the winning party or the creditor may submit an application to the Chairman of the Central Jakarta District Court for the international arbitration award to be executed by force (execution forced). In this article, the author will focus on exploring issues in the implementation of international arbitration decisions in Indonesia and looking at implementing foreign arbitral awards in the United States, the Netherlands, and Singapore. The author of the normative juridical research method is carried out by focusing on legal interpretation and legal construction so that it can answer the above problems in depth.

**Keywords:** Enforcement; International Arbitration Award; Comparative Study.

## Introduction

In observing business activities that have hundreds or even thousands of transactions every day. It is very impossible to avoid disputes between the parties. Every type of dispute which occurs always needed to be solving quickly.<sup>1</sup> The more and the extent of trading activities, the higher the frequency of disputes. This means more disputes must be resolved.<sup>2</sup> Conventionally, dispute resolution is usually carried out in litigation or dispute resolution by the court. In such circumstances, the position of the parties to the dispute is very antagonistic.<sup>3</sup> Settlement of business disputes in this model is less desirable for business people, because it requires a relatively long time and costs are not easy, so that the company or the disputing parties experience some sort of uncertainty.<sup>4</sup>

Business actors prefer arbitration forums to resolve business disputes that occur between them, when compared to settlement through litigation.<sup>5</sup> Huala Adolf state, there are several important reasons related to this, namely: (i) arbitration is a court of businessmen (traders); (ii) quick completion; (iii) the arbitrator is an expert; (iv) the parties choose the arbitrator; (v) the arbitration procedural law is flexible; (vi) confidential; and (vii) arbitration awards are recognized internationally.<sup>6</sup>

Arbitration and Alternative Dispute Settlement have attributes that are preferred by some business people, for certain things and in certain situations, because the procedures are relatively shorter, reduce costs, and can utilize experts in

---

<sup>1</sup> Syed Sagoff Alsagoff and Rahmah Ismail, 'Trade Liberalization and Consumer Vulnerability : A Legal Framework on Legislations and Testing Mechanism for SEAN Product Safety Directive' (2017) 1 Sriwijaya Law Review.[1-21].

<sup>2</sup> Suyud Margono, *Alternative Dispute Resolution Dan Arbitrase, Proses Pelembagaan Dan Aspek Hukum* (Ghalia Indonesia 2000).[11-12].

<sup>3</sup> Hambali Yusuf and Siafullah Basri, 'Model Penyelesaian Alternatif Perkara Pidana Pembunuhan Biasa Menurut Hukum Islam Dan Relevansinya Dengan Pembaruan Hukum Pidana Indonesia' (2017) 24 Jurnal Hukum Ius Quia Iustum <<http://journal.uui.ac.id/IUSTUM/article/view/7639/6655>>.[73-93].

<sup>4</sup> Gr.van der Burght and JDC Winkelman, 'Penyelesaian Kasus' (1994) XXII Pro Justitia.[54].

<sup>5</sup> Setiawan, 'Kontrak Bisnis Internasional : Choice of Law & Choice of Jurisdiction' (1994) 107 Varia Peradilan.[151].

<sup>6</sup> Huala Adolf, *Dasar-Dasar, Prinsip Dan Filosofi Arbitrase* (Keni Media 2014).[30-39]

the disputed field.<sup>7</sup> In addition, the parties can maintain their good name considering the nature of arbitration that is *private and confidential*, avoiding the parties from the elements of mutual hostility and more accommodate the freedom of contract, including the willingness of the parties to agree on the media and procedures to find a way out in case of a dispute.<sup>8</sup> International arbitration award handed down in a particular country can be applied for in another country, as long as the country is listed as a participant in the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Award, between those countries there are bilateral and multilateral agreements regarding the recognition and enforcement of international arbitration award.

An arbitration award, as well as a judge's decision, can actually be carried out voluntarily by the losing party or debtor. If the decision has been carried out voluntarily by the losing party, or in other words, the achievement has been fulfilled with good faith, then the problem is over. However, it is not uncommon to happen that the losing party does not want to voluntary implement the arbitration award. In such case, the party that wins the case can submit an application to the Chairperson of the Central Jakarta District Court so that the award can be executed by an instrument of the state determined for that.

To date, the Government of the Republic of Indonesia has just ratified and recognized two international conventions relating to the recognition and enforcement of foreign arbitration award. The two conventions are (i). The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States or commonly referred to as the ICSID Convention which has been ratified or enacted based on Law Number 5 of 1968 concerning Approval of the Convention concerning Settlement of Disputes between Countries and Foreign Citizens Regarding dated Investment June 29, 1968 and (ii). Convention on the Recognition and Enforcement

---

<sup>7</sup> Huala Adolf, 'The Construction Dispute : A Need of Adjudication?' (2017) 9 Indonesia Arbitration Quarterly Newsletter.[16-19].

