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The Provisions on the Enforcement of Foreign Arbitration Awards in Indonesia (under the New York Convention of 1958?)

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This article tried to describe the laws concerning the enforcement of foreign arbitration awards in Indonesia. This issue is relevant in the light of frequent curiosity of foreign commentators, business communities, practicing lawyers, concerning the arbitration in Indonesia, in particular its enforcement of foreign arbitration awards. The main laws on arbitration analyzed were, firstly, the Indonesian law on arbitration, namely Law No 30 of 1999 on Arbitration and Alternative Dispute Resolution and the Presidential Regulation No 34 of 1981 concerning the Ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. The provisions of Law of 1999 analyzed were confined to its international provisions on arbitration, in particular the requirements for the enforcement of foreign arbitration awards and also the requirement that the awards do not violate Indonesian public policy. The problem with the Indonesian arbitration law (and the courts' practice) were that no provisions which provided guidance or meaning with regard to public policy. The absence or lack of guidance or definition on public policy had some times confused lawyers or the parties in dispute fearing that their arbitration awards would not be enforced due to the violation of public policy. Secondly was the different opinion of two Indonesian arbitration

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experts, Prof. Sudargo Gautama and Prof. Priyatna Abdurrasyid. Both scholars had rather different opinions with regard to the meaning of public policy in Indonesia. Thirdly was a recent case law, Astro Nusantara Bv et.al., vs PT Ayunda Primamitra Case (2010) decided by the Indonesian Supreme Court with regard to the enforcement of foreign arbitration awards. This article concluded that the Indonesian court, in particular the Central of Jakarta Court, so far have given its support that the execution of foreign awards was duly enforced.

Key Words : Indonesian Arbitration, Enforcement of Foreign Arbitration Awards, Public Policy.

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Ⅰ. Introduction

The issue of the enforcement of foreign arbitration awards in Indonesia has always been the focus of substantial attention from arbitration specialist.[1] A number of reasons for this attention are the following. First, Indonesia is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Indonesia gave its consent to be bound by the Convention in 1981. Being a party, Indonesia has given its approval to recognise and enforce the foreign arbitral awards sought for its enforcement in Indonesia.

Secondly, the enforcement of foreign arbitration award in Indonesia has at a time given a rather bad image on the practice of arbitration in Indonesia.[2] This is mainly because there is a strong impression on many arbitration experts, lawyers or academics about the notorius case of *E.D. & F. Man (Sugar) Limited v. Y. Haryanto.*[3] This case

1) See for example, Karen Mills and Risdiana Yana, "Indonesia District Courts Annul Two Domestic Awards," *Int.A.L.R.* 2003, 6(2) N16-20.

2) See Noah Rubin, "The Enforcement And Annulment of Arbitration Awards in Indonesia," (2005) 20 *Am.U.Int'l. Rev.* 359; S.R. Luttrell, "Lex Arbitri: The Law and Practice of Commercial Arbitration in Indonesia," *Int.A.L.R.* 2007, 10 (6) 190-205, above., Karen Mills and Risdiana Yana, "Indonesia District Courts Annul Two Domestic Awards," *Int.A.L.R.* 2003, 6(2) N16-20.

was an old case. The award was rendered in 1991. Since then, unfortunately this case has been quoted repeatedly in many publications about arbitration in Indonesia. This exposure had given a big blow to the Indonesian arbitration image to the practitioner in the world about arbitration in Indonesia. Many regretted the position of Indonesian court that annulled the foreign arbitration award or gave the award "*non-exequatur*" (non-execution) in Indonesia.

The purpose of this article is to throw some light on the Indonesian laws and practice on the recognition and enforcement of foreign arbitral awards under the New York Convention in Indonesia. This article also would like to see the position of the court in Indonesia. A particular aspect of it was to see whether they are implementing the New York Convention. This analysis would also determine whether the Indonesian courts are giving their support to arbitration in Indonesia, including its enforcement of foreign arbitration awards.

