

Rejection of Foreign Arbitration Awards in Investment in Indonesia

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ABSTRACT

In the field of speculation, the affirmation on the essential and execution of the law in a Nation become one of the crucial part as a kind of perspective for financial specialists to put resources into another Country. As one of the Joined Country's part which embraced the 1958 New York Show on the Certification and Essential of New Arbitral Differentiations, and through its positive rules according to the Intercession, Indonesia has not had the decision to give real sureness on the need too execution to the execution of the New Arbitral Qualification in Indonesia which is displayed by how much the Court Choices excusing the execution of New Arbitral Differentiations in Indonesia eve at any rate the Honor is persuading and restricting, on that premise Indonesia is seen by the general area a clashing undermining country. This making is made to dissect the need of the authentic conviction comparable to the execution of New Arbitral Differentiation in Indonesia which will give helpful result for the new speculation's ongoing situation in Indonesia

KEYWORD : *Arbitration, Investment in Indonesia*

INTRODUCTION

In business relationships, nothing ends with a dispute, so business people are aware of the potential for emergence. The dispute must be provided. The setting is inside an agreement in the form of a clause on dispute resolution. Deep the clause specifies the manner chosen by the parties If a dispute arises later. In general, the Business people who have Standing in Legal jurisdiction are different (cross-country) more. Choosing a settlement procedure for disputes outside the court (non-litigation), also called Alternative Dispute Resolution (ADR) (Usman, 2012), is based on the reasoning that The resolution of the dispute is felt to be more effective than litigation in Court.

One of the most important factors Selection of settlement procedures Disputes through ADR are related efficiency and confidentiality, considering the international business world, Publicly known disputes may negatively affect the image concerned business person. Correspondingly as quoted from the views of Henry R. Cheeseman, who stated that: "Using the legal system to settle commercial and other conflicts can take years and result in hundreds, if not millions, of dollars in fees and expenses. The parties' regular business operations are frequently interfered with during commercial litigation. Businesses are increasingly using alternative dispute resolution (ADR) techniques and other tools to settle conflicts in an effort to avoid or decrease these issues. Arbitration is the most popular type of ADR (Cheeseman, 2001).

One of the procedures outside dispute resolution frequently used courts International business persons use Arbitration. In Black's Law Dictionary, as for the referred to Discretion is "a Strategy

for Debate Goal including at least one impartial third parties who are consented to by the questioning gatherings and whose choice is restricting (Garner, 1999)". As for the settlement, Disputes through arbitration national, regulated in Law Number 30 of 1999 on Arbitration and Alternatives Dispute Resolution (for further in this writing referred to as the "AAPS Act"), as in the provisions of Article 1, number 1 The AAPS Act explained that the Arbitration means "How to resolve a dispute Civil Proceedings Outside the General Court which is based on the agreement arbitration in writing by the parties to the dispute". According to John F. Phillips, that Arbitral institutions that are enforceable must at least meet some The elements are (Phillips, 1988): A dispute involving two or more parties, An agreement between them to submit the dispute to arbitration for resolution (expressed in the original contract or at the time the issue originated), and The fact that the parties will be bound by the arbitration panel's ruling.

In an agreement that contains clauses regarding dispute resolution, can shown through words such as: "If in the future there is a dispute arising. Against this agreement, the Parties agree to settle. The dispute is through...". In the clause the perpetrators Businesses can choose whether such disputes will settled through the courts (litigation) or by arbitration. In the event of a dispute arising over an agreement that does not contain a settlement clause through arbitration, then the parties remain can choose dispute resolution through arbitration by making a declaration of consent to Using the Arbitration Procedure in a written agreement that signed by the parties, as can be quoted from Henry R. Cheeseman's views which states that "Assuming that there is no discretion provision, the gatherings can go into an accommodation understanding by which they consent to present a debate to intervention after the debate emerges" (Cheeseman, 2001).

Based on the foregoing, several juridical characteristics of arbitration can be drawn, namely (Fuady, 2000): There is a controversy between the parties; The controversy submitted to the arbitrator; Arbitrators shall be submitted by the party or appointed by certain bodies; The arbitrator is an outside party general judicial bodies; Basis for filing a dispute to arbitration is covenant; The arbitrator conducts case examination; After examining the case, The arbitrator shall grant The arbitral award which binding on the parties.