<sup>8</sup> Pusat Pengkajian Hukum, 'Prosiding Interaksi Antara Arbitrase Dan Proses Kepailitan', *PPH* (PPH 2005).[xxii].

of Foreign Arbitral Awards also called the 1958 New York Convention, which Indonesia has ratified based on Presidential Decree Number 34 of 1981.<sup>9</sup> In addition, there are also other regulations in the form of Supreme Court Regulation Number 1 of 1990 concerning the Procedures for the Enforcement of Foreign Arbitration Award. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution wherein articles 65 to 69 regulate the requirements and procedures for the enforcement of the International Arbitration Award.<sup>10</sup>

However, practically there are still obstacles or obstacles in the implementation of international arbitration award in Indonesia because the process of ratifying the results of the arbitration is still difficult and takes a relatively long time and the costs are not small, even an international arbitration award can be canceled. The nature of the efficiency and effectiveness of the arbitration process seems to be neglected and this is considered to ignore legal certainty. As a consequence, Indonesia is considered unfriendly towards international arbitration. In examples of actual cases in this case, are cases between PERTAMINA and PLN, PERSERO, against KARAHHA BODAS COMPANY LLC (KBC).<sup>11</sup> which was decided by the International Arbitration Board in Geneva, Switzerland, on December 18. 2000 which declared PERTAMINA and PT. PLN (Persero) has violated the Agreement (breach of contract), so PERTAMINA and PLN are punished to pay compensation of USD 11.1 Million and USD 150 Million. and USD.66.654.92 to KARAHHA BODAS COMPANY LLC (KBC). It is ironic, even though 17 years have passed, the award of the Geneva, Switzerland International Arbitration Board-which decision was canceled by the Central Jakarta District Court,<sup>12</sup> however, it was annulled by the Supreme Court's Appeal/Referee

---

<sup>9</sup> Gunawan Wijaya, *Hukum Arbitrase* (Raja Grafindo Persada 2001).[110].

<sup>10</sup> Ricardo Simanjuntak, 'Relevansi Eksekusi Putusan Pengadilan Niaga Dalam Transaksi Bisnis Internasional' (2003) 22 *Jurnal Hukum Bisnis* <<https://lib.atmajaya.ac.id/default.aspx?tabID=61&src=a&id=174788>>.[8-15].

<sup>11</sup> Decision Number 86/PDT.G/2002 / PN.JKT.PST. Dated August 27, 2002 jo. Supreme Court Appeal Decision No.01/Appeal/Referee-Int) 2002 dated March 8, 2004, jo. Supreme Court PK Decision No.444 PK/Pdt/2007 dated September 9 2008.

<sup>12</sup> Decision Number 86/PDT.G/2002/PN. JKT. PST. Dated August 27 2002.

Decision,<sup>13</sup> The Central Jakarta District Court has not yet been able to complete it, so the winning party has not been able to enjoy the results of the victory.

Another example is the Case Trading Corporation of Pakistan Limited against PT Bakrie & Brothers in 1986. The extrusion of a case submitted to the Federation of Oils, Seed and Fats Association was rejected by the Central Jakarta District Court because the award was considered invalid. The reason was that the arbitration award was made in England, while according to the principle of reciprocity stated in Presidential Decree 34/1981 it was determined that Britain was not authorized to decide on the case in question considering that the countries concerned were Indonesia and Pakistan. In another example, the United States and Germany are two countries with different legal systems, namely common law and civil law which often refuse recognition and implementation of an international arbitration award based on the 1958 New York Convention.<sup>14</sup> The United States today strongly encourages the utilization and empowerment of APS, especially mediation and arbitration with the aim of accelerating the settlement and maintaining fairness and efficiency.<sup>15</sup>

The fundamental legal issue in this study is essentially how to practice the enforcement of international arbitration award in Indonesia, related to the 1958 New York Convention and the ICSID Convention to realize legal certainty. In this regard, as a consequence, this type of research is normative legal research or dogmatic law research or doctrinal research. As normative juridical research, the method used to discuss research is through the statute approach, case approach, conceptual and comparative approach.<sup>16</sup>

Normative juridical research is carried out by focusing on legal interpretation and legal construction,<sup>17</sup> in order to produce legal norms, legal conceptions, inventory

---

<sup>13</sup> Supreme Court Appeal Decision No.01/Banding/Wasit-Int) 2002 dated March 8, 2004, jo. Supreme Court PK Decision No.444 PK/Pdt/2007 dated September 9 2008.

<sup>14</sup> Tineke Louise Tuegeh Longdong, *Asas Ketertiban Umum & Konvensi New York 1958* (Citra Aditya Bakti 1998).[11].

<sup>15</sup> Paulus E. Lotulung, 'Interaksi Antara Arbitrase Dan Proses Kepailitan', *Sambutan Pembukaan dan Pengarahan Lokakarya Interaksi Antara Arbitrase dan Proses Kepailitan* (2004).[3].

<sup>16</sup> Pieter Mahmaud Marzuki, *Research Law* (Kencana Prenada Media Group 2013).[133-177].

