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THE ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN INDONESIA

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I. Introduction

Indonesia is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted at New York on 10 June 1958 (the New York Convention). It has been ratified in Indonesia by Presidential Decree No. 34/1980, entered into force on August 5, 1981. However, Indonesia does not have both a Domestic Arbitration and an International Arbitration Act. Therefore, each judicial body in Indonesia has a different interpretation of the New York Convention of 1958. For example, the Supreme Court of the Republic of Indonesia (known as: Mahkamah Agung Republik Indonesia) imposed that, eventhough Indonesia ratified the New York Convention of 1958, foreign arbitral awards cannot be enforced without implementing regulations.[1] On the other hand, the District Court of Jakarta Pusat[2] (known as: Pengadilan Negeri Jakarta Pusat) made a decision that the enforcement of arbitral awards be based not on the New York Convention of 1958 but on the Geneva Convention of 1927.[3] Then, on 1 March 1990, the Indonesian Government issued the Supreme Court Regulation No. 1 which implemented the New York

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[1] Azikin Kusumah Atmadja, "Arbitrasi di Indonesia" (translated: "Arbitration in Indonesia") (1988) 124, *Varia Peradilan,* 125, 6.

[2] There are three judicial hierarchies in Indonesian general courts: The Pengadilan Negeri (State Court is the court of first instance), The Pengadilan Tinggi (High Court is the court of appeal) and The Mahkamah Agung (Supreme Court is the highest court that heras appeal from lower courts).

[3] The District Court of Central Jakarta Reg.No.2288/1979 P, dated 10 June 1981.

Convention of 1958. However, this could not guarantee the Convention as expected because it contains provisions which are too abstract. Consequently, the enforcement of foreign arbitral awards in Indonesia now and in the future is still to be questioned. The following submission will explore these questions.

II. Statute and Rules of Arbitration

A careful appreciation of the Indonesian regulations for domestic arbitration is essential in relation to the New York Convention of 1958, in which article 3 provides that *"Each contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rifles of procedure of the territory where the awards is relied upon, under the conditions laid down in the following article. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition on enforcement of enforcement of domestic arbitral cnvards".*[4] The main point to be noted from the above provision in respect to enforcement of foreign arbitral awards, is that it refers *to "... the rules of procedure of the territory where the award is relied upon,...".* So, what is the arbitration procedure law of Indonesia?

Indonesia, since gaining independence on 17 August 1945 , does not have both a Domestic Arbitration and an International Arbitration Act. Therefore, arbitration rules as stipulated by Dutch Colonial, Rechtsverordering of 1854 (known as ; R.v.),[5] is still applied in Indonesia. Moreover, it also pertains to Indonesian society and foreign oriental Chinese.[6] R.v. does not

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[4] The New York Convention of 1958

[5] Rechtsverordering is the Procedure Privat Law of The Dutch Society in Hindia Belanda (Nowdays is called: Indonesia), imposed bv Staatsblad 1847 : 52 jo 1849;63 (Staatsblad refers to Government Gazette of The Netherlands Indies), Engelbrecht 599.

regulate and establish anything concerning the recognition and enforcement of foreign arbitral awards because the Dutch Colonials believed that it would be respected by the Geneva Convention of 1927 concerning with the Execution of Foreign Arbitral Awards that had been adopted and operated in the Dutch Colonies.[7] Then, after Indonesia attained its independence on 17 August 1945, Indonesia drew up its Constitution of 1945 in which article 11 of the transitory rules provided that *the old laws of Nederlands Indies are regarded to be still valid providing that they are not contrary to the 1945 constitution.*[8]

Furthermore, article 5 of the Indonesia Supreme Court Regulation No 1 of 1990, concerning the implementing of foreign arbitral awards, points out that the old law as ruled in article 337 of HIR and 705 Rbg is still be applied in connection with the enforcement of foreign arbitral awards. Hence, there are some law sources which can be used to back the foreign awards. The next question is whether those rules have a correlation with foreign arbitral awards.