Indonesia as one of the Member states of the United Nations, co-ratified the Convention New York Year 1958 about Recognition and Execution of Judgments Foreign Arbitration by Decision President of the Republic of Indonesia Number 34 of 1981 (hereinafter referred to as KEPRES No. 34 of 1981), later by the Supreme Court issued Supreme Court Rules Number 1 of 1990 concerning Tata How to Execute the Judgment Foreign Arbitration (henceforth called PERMA No. 1 of 1990). Thus the State of Indonesia de facto and de jure acknowledge, respect, and participate implement the corridors of arbitration arrangements either by national and international.

Business people who domiciled in a jurisdiction Different laws that Binding in a relationship business or investment in Indonesia, Generally use Dispute Resolution Clause through an Arbitration Institution International, which means that any dispute arising between Parties to an agreement it will then be examined and completed through procedures and Arbitration procedures. As for some International Arbitration Institutions which is often used by the business people in Indonesia include: Singapore International Arbitration Centre (SIAC) and The London Court of International Arbitration. Any resolved disputes through foreign Arbitration institutions as mentioned above will be disconnected also by institutions that pertinent later the ruling is known as Arbitration Award Foreign/International.

As for the provisions Article 1 number 9 of the AAPS Act jo. Article 2 PERMA No. 1 of 1990 which meaning of Arbitration Award Foreign is "a verdict that dropped by an Agency Arbitration or Arbitrator Individuals outside of jurisdiction Republic of Indonesia, or judgment an Arbitration Body or Individual arbitrators who are according to legal provisions of the Republic of Indonesia considered a verdict Foreign Arbitration, which has the force of law remains in accordance with the Presidential Decree No. 34 of 1981 (Gazette State Year 1981 No. 40) dated August 5, 1981" (Gautama, 2017).

One reason he picked debate goal through Assertion is forcibly law of the Mediation Grant is conclusive and restricting. Last deciphered that the arbitral honor It is a choice last level so that shut endeavors regulation both allure, cassation and legal survey. Restricting deciphered that the arbitral honor it ties the two players which is questioned in this way The gatherings are obliged to deliberately authorize the arbitral honor it. Understanding Last and restricting referenced above as per the arrangements that contained in Article III of the Show New York 1958, which expresses that: " Each Contracting State will see arbitral distinctions as limiting and execute them in understanding with the principles of procedure of the area where the honor is relied on, in light of the current situation put down in the going with articles. There won't be force altogether more lumbering circumstances or higher charges or charges on the affirmation or prerequisite of arbitral distinctions to which this Show applies than are constrained on the affirmation or necessity of local arbitral distinctions".

Although the Arbitration Award Foreign has been expressly stated as a final verdict and binding, but deepits application and enforcement in Indonesia, most executions upon such Foreign Arbitral Award being rejected by an Award which issued by the Judiciary in Indonesia, denial of execution Such Foreign Arbitral Awards based on the provisions as set forth in Article 66 AAPS Act which states that "International Arbitration Award only recognized and able Implemented in Jurisdiction Republic of Indonesia, if meet the following requirements (Aisy & Marpaung, 2022):

- a. Arbitration Award International dropped by arbitrator or tribunal arbitration in a country the one with the country Indonesia is bound to agreement, either on a regular basis bilateral and multilateral, regarding recognition and implementation of the Judgment International Arbitration.
- b. Arbitration Award International as referred to in letter limited to rulings that according to legal provisions Indonesia falls within the scope of law trade.
- c. Arbitration Award International as referred to in letter a can only be implemented in Indonesia is limited to Verdicts that are not Contradict public order.
- d. Arbitration Award International can implemented in Indonesia after acquiring executor of the Chairman Jakarta District Court Navel; and
- e. Arbitration Award International as referred to in letter which concerns the State Republic of Indonesia as One of the insiders disputes, can only implemented after obtaining an equator of the Court."

One of the Court's rulings Indonesia rejects execution Such Foreign Arbitral Awards is the Judgment of the Supreme Court No. 04 K/Ex'r/Arb.Int/Pdt/200 dated September 5, 2000, where the Panel of Judges on The Supreme Court examining The case provides consideration that rejection execution of Foreign Arbitral Awards such is based on Reason "contrary to public order". In the presence of Multiple interpretations of these reasons cause business people especially the side won

in an Arbitration Award on International Arbitration Institutions But the execution of the verdict It was rejected by the judiciary in Indonesia considers that Indonesia has not had the option to Give legitimate assurance in Implementation and requirement process the law of execution of such Unfamiliar Arbitral Honor.