<sup>17</sup> Yudha Bhakti Ardhiwisastro, *Penafsiran Dan Konstruksi Hukum* (Alumni Publisher 2012).[6-31].

of legal regulations and in concreto applicable law that underlie the enforcing of international arbitration award related to the 1958 New York Convention and ICSID Convention.

A conceptual approach is needed to find out whether there is consistency, suitability and existence of the application of the implementation of international trade arbitration award linked to the two conventions above. Likewise, case approaches and legal comparisons are needed by examining legal cases that exist in judicial practices in Indonesia and in other countries, such as the United States, the Netherlands, and Singapore. A legal comparison approach is needed in the context of practical needs.<sup>18</sup> Starting from the description above, the main issues that can be raised are as follows; what are the legal issues for the difficulty in enforcing of international arbitration award in Indonesia and how is the enforcing of foreign arbitration award in the United States, the Netherlands and Singapore?

### **Implementation of an International Arbitration Award in Indonesia**

Article 58 of Law No .48 of 2009 concerning Judicial Power states that efforts to resolve civil disputes can be done outside the state court through arbitration or alternative dispute resolution. Whereas Article 59 paragraph (i) states that Arbitration is a way of resolving a civil dispute outside the court based on an arbitration agreement made in writing by the parties to the dispute. While in paragraph (2) it is affirmed that the arbitral award is final and has permanent legal force and is binding on the parties. The same thing is reaffirmed in Article 1 number 1 and Article 60 of Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution.

Often the implementation of an international arbitration award in Indonesia is not as smooth as expected. There are several obstacles or obstacles around the enforcement of an international arbitration award. Basically there are three main things that can be used as legal reasons for blocking international arbitration award

---

<sup>18</sup> Sunarjati Hartono, *Kapita Selekta Perbandingan Hukum* (PT. Citra Aditya Bakti 1991).[7-23].

in Indonesia, namely (i). The international arbitration award are not final,<sup>19</sup> (ii) The international arbitration award is contrary to public order,<sup>20</sup> and (iii) The international arbitration award under Indonesian law do not include the scope of trade law.<sup>21</sup> However, other legal reasons developed which were used as a barrier (refusal) not to enforcement of international arbitration award, among others through the attempt to cancel the International Arbitration Award through the District Court,<sup>22</sup> and file a lawsuit against the District Court based on the Act Against the Law.<sup>23</sup>

According to Hikmahanto Juwana there is a principle difference between the annulment (set aside) and the refusal of arbitration. This difference can be seen, *first*, based on the process and reason. The cancellation of the arbitration award is regulated in a country's laws and regulations and is not regulated in an international agreement. While the process and reasons for refusal (refusal) of the

---

<sup>19</sup> Article 67 paragraph (1) of the Act. Arbitration and APS states as follows: "The application for the execution of an International Arbitration Award is carried out after the decision is submitted and registered by the arbitrator or his proxy to the Clerk of the Central Jakarta District Court".

<sup>20</sup> Article 66 letter c of the Law. Arbitration and APS reads as follows: "The International Arbitration Award as referred to in letter a can only be implemented in Indonesia limited to decisions that are not contrary to public order." According to Gautama Sudargo that: the issue of public order (order public, public policy) is one of the things that is very important and is one of the fundamental or harmonious elements of all International Private Law (HPI). Foreign law must be treated, this does not mean that foreign law must always be used in all matters. a violation of the very nature of national law, then the Judge can override the foreign law. So this function of public order, as if as an "emergency brake", its use must be careful and as effective as possible ".Vide Sudargo Gautama, *Pengantar Hukum Perdata Internasional* (Badan Pembinaan Hukum Nasional Departemen Kehakiman Republik Indonesia Kerja Sama Binacipta 1987).

<sup>21</sup> Article Article 66 letter b of the Arbitration Law and APS states as follows: "The International Arbitration Award as referred to in letter a is limited to decisions which according to Indonesian law are included in the scope of trade law". <http://www.hukumonline.com/news/read/lt4b8f29efb35c5/Talkhukumonline-discussion-uploaded-7/12/2015-at-21.35-WIB>. There are things that cannot be disposed of through arbitration forums, namely regarding gifts and inheritance used for maintenance, shelter and clothing, as well as regarding separate living or divorce and sharing of shared property, disputes regarding personal status and all matters which cannot be done peace efforts, Vide Sudargo Gautama, *Capita Selecta Hukum Perdata Internasional* (Penerbit Alumni 1974). [84-85]

<sup>22</sup> Vide Decision of the Central Jakarta District Court No.86 / Pdt.G / 2002 / PN.Jkt.Pst. dated August 19, 2002 in a case between Pertamina and Karaha Bodas Company, LLC. And PT. PLN (Persero) Jo.The Supreme Court Decision Number 01 / Banding / Wasit / Int / 2002 dated March 8, 2004 and Decision No.64 K / PDT. SUS / 2010 dated April 26, 2010 in a case between PT. Bungo Raya Nusantara as the Appellant formerly the Petitioner opposed PT. Jambi Resources Limited ( d. h. PT.Basmel Utama Internasional) as the Respondent for Appeal before the Respondent.