A. The Content Of Rechtsverordering

Regardless of whether the provisions of Rechtsverordering give credence to the New York Convention of 1958 or otherwise, I would like to present some provisions of Article 615-651 of Rechtsverordering that regulate arbitration rules in Indonesia. These provisions reflect any similarities between the New York Convention of 1958 and the Indonesian arbitration rules as in the following:

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[6] In the period of Dutch Colonialism, the sosiety of Hindia Belanda, based on article 163 jo 131 Indische Staatsregeling (the Constitution of Dutch Colonial), divided in three groups: European (including Dutch), Foreign Oriental Chinese and Indonesian, and they comply with the different rules.

[7] Staatsblad No 132 of 1933

[8] Article II of Transitory Law 1945 of the Constitution of Indonesia.

1. The submission to arbitration is based on agreement of the parties;
2. The parties have freedom to choose the arbitrator and rules of arbitration; the parties have authority to determine the kinds of evidence which will be used;
3. The interlocutory decisions; the wards
4. The appeal;
5. The nullification;
6. The enforcement.

Article 615-651 of Rechtsverordering does not express a definition of domestic arbitration or even international arbitration but gives guidelines which may be applied to all disputes of a commercial nature (which can be subjected to arbitration). This includes general disputes of government agencies and state owned corporations. "It is not allowed, on penalty of nullity, to conclude an arbitral agreement with regard to donations and legacies for alimentation, lodging or clothes; with regard to divorces or separation between husband and wife; regard to the status of any person, nor any other disputes on which the legal provisions do not allow a compromise."[9] So far, the term commercial cannot be found either on Rechtsverordering or any another Indonesian provision. But, in practice, all kinds of activities that relate to profits, as long as not against the law, are translated as "commercial". Lack of definition of the term "commercial", especially for a judge could be seen as a barrier to those who seek the enforcement of arbitral awards.

Arbitration is a Contract:

The validity of an arbitration agreement as a contract is based on article 1320 of Indonesian Civil Code[10] requiring: (i) the consent of the parties, (ii) the capacity to contract, (iii) the specific object certain, and (iv) the lawful

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[9] Article 616 of Rechsverordering

[10] Civil Code refers to the Substansial Privat law which is derived from Dutch Colonial time

purpose. Then all contracts that are correctly made and based on 1320 of the Civil Code shall binding as law on the parties who make them as ruled in article 1338 of the Civil Code. The foregoing provisions are (arts 1320 and 1338) known as the basic principles of freedom of contract.

Freedom to choose the arbitrators:

The arbitrators (or an arbitrator) can be chosen by the parties and may be almost anybody who is aged at least 18 years of age, male or female and capable of being appointed as an agent. There must be an odd number of arbitrators. If the parties do not agree on the arbitrator, the court can be asked to appoint. The arbitrators (or an arbitrator) who has accepted appointment by either parties or court must act as a neutral arbitrator without having an interest in either party. They are asked to award within a time limit determined in an agreement. The period of time is really needed by the parties who always appreciate the value of time due to the advantages of the arbitration compared with judicial proceedings eventhough this takes a lot of time. If there is not pre-arranged shorter a time limit, the mandate given to the arbitrators also can be revoked at six months unless this time is extended unanimous decision by the parties. The arbitrators who are appointed by the judge cannot be challenged by unless both parties agree for reasons arising later on.

Evidence:

As the legal law system of Indonesia is based on Civil Law, documentary evidence is more appropriate than any other, such as verbal. Therefore, the arbitral agreement has to be put in waiting and signed by both parties. In the event either party is illiterate, the arbitration agreement must be made before a notary public and 2 witnesses as a statutory declaration.[11] Moreover, the agreement shall establish the subject of dispute, names and domiciles of parties, and also the names and domiciles of the arbitrators (or arbitrator).