Based on the description in above, there are inconsistencies from Foreign Arbitral Awards in Indonesia, besides being a Problems that can hinder level of practice, especially in terms of execution of an Arbitral award Foreign, also has an impact on investment climate in Indonesia. The business people view that the Indonesian Government cannot Provide assurance of certainty Law for Investment Activities in Indonesia, especially towards dispute resolution through Arbitrations that have been decided in International Arbitration institutions that Where should the verdict be has been final and binding, will but get rejected by National Judiciary on matters execution in Indonesia, on the grounds of that Foreign Arbitral Awards It is "contrary to public order"

RESEARCH METHODS

The normative legal method is one approach in scientific research that is widely used in legal studies and legal science (Karmel & Yunanto, 2022). This approach focuses on the analysis of existing legal norms, including laws and regulations, court decisions, legal principles, and other legal documents in this context, namely aspects of arbitral awards in the Indonesian judicial system. The normative legal method seeks a deep understanding of law by interpreting and analyzing existing legal norms (Bachtiar, 2019). In doing this writing, the author bases the research method by involving a legal approach, a case approach, a conceptual approach and using a comparative approach. The method chosen by the author is a normative legal research method as an effort to analyze writing problems based on applicable laws and regulations (Marzuki, 2017).

RESULTS OF RESEARCH AND DISCUSSION

Legal Certainty of Rejection Execution of Foreign Arbitral Awards

Refusal or in English termed refusal, as Black's Law Dictionary can be defined as follows (Garner, 1999): The disavowal or dismissal of something of fered or requested the attorney's refusal to reply, the legal advisor's refusal to reply question depended on the lawyer client privilege. A potential chance to acknowledge or reject something before it is proposed to other people; the right or on the other hand honor of having this opportunity she guaranteed her companion the refusal on her house. Based on the New Convention York of 1958, in terms Article V provides for the basis for refusal of execution foreign arbitral awards, which states that:

1. Affirmation and necessity of the honor may be denied, in accordance with the party against whom it is summoned, given that that party outfits to the talented authority where the affirmation and approval is searched for, check that:
 - a) The social events to the game plan implied in article II were, under the law pertinent to them, under some deficiency, or the said course of action isn't genuine under the law to which the get-togethers have abused it or, slumping any sign in this manner, under The Law of the Country Where the honor was Made; then again

- b) The party against whom the honor is called was not given authentic notification ahead of time of the game plan of the middle person or of the watchfulness systems or was overall around confused to push his viewpoint; obviously
 - c) The honor deals with a partition not considered by or not. Falling inside the nuances of the solace to watchfulness, or it contains decisions on issues past the level of the convenience to care, gave that, on the off chance that the decisions on issues submitted to mindfulness can be isolated from those not all around that presented, that piece of the honor which contains decisions on issues submitted to intervention may be seen and stayed aware of; obviously
 - d) The production of the arbitral power or the arbitral strategy was not according to the discernment of the social gatherings, or, hanging such appreciation, was not according to the law of the country where the intervention happened; clearly
 - e) The honor has not yet become binding on the social occasions, or has been saved or suspended by a pre-arranged power of the country in which, or under the law of which, that honor was made.
2. Affirmation and approval of an arbitral honor may in like manner be denied if the talented master in the country where affirmation and approval is searched for sees that as:
- a) The subject of what makes a difference isn't prepared for settlement by intercession under the law of that country; on the other hand
 - b) The affirmation or approval of the award would be despite individuals in everyday system of that country. Based on the description above, one of the reasons for his rejection execution of Foreign Arbitral Awards is "contrary to public order", where then This reason is the reason that often used by Judges in Indonesia to reject execution Foreign Arbitration Award, which is erroneous One can be seen on consideration of the Panel of Judges in

Supreme Court Decision No. 04 K/Ex'r/Arb.Int/Pdt/200 dated September 5, 2000 which is business disputes between Bankers Trust and Mayora Indah / Jakarta International Hotels & The Development consider that reason denial of execution of the Judgment Such Foreign Arbitration shall be contrary to order common.

One of the related disputes First foreign arbitration in Indonesia which makes the reason "order" general" as a consideration in Arbitral Execution Refusal Award foreign, other than business disputes between Bankers Trust and Mayora Indah/Jakarta International Hotels & The development above, is a dispute business between E.D. & F MAN (Sugar) against YANI HARYANTO, which is in dispute It began in 1982, Yani Haryanto ("Yani") agreed to buy 300,000 tons of sugar sand from a company British commodities E.D. & F MAN Limited ("F MAN") which later The whole sugar should be received by Yani in 1983/1984. Any payments and other procedures have been agreed set forth in the Agreement, namely: in the form of irrevocable letter of credit, whereby the parties agree to use the Arbitral institution in London and by law England, as well as in treaties It expressly states that "purchaser very much mindful for getting any fundamental import permit and inability to get such permit will not be adequate reason for force majeure".