<sup>23</sup> Supreme Court Decision No.238 PK / PDT / 2014 in the case between Siti Hardiyanti Rukmana against Hary Tanoesoediyo in the case of TPI or MNC TV.

foreign arbitration award are actually regulated in international agreements which are then transformed in the form of national legislation. *Second*, based on the legal consequences. The cancellation of the arbitration award results in being denied, as if it never existed, an arbitral award and the court may request that the parties repeat the arbitration process (re-arbitrate). The cancellation of the arbitral award does not bring consequences to the court that cancels to have the authority to examine and decide the dispute. Whereas the refusal of the arbitral award by the court does not mean denying the decision. Refusal has the consequence of not being able to take an arbitration award in the jurisdiction of the court that has refused it.

In Indonesia, the lawsuit for the cancellation of the International Arbitration Award through the Central Jakarta District Court turned out to have been used as an excuse to postpone the implementation of an international arbitration award. This can be seen in the case between PERTAMINA against (i). KARAHA BODAS COMPANY LLC (KBC). and PLN, PERSERO. Supreme Court in its Decision Number 01/Banding/Wasit/Int/2002 dated March 8, 2004, in the case of PERTAMINA against (i). KARAHA BODAS COMPANY LLC (KBC). and PLN. SERERO. among others, have considered the following:

That International Arbitration. Law No. 30 of 1999 only regulates that Article 65 sd.69, which in addition to stipulating the conditions for the acceptance and implementation of an International Arbitration award in Indonesia, also regulates the application of an arbitration award. Therefore, the Central Jakarta District Court is not authorized to examine and decide on the claim for an International Arbitration filed by the Applicant. Whereas the 1958 New York Convention which has been ratified by the Presidential Decree No.34 of 1981 which has therefore, become a national legal norm has determined that the annulment of an arbitral award can only be made by the Judiciary in the country or law where the decision is given “. (bold letters from the researcher).

The above decision has also been strengthened by the Panel of Judges in Decision Number 64 K/PDT.SUS/2010 dated April 26, 2010 jo. Central Jakarta District Court No. 03/CANCELLATION ARBITRASE/2009/PN. JKT. PST.



dated November 18, 2009, in a case between PT. Bungo Raya Nusantara as an Appellant beforehand, the Petitioner opposed PT. Jambi Resources Limited (formerly PT.Basmal Utama Internasional as the Respondent for Appeal, formerly the Respondent, which stated among others:

1. That the Central Jakarta District Court is not authorized to examine and decide on a lawsuit for cancellation of international arbitration because the cancellation of an arbitral award can only be made by the Arbitration Board in the country or law where the decision is given;
2. That the reason for the cancellation by using Article 70 of the Law No. 30 of 1999 does not apply to the cancellation of the International Arbitration Award, because Article 70 only applies to the National Arbitration Award (there must be a criminal decision).

Therefore, the International Arbitration Award or foreign arbitration cannot be made a legal remedy for cancellation through the National Court, because the competent authority for this is the Court in the State where the Decision was imposed. The request for cancellation of the arbitral award based on Article 70 of Law No. 30/1999 is only applicable to national arbitration decisions or domestic arbitration, both ad hoc and permanent.<sup>24</sup>

Even though the lawsuit for cancellation of an international arbitration award cannot be done through the District Court, in practice there are still many lawyers who filed a lawsuit for cancellation of an international arbitration award through the Central Jakarta District Court, often used as an excuse to postpone or suspend the implementation of an international arbitration award. Because the filing of a lawsuit for the cancellation of an international arbitration award to the Central Jakarta District Court does not have a strong legal basis, then filing a lawsuit for cancellation of an international arbitral award like this tends to just stall time (buying time). Another problem in relation to the constraints in the implementation of international arbitration decisions is the occurrence of differences in interpretation

---

<sup>24</sup> Ilhami Ginang Pratidina, 'Interpretasi Mahkamah Agung Terhadap Alasan Pembatalan Putusan Arbitrase Dalam Pasal 70 UU No. 30/1999' (2014) 29 Yuridika.[310-329].

between unlawful acts and broken promises or breach of contracts in the event of an agreement with the arbitration clause.<sup>25</sup> Not a few among legal experts which still distinguishes sharply between unlawful acts and breach of contract, both in terms of their legal sources, the emergence of claiming rights and their own compensation claims. If an action against the law originates from Article 1365 of the Civil Code and arises as a result of a person's actions, then the right to claim compensation without requiring a subpoena. In addition, whenever acts against the law can occur, so the aggrieved parties immediately get the right to claim compensation, but the compensation itself is not determined by the form and details.