[11] Article 618 of Rechtsverordering

Arbitration agreement can be made by the parties before the case arises this is known as "factum de compramitendo" or after the cases arise this is known as "acta compromis".

The arbitrators have the right to impose provisional measures. If the originality of the documents is in question, the arbitrator will have to refer the investigation to the competent District Court. Moreover, if considered necessary, the chairman at the request of either party or at his/her initiative may summon witnesses and experts. They will be asked to take on oath before they show evidence or their reports. The method of cross examination upon witness is not used. Nevertheless, no special rule about cross examination is provided in the Rechtsverordering. In case, witnesses refuse to cooperate, District Court intervention may be requested.

Inter locutory decisions:

Moreover, the arbitrators can produce interlocutory decisions in respect with requests for protecting of the rights of the parties, and it will come into force after acknowledgment of the award to the parties. It is to be hoped that, interlocutory decisions will produce the effect of an award.

Awards:

The awards must be made in writing containing the names and domiciles of the parties, a summary of the submissions of the parties and the reasons for awards. Furthermore, it must be dated and should mention the place at which it was rendered. In addition, it has to be signed by arbitrators. If a minority of arbitors do not sign, those arbitors who have signed must mention this fact in their awards, and the refusal will not affect the validity of the awards but it has the same effect as if it was signed by all of them. The arbitrators shall decide according to the rules of the law, unless the arbitral agreement has given to them the competency to decide aequo et bono.[12]

[12] Article 631 of Rechtsverordering

Appeal:

Any awards may be appealed to the Supreme Court when the amount in controversy in the underlying dispute exceeds Rp. 25.000,- (approximately US $ 14,00). The appeal may relate to issues of fact as well as law. The request for appeal has to be made and submitted in writing to the Supreme Court through the Chief Justice of District Court within the period of one month from notification of the awards to each party. All other documents must accompany the appeal as evidence that the arbitral award has been decided by the arbitrators and the appellant believes a wrong decision has been handed down. However, the parties can waive their rights to appeal, either in the arbitration agreement itself or by selection of institutional rules to govern the arbitration which does not allow for appeal.

Nullification:

Application for nullification of an award may be made to the court which has issued the enforcement order, and must be initiated within six months after the award has been notified to the losing party, and this application may only be made on the following grounds: [13]

1. The decision was made without regard to the terms of reference of the arbitration agreement;
2. The compromise is invalid or has terminated;
3. the decision was made by one or more arbitrators not entitled to decide in the absence of one or more of the other arbitrators;
4. The decision concerns matters not claimed, or contains an award for a greater amount than claimed;
5. The terms of the decision are self-contradictory;

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[13] Kenneth R. Simmonds. Brian H.W. Hill, *International Commercial Arbitration - Commercial Arbitration Law in Asia and the Pasific, Country Commentaries, Indonesia* (October, 1990), Released 90-1.

6. The arbitrators have failed to decide on one or more matters submitted to them;
7. The decision is based on documents which after the award prove to be false;
8. Decisive new documents, previously withheld by one of the parties, are made available after the award;
9. The decision is based on deceit or deceitful fabrication.

Enforcement:

The arbitral award should be registered in the court where it was decided, and it is enforceable after an enforcement has been given by the president of the court who examined the basic grounds of the award, such as the appointment of the arbitrators, and their competence. The president of court does not consider the legal reason taken by the arbitrator in detail, but only a prima facie examination. Nevertheless, in practice, the president of the court, frequently investigates whether the arbitrators have broken the rules of public policy, and if this has occurred, the execution will be refused. The definition of Public Policy cannot be found in codefication of law in Indonesia.

B. The Indonesian National Board of Arbitration (called in Indonesia: Badan Arbitrase Indonesia)

The Indonesian National Board of Arbitration will be examined in brief because there is no strong relation with the enforcement of foreign arbitral awards. However, this institution is favoured by most business people rather than litigation.

