The Asia-Pacific Arbitration Review

2019

Public Policy under Indonesian Arbitration Law

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Public Policy under Indonesian Arbitration Law

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One of the problems with the request for the enforcement of foreign arbitration awards is the rejection of the request by the national courts on the ground that the award violates public policy.1 This problem also occurs in Indonesia. This issue appeared for the first time in 1979 when the Supreme Court rejected the request for execution of the London arbitration award in ED & F Man (sugar) Ltd v Haryanto. The Supreme Court argued the London arbitration award was in violation of the public policy of Indonesia.

The Indonesian Supreme Court was of the opinion that the purchase of sugar agreement made between the parties, namely ED & F Man (Sugar) Ltd, a London-based sugar company and Mr Haryanto, an Indonesian businessman, was not valid under Indonesian law. The Supreme Court argued the only institution that had the authority to export and import sugar was the government-owned logistic body, namely Badan Usaha Logistik. Therefore, the Supreme Court further argued the sugar transaction made by Mr Haryanto was a violation of Indonesian law. This, according to the Supreme Court, was a violation of public policy.

The ground of public policy for the annulment of foreign arbitration award is recognised under the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. Article V paragraph 2 (b) of the New York Convention provides that '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 the recognition or enforcement of the award would be contrary to the public policy of that country.'2

The main difficulty with the issue of the set-aside or the annulment of foreign arbitral awards on the basis of violation of public policy is that there is no clear meaning under the Indonesian arbitration laws. The laws are silent about the meaning or definition of it.3

Since the Supreme Court's decision in the ED & F Man (sugar) Ltd v Haryanto, various laws on arbitration have been promulgated. The main problem with these laws is that they do not give satisfactorily the meaning of public policy. This issue has also became interesting, as the government in 1999 promulgated Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. The same question is whether this law provides a better formula concerning the meaning of public policy.

Besides discussing the statutory laws above, this article will also outline the opinions of Indonesian scholars specialising in arbitration. Their opinions about public policy with regard to the arbitration awards will help to understand public policy as a term. The scholars included are Professor Sudargo Gautama and Professor Priyatna Abdurrasyid. My short opinion will also be added to this part.

The decisions of the courts concerning arbitration and public policy will also be specifically mentioned in this article. There are two controversial but interesting cases, which will be discussed. These are:

- Bankers Trust v PT Mayora Indah TbK (2000);
- The Astro Nusantara Bv et al v PT Ayunda Primamitra (2010).

In general, this article tries to see what development has taken place in relation to the application of public policy. Particular attention will be given to the position of the Indonesian court when faced with the request for the execution of foreign arbitral.4

PUBLIC POLICY UNDER INDONESIAN ARBITRATION LAW

Indonesian laws in general contains the term public policy in it. The term public policy, for example, is found in Law No. 9 of 2004 concerning the Administrative Court. According to this law, public policy is 'the interest of the nations and state and/or the interest of the people and/or the interest of the development in accordance with the existing regulations.'[5] As seen from this definition, the term public policy under this law is exceedingly broad. Public policy is connected not only with the interest of the state or nation but also with the people and (national) development. No laws explain what the interests of the state or nation is. However, when it comes to the issue of the interests of the state and development, the issue of state's assets or money may be classified as falling within that meaning.

An important legislation promulgated in the same year with Law No. 9 of 2004 is Law No 1 of 2004 concerning the State's Assets. This Law strongly gives a signal of warning to the public (and might include foreign courts or foreign arbitration) about the status of the state (Indonesian government) assets. Article 50 of this Law states that no body may confiscate state's assets including state's money.

The other laws contained the term public policy may also be found in Law No 48 of 2009 concerning the power of judiciary;[6] and Law No. 5 of 1999 concerning the Prohibition of Monopoly and Unfair Competition.[7] All of these laws provide a very broad definition with regard to the meaning of public policy.

The Indonesian statutory laws on arbitration include:

- Government Regulation No. 34 of 1981 concerning the Ratification of the New York Convention of 1958;
- Supreme Court Regulation No. 1 of 1990 concerning the Methods for the Execution of the Foreign Arbitral Awards; and
- Law No. 30 of 1999 concerning the Arbitration and Alternative Dispute Resolution.

Government Regulation No. 34 of 1981 concerning the Ratification of New York Convention 1958

The first consideration that the Indonesian court argued, as shown below, in applying the public policy consideration is the fact that Indonesia is a member of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. The Indonesian legislation that embodies the ratification of the Convention is Presidential Regulation No. 34 of 1981.