As a result of differences in interpretation between unlawful acts and promises of promises or defaults as described above, it turns out that it also influences judicial practice in the event that there is an agreement with the arbitration clause. Examples of cases in this case relate to the execution of an international arbitration award in accordance with the Determination of the Chairperson of the Central Jakarta District Court Number 89/2014 / Eks. Dated October 27, 2014, which even though there was an arbitration clause in the agreement, but it was simply removed by the Court Decision because of the basis of the claim a plaintiff is an illegal act.

The Respondent's sudden execution has submitted a request for a suspension and a delay in the execution of the execution, together with that he has also filed a lawsuit due to an unlawful act registered with the Bekasi District Court with Number 266/PDT. G/2007/PN. BKS. dated March 10, 2008, and by the Panel of Judges concerned had granted the Plaintiff's claim, which verdict was strengthened at the appeal level in the Bandung High Court in accordance with Decision Number 253/Pdt/2008/PT. BDG. dated September 22, 2008.

The Decisions of the Bandung aqua Level Court have been filed for cassation to the Supreme Court, and the Supreme Court of Appeal in the cassation level stated that *Judex Factie* had misapplied the law because there was an arbitration clause so that the Supreme Court was in accordance with Case 937 K/Pdt/2009 dated 30 June

---

<sup>25</sup> Ricardo Simanjuntak, 'Asas Asas Utama Hukum Kontrak Dalam Kontrak Dagang Internasional : Sebuah Tinjauan Hukum' (2008) 27 Jurnal Hukum Bisnis.[14].

2010, has granted the request for cassation from the Cassation Petitioner II of PT. Kwang Yang Motor Co. Limited and then has canceled the Bandung High Court Decision Number Number 253/Pdt/2008/PT. BDG. dated September 22, 2008, No. Decision of Bekasi District Court Number 266/PDT. G/2007/PN. BKS. March 10, 2008. Against the Cassation Decision of the Supreme Court of the Republic of Indonesia.

This has been proposed for legal remedies to the Supreme Court of the Republic of Indonesia in accordance with the PK Decree Number 229 PK/Pdt/2012, dated November 14, 2012 and, among other things, has considered that there is a judge's mistake and a clear error in the cassation decision No. 937 K/Pdt/2009 dated June 30, 2010, so that there were enough reasons to grant the PK request submitted by the Petitioner of PT. Metropolitan Tirta Perdana PK therefore canceling the Supreme Court Decision No. 937 K/Pdt/2009 dated June 30, 2010, which annulled the Bandung High Court Decision No.253/Pdt/2008/PT.Bdg. dated September 22, 2009, which strengthened the Bekasi District Court Decision No.266/Pdt. G/2007/ PN. Bks. Dated March 10, 2008, and the Supreme Court re-tried this case by granting the PK application from the PK Applicant: PT.METROPOLITAN TIRTA PERDANA, and stated that the Defendant I (KWANG YANG MOTOR CO.LTD) and Defendant II) (PT. KYMCO LIPPO MOTOR INDONESIA (KLMI) has committed an unlawful act, sentenced Defendant I (KWANG YANG MOTOR CO.LTD) and Defendant II (PT. KYMCO LIPPO MOTOR INDONESIA (KLMI) above jointly to pay the material compensation to the Plaintiff (PT.METROPOLITAN TIRTA PERDANA) amounting to Rp. 88,914,307,340 and USD10.2 Million

**The Implementation of Foreign Arbitration Decisions in the United States, the Netherlands, and Singapore as the World's Business Centers****United States**

Most arbitral awards are obeyed voluntarily by the parties, so it does not require the execution of a decision by court again.<sup>26</sup> The basic framework of legislation for the implementation of the recognition of international arbitration awards in the United States is derived from the International Commercial Arbitration Inter-American Convention 1975, (hereinafter referred to as IACICA), the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter called the New York Convention 1958) and US Federal Arbitration Act (hereinafter referred to as FAA).<sup>27</sup>

Regarding the recognition and implementation of international arbitration rulings stipulated in Article 207 and 304 and Article 9 of the FAA which reads as follows:

**Article 207**

“Within three years of arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or recognition of the award specified in the said Convention”.

**Article 304**

“Arbitral decisions are made in the territory of a foreign state, on the basis of reciprocity, if they have been ratified or acceded to the Inter-American Convention”.

Then Article 9 of the FAA stipulates that within one year after the award is made, the parties may request the court to recognize the award, and the court must provide an acknowledgment unless the award is canceled, modified or corrected based on Article 10 and Article 11 FAA. Actually Article 9 is applied to international arbitration decisions outside the 1958 New York Convention and the Panama Convention, but can be used as an alternative model for arbitration based on the Convention. The implementation of Articles III and V of the 1958 New York Convention is regulated

---

<sup>26</sup> R.Doak Bishop King, *Enforcement of Foreign Arbitral Awards* (2009).[1].