Ⅱ. Arbitration Law in Indonesia

1. Introduction: Arbitration Law No 30 of 1999

The main law specifically dealing with arbitration is Law No 30 of 1999 on Arbitration and Alternative Dispute Resolution ("Arbitration Law"). The Arbitration Law replaced the old Dutch Law on Arbitration as embodied in Articles 615-651 of the Dutch Civil Procedural Law.

There are however, a number of characteristics of the Arbitration Law generally not found in other arbitration laws. *Firstly*, the Law does not adopt UNCITRAL Model Law on International commercial arbitration ("Model Law"). The main differences of Arbitration Law with the UNCITRAL Model Law are the definition of international arbitration and the requirement for the enforcement of foreign arbitration awards (see below).

The Indonesian Arbitration Law sets two criteria on the meaning of international arbitration: (i) the arbitration is international if the arbitration is conducted outside the territory of Indonesia; or (ii) according to Indonesian conflict of Laws such arbitration is considered as an international arbitration. While the UNCITRAL Model Law defines

3) *Penetapan* (Court's Order) No 1 Pen.Ex'r/Arb.Int/ Pdt/1991.

international arbitration as stipulated in its Article 1 para. 3.[4)]

During the deliberation of the Law at the parliament, no specific record that specifically recommended the UNCITRAL Model Law to be adopted into the (Draft) Arbitration Law.

Secondly, the Arbitration Law encourages peaceful settlement of disputes between the parties. Article 45 of the Arbitration Law specifies:

> (1) In the event that the parties appear on the day determined, the arbitrator or arbitration tribunal shall first endeavour to encourage an amicable settlement between the disputing parties.

Thirdly, the Indonesian Arbitration Law grants authority to arbitration (institution), if requested, to provide a binding opinion about a certain matters with regard to a certain conflict, legal issues, or certain troubled provisions in a contract. Providing a binding opinion in practice may prevent dispute settlement before a substantial dispute arises.

Fourth, the proceedings, including the issuance of the awards, must be completed in 180 days. This is found in Article 48 Arbitration Law which reads:

> (1) The hearings on the dispute must be completed within not more than one hundred eighty (180) days from the formulation of the arbitral panel.
> (2) Such time limitation may be extended upon consent of the parties or if required in accordance with the provisions of Article 33 hereof.

Fifth, there is a requirement to register the arbitration award with the district court, either for domestic as well as for foreign or international awards. In case of domestic

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4) Article 1 para. 3 provides: An arbitration is international if:
(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
(b) one of the following places is situated outside the State in which the parties have their places of business:
(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
(c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

arbitration awards, the arbitrator or the arbitration tribunal is required to register the arbitration awards with the district court where the respondent is domiciled. The registration must be made within 30 (thirty) days since the arbitration awards are rendered.[5)]

In case of international arbitration awards, the party requesting the execution or enforcement must register the arbitration awards with the clerk of the district court of Central Jakarta.[6)] Unlike domestic arbitration awards, no time limit is required upon the party requesting the enforcement, to register the arbitration awards with the Indonesian courts (Central Court of Jakarta).

The submission of the file of the application for enforcement must be accompanied by:

a. the original or authenticated copy of the Award, together with an official translation of the text into the Indonesian language;
b. the original or a copy authenticated agreement, together with an official translation of the text into the Indonesian language;
c. a certification from the diplomatic representative of the Republic of Indonesia in the country in which the International Arbitration Award was rendered stating that such country and the Republic of Indonesia are both bound by a treaty on the recognition and implementation of International Arbitration Awards.[7)]

2. Law No 5 of 1968 on the Ratification of the Washington (ICSID) Convention of 1965

With regard to the international agreement on arbitration, Indonesia ratified the Convention on the Investment Disputes Convention of 1965 in 1968. This gave assurance to the foreign investors that Indonesia has given its consent to settle investment dispute involving Indonesian government and foreign investors in ICSID arbitration.

