



Original Article

THE ENFORCEMENT OF ARBITRAL AWARDS

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ABSTRACT

Background. According to Law No. 30/1999, Article 60, arbitral awards are binding on the parties, final, and have permanent legal effect. Except in cases of third-party opposition, arbitration rulings do not give rise to legal recourse. Indonesia has been using alternative dispute resolution (ADR) since ancient times. ADR is seen as an alternative to litigation or adjudication. Early neutral evaluation, conciliation, mediation, negotiation, and various hybrid forms are some of the ADR practices Indonesia has been using. Civil procedural law governs the execution of arbitration rulings; these rules are found in the *Het Herziene Indonesisch Regelemen* or Renewed Indonesian Reglemen. This research aimed to determine the enforcement of arbitral awards.

Research Method. This research approach uses a juridical-sociological methodology, which entails researching actual social situations with the goal of fact-finding, which subsequently leads to problem identification, and finally, problem solution.

Findings. Similar to the execution of decisions made by civil courts, not all arbitration awards can be carried out due to the challenges involved in doing so. In addition, there must be significant efforts made by seeking for execution seizure of the respondent's property in order to ensure that the obligation to pay a specific sum of money may actually be achieved, ensuring that execution does not become illusory or win on paper alone.

Conclusion. Arbitration awards cannot be executed due to challenges and property seizure. Significant efforts are needed to ensure the obligation to pay a specific sum is met, preventing illusory or paper wins.

Keywords: Arbitral Awards, Arbitration, Legal Remedies.

BACKGROUND

Article 60 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution stipulates that arbitral awards are final have permanent legal force and are binding on the parties. It is further emphasized in the explanation of the article that no appeal, cassation, or juridical review can be filed against an arbitral award[1]. In other words, legal remedies are not provided for arbitration decisions, both ordinary legal remedies and extraordinary legal remedies, except for third-party resistance which in this case is very possible. Ordinary legal

remedies are resistance to perstek, appeal, and cassation decisions. While extraordinary legal remedies are third-party resistance and civil recess or judicial review[2].

One way to think of alternative dispute resolution (ADR) is as a substitute for litigation or adjudication. According to the first understanding, arbitration cannot belong in ADR as it is essentially an adjudication. Among the possibilities for the second interpretation is Because arbitration is not a legal or judicial procedure, it is included in ADR[3]. But ADR has been quickly developed worldwide because of its adaptability and capacity to react not only to substantive interest (tangible or property-connected interest), but also to three of these fundamental human interests: psychological, procedural, and third.

As indicated by the title of Law No. 30/1999, which distinguishes between ADR and arbitration, alternative dispute resolution (ADR) is understood in Indonesia to be an alternative to adjudication. Thus, ADR includes early neutral evaluation, conciliation, mediation, negotiation, and other hybrid kind of ADR. Similar to other Asian nations, Indonesia has been engaging in ADR was formerly common in primitive communities[4]. For example, in the traditional village of Pasemah, South Sumatera, third-party conciliators, known as Jurai Tue or Sungut Jurai, are used in customary conflict settlement. It is referred to as Kerapatan Adat Nagari in West Sumatra or Kerapatan Ninik Mamak, which resolves conflicts according to their customs regulations. Despite the fact that classical ADR has been used extensively across the island's archipelago, institutionalizing Alternative Dispute Resolution (ADR) to address current issues has been lagging behind certain Asian nations, including Japan, with the implementation of Chotei (conciliation of the Philippines with Commissioners) and Wakai (conciliation by the presiding judge), ADR in subordinate courts is annexed by Singapore and Barangay Justice.

Furthermore, in Article 64 of Law Number 30 year 1999 on Arbitration and Alternative Dispute Resolution, it is stipulated that an arbitration award that has been affixed with the order of the Chairman of the District Court shall be implemented in accordance with the provisions for the implementation of decisions in civil cases that have permanent legal force[5].

From these provisions, it is very clear that the execution of arbitration awards is subject to the provisions of civil procedural law governing the execution of awards. Court that has permanent legal force (*inkracht van gewijsde*). Provisions regarding the execution of decisions are regulated in the *Het Herziene Indonesisch Regelemen* (HIR) often referred to as Renewed Indonesian Reglemen (Rv) in the Fifth Section of Executing Decisions. Thus all provisions governing the execution of civil cases on court decisions that have permanent legal force that are usually carried out by the district court, also apply to the execution of arbitration awards.