The Presidential Regulation however has only two paragraphs. These two paragraphs contain a confirmation that Indonesia ratified the New York Convention. The first paragraph affirmed that the text of the New York Convention was attached to the Presidential Regulation. The Regulation also set the date of the entry of force of the Presidential Regulation, namely the date of the promulgation of the Presidential Regulation, which was 5 August 1981.

The problem with this presidential regulation is that it does not, for example, provide a translation of the text of the New York Convention into Indonesian.[8] It does not mention either which court is given the authority to deal with requests for the enforcement of foreign arbitral awards in Indonesia. It is also silent about the application of public policy as embodied in article V of the New York Convention.

An important and interesting case with regard to the lack of the detailed provisions implementing the New York Convention was the PT Nizwar v Navigation Maritime Bulgare.[9] The Indonesian Supreme Court refused to give execution to the request for the enforcement of London Arbitration Award. The Supreme Court argued that the court could not enforce the award mainly because there was no implementing legislation (of the Government Regulation No. 34 of 1991), which gave the power to the Court of Jakarta to enforce the foreign arbitration award (in Indonesia).

On the basis of these developments, the Indonesian Supreme Court launched an initiative to issue legislation accommodating the problems faced in the two cases above, namely Supreme Regulation No. 1 of 1990 concerning the Methods of Implementing and Executing the Foreign Arbitration Awards.

Supreme Court Regulation No. 1 of 1990 concerning the Methods of Implementing and Executing the Foreign Arbitration Awards

Supreme Court Regulation No. 1 of 1990 answers three problems in relation to the regulation of foreign arbitral awards as embodied in Government Regulation No. 34 of 1981. Firstly, it gives power to the Central Jakarta Court to handle the request and execution of foreign arbitration awards.[10]

Secondly, it lays down the requirement for the grant of execution. Among others it requires that the foreign arbitration awards may only be enforced in Indonesia if they are not in violation of public policy of the Republic of Indonesia.

The third problem is the definition of 'public policy' in Indonesia. Article 4 of the Supreme Court Regulation says that the public order (policy) is the violation of the principles of the whole legal system and society in Indonesia.[11] This definition is more restrictive than the definition provided in Law No. 9 of 2004. Nevertheless, this definition does not solve the problem. This definition is purportedly to be confined to the law, but still it may cover all the systems of law (and society) in Indonesia. It does not state which specific laws would fall within the meaning of public policy. Therefore, the attempt of the Supreme Regulation to define the meaning of public policy is still far from the expectation. The meaning of public policy is still broad.

Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

The government promulgated Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (the Law) in August 1999. The law replaced the old Dutch-private procedural law on arbitration as embodied in articles 615–651.[12]

Law No. 30 of 1999 regulates both domestic and international arbitration and their awards. The requirement of public policy is contained in article 66. This article states that international arbitration awards will only be recognised and enforced within the jurisdiction of the Republic of Indonesia if they fulfil the following requirements:

1. 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;
2.

iinternational arbitration awards, as contemplated in item (i), are limited to awards which, under the provisions of Indonesian law, fall within the scope of commercial law;

3. international arbitration awards, as contemplated in item (i), may only be enforced in Indonesia if they do not violate public order;
4. the international arbitration awards may be executed in Indonesia after obtaining execution from the head of the Central District Court of Jakarta; and
5. when one of the parties involved in the international arbitration is the State of the Republic of Indonesia, the international arbitration may only be enforced if it has obtained execution from the Supreme Court, in which the power will be delivered to the head of the Central District Court of Jakarta.

The explanatory notes of article 66 of Law No. 30 of 1999 does not offer any explanation on what the terms public policy means. The lack of the definition would imply that the broad definition mentioned under Supreme Regulation No. 1 of 1990 still applies. This would also mean that the term could be still extensively interpreted.

The opinions of scholars

Professor Sudargo Gautama

The scholar who tried to define the term 'public policy' for the first time was 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 these terms ought to be strictly limited and be applied cautiously. This term was only an exception. He opined, if this term was used without any limitation to set aside the application of the foreign law, it would mean private international law would 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.13 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'.14

What Professor 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.