It was established in 1977 in Jakarta and was sponsored by the Indonesian National Chamber of Commerce. This institution has a good reputation at present, because most entrepreneurs do not favour litigation due to the fact that the judicial process is inefficient, and it takes a long time, starting from

District Court, High Court and culminating with The Supreme Court. Moreover, businessmen and companies who are members of the Indonesian Chamber of Commerce and Industry, are encouraged to submit their dispute to arbitration by the National Board of Arbitration. As a good member of the Chamber they are expected to comply with the decision of the Arbitrators voluntarily. Its main purpose is to provide just and quick settlements in disputes arising in the field of trade, industry and finances, both of national as well as international characters.

III. The uncertainty of enforcement of foreign arbitral awards

It is the enforcement of foreign arbitral awards which in Indonesia is uncertain. In the past they could not be enforced because Indonesia did not have the implementing rules of the New York Convention of 1958. In the future, eventhough Indonesia now has the implementing rules as ruled in the Supreme Court Regulation No 1 of 1990, the enforcement of the New York Convention is most likely unsuccessful. It is influenced by many things.

Indonesia does not have both legislation regulating foreign arbitral and domestic awards. The existence of R.v. (article 615-651) as a domestic arbitration rule (inherited from Dutch Colonial times) could not be used to enforce a foreign arbitral award. As has been mentioned above, R.v. does not regulate an International Arbitration.

For Indonesia as a country which applies the civil law system, the existence of a suitable legislation is very important. A court always uses provisions provided in legislation. Indonesia does not apply the binding force of precedent as can be found in a common law country. A judge does not have to follow other judges' decisions eventhough a case may have a similarity with a previous decision. Therefore, the absence of legislation in connection with the enforcement of foreign arbitral awards might be a big problem to a judge who was asked to render a decision. So, the existence of legislation is more important than other rules, such as a Supreme Court

Regulation, Presidential Decree or Ministry Regulation. Consequently, a court always applies an act as a basic consideration in its judgment.

In connection with the New York Convention of 1958, which was ratified by Indonesia in 1981, some Indonesian law experts raised the question that Indonesian Government would have to establish an Indonesian International Arbitration Act as soon as possible. A foreign arbitral award will be more likely to fail in Indonesia without the presence of an Indonesian International Arbitration Act. It is surprising that Indonesia is a signatory to the New York Convention of 1958 yet, it does not have legislation of its own to support that convention.

The absence of an International Arbitration and Domestic Arbitration Act causes each of the judicial bodies to have a different interpretation of the New York Convention of 1958. Indonesia has the principle that a judge not be allowed to refuse to hear a dispute because of the absence of an Act. Hence, a judge must examine a dispute based on fairness and equity. However, in fact, there are many cases which have been refused a hearing because of the absence of an Act, particularly in criminal cases. For example, the Indonesian criminal law Act has the basic principle that provides none can be sentenced by a court without the power of an Act (known as: nullum delictum nulla sine poenali/nullum delictum)

The cases below show some Indonesia Court Decisions in relation to foreign arbitral awards:

1. The Supreme Court, in PT. Nizwar v Navigation Maritime Bulgare, number 2944 K/Pdt/1983 decided the submission for enforcing foreign arbitral awards made in London on 12 July 1978 could not be enforced because Indonesia did not as yet have an implementing rule of the New York Convention of 1958.

2. The District Court of Jakarta Selatan, in PT. Bakrie & Brothers v Trading Corporation of Pakistan Limited, number 64/Pdt/G/1984/PN.Jkt Sel. refused to enforce foreign arbitral awards rendered in London as well, because the District Court considered the merit of the foreign arbitral award was

against Indonesian law. Furthermore, this court did not examine the New York Convention of 1958 because it was believed the Geneva Convention of 1927 believed could be applied.

