



Rights and Obligations of the Parties against International Arbitration Awards in Indonesia

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Abstract

The position of international arbitration awards which is different from national arbitration awards and district court decisions causes differences in the rights and obligations of the parties to arbitral awards, especially those relating to legal remedies against awards. The formulation of the problem in this study is how are the rights and obligations of the parties to international arbitral awards in Indonesia. The research method used in this article is legal research using primary and secondary legal materials. The results of the study state that the rights possessed by the parties to international arbitral awards in Indonesia are related to legal remedies against decisions, namely corrections to these international arbitral awards. The corrections to the decisions here are not only limited to administrative corrections but also corrections related to the principal international arbitral awards made before the request for execution was registered at the Central Jakarta District Court. While the obligations of the parties to international arbitral awards are to carry out international arbitral awards in good faith.

Keywords: *Rights and Obligations; International Arbitration Award*

Introduction

Arbitration is a way of resolving disputes outside the court based on an arbitration agreement. With an arbitration agreement, the court does not have the authority to adjudicate the dispute. If it is connected with Article 1233 of the Civil Code which determines that there are two sources of engagement, namely engagements born because of agreements and agreements born because of laws. Thus, an engagement is a legal relationship between two people (parties) or more in the field of assets which creates an obligation on one of the parties in the legal relationship (Widjaja & Yani, 2000). From this formulation it can be seen that an engagement has at least 4 (four) elements namely (Widjaja & Yani, 2000):

- a) That the engagement is a legal relationship
- b) The legal relationship involves two or more people

- c) The legal relationship is a legal relationship in the field of property law
- d) The legal relationship creates an obligation on one of the parties in the engagement

Arbitration is an agreement born because of an agreement. The agreement is one of the sources of the birth of the engagement. By entering into an agreement, one or more parties bind themselves to fulfill the obligations as promised. From an agreement can be born various kinds of obligations or achievements that must be fulfilled. Not only the predetermined achievements that must be fulfilled by one of the parties in the agreement but also achievements that are determined by the law and carried out reciprocally between the two parties in the agreement (Widjaja & Yani, 2000). According to Subekti, an agreement is an event where a person promises to another person or where two people promise each other to do something (Subekti, 1998). As a form of agreement, whether or not an arbitration agreement is valid is also determined based on Article 1320 of the Civil Code which reads: "For an agreement to be valid, 4 (four) conditions are required, namely the agreement of those who bind themselves, the ability to agree, a certain matter and a reason lawful. The agreement gave birth to an agreement that gave rise to legal consequences for the parties. Engagement is a legal relationship that occurs between 2 (two) or more people located in the field of assets, where one party is entitled to achievement and the other party is obliged to fulfill that achievement (Badruzaman, 1996). Talking about the agreement is inseparable from the issue of justice. The function and purpose of the agreement cannot be separated from the objectives of law in general, namely justice, benefit, and legal certainty. Theo Huijbers outlines 3 legal objectives, namely: first, maintaining legal interests in society. Second, maintaining human rights, and third, realizing justice in life together (Huijbers, 1982).

In the business world, agreements are very important as guidelines, guidelines, and evidence for the parties. Agreements can provide guarantees and legal certainty for the parties. The agreement contains the meaning "promises must be kept" or "promises are debts". Therefore the parties must keep their promises and carry them out (Wacks, 1995). The benchmark for the implementation of an agreement can be seen to what extent the parties carry out their rights and obligations properly. However, in practice, it often does not go well and even creates conflict. Fulfillment of rights as the implementation of obligations in accordance with the agreement of the parties in the arbitration agreement must be obeyed, bearing in mind that in making an arbitration agreement the parties do so based on the principles of freedom of contract, good faith, and promises that must be kept. The arbitration agreement creates legal consequences of the agreement of the binding parties and this needs to be realized reciprocally between the parties to carry out their obligations as a form of legal action to fulfill the rights of each party. The arbitration agreement gives rise to rights and obligations because it is based on Article 1338 Civil Code and Article 1320 Civil Code so the agreement made is a binding law or law for the parties to implement. If one of the parties does not carry out their obligations, then another party can be sued for breaking a promise to the arbitration agreement made (Politon, 2017).