<sup>27</sup> *ibid.*

in Section 207 FAA which stipulates that a court must recognize foreign arbitration award as stipulated in the 1958 New York Convention, unless there are one or several things as a basis for rejecting the international arbitration award, which basis which is determined by the New York Convention 1958. The application for recognition of an international arbitration award must be submitted within three years after the decision was issued by the arbitrator, not since the decision was final.<sup>28</sup>

In relation to the cancellation and suspension of international arbitration awards, the legal principle adopted by the courts in the United States that the cancellation and suspension of international arbitral awards can only be done in countries where arbitration is conducted and in countries where the arbitration procedural law has been chosen by the parties to be applied to the arbitration process, outside of substantive law, although usually between substantive law and the law of arbitration procedures both are the same. In the case of International Standard Electric Corp. (hereinafter referred to as ISEC) v. Bidas Sociedad Anonima Petrolera Industrial Commercial,<sup>29</sup> the arbitration award was made in Mexico City which won Bidas. The ISEC party petitioned the United States court to cancel (vacate) the decision and refuse its implementation. Bidas stated that the courts in the United States did not have the authority to cancel (vacate) the arbitral award by referring to the 1958 New York Convention as a reference.

The ISEC argues that both the Mexican court, where the award was made, and the court of the United States, the country where the substantive law applies in accordance with the agreement, both have the authority to cancel (vacate) the international arbitration award under the 1958 New York Convention, while the parties Bidas insists that only the Meksiko court can cancel (vacate) the arbitration award in question. The United States Court agreed with the views expressed

---

<sup>28</sup> Seetranspor Wiking Trader Schiffahrtsgesellschaft MBH & Co.v Nivimpex Centrala Navala, 989 F.2d 572,581 (2d.Cir. 1993);*ibid*.

<sup>29</sup> International Standard Elec. Corp.v Bridon Sociedad Anonima Petrolera Industrial Y Commercial, 745 F Supp. 172, 178 (SDNY, 1990), Judgment Of 1 February 1980, Austrian Supreme Court, summarized in VII YBCOM. ARB 312 (1982) (International Council for Commercial Arbitration); *ibid*. [9-10].

by Bidas. According to the United States Court, a court in a country where the substantive law is used in an arbitration agreement, only with the fact itself, does not have the authority to cancel the arbitration award. The judge at the United States Court further stated that the sentence in the provisions of Article VI (e) of the New York Convention refers exclusively to procedural law and not substantive law.<sup>30</sup>

Article VI (e) further states:

“Refers exclusively to procedural and not substantive law, and more precisely, to the regimen of the procedural law of arbitral scheme under which the arbitration was conducted, and not the substantive law of the contract which was applied in the case”.<sup>31</sup>

So what is meant by the 1958 New York Convention is an arbitration procedural law whereby arbitration is carried out not the substantive law that is applied in the agreement.

### **Netherlands**

The source of the Arbitration Law in the Netherlands is (i). Book 4 of the Book of the Dutch Civil Law (Dutch Civil Code) (ii). Dutch Arbitration Act (DAA) and (iii). 1958 New York Convention. Provisions in the 1958 New York Convention will apply if there is a difference with the DAA. Any arbitration that takes place in the Netherlands, regardless of the nationality of the parties or the subject or scope of the arbitration, is subject to the DAA. This Act was effective in 1986 which adopted most of the provisions of the UNCITRAL Legal Model. The Netherlands has signed and ratified the 1958 New York Convention, which in this case chooses reservations for reciprocity, namely only recognizing and carrying out arbitral awards from the Contracting States.<sup>32</sup>

All cases can be arbitrated, unless it will cause legal consequences that cannot be ruled out by the parties, namely cases that enter the domain of public law. Typologies of arbitration disputes handled are commercial disputes related

<sup>30</sup> *ibid.*[11-12]

<sup>31</sup> Rene David, *Arbitration in International Trade* (Kluwer Academic Publishers 1985).[383-385].

<sup>32</sup> Marnix A. Leiten and Rogier Schellaars, *Arbitration International Bar Association (IBA) Arbitration Committee* (The Netherlands 2015).[1-2]. Mark Ziekman and Mariou de Groot, *CMS (Arbitration in the Netherlands)*. [500-514].

to contracts, changes in contract clauses, joint ventures and various subjects such as in the fields of energy, distribution and construction projects. If the arbitration agreement is questioned about its existence then it must be proven by written instruments, including electronic data that meets certain requirements. The arbitration agreement is considered a separate agreement. The arbitral tribunal has the authority to decide on the existence and validity of the main contract under which the arbitration agreement is a part.<sup>33</sup>

The arbitral award can only be applied in the Netherlands after the Chairperson of the district court (*voorzieningenrechter*) in the district where the arbitration is located has given an arbitration execution order (*exequatur*) at the request of one of the parties. Implementation orders (*exequatur*) must be recorded in the original arbitral award from or, if the arbitration award has not been registered, it must be determined in a decision. Resistance effort that can be done by cancellation and revocation as specified in the Act. In the case of arbitration being made in the Netherlands, the process of awarding an *exequatur* is carried out *ex-parte*, in the sense that there is no need to present the losing party. As for the recognition and implementation of international arbitration decisions, the losing party must be presented to be heard.<sup>34</sup>