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5) Article 57 of Arbitration Law.
6) Article 65 of Arbitration Law No 30 of 1999.
7) Article 67 Law No 30 of 1999. Further discussion on Law No 30 of 1999, see: Sudargo Gautama, *Undang-Undang Arbitrase Baru 1999* (transl: *New Arbitration Law of 1999*), Bandung: Citra Aditya Bakti, 1999, pp.1 etc.

3. Presidential Regulation No 34 of 1981

Indonesia is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 in 1981. When ratifying the Convention, Indonesia requested two reservations to be met before the enforcement order is given:

1) the dispute falls within the meaning of trade under Indonesian law ("trade disputes");
2) the requirement of reciprocity. Indonesian court will give its "*executatur*" (order of execution) if the country where the arbitration award is made is also a party to the New York Convention of 1958.

In addition to these reservations, Indonesia adheres specifically to the public policy requirement as stipulated in Article V para. 2 b of the New York Convention. The requirement of public policy is found in Article 66 (c) of the Arbitration Law No 30 of 1999.

a. Trade Disputes Requirement

The dispute that may be settled by arbitration (*arbitrability*) under Indonesian Arbitration law is laid down in Article 5 and Article 66 of the Law No 30 of 1999 (on Arbitration).[8] This condition is also found in the Presidential Decree No 34 of 1981 (ratifying the New York Convention of 1958).[9] These two laws state that the subject matter of the dispute is only disputes of a commercial nature.

One of the problems with the Law is that it does not clearly define what the commercial dispute is. Article 5 (2) of the Law only states that the disputes which may not be resolved

8) Article 5 provides: "(1) Only disputes of a commercial nature, or those concerning rights which, under the law and regulations, fall within the full legal authority of the disputing parties, may be settled through arbitration.
(2) Disputes which may not be resolved by arbitration are disputes where according to regulations having the force of law no amicable settlement is possible."

9) When ratifying the New York Convention, Indonesia required the reservation to the Convention. Indonesia will only recognize and enforce the foreign arbitral awards if the subject matter of the dispute falls within the commercial dispute in accordance with Indonesian law.

by arbitration are disputes where according to regulations having the force of law no amicable settlement is possible. There is no further guidance which regulations are means in article 5 (2) above. The elucidation or explanatory note of this article only states that this provision is "sufficiently clear". In some laws, the Law itself that determine which dispute that may or may not be subject to a certain mechanism or court.

However, the second article, Article 66 imposes the requirement of disputes falling within the "commercial law" according to Indonesian laws. The explanatory note of article 66 states the term "commercial law" includes, among others in the field of commerce; banking; finance; investment; industry and intellectual property rights.

Other laws do mention whether a certain subject matter of dispute is or may be subject to arbitration. For example, Article 65 of the Law No 19 of 2002 on Copyright specifies that the parties may settle their dispute on Copyright matters to arbitration (or alternative dispute resolution).

The Law on Bankruptcy, however, clearly states the jurisdiction of Commercial Court to settle the bankruptcy disputes. This competence may be set aside although the parties have already agreed that their disputes are to be settled by arbitration.[10)]

The term commercial under the UNCITRAL Model Law may also become a useful tools to understand the meaning of commercial. The Model Law specified that the terms commercial should be interpreted widely. The term "commcercial" according UNCITRAL Model Law includes:

> *"‥matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business co-operation; carriage of goods or passengers by air, sea, rail or road.*

10) Law No 4 of 1998 on Bankruptcy especially Article 280, states that the jurisdiction to decide the bankruptcy petition lies with the Commercial Court ('Pengadilan Niaga'). The Law of 1998 was replaced by Law No 37 of 2004. Article 306 of the Law No 37 of 2004 reaffirms the jurisdiction of the Commercial Court ("Pengadilan Niaga").