PROFESSOR PRIYATNA ABDURRASYID

The other scholar who tried to explain the meaning of public policy was Professor Priyatna Abdurrasyid. He was the chair of the BANI Arbitration Centre of Indonesia. In his leading book on arbitration (in Indonesia) titled Arbitration and Alternative Dispute Resolution, Abdurrasyid did not try to give the meaning of public policy. He only stated that there needed a further study about public policy.15 Secondly, Abdurrasyid merely quoted the meaning of public policy as contained in the Supreme Court Regulation No. 1 of 1990.16

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.17

Although admitting the importance of public policy ground, Abdurrasyid was of the opinion that the existence of this ground did not mean that it was a mandatory for a court to set aside the award. He opined that public policy might be used to set aside the award.18 The words 'might be used' emphasises that public policy grounds should not be freely, or at all the times, used by the court to set aside the foreign arbitral awards. It was on the hand of the court whether it would use it or refused to use it to set aside the foreign arbitral awards.

My personal opinion about public policy under Indonesian arbitration law is that since the term is not really clear and subject to broad interpretation depending upon the National Court to interpret it, I share with the opinion of Professor Gautama, that the term must be used carefully. The term cannot be used easily to set aside the foreign arbitration awards. The basis for this position are the following.

Firstly, public policy should be used cautiously mainly because all states must respect the application of due process of law in other countries. This position is of importance, and must be taken into consideration mainly because the existence of different meanings of public policy in every legal system should be appreciated. This fact should be considered carefully, in order to prevent the misuse of this institution (public policy). At the end of the day, the free use of this institution would endanger the 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.19

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.-20 The convention recognises the principle of public policy that requires its more than 150 member states to observe it.21

CASE LAWS: PUBLIC POLICY AND FOREIGN ARBITRATION AWARDS IN INDONESIA

No comprehensive data concerning the number of foreign arbitral awards registered with the Central District Jakarta Court requesting for their execution in Indonesia has been recently reported. However, in the survey made in 2010, the number of foreign arbitration awards registered with Central Jakarta Court was about 29 cases (per year).22 Case laws on the application of the principle of public policy to the foreign arbitration awards so far are very few. There are only two cases, which related to the application of public policy in Indonesia. They included:

- Bankers Trust v PT Mayora Indah Tbk (2000); and
- Astro Nusantara Bv et al v PT Ayunda Primamitra (2010).

Bankers Trust v PT Mayora Indah (2000)23

Facts of the case

The claimant, Bankers Trust, is a company based in London. The respondent, PT Mayora Indah Tbk, is an Indonesian company. The dispute between the parties arose out of the International Swaps and Derivatives Association (ISDA) Master Agreement signed in 1995. When the financial crisis hit Indonesia in 1998, the respondents failed to fulfil their obligations under the agreements.

The respondent brought the dispute to the South District Court of Jakarta requesting for the annulment of the ISDA agreements. The respondent argued that the agreement was in violation of the public policy. The claimant opined that the swaps and derivatives transaction were transactions violating public policy in Indonesia.

The claimant on the other hand submitted the dispute to the arbitration at the London Court of International Arbitration (LCIA). The Jakarta district court was in favour of the respondent while the LCIA was in favour of the claimant. The arbitration award was registered with the Central District Jakarta Court for execution. While at the same time, the claimant appealed the decision of the South Jakarta Court to the Supreme Court.

Faced with the fact that the dispute was being appealed and being examined by the Supreme Court, the Central District Court of Jakarta refused to enforce the arbitration award.

The claimant appealed the decision of the Central District Court to the Supreme Court. The claimant argued that, firstly, the Central District Jakarta Court had not exercised its power in accordance with the Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. The claimant argued, based on the Law No. 30 of 1999, the authority of the District Court in examining the application for the execution of the arbitration award, was an administrative measure. The court may only look at the formality of the application. The court, however, is not authorised to examine and value the substantive aspect of the arbitration award.[24]

Secondly, the claimant argued that the Central District Court of Jakarta had made a serious error in examining the three documents required by the law. The required documents were the authentic copy of the arbitration award, the authentic copy of the arbitration agreement and the note from the Indonesian embassy where the arbitration award was made declaring that the country where the arbitration award was made, was also a party to the international agreement on the recognition and enforcement of foreign arbitral awards.[25]

The claimant thirdly argued that the Central District Court had made a serious fault in exercising its function by taking into account the application of a party to refuse the application of arbitration award. The claimant argued the application of execution of an arbitration award was an ex parte proceeding, not a two-party proceeding.[26]

Fourth, the claimant argued that the Central District Court had made a serious fault in accepting and enjoining the two applications, one from the claimant and one from the respondent, to become one application.[27]

Finally, the claimant argued that the Central District Court had made a serious fault in examining the 'substance' of the international arbitration award.[28]

The decision of the court

The Supreme Court (the Court) dismissed the objections or the arguments of the claimant. The Supreme Court held that the Central District Jakarta Court had not applied the law wrongly. There is however no arguments made by Court to support its position on this point.