3. The Supreme Court in Ahyu Forestry Company Limited v PT. Balapan Raya, number 2924 K/Sip/1981, dated 8 February 1982. The dispute between an Indonesia Company in relation to the joint exploitation of a forest concession. Both the Court of North Jakarta and the Court of Appeal decided that the contention of the Indonesian partner should be accepted and the courts declared themselves competent to sit in the matter. But the Supreme Court in its cessation ruling decided both the decisions of the District Court of North Jakarta and the Court of appeal of Jakarta should be set aside. The Supreme Court decided that Indonesia had no jurisdiction to sit the matter, as the parties had referred the ICC rules in connection with the basic agreement for a joint venture.

Those decisions can be used as evidence that the enforcement of foreign arbitral awards are focused by the judicial bodies in on any different ways. Of course, a legislation always lets a judge decide a case based on equity and fairness. But, in the Indonesian Courts the problems are extremely peculiar. For example, in the first decision above, the Supreme Court decided a dispute in relation to the absence of implementing rules of the New York Convention, whilst in the second decision, the District Court of North Jakarta decided cases in connection with the Geneva Convention of 1927. However, the Government of Indonesia stipulates that the Geneva Convention of 1927 is not to be used in relation to the enforcement of foreign arbitral awards.[14] Both the decisions describe how the Indonesia court view a submission of the enforcement of foreign arbitral awards. Of course, these situations are not convenient to someone desiring the enforcement of a foreign arbitral award. Those decisions reflect to us how the Judicial bodies in Indonesia produced a judgement in different ways though the cases have similarity. No one could understand even an Indonesian.

The judicial system in Indonesia does not encourage the enforcement of foreign arbitral awards. Eventhough Indonesia does not apply the theory of Montesquieu, it recognizes that the power can be divided and separated into three categories (the legislative, executive and judicative). The aim of the theory is to prevent an intervention from other powers. The elucidation of the Indonesia Constitution of 1945, Indonesia does not apply the concept of separation of powers, such as the United States. Also, according to the 1945 Constitution, there is no separation of power between the executive and legislative (Article 5(1) of the 1945 Constitution). Moreover, article 24 (1) of the 1945 Constitution stipulates that the Supreme Court (known as: Mahkamah Agung) has the authority to exercise the judicial power. The judicial independence in Indonesia is the freedom of judges from pressures and influence of the government in making decisions. Nevertheless, in fact the expectation of people to reach justice and legal certainty often faces many impediments. In relation to enforcement of foreign arbitral awards, the losing party, usually business peoples, have a good relationship to the executive institution. This institution has the power to influence judicial bodies. The verdict of the judge can be compromised and there is "mafia justice" that has become relatively common among legal upholders.[15]

A. The Supreme Court Regulation Number 1 of 1990 As It Implements The Rules of The New York Convention of 1958

After years in waiting, Indonesia established the implementing rules of the New York Convention of 1958 in 1990. This was entered into force on 1 March 1990. This regulation it was hoped would be able to overcome the problem in connection with the enforcement of foreign arbitral awards. Since

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[14] President Decree No.33 of 1950.

[15] Ridwan Indra Ahadian, Hak Asasi Manusia Dalam UUD 1945 (Human Rights in the 1945 Constitution) as quoted from TEMPO, 24 May 1979.

1981 Indonesia has not ever enforced any foreign arbitral awards because Indonesia had not had implementing rules. Therefore, criticisms were raised by people who sought the enforcement of foreign arbitral awards upon Indonesian government decisions. Foreign companies were aware that Indonesia had ratified the New York Convention in 1981, they did not know that an Indonesian Court needed implementing rules in order to enforce foreign arbitral awards. The next question was and still is, will the Supreme Court Regulation be able to create the certainty of enforcement of foreign arbitral awards?