BANI Arbitration Rules does not either define the meaning of this term. BANI however specifies the trade disputes that may be submitted to BANI. They include disputes with regard to "investment, industry, finance such as corporate, insurance, financial institution matters, aviation, telecommunication, mining, sea, land and air transportation, manufacturing, intellectual property rights, licensing, franchise, construction, shipping/maritime issues, environmental issues, remote sensing and others within the scope as set forth by laws and regulations and international practices."[11)]

b. Reciprocity Requirement

The reciprocity requirement is mentioned in article 67 (see above). This Article requires the party requesting the enforcement to get a certification from the diplomatic representative of the Republic of Indonesia in the country in which the International Arbitration Award was rendered. The certificate must state the country where the place of arbitration is held and the Republic of Indonesia are bound by a bilateral or multilateral treaty on the recognition and implementation of International Arbitration Awards. This requirement is not found in the UNCITRAL Model Law nor in the New York Convention. This article may also fair to note that it imposes additional obligation upon the party to get this certification.

The slight problem found in practice was that (many) Indonesian embassies are not aware of this requirement. Besides, most of the Indonesian embassies or representative abroad is not familiar with Arbitration Law. This situation might be understood since most of the diplomats are mostly political, economic or international relations experts or specialists.

c. Public Policy Requirement

The requirement of public policy and the consequence of its violation may be found in a number of laws. These include the Arbitration Law no 30 of 1999. Article 66 of this Law among other states:

"International Arbitration Awards will only be recognised and may only

11) BANI, *BANI Arbitration Centre: Arbitration A preferred mechanism for business disputes*, pamphlet, 2017, p.2.

> be enforced within the jurisdiction of the Republic of Indonesia if they fulfill the following requirements: …
> (c) International Arbitration Awards, … may only be enforced in Indonesia if they do not violate public order.

The problem with this requirement is, as also found in the meaning of trade dispute (above), no definition with regard to the meaning of public policy. There is however a reference to the doctrine (of Indonesian arbitration experts) with regard to the meaning of this term.

(i) Prof. Sudargo Gautama

The prominent Indonesian scholar who was recognised for the first time trying to define the term public policy is Prof. Sudargo Gautama, a professor of private international law. He explained the term public policy or the principle of public order in the following statements: "public policy or open *bare orde* is merely a reserve principle which is only to be invoked exceptionally."

He said the application of this terms must be strictly limited and be applied cautiously. This term is only an exception. He opined, if this term is used without any limitation to set aside the application of the foreign law, it would make the private international law fail to develop and would only uphold the supremacy of the national law to foreign law. This condition could alienate Indonesia from the international community.[12] He further noted that the public policy should be an "escape clause" and should be confined to be used as a "shield not a sword."[13]

What Prof Gautama meant to intent is quite clear. He did not try to provide the meaning to the term public policy. He merely wanted to argue that this term should be applied cautiously and this would mean that the term should not be applied easily.

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12) Sudargo Gautama, *Hukum Dagang dan Arbitrase Internasional (Transl: Trade Law and International Arbitration)*, Bandung: Citra Aditya Bakti, 1991, p. 8; Prof Sudargo Gautama's opinion of public policy is also discussed in:Tineke Louise Tuegeh Longdong, *Asas Ketertiban Umum dan Konvensi New York 1958(transl: The Principle of Public Policy and New York Convention of 1958*, PT. Citra Adtya Bhakti, Bandung, 1998, p. 24.

13) Sudargo Gautama, *Ibid.*, *Cf.*, Alan Redfern and martin Hunter (with Nigel Blackaby and Constatine Partasides) *Law and Practice of International Commercial Arbitration*, London: Thomson and Sweet & Maxwell, 4th.ed., 2004, p. 545. (Redern and Hunter argued that "…many states are increasingly taking a restrictive approach to the application of public policy").