The Court also held that the dispute between the parties was in fact still in the process of examination at the South District Court of Jakarta. Therefore, the Court was of the opinion that the application for execution should not be submitted until the case heard at the South District Court of Jakarta gave its final and binding decision.

The Court, on the other hand, agreed with the argument of the claimant that the Central District Court of Jakarta had only an authority to examine the formal measure of the arbitration award. The Court however opined that, based on article 66(c) of Law No. 30 of 1999, the Central District Court of Jakarta had also an authority to examine whether the substance of the application for execution of the foreign arbitration award did not violate public policy, including legal order in Indonesia.29

On the basis of these considerations, the Court held that the application of execution of the London arbitration award was a violation of law.30

Astro Nusantara Bv et al v PT Ayunda Primamitra (2010)31

Facts of the case

The dispute between the parties arose due to the unsuccessful joint venture agreement. The two parties had signed an agreement called the Subscription and Shareholders Agreement (SSA). The SSA contained the agreement of the two parties to provide direct-to-home multi-channel digital satellite pay television, radio and interactive multimedia services in Indonesia.

The failure of the agreement led the claimant to bring this dispute to the Singapore International Arbitration Centre (SIAC) in accordance with article 17.4 of the SSA. When the dispute was heard at the SIAC, the respondent brought the dispute to the District Court of South Jakarta.

The arbitrators were in favour of the claimant and issued an order, among others, for the respondent to stop the court proceedings at the South District Court of Jakarta. The arbitrators reiterated that the clause 17.6 of the SSA forbid the parties to submit their dispute to the national court.

The claimant shortly submitted the copy of the arbitration award to the Central Jakarta Court requesting the execution of the award.

When the registration of the SIAC arbitration award filed with the Central Jakarta Court, the respondent filed a petition to the Central Jakarta Court requesting that the court reject the application for the execution on the basis of, among others, the violation of public policy.

In its decision, the Central District Court was in favour of the respondent. The court stated that the award of the SIAC arbitration was non-executable due to the violation of public policy in Indonesia.

The claimant appealed to the Supreme Court.

One of the legal problems arising out of the facts of the case is whether the grounds for the rejection of the execution of the arbitration award was strong.

The claimant argued that the request of the respondent to reject the execution of the arbitration award was not valid under Indonesian arbitration law. The claimant argued that the issue of the execution of the award was merely between the party requesting for

execution and the court that will give its execution order to the losing party to fulfill the order in the award. Therefore, the claimant argued that the Central District Court should not take into account the request of the third party (the respondent)

Furthermore, the claimant argued against the decision of the Central District Court that the SIAC arbitration was non-executable due to the violation of public policy in Indonesia. The argument of the claimant was based on the opinion of Professor Sudargo Gautama concerning the meaning of public policy.32 In particular, the claimant argued that there was no violation of the principles and the basis of the legal sysem and national interests of the national.33

The claimant also questioned whether the intervention of the process of the court in Indonesia is considered as the form of the violation of public policy.34

The claimant also argued that the subject matter of the dispute was in the realm of the commercial matters (commercial disputes), since the dispute brought to the arbitration was related to the violation of an agreement. Furthermore, the claimant argued that the SSA contained the provision where prohibited the parties to take legal action in court.35

The opinion of the courts

The Central Jakarta Court issued the decision on 28 October 2010 which argued, firstly, that the request of the claimant was not granted; and, secondly, that the execution for the arbitration award of the SIAC No. 062 of 2008 9ARB 062/08/JL could not be granted. The Supreme Court rejected the request of the claimant.36

The Supreme Court recognised that article 66 of Arbitration Law does not regulate that the third parties might submit the request for the rejection of the provision of the execuation. The Supreme Court, however, was of the opinion that, from the procedural law aspect, and based on the principle of 'point d'interet, point d'action', which gives the right to the interested parties with the award, the third or interested parties have the right to submit exception to the execution which may impair their interest.37

On the substantive provision, the Supreme Court was in favour of the decision of the Central District. The Supreme Court argued that the order of the arbitration award to stop the process of the proceedings in the Indonesian court was a violation of the principle of sovereignty. The court argued that no other foreign power may intervene the legal process of the court in Indonesia.38 The Supreme Court also argued that the subject matter of the dispute was not within the meaning of the commercial dispute but within the procedural law matter.39

CLOSING REMARKS

The Indonesian laws and the opinions of scholars above does not give any direction as to what public policy means.