The parties enter into an agreement based on certain objectives based on the will that has been expressed, namely in the form of promises between the parties. In the business world, agreements are the most important instrument for realizing economic changes in the distribution of goods and services (Sinaga, 2018). According to Patrick S. Atiyah, the agreement has 3 (three) basic objectives as described below (Smith & Atiyah, 1995):

- 1) Force a promise and protect
- 2) Preventing enrichment (attempts to enrich oneself) which is carried out unfairly and correctly
- 3) To prevent certain kinds of harm

The arbitration agreement contains clauses. This clause is the lifeblood of arbitration because through this clause it can be seen that the parties submitting disputes with what choice of law, what procedure, which arbitration institution, and so on. Arbitration clauses can be made as simple as

containing the commitment/agreement of the parties to carry out arbitration. But it can also be made more comprehensive by including the terms of arbitration, disputes resolved, how it is carried out, what substantive law applies to the place, and language used in the arbitration process (Kartasasmita, 2021). The arbitration agreement is only an accessory in nature that contains specific requirements regarding the method of settling disputes arising from the principal agreement. The arbitration clause added to the main agreement is essentially outside the content or material of the main agreement and does not in any way affect or be affected by the validity or implementation of the fulfillment of the main agreement. Because the arbitration agreement is a complement agreement, with the cancellation of the principal agreement which results in a dispute, the arbitration agreement remains in force.

The nature of the arbitral award which is final and binding means that the arbitral award cannot be appealed, cassation, or judicial review. This means that there are no other legal remedies against the arbitral award that has been decided by the arbitral institution. The position of international arbitral awards is different from national arbitration awards and district courts, it requires the goodwill of the parties to be able to enforce the international arbitration award, both for the party that is defeated and the party that won. Due to the different standing of international arbitral awards from national and district court arbitral awards, this research focuses on the rights and obligations of the parties to international arbitral awards in Indonesia.

Methods of Research

This research is legal research (Marzuki, 2016). Legal research is finding the truth of coherence, that is, whether there are legal rules in accordance with legal norms and are there norms in the form of orders or prohibitions in accordance with legal principles, and whether a person's actions are in accordance with legal norms (not just in accordance with legal rules) or legal principles (Marzuki, 2016). The types of approaches used in this study are statutory approaches, conceptual approaches, and case approaches. The types of legal materials in this study are primary legal materials consisting of national legislation and international conventions, while secondary legal materials consist of textbooks, research reports, scientific articles, and dictionaries.

Results and Discussion

Fulfillment of rights as the implementation of obligations according to the agreement of the parties in the arbitral award must be obeyed, considering that in making contracts the parties do so based on the principle of freedom of contract, good faith, and promises must be kept. The arbitral award which gives rise to the legal consequences of the agreement of the parties is binding and this needs to be realized reciprocally between the parties to carry out their obligations as a legal action to fulfill the rights of each party. Fulfillment of rights carried out as the fulfillment of obligations based on the agreement of the parties in an arbitration award is a legal action that can be accounted for because the decision is made by the parties in accordance with the agreement and the parties making the contract are parties who are capable of carrying out legal actions limited to matters certain things and based on good faith, namely for lawful reasons.

In every agreement, there is always good faith from the parties even though it is not stated explicitly. The principle of good faith is the principle that the parties must carry out the substance of the contract, based on the trust or confidence, or willingness of the parties. This good faith is not limited to when entering into legal relations, but also when exercising the rights and obligations arising from such legal relations. According to Subekti, good faith is the most important cornerstone in contract law. Good faith, apart from being in the human heart in carrying out rights and obligations arising from a legal

relationship, must also heed the norms of decency and justice by abstaining from actions that might cause harm to other parties (Subekti, 1998). Law always pursues 2 (two) goals, namely guaranteeing certainty and is seen as a condition or demand for legal certainty (binding promise), the third paragraph of Article 1338 of the Civil Code must be seen as a demand for justice (Subekti, 1998).

If one party does not carry out its obligations according to the agreement, then the other party has the right to take legal action to get their rights. There are 3 (three) forms of not fulfilling the agreement, namely the debtor does not fulfill the agreement at all, the debtor is wrong or does not deserve to fulfill the agreement, the debtor is obliged to pay compensation after he is declared negligent but still does not fulfill the agreement (Article 1243 Civil Code). Compensation consists of costs and interest (Articles 1244 to 1246 Civil Code). Compensation must have a direct relationship with broken promises (Article 1248 Civil Code). There is a possibility that the broken promise is not the fault of the debtor but circumstances force how the compensation is resolved by risk teachings. It can be concluded that achievement is the fulfillment of obligations arising from an agreement relationship. This obligation is a contractual obligation that can then originate from laws and regulations, contracts or agreements made by the parties, propriety, and custom (Khairandy, 2013).