B. The Procedure Of Enforcement

According to article 1 of the Supreme Court Regulation, the District Court of Central Jakarta (known as: Pengadilan Negeri Jakarta Pusat) in the capital city Jakarta of the Republic of Indonesia has been given authority as an official judicial institution to enforcement matters concerning foreign arbitral awards. The arbitral award must have enforceable status (final and binding). According to article 5 of the Supreme Court Regulation, every submission for enforcement must be registered in the office of the secretary of the Jakarta Central District Court, and it will be sent within fourteen days to the Supreme Court in order to obtain the execution permission. The Submission must be supported as follows:

1. An original copy of the arbitral award, authenticated in conformity with the requirements for legalization of foreign documents. An official translation of the award is also required, certified in conformity with the laws valid in Indonesia.
2. A copy of the arbitration agreement, which should be legalized, together with an official translation, as required under Indonesian law.
3. A statement from the diplomatic Indonesian representative, confirming that the respective country at the time when the foreign arbitral award was handed down had a bilateral or multilateral treaty or convention with

Indonesia concerning recognition and enforcement of foreign arbitral awards.

4. A statement from the diplomatic Indonesian representative, confirming that the respective country at the time when the foreign arbitral award was handed down had a bilateral or multilateral treaty or convention with Indonesia concerning recognition and enforcement of foreign arbitral awards.
5. Respective requirements are not contrary to the provisions of the New York Convention.

Moreover, article 3 the Supreme Court Regulation provides the arbitral award should be handed down by arbitration in a state which is bound by a bilateral or multilateral convention on the recognition and enforcement of arbitral award with the Republic of Indonesia. The enforcement is carried out as a matter of reciprocity. In addition, the award should be limited to decisions that are not contrary to any Indonesian law principle, public policy and only in commercial transaction.

After the executive order has been handed over by the Supreme Court, the enforcement is then acted upon by the President of the Jakarta Central Districts Court. Moreover, if the assets of the debtor are found in another District Courts Jurisdiction, the Jakarta District Court will ask the assistance of the District Court where the debtors' goods are situated.

I believe that the foregoing provisions are based on article III of the New York Convention which stipulates that each contracting state shall recognize arbitral awards in accordance with the rules of procedure of the territory where the award is relied upon. Therefore, every contracting state has the authority to determine the procedure of enforcement concerning foreign arbitral award.

Also, article 5 of the Supreme Court Regulation has a similarity with article IV of the New York Convention which provides every submission for enforcement of a foreign arbitral award must be supplied:

1. To obtain the recognition and enforcement mentioned in the proceeding article, the party applying for recognition and enforcement shall, at the application, supply: (a) the duly authenticated original award or a duly certified copy thereof, (b) the original agreement referred to in article II or a duly certified copy thereof.
2. If said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or a diplomatic or consular agent.

Based on the foregoing procedure, I believe that the Supreme Court Regulation Number 1 of 1990 does not encourage enforcement of foreign arbitral award. Some barriers can be used by the Supreme Court of the Republic of Indonesia to refuse the enforcement of foreign arbitral awards. As an application of public policy, all Indonesian law systems are more likely to be applied to deny the submission of the enforcement.

A definition of Public Policy could not be found encodified in Indonesia. It is always related to the current political system. As has been mentioned above, the power of politics has a strong influence on judgements in Indonesia. As in many other developing countries, the political system is constantly changing. In the past, a high proportion of "losers" in foreign arbitral awards have been Indonesian. The Government of Indonesia tends to "over-protect" the "loser". In my experience, the judicial bodies of Indonesia sometimes display bias towards the Indonesian losing party in an international dispute without a clear legal reason.

The enforcement of foreign arbitral award is not contrary to all Indonesian law systems. The enforcement of foreign arbitral awards only has little chance because Indonesia has many different law systems. Indonesian law systems relate to a number of law sources that are used in daily life. Briefly, written laws, customarily are used as the law source in Indonesia. This is also understood as the "Indonesian law system".

Written law, generally, in connection with the arbitration is related to the Civil Code. This rule has been applied in Indonesia since Dutch Colonial times and still continues until now. The Civil Code is easier to understand than other rules, such as customary law, because it may be found in law codification. With respect to foreign arbitral awards, there are some provisions in Civil Code that have no clear interpretation. For example, article 1337 of the Civil Code talks about contracts which are not contrary to "Public Policy" but it does not describe what the meaning of public policy is.

