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Enforcement On Arbitration Award In Indonesia

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Generally, there are two alternative forums for settling the commercial disputes, i.e. through (i) litigation and (ii) arbitration. Arbitration is a form of alternative dispute resolution, a technique to resolve disputes outside the courts, where the parties to a dispute have agreed to resolved their legal dispute to one person or more (called the "arbitrators", "arbiters" or "arbitral tribunal"), by whose decision (called the "award") they are agree to be bound. It is a resolution technique in which a third party reviews the evidence in the case and imposes a decision that is legally binding for both sides and enforceable.

By their nature, not all disputes may be settled through arbitration, and in general, two groups of legal procedures cannot be subjected to arbitration. Those are procedures which necessarily lead to a determination, which the disputed parties may not enter into an agreement upon, such as crimes, status, and family law. Some legal orders exclude or restrict the possibility of arbitration for reasons of the protection of weaker members of the public, for example consumers. In practice, the parties who chose arbitration as the way of dispute settlement will firstly sign or enter into an arbitration agreement. An arbitration agreement is generally divided into two types, in either type we will find statements or article in the agreement in substance regulates that all disputes will be resolved by arbitration. And the other one is the agreements which are signed after a dispute has arisen, agreeing that the dispute should be resolved through an arbitration proceeding.

Arbitration under Indonesian Law

There are several applicable laws and regulations in Indonesia with regards to the conduct of Arbitration and enforcement on an arbitration award i.e.:

(i) Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution ("Arbitration Law");

(ii) Indonesia is a party to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (as this Convention has been ratified based on *Keputusan Presiden* (Presidential Decree) No. 34 of 1981), so that an international (foreign) arbitration award is enforceable in Indonesia, subject to certain procedures or requirements shall be fulfilled and completed. In addition, Indonesia is also a member of the "Convention on Settlement of Investment Disputes between States and Nationals of other States (ICSID)", which was ratified by Law No. 5 Year 1968 ("ICSID Convention"); and

(iii) As an implementation of the New York Convention and ICSID Convention, the Supreme Court has issued the Supreme Court Regulation No. 1 Year 1990 dated 1 March 1990 pertaining to the Enforcement Procedure of Foreign Arbitral Awards.

Different Treatment on the Enforcement of National and International Arbitration Award

The Arbitration Law established different treatments between National and International Arbitration. Notable differences include: the procedure for the registration and enforcement award, time limitation for the registration of the award, and legal action can be taken when the court rejects the application for enforcement. One the most important distinctions is that different legal remedy can be conducted in National Arbitration Award and International Arbitration Award.

Article 70 of Arbitration Law regulated that a party may apply for the annulment of National Arbitration Award with the following conditions: (i) The documents in the investigation are false or declared to be false; (ii) An important or essential document are hidden by the party which will affect the award, is found; or (iii) the award was given in fictitious ways, which was done by one of the disputing party.

Enforcement of National Arbitration Award

Article 59 of the Arbitration Law regulated that the enforcement a National Arbitration Award can only be registered within a maximum time limit of 30 days after such award was rendered. The original or authentic National Arbitration Award must be submitted and registered with the

Registrar (Clerk) of the District Court where the losing party domiciles.

Arbitrator or its representative shall submit the said award and original letter of his/her appointment as arbitrator or its certified copies to the Registrar of the District Court. All fees of the registration of the award shall be paid by the parties. Failure to meet this requirement may give rise to the inapplicability of the award ('null and void').

A party may request the order of the execution from the Chairman of the District Court to enforce the award to other party. Since the award is deemed as final and binding decision, the procedure and/or steps on the execution of the National Arbitration Award is subject to the Indonesia Civil Procedural Laws in the execution proceeding towards final court decision.

Before giving the order of the execution, the Chairman of the District Court will first examine the award to ensure the following requirements are met:

α. There is an arbitration agreement signed by the parties;

β. The dispute is a commercial dispute and dispute concerning rights, which under laws and regulations fall within the control of disputing parties;

χ. The award is not in conflict with public morality and order[1]

If the Chairman of the District Court finds that the requirements above are not fulfilled then Chairman of the District Court will reject the application. The Chairman of District Court shall not examine the legal reasoning or arguments of the arbitrator(s).

Enforcement of Foreign (International) Arbitration Award

According to article 65 to 69 of Arbitration Law, the Central Jakarta District Court is the only court authorised to handle the recognition and enforcement of international (foreign) arbitral awards.

The Foreign (International) Arbitration Award can only be recognised and enforced in Indonesia Jurisdiction if it meets the following requirements:

α. the award is rendered by an arbitration body or an individual arbitrator in a country which is bilaterally bound to Indonesia or jointly with Indonesia to an international convention regarding the recognition and enforcement of foreign arbitral awards. The enforcement thereof is based on the principle of reciprocity;

β. the foreign arbitral award is only limited to award which according to the Indonesian law falls within the definition of commercial law;

χ. It does not contravene with public order under the Indonesian Law; and

δ. an authorisation ("*exequatur*") has been given by the Chairman of the Central Jakarta District Court.