The enforcement of arbitral awards is a fundamental aspect of international arbitration, ensuring that the decisions reached by arbitration tribunals are recognized and implemented in various jurisdictions. An arbitral award, which is a binding decision made by arbitrators, is intended to provide a resolution to disputes outside of the traditional court system[6]. The effectiveness of arbitration as a dispute resolution tool largely depends on the ability of parties to enforce the awards they receive. Despite the generally favorable environment for

enforcement, various challenges exist, including differing national laws, local public policy considerations, and the possibility of judicial intervention.

This introduction highlights the significance of the enforcement of arbitral awards, setting the stage for further exploration into the legal frameworks, procedural aspects, and practical considerations that shape this critical area of international arbitration. Ensuring recognition and implementation of arbitration decisions across jurisdictions is essential for international arbitration. An arbitral award, a binding decision arbitrators make, resolves disputes outside the court system[7].

The need for dependable dispute resolution mechanisms increases concurrently with cross-border trade and investment growth. Arbitral awards need to be both fair, just, and enforceable in varying legal jurisdictions. The New York Convention, an international agreement, sets the standard for recognizing and enforcing foreign arbitral awards worldwide[8].

An arbitration award's enforceability significantly impacts its overall effectiveness in resolving disputes. Challenges in enforcing laws exist, despite a generally favorable environment, due to differing national laws, local public policy, and the potential for judicial intervention. Based on the description above, because the execution of arbitration awards is subject to the provisions of civil procedural law governing the execution of awards, the legal issue that arises “all arbitral awards that have been affixed with the order of the President of District Court executable?”.

RESEARCH METHOD

The juridical sociological approach is a method of analyzing legal phenomena by considering the social contexts in which laws operate. This perspective emphasizes the interplay between law and society, exploring how social factors influence legal norms and how those norms, in turn, affect social behavior[9]. Here’s a breakdown of the problem approach within this framework:

1. Identification of Legal Issues: The first step involves identifying specific legal issues or problems within a societal context. This could include examining how laws affect particular communities, societal behaviors, or how social injustices lead to legal disputes.
2. Contextual Analysis: In this stage, the focus shifts to understanding the social, economic, and cultural backgrounds that shape the identified legal problems. This includes analyzing factors such as social norms, power dynamics, historical contexts, and economic conditions that influence legal interpretations and outcomes.
3. Discourse Analysis: The approach often involves examining legal texts, judicial decisions, and legislative materials in light of societal narratives and discourses. This helps to uncover the underlying assumptions and values that inform legal decisions and policymaking.
4. Impact Assessment: An important aspect of the problem approach is assessing the impact of legal norms and decisions on society. This may involve studying how legal rules are

implemented in practice and their effects on various social groups, particularly marginalized communities.

5. **Interdisciplinary Integration:** The juridical sociological approach often intersects with other disciplines such as sociology, anthropology, and political science. This interdisciplinary perspective enriches the analysis and provides a more comprehensive understanding of legal phenomena.
6. **Policy Implications:** Finally, the approach can lead to policy recommendations aimed at addressing the identified legal problems. By understanding the social ramifications of legal norms, lawmakers and practitioners can develop strategies that promote justice, equity, and social welfare.

Overall, the problem approach in the juridical sociological framework provides valuable insights into the complex relationship between law and society, highlighting the necessity for legal systems to adapt to the evolving social landscape.

FINDINGS

The enforcement of arbitral awards is a critical aspect of international arbitration. An arbitral award is a decision made by an arbitration tribunal, which is intended to resolve a dispute between parties outside of the court system[10]. Here are some key points regarding the enforcement of arbitral awards:

1. **Legal Framework:** The enforcement is typically governed by national laws, and international treaties such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), which facilitates the enforcement of arbitral awards in countries that are parties to the convention.
2. **Automatic Recognition:** Under the New York Convention, a valid arbitral award should be recognized and enforced by the courts of the contracting states, subject to limited grounds for refusal.
3. **Grounds for Refusal:** Common grounds for refusing the enforcement of an award include:
 - Lack of jurisdiction of the arbitral tribunal
 - Procedural irregularities or violations of due process
 - The award is contrary to public policy
 - The arbitration agreement not be valid under the law of the country where enforcement is sought.
4. **Procedure for Enforcement:** The typical procedure involves filing a request for enforcement with the competent court in the jurisdiction where enforcement is sought. The court reviews the award based on the applicable legal standards.
5. **Domestic vs. International Arbitration:** The enforcement processes may differ between domestic and international arbitration, with specific national laws applying in the case of domestic awards.