Engagement is a legal relationship that occurs either by agreement or by law. The legal relationship is a relationship that gives rise to legal consequences, namely the existence of rights and obligations. An agreement that fulfills legality has binding power for the parties and the legal consequences of the existence of the agreement are that the parties are bound by the contents of the agreement and also based on decency, custom, and law (Articles 1338 to 1340 Civil Code) (Sinaga, 2019). One of the very basic principles or principles in contract law is the principle of legal protection for the parties, especially the aggrieved party. If one of the parties does not carry out the performance in accordance with what has been agreed, it will result in a default. The occurrence of a default results in a loss for one of the parties. Therefore, the party that has defaulted must bear the consequences of the claims of the aggrieved party. Even though one of the parties has defaulted, their interests must still be protected to maintain balance (Sinaga, 2019).

To better understand the meaning of an act in good faith or not in a partnership made by business actors, we can also see from the dispute resolution process that occurred between PT. Petroleum Lyrics with PT. Pertamina. Implementation of dispute resolution through ICC arbitration, civil lawsuits to the Central Jakarta and South Jakarta District Courts as well as decisions of the Supreme Court. The arbitral award which is final and binding makes other legal remedies against the arbitration award closed. From the PT Pertamina case above, it can be seen that there was an attempt to delay the execution time of the arbitral award made by PT Pertamina as the party that was defeated in the decision. The delay in the execution time occurred because the Law Number 30 of 1999 concerning arbitration and Alternative Dispute Resolution provided an opportunity for cassation to be filed against the arbitral award. The existence of cassation against this arbitral award, of course, provides an opportunity for the losing party to postpone execution for various reasons and will certainly provide legal uncertainty for the arbitral award so that the arbitral award cannot provide legal protection for the rights and obligations of the party won. in the arbitral award. Legal protection is to protect human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law in other words legal protection is various legal remedies that must be given by law enforcement officials to provide a sense of security, both mentally and physically from disturbances and various threats from any party. Legal protection is the protection of dignity and recognition of human rights owned by legal subjects based on legal provisions of arbitrariness or as a collection of rules or norms that will be able to protect one thing from another (Hadjon, 1987).

Legal protection is an illustration of the functioning of the law to realize legal objectives, namely justice, benefits, and legal certainty. According to Philipus M. Hardjon, legal protection for the people includes 2 (two) things namely (Hadjon, 1987):

- a) Preventive legal protection, namely a form of legal protection in which the people are allowed to submit objections or opinions before a government decision gets a definitive form;
- b) Repressive legal protection, namely a form of legal protection that is more aimed at resolving disputes.

The difference in the treatment of international arbitral awards is due to the nature of the arbitral awards themselves, namely final and binding. To realize the final and binding arbitral award, Article 68 paragraphs (1) and (2) of the Law Number 30 of 1999 concerning arbitration and Alternative Dispute Resolution must be deleted. The article should state that the arbitral award is final and binding on the parties to the arbitral award so that the existing legal rules can provide legal certainty and legal protection for the rights and obligations of the parties, whether the party won or the party lost in an arbitral award. If the party defeated in the arbitral award does not agree with the contents of the arbitral award for reasons that can be justified by law, then efforts that can be made are changes to the contents of the award, either adding or reducing the contents of the arbitral award as long as the changes are agreed upon by the parties and the tribunal arbitration. Changes to the contents of this decision were made before the arbitral award was registered with the district court to be executed.

In addition, to guarantee the implementation of the rights and obligations of the parties to the arbitral award, the repressive legal protection efforts that must be carried out are adding articles that regulate the rights and obligations of the parties to the arbitration award. This arrangement is very important to do because it takes into account the differences between international arbitral awards and national arbitration awards and district court decisions. The special nature of the arbitral award is that it is final and binding, requiring special treatment so that the arbitral award can be enforced. Therefore, it is appropriate that the current Law Number 30 of 1999 concerning arbitration and Alternative Dispute Resolution be amended, either through a comprehensive change by separating the arrangements between national arbitration and international arbitration or in the form of an amendment.