(ii) Prof Priyatna Abdurrasjid

The other Indonesian scholar trying to explain the meaning of public policy is Prof. Priyatna Abdurrasyid. He was the former Chair of the BANI Arbitration Centre of Indonesia. In his book, firstly, Abdurrasyid did not try to give the meaning of public policy. He only stated that there need a further study about public policy.[14] Secondly, Abdurrasyid merely quoted the meaning of public policy as contained in the Supreme Court Regulation No 1 of 19990 (above).[15]

Abdurrasyid admitted Article V (2) (b) of New York Convention is the most important provision for a (domestic) court to set aside the foreign arbitral awards when they are violating the public policy of a state.[16]

Although admitting the importance of public policy ground, Abdurrasyid is of the opinion that the existence of this ground does not mean that it is a mandatory for a court to set aside the award. He opines that the public policy ***may be used*** to set aside the award.[17] The words "**may be used**" printed in bold and italics emphasises that public policy ground should not be freely or at all the time used by the court to set aside the foreign arbitral awards. It is on the hand of the Court whether it would use it or refuse to use it to set aside the foreign arbitral awards.

My personal opinion about the public policy under Indonesian Arbitration Law is that since the term of it is not clearly defined and subject to multi-interpretation (of the parties) and depend upon the (National) Court to interpret it, the term, I share with the opinion of Prof Gautama above, must be exercised carefully. The term cannot be applied easily to set aside the foreign arbitration awards. The basis for this position is the followings.

Firstly, the public policy should be used cautiously mainly because all States must respect the application of the due process of law in other countries. This position is of importance and respect must be taken into consideration mainly because the existence and different meaning of public policy ine very legal system. This fact should be considered carefully, in order to prevent the misuse of this institution ("public policy"). In the end of the day, the free use of this institution would endanger the

14) Priyatna Abdurrasyid, *Arbitrase dan Alternative Penyelesaian Sengketa* (APS) (Translation: *Arbitration and Alternative Dispute Resolution*), 2nd Rev. Ed., Jakarta: Fikahati, 2nd.rev.ed., 2011, p. 23.

15) Priyatna Abdurrasyid, *Ibid.*

16) *Ibid.*

17) *Ibid.*

existence and the future of international arbitration.

Secondly, the recognised principle of acquired rights under private international law. This principle suggests that what has been recognised as valid under national law where the arbitration (awards) takes place, must also be recognised in other States.

Thirdly, arbitration has been a universal mechanism for the settlement of commercial disputes acknowledged by states in the world. The universal character of arbitration requires that it is a universal mechanism and therefore should be universally recognised by states in the world. This universal character is found in its substantive provisions as well as formal provisions for arbitration.[18)]

Fourth, to day we have an internationally recognised convention on the recognition and enforcement of foreign arbitral awards, namely the New York Convention of 1958. This convention lays down the obligation upon its members to recognise the arbitration agreement or clause and the arbitral awards made in the territory of the member states.[19)] The convention recognizes the principle of public policy that requires its more than 150 member States to observe it.[20)]

The requirements as the grounds for the refusal of the enforcement of foreign arbitration awards under the Arbitration Law (Law No 30) are exclusive: requirements of trade disputes, reciprocity, and public policy. These requirements seems among others similar with the requirements under Article V paragraph 2 of the New York Convention which states:

> 2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
> (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
> (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

18) These substantive and formal provisions universally accepted are embodied in the UNCITRAL Arbitration Rules of 1976 as well as in the UNCITRAL Model Law on International Commercial Arbitration of 1985. Also importance is the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, below.

19) Article III of the Convention.

20) Article V:2 (e) of the Convention.

Although Indonesia ratified the New York Convention, the requirements for refusal of foreign arbitral awards under article V para 1 of the Convention, interestingly, is not mentioned in Indonesian Arbitration Law. This article among others stipulates the requirements of the violation of the procedural law in arbitration proceedings. Article V para. 1 provides:

> 1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:
> (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
> (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
> (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
> (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
> (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

It is therefore interesting to see how the Indonesian courts will give its opinions when the refusal of enforcement of foreign arbitration awards are tested on the grounds embodied in Article V para. 1 of the New York Convention. This situation is interesting to see because (most if not all) judges in Indonesia is trained to refer to Indonesian positive law, that is the law written in the Indonesian language, as the law to be applied by the courts. The international treaties or convention, as long as it is not clearly stipulated (or transformed) into Indonesian law and written in Indonesian language, does not bind the Indonesian Courts (although the State has given its commitment to be bound by the International Treaty, i.e., New York Convention).