6. Judicial Support: Some jurisdictions provide judicial support for the arbitration process, which can include the recognition and enforcement of awards, as well as measures to assist in the arbitration itself.
7. Timeframe and Costs: Enforcement can involve considerable time and costs, depending on the jurisdiction and the specific case.

Understanding the enforcement of arbitral awards is crucial for parties engaged in arbitration to ensure that any awards obtained can be effectively implemented and do not remain merely theoretical resolutions to their disputes.

DISCUSSION

In civil procedure law, executable court decisions are those relating to 1) the execution of a judgment that punishes to pay a sum of money (article 196 HIR); 2) the execution of decisions that punish people for doing an act (article 225 HIR); and 3) real execution (article 1033 Rv). The problems that arise when the verdict is implemented are what if the party sentenced to pay a certain amount of money is unable or unwilling to pay. What if the party who is sentenced to perform the actions ordered by the verdict? And what if the real execution, for example, the vacating of a house, turns out that the house is in the power of another party or a third party who is not a party to the case? Things like this are very likely to happen in the execution of an arbitration award, so problems that may arise in the execution of court decisions will also arise in the implementation of arbitration awards.

We take the example of BANI Jakarta's verdict which stated that PT Pertamina (Persero) must pay US\$ 20.1 million to PT Pandanwangi Sekartadji. Apparently, PT Pertamina (Persero) is stubborn, because it is only willing to pay US\$ 6.4 million, and PT Pertamina (Persero) as a state-owned company has set an example of not being willing to submit to arbitration decisions that have become a voluntary choice in dispute resolution. So PT Pandanwangi spoke in the media, in an effort to urge PT Pertamina (Persero) to be willing to fulfill the contents of the Jakarta BANI decision[4].

For the execution of a judgment that punishes a person to pay a sum of money and it turns out that the person is unwilling or unable to pay even though an admonition (*aanmaning*) has been made within a period of 8 (eight) days, as stipulated in Article 196 HIR, then the effort that must be made by the winning party (applicant for execution) is to apply for execution confiscation of the goods belonging to the respondent for execution, both for movable and immovable goods to be used as collateral for payment (Article 197 HIR).

If after the execution seizure is carried out it turns out that the execution respondent remains stubborn and is not willing to carry out the contents of the decision, then the next step is to sell the auction of the goods that have been seized[11].

This is in contrast to the execution of a judgment that requires the respondent to perform a certain legal act, such as signing a deed of sale and purchase. This is very difficult to implement even with forced efforts with the help of State Power. Therefore, in civil court practice, it is anticipated by installing a petitum of the lawsuit/ verdict proposal "If the defendant refuses, then the plaintiff shall be authorized by the court to sign the sale and

purchase deed. For and on behalf of the respondent (execution respondent)”. This is unlikely to appear in an arbitration award because arbitration does not have the authority that a court judge has. Such difficulties will also arise in the case of real execution, for example in the form of vacating a house controlled by another party or a third party who is not a party to the arbitral award. As a party outside the award, either an arbitration award or a court decision, according to Article 1917 of the Civil Code, it is determined that the other party or third party is not bound by the award. Thus, the other party or third party cannot be penalized or forced to submit to carry out the award[12]. In other words, arbitral awards (as well as court decisions) become unenforceable or nonexecutable.

The contribution of this research is that ideally, during the arbitration proceedings, the arbitrators should be authorized to seize the respondent’s property with the permission of the President of the District Court, so that the award will not be illusory or won on paper only.

CONCLUSION

It can be concluded that not all arbitration awards can be executed given the difficulties in their implementation, as is the case in the implementation or execution of civil court decisions. Apart from that, in order for execution not to become illusory or win on paper only, namely the need for important efforts by applying for execution seizure of the respondent’s property, so that there is a guarantee that the obligation to pay a certain amount of money can be realized.

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