The need to regulate the rights and obligations of these parties is to provide legal protection for both the party who won the arbitral award and the party who lost the arbitral award. The need for this arrangement is because not all parties know and are aware of their rights and obligations towards the arbitral award. For example, a party that won an arbitration award, then that party has the right to obtain an amount of compensation in accordance with what has been agreed upon in the arbitral award and corrects the arbitral award either by adding or reducing the contents of the award and must implement the arbitral award in good faith. Likewise, with the party that was defeated in the arbitration award, that party has the right to correct the decision either by adding or reducing the contents of the decision, getting an appropriate amount of time to make compensation payments, and is obliged to make compensation payments in accordance with the agreed amount and is obliged to enforce the arbitral award in good faith. Because the arbitral award is final and binding, there is no right for the defeated party to file legal remedies, whether appeal, cassation, or review of the arbitral award.

In addition, even if they have to use legal remedies in the form of refusal to enforce the arbitral award, the party applying to refusal of the arbitral award must understand the reasons that can be put forward for refusing the arbitral award. 7 reasons can be used as a basis for submitting a request for refusal of the arbitral award. In Article V of the 1958 New York Convention, there are 7 (seven) reasons that can be submitted to reject the implementation of the arbitral award. The seven reasons for refusal have 3 (three) characteristics, namely, those reasons are exhaustive, the court has no right to reexamine the principal case in the arbitral award and the burden of proof lies with the defendant.

If the rejection of the arbitral award is approved by the judge of the Central Jakarta District Court, then the arbitral award cannot be enforced in Indonesia. The petitioner as the party submitting a request for refusal of the enforcement of the arbitral award is obliged to determine in which country this arbitral award will be enforced, while the respondent is obliged to accept the implementation of the award made in a country other than Indonesia. And for an arbitration award that has been approved by a judge at the Central Jakarta District Court to reject its implementation, there are no other legal remedies that can be filed. Whereas legal remedies are in the form of annulment of the arbitral award. In Article 70 Law Number 30 of 1999 concerning arbitration and Alternative Dispute Resolution, the reasons for annulment of the arbitral award are formulated preceded by the phrase "allegedly containing elements" in attachments to documents/letters and proceedings in proceedings which are categorized into 3 (three) legal reasons, namely:

- a. Letters or documents submitted based on a court decision are declared fake;
- b. After the verdict was rendered, decisive documents were found hidden by the opposing party;
- c. The decision is taken based on the trick of one of the parties in the examination of the dispute.

According to the author, from the arrangement of the reasons for canceling the arbitral award as contained in Article 70 Law Number 30 of 1999 concerning arbitration and Alternative Dispute Resolution, several things must be understood, namely that the arbitral award already exists, there are documents declared fake by one of the parties, there are documents which are declared the result of deception by one of the parties and documents that were deliberately hidden during the trial by one of the parties. However, in reality, there are other reasons used as the basis for the annulment of the arbitral award, for example, the respondent deliberately used legal remedies to annul the arbitral award to prolong the execution time of the arbitral award.

Even though Law Number 30 of 1999 concerning arbitration and Alternative Dispute Resolution contains provisions regarding the annulment of arbitral awards, this arrangement only applies to cancellations of national arbitral awards and does not apply to cancellations of international arbitral awards. Bearing in mind that what is meant by an international arbitral award is "...a decision handed down outside the territory of the Republic of Indonesia", the country that has the right to cancel the arbitral award is the country where the award was handed down. Therefore, for a party wishing to apply for annulment of this international arbitral award, they must apply for annulment of the international arbitral award in the country where the arbitral award was made.

Thus, there is no longer any reason for the parties to refuse to recognize and enforce the arbitral award because the arbitral award that is registered is a final decision and has been agreed upon by the parties so that when the decision is registered it can be immediately executed. This is done to guarantee legal certainty regarding the arbitral award and guarantee legal protection of the rights and obligations of the parties in the arbitral award.

Conclusion

The rights and obligations of the parties to international arbitral awards in Indonesia, especially those relating to legal remedies that can be made against arbitral awards, namely corrections to decisions made before international arbitration awards are registered for execution at the Central Jakarta District Court.

Recommendation

Make changes to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution by adding Articles that regulate the rights and obligations of the parties to arbitral awards, both national and international arbitral awards so that the parties receive clear and firm legal protection.

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