The foreign arbitral awards in Indonesia cannot be enforced if the award contradicts or violates public order under the Indonesian law.

According to Dr. Andriani Nurdin, S.H., M.H. (formerly Chairman of Central Jakarta District Court) in her article "Pengakuan Dan Pelaksanaan Putusan Arbitrase Internasional (*recognition and enforcement of international arbitral awards)*", from 2007 to 2013 there are 39 (thirty nine) Exequatur Application submitted by the winning parties as detailed below:

International Arbitration Award's Exequatur Application in Central Jakarta District Court Year 2007 – 2013[2]

YEAR	REGISTRATION	ACCEPTED	v
2007	1	1	0
2008	2	2	0
2009	4	3	1
2010	1	1	0
2011	7	7	0
2012	9	9	0
2013	15	0	0

The table above shows that there is only one rejected exequatur application. In this case the Chairman of Central Jakarta District Court issued a Declaration

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that the International Arbitration Award was issued beyond its authority, by intervening the legal process of the Indonesian Court (Vide Supreme Court Decision No. 1 K/Pdt. Sus/2010).[3]

Conclusion

1. Indonesian Arbitration Law regulated different procedure to enforce the National Arbitration Award and International Arbitration Award;
2. There are some requirements that must be fulfilled by the submitting parties to prevent the Arbitration Award be annulled or refused; and
3. From 2007 to 2013, one application was rejected by the Chairman of Central Jakarta District Court, that possessing the authority to reject a Decision that against public order. Such authority is given by the Arbitration Law.

Pheo M. Hutabarat *is one of the founding partners who estabilised HHR. Prior to founding the firm, he practiced commercial law among the most prominent law firms in Indonesia. To date, he has been practicing law for more than 25 years.*

He has developed an extensive practice both in business law and dispute resolution. He has led has led and acted as practice group leaders within the firm in relation to (i) Corporate & Investment, (ii) Banking & Finance, (iii) Capital Market & Securities, (iv) Commercial Disputes, (v) Competion and Regulated Industry and (vi) Natural Resources and Infrastucture.

His particular experience in structuring legal frameworks, negotiating and providing strategy and preparing transactions documents for a broad range of transactional and transnational projects/cases within the areas of practices mentioned above has led him to handle various types of international and domestic projects as well as principal advisor in various litigation as well as arbitration cases, representing numeours multinational companies and Indonesian conglomerate group of companies in doing their business in Indonesia.

Asido M. Panjaitan *is currently in charge as the Practice Group Leader of the Commercial Disputes Resolution practice group and the Real Property practice group. In addition to that, his areas of specialisation also encompass: (i) Securities; (ii) Corporate and Commercial; (iii) Corporate Crime Litigation; (iv) Bankruptcy & Intellectual Property Court; (v) Banking and Finance; (vi) Business Competition Supervisory Commission (KPPU); (vii) Media and Telecommunication; (viii) Insurance; (ix) Real Estate; (x) Labour; (xi) Industrial Relation Dispute; and (xii) Administrative Litigation.*

He had experienced as a coordinator as well as a team member in drafting and preparing transactional documents in connection with LDD reports which required in the commercial transactions; as a legal consultant and negotiator of one of the big Portuguese Company in the Republic Democratic of East Timor ("RDTL") (2002-2004) and as a legal consultant of Australian Bank Company in RDTL (2003). In regards with these works, he has been appointed by international as well as real property companies in relation to among others: (i) land acquisitions and relinguishments, (ii) titling and strata title, (iii) BOT and other real property structured transactions, (iv) restucturing of real property complex, and (v) industrial estate related transactions.

Leonive Simamora *is attached to the firm's Commercial Disputes Resolution Practice Group, especially in litigation in Indonesia. Leo particular experience in connection with (i) arbitration cases; (ii) corporate and commercial litigation; (iii) industrial relation dispute; (iv) administrative litigation and (v) Bankruptcy and Suspension of Payment in Indonesia. He is a member of the Association of Indonesian Advocates (PERADI) and is a licensed advocate.*

In ***Commercial Dispute Resolution*** *works, he has involved in various court litigation, bankruptcy and suspension of payment, administrative court, labor court, as well as in international and domestic arbitration proceedings.*

1. Article 62 of Arbitration Law
2. Dr. Andriani Nurdin, S.H., M.H. (formerly Chairman of Central Jakarta District Court) in her article "Pengakuan Dan Pelaksanaan Putusan Arbitrase Internasional (*recognition and enforcement of international arbitral awards)"*
3. Supreme Court No. 1 K/Pdt/2010 between Lippo Group as Respondent and Astro Group as Applicant of Exequatur.