Then in line with the fall the price of granulated sugar in Indonesia on in 1982/1983, Yani cancelled agreements that have been agreed in initial (letter of credit) unilaterally, but on the other hand F MAN has purchased granulated sugar from the party third to fulfill obligations arising out of the agreement, even though the sugar is not yet sent to Yani at Indonesian. In June 1984, because they feel they have an interest aggrieved then F MAN filing an Arbitration claim in London Court. F MAN sued compensation of US\$ 146,300,000 on the basis of violations against the agreement

made by which Yani (Default) the demand was granted by London Court, however, Yani refused to pay compensation for such damages. Correspondingly, Yani proposed

appeals in the High Court of England in London, Yani argued that He doesn't fully understand Languages used in the agreement, but on 1985 High Court the British rejected the application Yani's appeal with consideration that Yani is under contract including arbitration provisions aforementioned. Then on the 7th In July 1986, the parties agreed to negotiate which outcome of the negotiation was Yani agreed to pay US\$ 27,000,000 to be paid with three stages, however in fact on July 31, 1987 Yani can only afford to pay in total US\$ 5,000,000 to F MAN.

In August 1988 Yani file a lawsuit with the Court The state of Central Jakarta requested cancellation of the said agreement made by the parties with postulates that the agreement violates Presidential Decree No. 43 of 1971 and No. 39 of 1978 relates that only the Logistics Affairs Agency (BULOG) alone can import sugar in Indonesia. Next District Court Central Jakarta granted the lawsuit Yani with the verdict that canceled the agreement between Yani and F MAN on contrary grounds provided that the conditions are valid agreement Article 1320 of the Civil Code. Related to this F MAN Appeal on Central Jakarta High Court however, the decision of PT Central Jakarta upholding the Jakarta PN verdict Center so F MAN later file a cassation with the Court Supreme Republic of Indonesia. At the same time, F MAN filed a lawsuit different from Yani in PN Jakarta Center for demanding returns money to Yani, but nevertheless Central Jakarta District Court rejects F's lawsuit MAN with consideration that Agreement underlying the relationship law between F MAN and Yani is a void agreement for the sake of the law, and on the basis of things the F MAN filed Appellate level examination however PT Central Jakarta verdict upholding the Central Jakarta ruling, which F MAN later filed cassation to the Supreme Court Republic of Indonesia.

While the case is in the process of being examined at Supreme Court, on the 5th November 1990 F MAN filed Executor's application for the judgment arbitration, and based on the Award Supreme Court No. 1 Pen. Ex'r/Abt.Int/Pdt/91 dated 1 March 1991 grant enforcement of the Arbitral award London (who won the F MAN) in consideration that Enforcement of the Arbitral Award it is in accordance with the system law in Indonesia and not violation of public order so that the application of the equator granted. Yet despite the equator has been granted, it will but Jakarta District Court the Centre as the executing court execution refuse to enforcing an arbitral award

such foreign and postponement Enforcement of the Arbitral Award it is in consideration that the dispute is still in stages of examination at the cassation level at the Supreme Court Republic of Indonesia.

Later, the Supreme Court in the cassation examination of the lawsuit case filed by Yani based on the Verdict Supreme Court No. 1205 K/Pdt/1990 dated 14 December 1991 and lawsuit submitted by F MAN based on the Court's Decision Agung No. 1203 K/Pdt/1990 dated December 4, 1991, give the same verdict by stating that Agreement between F MAN and Yani related to the purchase of 300,000 tons of sugar sand is null and void and has no binding force. On the basis of both rulings The Supreme Court, then the Panel of Judges on The Supreme Court of Justice grant the upper equator such Arbitral award (the Arbitral Award Supreme Court No. 1 Pen. Ex'r/Abt.Int/Pdt/91 dated March 1, 1991) correcting and Dropping a Verdict of Refusal execution of London arbitration award such with consideration Law that recalls the agreement is null and void then Supreme Court

Decision No. 1 Pen. Ex'r/Abt.Int/Pdt/91 dated March 1, 1991 which has grant the execution of the judgment London arbitration declared not again relevant to implement.