Ⅲ. Provisions of Enforcement of Foreign Arbitration Awards

1. Provisions under the Law No 30 of 1999

a. Domestic Arbitration Awards

The Arbitration Law No 30 of 1999 comprises of two main provisions for the enforcement of arbitration awards: first, the domestic arbitration awards (Articles 59 - 64). Since in its formation in 1977 until the time of writing of this article, BANI Arbitration Center of Indonesia, has been settling approximately 950 cases.[21)]

Most of the BANI Arbitration awards were enforced either by the courts or by unilateral fulfilment by the parties. Under article 70 of the Arbitration Law, there are three grounds for the annulment for domestic arbitration awards, including:

> (a) letters or documents submitted in the hearings are acknowledged to be false or forged or are declared to be forgeries after the award has been rendered;
> (b) after the award has been rendered documents are founded which are

21) This number does not include the cases settled by the BANI Representative Offices in major cities in Indonesia. They include BANI Representative Offices in the cities of Surabaya, Medan, Bandung, Denpasar, Pontianak, and Jambi. Most of the BANI Arbitration awards were enforced either by the courts or by unilateral fulfillment by the parties.

decisive in nature and which were deliberately concealed by the opposing party; or
(c) the award was rendered as a result of fraud committed by one of the parties to the dispute.

So far, only 3 (three) out of 950 BANI Arbitration awards were regrettably annulled. They are: *Hasan Wijaya v. PT Multi Mechindo Industries* (Case No. 141/II/ARB-BANI/2001) (on grounds article 70 (b) and (c) above); *PT Truba Jurong Engineering v. PT Barata Indonesia (Persero)* (Case No. 147/VIII/ARB-BANI/2002) (on grounds article 70 (c)); and PT Deo Dipa Energi v. PT Bumigas Energi (Case No. 271/XII/ARB-BVANI/2007) (on grounds article 70 (c)). Since 2007, no BANI Arbitration awards or decisions are annulled by the courts.

b. Foreign Arbitration Awards

Second, the international arbitration awards (Articles 65 - 69). There are 5 (five) requirements for foreign arbitration awards to be enforced in Indonesia. They include:

1) The District Court of Central Jakarta shall be the court vested with the authority to handle matters of the recognition and enforcement of International Arbitration Awards.[22)]
2) International Arbitration Awards will only be recognised and may only be enforced within the jurisdiction of the Republic of Indonesia if they fulfill the following requirements:
   (a) The International Arbitration Award must have been rendered by an arbitrator or arbitration tribunal in a country which, together with the Republic of Indonesia, is a party to a bilateral or multilateral treaty on the recognition and enforcement of International Arbitration Awards.
   (b) International Arbitration Awards, as contemplated in item (a), above, are limited to awards which, under the provisions of Indonesian law, fall within the scope of commercial law.

22) Article 65 of Arbitration Law.

(c) International Arbitration Awards, as contemplated in item (a), above, may only be enforced in Indonesia if they do not violate public order.

(d) An International Arbitration Award may be enforced in Indonesia only after obtaining an order of Exequatur from the Chief Judge of the District Court of Central Jakarta.