However, the two decisions of the Supreme Court seem to give a little light. First of all, the decisions of the Supreme Court on the two cases above appear to have weakened the integrity of international arbitration.

The decisions of the Supreme Court on the two cases above at least have given us a picture concerning the position of the Supreme Court with regard to the application of the request for the execution of arbitration award in Indonesia.

Secondly, the decision of the Supreme Court has overlooked the recognised principle of acquired rights under private international law. As mentioned above, this principle argues that what has been recognised as valid under the national law where the arbitration takes place, this recognition must also be acknowledged in other countries.

Thirdly, since arbitration has been a universal mechanism recognised 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, including the awards made from the arbitration. The court should first of all, recognise the arbitration award as a final and binding.

Fourth, since Indonesia (and UK) are parties to the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards, the court should take into consideration the provisions of this convention when drafting its decision. The most important provision of this convention is article III, which reads:

> Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. 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 or enforcement of domestic arbitral awards.

Despite the criticisms above, the two decisions of the Supreme Court had a single similarity. The main reason for the court's argument in applying the public policy consideration, was because the application for execution was not granted because there was a district court that was still hearing and examining the case of the two parties.

The two cases above at least gave us a somewhat apparent picture on the meaning of public policy under Indonesian arbitration law. This includes the intervention of ongoing proceedings of the domestic court. The intervention may be in the form of an order in the arbitration award, to the parties or to the court in Indonesia to stop the proceedings.

Notes

1 Cf, Redfern and Hunter's observation. They opined '. . .in fact that different States have different concept of their own public policy means that there is a risk that one State may set aside an award that other States would regard as valid.' (Nigel Blackaby et al, Redfern and Hunter on International Arbitration, Oxford: Oxford UP, 2009, p 615).

2 For discussion on article 5 para 2 (b) of the Convention, see: Albert Jan van den Berg, The New York Convention of 1958, The Netherlands: Kluwer, 1981.

3 Cf, Jan Paulsson has rightly stated that 'it is important to consider not only how judges should uphold national public policy without undermining international arbitration, but also the responsibility that international arbitrators have for taking respectful account of it.' (Italics added) (Jan Paulsson, The Idea of Arbitration, Oxford: Oxford UP, 2013, p 200).

4 Prof Abdurrasyid had made an interesting observation concerning the refusal for the recogntion and enforcement the grounds that See for example, Redfern and Hunter's observation. They opined '. . .in fact that different States have different concept of their own public policy means that there is a risk that one State may set aside an award that other

States would regard as valid.' (Nigel Blackaby et al, Redfern and Hunter on International Arbitration, Oxford: Oxford UP, 2009, p 615).

5 Explanatory to article 49 of the law. article 49 says that the Administrative Court shall not have the power to adjudicate and decide the disputes concerning the decisions made by the authorities where the decisions are made in the interest of public policy based on the applicable laws.

6 Explanatory to article 16 of law No. 48 of 2009 provides that the public interest concerns with the interest of the society in general.

7 For example found in article 1(b) of Law No. 5 of 1999 explains that the unfair competition may include an unfair competition which harms 'the society in general'.

8 The translation into Indonesian language of the text of the convention or international agreements is later a mandatory according to article 31 of Law No. 24 of 2009 concerning Flag, Language and State's Coat of Arms and National Anthem.

9 Supreme Court Decision No. MA: No. 2944 K/Pdt/1983.

10 Article 1 of the Supreme Court Regulation No. 1 of 1990.

11 Article 4 of the Supreme Court No. 1 of 1990 reads (in Indonesian): '. . .bertentangan dengan sendi-sendi dari seluruh system hukum dan masyarakat di Indonesia.'