The basis for canceling the arbitration award in the Netherlands is basically as follows (i). Illegal arbitration agreement, (ii). The arbitral tribunal is not appointed in accordance with the regulations, (iii). The arbitral tribunal has exceeded its mandate, (iv). The arbitration award is not signed or has no grounds; and/or,(v). Arbitration decisions or ways of making it violate public order. In the case of refusal to acknowledge the award, it can be appealed to the Court of Appeal and if it is rejected it can also submit an appeal to the Dutch Supreme Court. On the other hand, the decision to award an arbitration award cannot be appealed and the only remedy in this matter is to cancel and revoke the arbitral award.<sup>35</sup>

---

<sup>33</sup> Marnix A. Leiten and Rogier Schellaars (n 35).[2-5].

<sup>34</sup> *ibid.*[16].

<sup>35</sup> *ibid.*[15].

The international arbitration award is contrary to public order, so the court must consider whether the arbitration award is contrary to Dutch public order or not. The basis for the above refusal is similar to the basis of rejection as stipulated in the 1958 New York Convention. An international arbitration award is contrary to the principle of public order in the Netherlands if the decision violates EU anti-monopoly rules and/or is contrary to fair fundamental principles. procedure), as denied by the right of one party to be heard by the arbitral tribunal.<sup>36</sup>

### **Singapore**

Singapore acceded to the 1958 New York Convention on August 21, 1986. The sources of Arbitration Law in Singapore are (i) the International Arbitration Act (IAA) and (ii). Arbitration Act (AA). The arbitration award by Singapore arbitration law is divided into 3 (three), namely: (i) domestic arbitration award; (ii) international arbitration awards; (iii) foreign arbitration decisions. The domestic arbitration award is a decision made in Singapore in an arbitration process in which the parties and the subject of an arbitration dispute have no connection with outside Singapore. Whereas foreign arbitration decisions are decisions made outside Singapore including those made in countries that sign the 1958 New York Convention.<sup>37</sup>

For international arbitration decisions, IAA remembers being made in Singapore but there are foreign parties, international arbitration decisions can be canceled by referring to the UNCITRAL Model Law in the cancellation (set aside) of international arbitration decisions, in the case (i). the arbitration agreement is not valid according to the law determined by the parties; or if not specified, contrary to Singapore law, (iii). the party is not given sufficient notice regarding the appointment of the arbitrator, the arbitration process cannot present the case, (iv) arbitration

---

<sup>36</sup> *ibid.*[17-18].

<sup>37</sup> Anton G. Maurer, *The Public Policy Exception under the New York Convention* (Revised, JurisNet LLC 2013).[158]. Compare with Suleman Batubara and Orinton Purba, *Arbitrase Internasional: Penyelesaian Sengketa Investasi Asing Melalui ICSID, UNCITRAL Dan SIAC* (PT Raja Grafindo Persada 2009).; Singapore International Arbitration Center, *Arbitration Rules* (6th edn, Annual Report 2016).[1-10].



decisions are included in the dispute that cannot be resolved or entered into scope arbitration; or (v) the composition of the arbitral tribunal or arbitration procedure is not in accordance with the agreement of the parties, unless the agreement is contrary to IAA.

Judges *ex officio* may also determine the cancellation of an international arbitration award, if according to the court: (i). the subject of the dispute cannot be resolved by arbitration under Singapore law or (ii). arbitral awards are contrary to Singapore's public order. Because a foreign arbitration award is a decision made outside Singapore, the losing party can submit a refusal to the court if (i). unauthorized parties to the arbitration agreement, (ii). the arbitration agreement is not lawful where the parties submit themselves, or if not regulated, under the laws of the country where the award was made. Judges *ex officio* may also determine the cancellation of an international arbitration award, if according to the court: (i). the subject of the dispute cannot be resolved by arbitration under Singapore law, or (ii) the implementation of an arbitral award will be contrary to Singapore's public order.

Regarding public order, whether it is against the cancellation or rejection of domestic arbitration decisions, the refusal of international or foreign arbitral decisions, the principle of public order used is based on Singapore's public order. Singapore Courts interpret the principle of public order narrowly so that rarely the arbitration award is rejected based on the argument of public order. This is also based on Singapore's legal policy which is more pro to the implementation of arbitration awards. Requests for execution orders for either domestic or international arbitration must be submitted to the Singapore High Court. the time limit for submitting an application for an order to implement an arbitral award (domestic and international) is 6 (six) years after the award is binding on the parties.<sup>38</sup>

## Conclusion

That which is a source of problems for the difficulty in carrying out international

---

<sup>38</sup> *ibid.*[160-165].

trade arbitration award in Indonesia, among others due to: (i). The weakness of ethics and business conduct as losing parties who do not want to volunteer or in good faith obey the contents contract or international trade arbitration award, (ii). The existence of legal remedies for cancellation of international arbitration award through the National Court, and (iii). The occurrence of differences in interpretation between default and unlawful acts in the event of an agreement with the arbitration clause. That in countries such as the United States, the Netherlands and Singapore generally the parties carry out international trade arbitration award in good faith. For those who do not accept international trade arbitration award, they can submit legal remedies for refusal, cessation, and cancellation to the Court, but rarely is the court granted their friendly attitude towards an international arbitration institution.