(e) An International Arbitration Award, as contemplated in item (a), in which the Republic of Indonesia is one of the parties to the dispute, may only be enforced after obtaining an order of Exequatur from the Supreme Court of the Republic of Indonesia, which order is then delegated to the District Court of Central Jakarta for execution.[23)]

3) Application for enforcement of an International Arbitration Award shall be made after the award is submitted for registration to the Clerk to the District Court of Central Jakarta Pusat by the arbitrator(s) or the legal representative thereof. The submission of the file of the application for enforcement must be accompanied by:

a. the original International Arbitration Award, or a copy authenticated in accordance with the provisions on authentication of foreign documents, together with an official translation of the text thereof into the Indonesian language;

b. the original agreement which is the basis for the International Arbitration Award, or a copy authenticated in accordance with the provisions on authentication of foreign documents, together with an official translation of the text thereof into the Indonesian language;

c. a certification from the diplomatic representative of the Republic of Indonesia in the country in which the International Arbitration Award was rendered stating that such country and the Republic of Indonesia are both bound by a bilateral or multilateral treaty on the recognition and implementation of International Arbitration Awards.[24)]

23) Article 66 of Arbitration Law.

4) No appeal to either the High Court or the Supreme Court may be lodged against a decision of the Chief Judge of the District Court above recognising and enforcing an International Arbitration Award. An appeal, however, may be filed with the Supreme Court against a decision of the Chief Judge of the District court refusing to recognise and enforce an International Arbitration Award.
The Supreme Court shall consider and rule upon an appeal submitted to it within a period of nor more than ninety (90) days after the application for appeal has been received by the Supreme Court. No appeal may be submitted against a decision of the Supreme Court. [25]

5) After the Chief Judge of the District Court of Jakarta Pusat has issued a writ of execution ("exequatur"), further enforcement shall be delegated to the Chief Judge of the District Court having jurisdiction to enforce it. (2) An order of attachment may be made upon such assets and property of the party against whom the award was rendered as shall be requested in the application for such order. (3) The procedure for seizure and attachment in enforcement of the award shall follow the procedures therefore as set out in the Code of Civil Procedure.[26]

Ⅳ. Enforcement of Foreign Arbitration Awards in practice

Since the coming into force of the Arbitration Law, there have been 117 decisions of Central District Court of Jakarta on the enforcement of foreign arbitration awards were rendered. They are:[27]

24) Article 67 of Arbitration Law.
25) Article 68 of Arbitration Law.
26) Article 69 of Arbitration Law.
27) Mutiara Hikmah, *Arbitrase dan Perkembangannya di Indonesia (Arbitration and Its Development in Indonesia)*, Manuscript, Jakarta, 2016, p. 2; see also generally on the decisions of the Indonesian domestic courts on arbitration in: Erman Rajagukguk, *Arbitrase dalam Putusan Pengadilan (Transl:*

1) 44 decisions which were granted their execution;
2) 4 decisions which refused the execution;
3) 32 decisions wee still under verification process;
4) 37 decisions were being processed (investigated).

It is worth noting that from the 4 decisions of the Central District Court of Jakarta which refused enforcement of the foreign arbitration awards (above) were issued on the grounds that they violated Indonesian public policy. The other two requirements, the trade dispute and reciprocity requirements have never been invoked yet.

It is also quite interesting to see that the Courts have different meaning to interpret the term public policy as the basis for the refusal for the recognition and enforcement of foreign arbitral awards. The four cases that were refused their enforcement on the grounds of violation of public policy were: *Bankers Trust v. Mayora Indah* (LCIA, 14 December 1999); *Bankers Trust v. PT Jakarta International Hotel & Development* (LCIA, 28 December 1999); *Karaha Bodas v Pertamina* (Swiss, 18 December 2000); and the recent decisions of the Jakarta court in *ASTRO Nusantara International BV v. PT Ayunda Prima Mitra* (SIAC No 62 of 2008, 7 July 2008). The former 3 cases had been discussed in various articles. The following is short description concerning the meaning of public policy in *ASTRO Nusantara International BV v. PT Ayunda Prima Mitra* (2008), whose court's decision was rendered in 2016.

a. *Astro Nusantara Bv et.al., vs PT Ayunda Primamitra Case* (2010)

The parties in the dispute, Astro group (Astro) and PT Ayunda (Ayunda) entered into a joint venture agreement (Agreement). The Agreement set up a Direct Vision company which was onwed 51 % by Astro and 49 % by Ayunda to operate a pay television business in Indonesia.