Also article 643 of R.v. is used to refuse foreign arbitral awards. It provides that arbitral awards are not appealable, they can be challenged as being null and void in the following cases:

1. When the decision is rendered beyond the limits of the agreement;
2. When the decision is given by virtue of an agreement which is void or which has expired;
3. When the decision is given by number of arbitrators who were not competent to decide in the absence of the others,
4. When there has been decided upon subjects which were not claimed or the award had allowed more than what was claimed;
5. When the award contains controversial dispositions;
6. When the arbitrators have omitted to decide upon one or more subjects which 5according to the agreement were submitted to their decision;
7. When the arbitrators have infringed procedural formalities which have to be followed on penalty of nullity, but this will be only the case when according to explicit stipulations in the agreement the arbitrators had to follow the normal court procedure;
8. When there has been decided upon documents, which after the decision had been rendered, are acknowledged to be false or has been declared false;
9. When, after the decision has been rendered, decisive documents which had been retained by one of the parties, are recovered;
10. When the decision was based upon fraud or guile, committed during the hearings, later on discovered.

Moreover, the customary law as a part of the Indonesian law system has a broad understanding. Customary law is always called "adat law" that derives from each tribe, there are more than two hundred tribes, each having its own customary law. The big problem of course is that customary law is not written as law. However it is applied as law in Indonesia. The religion of each tribe, for example, Hindu, Islam and Christian law are always considered in its customary law.

Also, of course, article V of the New York Convention of 1958 provides a number of grounds to refuse the validity and enforcement of foreign arbitral award:

1. Invalidity of the arbitration agreement;
2. Procedural fairness.,
3. Lack of authority in making the award;
4. Lack of authority in conducting arbitral proceedings;
5. Lack of legal effect in the award;
6. Illegality of the award under the local law;
7. Violation of public policy.

Therefore, a number of provisions as above, show us that the Indonesian rules tend to straightened the enforcement of foreign arbitral awards rather than to encourage them. Moreover, there are a number of provisions which do not have clear meaning. However they are very hard to understand, such as the Public Policy. This matter, of course, will mean international business people are reluctant to engage in business with the Indonesian business people as well. In addition, the foreign business people will have the impression that in Indonesia there is no any legal certainty of protection of their interests. As in the last few decades those arbitration clausules are very commonly to be found in any international business contract. In foreigners' opinions, international arbitration is much better than litigation. However, the enforcement of foreign arbitral awards in Indonesia is still to be questioned by any one who wants to engage in business with an Indonesian. Seemingly,

the rules concerning the enforcement of foreign arbitral awards cannot be used as an umbrella to protect the interests of foreigners who win in an international arbitration decision.

IV. Conclusion

The enforcement of foreign arbitral awards, now even in the future will continue to face the same problems as in the past. Awards tend to fail, as long as there is no Indonesian International Arbitration Act. However, the existence of any arbitration rules, such as the Supreme Court Regulation No 1 of 1990. It does not encourage the enforcement of foreign arbitral awards. This rule has many provisions which are too broad and abstract. The Public Policy and all Indonesian law system, which are used as a prerequisite for application for execution are more likely to be used by a court to refuse the enforcement of foreign arbitral awards. Both the Public Policy and all Indonesian law system do not have a clear understanding even when courts have the big opportunity to give the meaning of them.

Those situations cause Indonesia and its law, to create a bad impression internationally. Indonesia could be branded as the country which does not have the will to enforce the new York Convention of 1958 in good faith. Moreover, the internationnal business community will ignore doing business in Indonesia. Of course, they are very worried about their future business in Indonesia because Indonesia does not have a legal certainty in connection with the enforcement of foreign arbitral awards. Therefore, the presence of Indonesian International Arbitration Act is really needed to overcome the enforcement of foreign arbitral awards. I believe that an Act is more appropriate than other types of law in Indonesia.

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