### **Bibliography**

Anton G. Maurer, *The Public Policy Exception under the New York Convention* (Revised, JurisNet LLC 2013).

Decision Number 86/PDT.G/2002/PN.JKT.PST. Dated August 27, 2002 jo. Supreme Court Appeal Decision No.01/Appeal/Referee-Int) 2002 dated March 8, 2004, jo. Supreme Court PK Decision No.444 PK/Pdt/2007 dated September 9 2008.

Decision Number 86/PDT.G/2002/PN. JKT. PST. Dated August 27 2002.

Gunawan Wijaya, *Hukum Arbitrase* (Raja Grafindo Persada 2001).

Gr.van der Burght and JDC Winkelman, 'Penyelesaian Kasus' (1994) XXII Pro Justitia.

Hambali Yusuf and Siafullah Basri, 'Model Penyelesaian Alternatif Perkara Pidana Pembunuhan Biasa Menurut Hukum Islam Dan Relevansinya Dengan Pembaruan Hukum Pidana Indonesia' (2017) 24 Jurnal Hukum Ius Quia Iustum <<http://journal.uui.ac.id/IUSTUM/article/view/7639/6655>>.

Huala Adolf, *Dasar-Dasar, Prinsip Dan Filosofi Arbitrase* (Keni Media 2014).

——, 'The Construction Dispute : A Need of Adjudication?' (2017) 9 Indonesia Arbitration Quarterly Newsletter.

Ilhami Ginang Pratidina, 'Interpretasi Mahkamah Agung Terhadap Alasan Pembatalan Putusan Arbitrase Dalam Pasal 70 UU No. 30/1999' (2014) 29 Yuridika.

Law Number 30 Year 1999 Concerning Arbitration and Alternative Dispute Resolution.

Law Number 48 Year 2009 Concerning Judicial Power States.

Mark Ziekman and Marious de Groot, CMS (Arbitration in the Netherlands).

Marnix A. Leiten and Rogier Schellaars, Arbitration International Bar Association (IBA) Arbitration Committes (The Netherlands 2015).

Paulus E. Lotulung, 'Interaksi Antara Arbitrase Dan Proses Kepailitan', Sambutan Pembukaan dan Pengarahan Lokakarya Interaksi Antara Arbitrase dan Proses Kepailitan (2004).

Pieter Mahmaud Marzuki, Research Law (Kencana Prenada Media Group 2013).

Pusat Pengkajian Hukum, 'Prosiding Interaksi Antara Arbitrase Dan Proses Kepailitan', PPH (PPH 2005).

R. Doak Bishop King, Enforcement of Foreign Arbitral Awards (2009).

Rene David, Arbitration in International Trade (Kluwer Academic Publishers 1985).

Setiawan, 'Kontrak Bisnis Internasional : Choice of Law & Choice of Jurisdiction' (1994) 107 Varia Peradilan.

Suleman Batubara and Orinton Purba, Arbitrase Internasional: Penyelesaian Sengketa Investasi Asing Melalui ICSID, UNCITRAL Dan SIAC (PT Raja Grafindo Persada 2009).

Sunarjati Hartono, Kapita Selekt Perbandingan Hukum (PT Citra Aditya Bakti 1991).

Suyud Margono, Alternative Dispute Resolution Dan Arbitrase, Proses Pelembagaan Dan Aspek Hukum (Ghalia Indonesia 2000).

Supreme Court Regulation Number 1 Year 1990 Concerning the Procedures for the Enforcement of Foreign Arbitration Award

Syed Sagoff Alsagoff and Rahmah Ismail, 'Trade Liberalitation and Consumer Vulnerbality : A Legal Framework on Legislations and Testing Mechanisme

for SEAN Product Safety Directive' (2017) 1 Sriwijaya Law Review.

Tineke Louise Tuegeh Longdong, *Asas Ketertiban Umum & Konvensi New York 1958* (Citra Aditya Bakti 1998).

Vide Sudargo Gautama, *Capita Selecta Hukum Perdata Internasional* (Penerbit Alumni 1974).

——, *Pengantar Hukum Perdata Internasional* (Badan Pembinaan Hukum Nasional Departemen Kehakiman Republik Indonesia Kerja Sama Binacipta 1987).

Yudha Bhakti Ardhiwisastra, *Penafsiran Dan Konstruksi Hukum* (Alumni Publisher 2012).

**HOW TO CITE:** Panusunan Harahap, 'The Enforcement Of International Arbitration Award In Indonesia: A Comparative Study With United States, Netherlands And Singapore' (2019) 34 *Yuridika*.