Based on examples Dispute Execution of Arbitral Award foreign as described above, indicates that the Court Agung did not consider and implement the principle of severability of arbitration clause, moreover that reason "contradicts public order" has been interpreted broadly and inconsistently. In this regard, the Court did not provides a distinction between Public policy in the national sense and public policy in scope international. In fact, as view of Sudargo Gautama that there is a difference between public order in the national sense and public order in space international scope, which in relation to the 1958 New York Convention its main purpose is to facilitate international trade, so that seen as appropriate for narrowing the scope of public order reasons in the national context (Hornick, 1991). What's more with denial of execution of the Judgment Such Foreign Arbitration, then parties won in case Foreign Arbitration Experiencing unclear status of rights given/granted by foreign arbitral awards but not can be implemented in Indonesia, so that it gives birth to fears and worries for Business people to invest in Indonesia considering the system and legal procedures in Indonesia are still Unable to provide guarantees Legal protection for perpetrators disputed businesses in Indonesia.

As for the provisions "Contrary to order general" in the AAPS Act in Indonesia does provide Legal basis for rejection execution of a Foreign Arbitral Award, that related understanding Further "public order" regulated in the provisions of Article 4 paragraph (2) PERMA No. 1 of 1990 which states that the Judgment Foreign Arbitration cannot given an executor if it is manifestly contrary to order public, which is public order What is meant is the joints the fundamental of the entire legal system and Indonesian society, however thus in the rule didn't get that explanation specifics related to the concept of order common. So with no clarity on criteria and Understanding Good Public Order as stated in the regulations Governing legislation denial of execution of the Judgment Foreign Arbitration, hence enforcement and the application of law to the judgment Foreign Arbitration in Indonesia is still It should be considered uncertain law.

Legal Effects of Rejection Execution of Arbitral Award Foreigners in Indonesia against Investment Climate in Indonesia

Legitimate conviction is One of the circumstances that should be met concerning policing, Lawful sureness being referred to is a legitimate security against erratic activities, and that implies that one will actually want to acquire something that normal in specific conditions (Manullang, 2007). Legal certainty itself is not just questioning the relationship law between citizens and country but also cross-country, Because as a value, essence From legal certainty is a problem Protection from action Arbitrariness of rights and the interests of a legal subject both legal subjects contained within a country or subject laws of other countries that are above The basis of cooperative relations have a legal interest that Must be respected and recognized its existence. Opinions on certainty the law was also put forward by Jan M. Otto as quoted by Sidharta is relevant above The problem, namely that Legal certainty in the situation certain require as next (Sidartha & Hukum, 2006): Rules available clear or clear laws,

Consistent and Easy acquired (acesible), which Published by Power country. That judges independent (judiciary) and impartial apply Rules of Law it's consistent as they Resolving Disputes law.

Although Indonesia has ratified the New York Convention Year 1958 and has products Arbitration-related law, and PERMA No. 1 of 1990 concerning Procedures for Implementing Judgments Foreign Arbitration, however, Indonesia has not been able to have More concrete special rules Related reasons for refusal of execution Foreign Arbitral Award, so that Later the judge will examine case for execution of an Arbitral Award Aliens will have handles as well as good precedent in Examining and Deciding Cases aforementioned. On the basis of this too today Indonesia is still known as an unfriendly country against foreign arbitration (unfriendly arbitration country) (Al-Gozaly, 2014).

This has an impact on Indonesia's image in Eyes of the International Community especially in the world of investment, which is in case of a dispute through Arbitration then Indonesia Seen as unable to provide certainty of the protection of rights and the interests of business people who won on the Arbitration award Foreigners who are asked for execution in Indonesia. Correspondingly as Lon Fuller views that the government should not Failed to create a rule clear, concrete, and not multi-interpretation (Failure to make comprehensible rules), and also the government must does not fail to create rules which is general, where The regulation does not contain Specificity or privilege of the top one party only but for all good parties (McCoubrey, 2019). The government is obliged to protect not only the interests of domestic business people but also foreign business people who have legal relations and investment interests in Indonesia.

CONCLUSION

There is no certainty in terms of enforcement and application of law related to the rejection of Foreign Arbitral Awards in Indonesia, which is indicated with multi interpretation of reason "public order" as grounds for rejecting the Judgment Foreign Arbitration in Indonesia. Legal consequences of uncertainty in terms of denial of execution of the Judgment Foreign Arbitration shall Impact on image Indonesia in association International as a country which recognizes the New Convention York 1958 but not yet able to provide certainty in terms of application and its enforcement,

so it will It also has an impact on the investment climate in Indonesia where business people International would think Reset to invest in Indonesia remembers not There is a guarantee of Legal protection against investment.

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