In the application of the Agreement, a dispute arose. On 3 September 2008, Ayunda brought the dispute to the District Court of South Jakarta, Indonesia. Ayunda's arguments included firstly, that Astro has violated the law (under Indonesian civil law

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Arbitration in the Decisions of the Courts), Jakarta: Chandra Pratama, 2001, pp. 1 etc.; also: Sudargo Gautama, *Arbitrase Luar Negeri dan Pemakaian Hukum Indonesia (transl: International Arbitration and the Use of Indonesian Law)*, Bandung: Citra Aditya Bakti, 2004).

or similar with 'Tort' under the Common Law system). Secondly, the subject matter of the dispute was not a commercial dispute; and thirdly, the arbitration award was an intervention of the procedural law in Indonesia.

On 6 October 2008, Astro brought the dispute to the Singapore International Arbitration Centre on 6 October 2008 in accordance with the Arbitration clause in the Agreement. The arbitration tribunal issued its award on 7 May 2009 which was in favour of the applicant, Astro.

The SIAC arbitration tribunal also issued the Interim Final Award. The Award held among others that Ayunda must pay compensation and to pay litigation free from the Indonesian proceedings. The award also ordered Ayudha to stop the proceedings against Astro in the Indonesian district court.

Ayunda rejected the arbitral award and on 3 August 2009 filed for a rejection of the award with the central court of Jakarta. The main argument Ayunda raised was that the award violated the public order of Indonesia and therefore the award cannot be executed in Indonesia.

The South Jakarta district court granted the request for Ayunda's request and annulled the arbitral award on the ground of the violation of public order.

Astro appealed to the Republic of Indonesia Supreme Court (SC). Astro argued that the action of Ayunda to request the non-execution of the award to the central district court of Jakarta was an act of intervention in the examination process of the request of execution of the district court of Jakarta. In addition, the arbitration award which ordered Ayunda to stop the legal proceedings in District court of Jakarta was not an act of intervention in the legal process in Indonesia.

The SC held, *firstly*, the Law No 30 of 1999 on Arbitration and Alternative Dispute Resolution is silent about the intervention of the third party in the process of the examination for the execution of the award. Nevertheless, SC argued that the procedural law in Indonesia gives the right to every (natural or legal) person who has interest to defend his right in the process of law.

Secondly, SC also argued that the order in the arbitration award to stop the process of legal proceedings in Indonesian court is a violation of the principle of sovereignty of the Republic of Indonesia. Since, no foreign power can intervene in the legal process in Indonesia. The award is therefore a violation of public order of Indonesia.

Thirdly, the SC also contended that the subject matter of the SIAC Arbitration award did not fall within the commercial matters, but the procedural law. This was also an evidence, as SC argued, of a violation of pulbic order in Indonesia. SC affirmed the District court decision.

Ⅴ. Conclusion Remarks

Generally the Indonesian laws regulating the enforcement of foreign arbitration awards are quite simple. The Indonesian laws for example only relied upon the three requirements as the test for enforcement: trade dispute, reciprocity and public policy requirements. There is however, only one exception that seems to be troublesome and needs the amendment of the laws. This is particularly the requirement for the obtaining of certification or letter of statement from the Indonesian embassy where the arbitration was held that Indonesia and the country of the place of arbitration are bound by a treaty on the recognition and enforcement of International Arbitration Awards.

The number for the request for execution of foreign arbitration awards is quite considerable. The courts' position to refuse (or annul) the enforcement is considered small. There are only 3 (three) cases where the refusal of enforcement were decided. And, the grounds for these refusal were the violation of public policy of Indonesia. Despite the statement from the Indonesian embassy above and the fact that the refusal of enforcement of arbitration awards exist, the climate of arbitration in Indonesia is generally fine. This suggests that the image of Indonesia as an unfriendly state for arbitration is not accurate. ***

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