12 Articles 615 to 651 Rv did not contain the provisions on public policy as the grounds for the annulment of (foreign) arbitration awards. This suggested that Rv on arbitration seemed to regulate the domestic arbitration. The Rv on arbitration was divided into five parts. Part 1 regulated the appointment of arbitrators (articles 615-623); part 2 was the provisions on arbitration proceedings (articles 624 – 630); part 3 regulated the arbitration awards (articles 631-640); part 4 was on the efforts or measures against the arbitration award (Articles 641–647); and part 5 contained the provisions concerning the end of arbitrators' duty (articles 648-651).

13 Prof Sudargo Gautama's opinion of public policy is discussed in: Tineke Louise Tuegeh Longdong, Asas Ketertiban Umum dan Konvensi New York 1958, PT. Citra Adtya Bhakti, Bandung, 1998, p 24.

14 Sudargo Gautama, Ibid, Cf, Redfern and Hunter op cit, p 615. (Redern and Hunter argued that '. . .many states are increasingly taking a restrictive approach to the application of public policy').

15 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.

16 Priyatna Abdurrasyid, Ibid.

17 Ibid.

18 Ibid.

19 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.

20 Article III of the Convention.

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

22 Mutiara Hikmah, Pelaksanaan Putusan Arbitrase Internasional Di Indonesia Berdasarkan Undang-Undang Arbitrase ('The Application of International Arbitration awards in Indonesia based on the Law on Arbitration'), PhD thesis, Universitas Pelita Harapan, 2010, p 256.

23 The Decision of the Supreme Court No. 02 K/Ex'r/Arb.Int/Pdt/2000. Some authors have discussed this case, among others, Karen Mills, Enforcement of Arbitral Awards in Indonesia & Other Issues of Judicial Involvement in Arbitration, Paper, February, 2003, revised February, 2005; Mutiara Hikmah, Loc.cit.

24 The Decision of the Supreme Court No. 02 K/Ex'r/Arb.Int/Pdt/2000, page 6.

25 The Decision of the Supreme Court No. 02 K/Ex'r/Arb.Int/Pdt/2000, page 7.

26 The Decision of the Supreme Court No. 02 K/Ex'r/Arb.Int/Pdt/2000, page 8.

27 The Decision of the Supreme Court No. 02 K/Ex'r/Arb.Int/Pdt/2000, page 8.

28 The Decision of the Supreme Court No. 02 K/Ex'r/Arb.Int/Pdt/2000, page 10.

29 The Decision of the Supreme Court No. 02 K/Ex'r/Arb.Int/Pdt/2000, page 11.

30 The Decision of the Supreme Court No. 02 K/Ex'r/Arb.Int/Pdt/2000, page. 12. (Note that the decision of the Court used the term 'violation of law or the Law' (bertentangan dengan hukum dan atau Undang-Undang). The Court did not use the term 'public policy.' Although not specifically used the term, one may see that the considerations of the Court in its arguments, mentioned above had previously used the term public policy.

31 The Supreme Court Decision No. 01 K/Pdt.Sus/2010. Some authors have discussed this case, among others, Karen Mills, Enforcement of Arbitral Awards in Indonesia & Other Issues of Judicial Involvement in Arbitration, Paper, February, 2003, revised February, 2005; Michelle Ayu Chinta Kristy and Zhengzheng Jing, 'Public Policy Violation under New York Convention,' MIMBAR HUKUM, Vol. 25:1, February 2013; also found in: http://www.singaporelaw.sg/sglaw/laws-of-singapore/case-law/free-law/high-court-judgments/15029-astro-nusantara-international-bv-and-others-v-pt-ayunda-prima-mitra-and-others-2012-sghc-212.

32 The Supreme Court Decision No. 01 K/Pdt.Sus/2010, Paragraphs 32–34.

33 The Supreme Court Decision No. 01 K/Pdt.Sus/2010, page 22 (Paragraph 34).

34 The Supreme Court Decision No. 01 K/Pdt.Sus/2010 , Paragraphs 35 and 36.

35 The Supreme Court Decision No. 01 K/Pdt.Sus/2010Paragraphs 35 and 36.

36 The Supreme Court Decision No. 01 K/Pdt.Sus/2010, page 37.

37 The Supreme Court Decision No. 01 K/Pdt.Sus/2010, page 36.

38 The Supreme Court Decision No. 01 K/Pdt.Sus/2010, page 36.

39 The Supreme Court Decision No. 01 K/Pdt.Sus/2010, page 37.

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