



LEGAL CERTAINTY OF EXECUTION DECISION OF THE INDONESIAN NATIONAL ARBITRATION BOARD NUMBER: 14/VII/ARB/BANI-MDN/2019

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Article history:	Abstract:
Received: October 11 th 2022 Accepted: November 11 th 2022 Published: December 28 th 2022	The Arbitration Award is final and binding, meaning that the decision cannot be requested for legal remedies such as appeals and cassations and the decision is binding for the parties to be obeyed voluntarily. However, as in the Arbitration Award Decision Number: 14/VII/ARB/BANI-Mdn/2019 there is a very interesting legal issue to discuss where the application for execution is submitted not based on where the domicile of the Respondent is. In this study, the method used is empirical juridical which aims to find out and understand the power of execution of the Decision of the Indonesian National Arbitration Board Number: 14/VII/ARB/BANI-Mdn/2019 through the Bandung District Court.

Keywords: Implementation Execution Decision of the Indonesian National Arbitration Board

INTRODUCTION

In its development, the world and business activities have developed so rapidly by penetrating into various sectors/fields of business, both concerning the goods sector/business sector and regarding the service sector/business sector. Running a business well is one of the pillars in efforts to encourage and support economic development and transactions in Indonesia. In the business world, business actors are very close and do not rule out the possibility of disputes or *dispute differences* between the parties involved.

The existence of a legal dispute or legal dispute that arises between the parties can be resolved through 2 (*two*) ways of settlement . and *Second* , settlement efforts in court (litigation). Settlement through non-litigation which is often in demand by business actors who are in dispute or dispute with other parties through the Indonesian National Arbitration Board (BANI), due to the nature of the decision which is final and binding and the examination process which is closed to the public. (Suleman Batubara, Orinton Purba , 2013).

In principle, provisions regarding arbitration are regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. At first arbitration was established by traders as an alternative to dispute resolution rather than having to go to court which often took a long time and the expertise of the judges was considered very generalist. They wish to create a private court, where they can make their own procedural law or in arbitration terms it is called the *Rule* , likewise they can appoint Arbitrators themselves with the qualifications they determine. One of the oldest international arbitration bodies is the *Court of*

Arbitration of the International Chamber of Commerce established by the ICC (*International Chamber of Commerce*) which was established in 1919.

Business actors in carrying out their business activities often enter into legal relations with other parties which can be proven through agreements or contracts both nationally and internationally which become the legal umbrella for business actors in carrying out their business by including a dispute settlement clause through arbitration, because in principle the settlement of a dispute is only can be implemented if there is an agreement or agreement between the parties to resolve their dispute through Arbitration. This agreement can be made before a dispute arises or is called a *Pactum de Compromittendo* or after a dispute arises which is called a *Compromise Deed* (M. Yahya Harahap, 2014). Business actors are very interested in settling through arbitration because indeed for the business community the method of resolving disputes through this body provides distinct advantages over through the national judiciary (Huala Adolf, 2002). Entrepreneurs as much as possible avoid publicity for disputes that exist between them, because company secrets are not wanted to be known by their rivals and society in general. (Andi Jukia Cakrawala / 2015).

If it is examined carefully that in principle the Arbitration Award is final and binding, meaning that the decision cannot be requested for legal remedies such as appeal and cassation and the decision is binding for the Parties to comply voluntarily in good faith because before the decision is made they have also agreed to settle it through arbitration with all the consequences.



However, in subsequent developments, the nature of decisions that were initially made voluntarily were often not voluntarily complied with by the losing party. This is of course an obstacle in the implementation of arbitration, so a way out is sought, namely by involving the state through the courts in the execution process. (Morgan Situmorang, 2017). Execution of an arbitral award is not as easy as imagined because it requires a delegation from the District Court to make an arbitration award have executive power. There are legal procedures that need to be carried out to carry out an execution of a decision of the Indonesian national arbitration body as stipulated in the provisions of the legislation.

Of the various legal issues resolved at the Indonesian National Arbitration Board, recently there was one case that managed to grab the public's attention because this case gave rise to an interesting new legal issue to be studied in depth. The case referred to in this case is a case involving PT Bunga Tanjung Raya as the Petitioner and the Government of the Republic of Indonesia cq. Minister of State Owned Enterprises cq. PT Angkasa Pura II (Persero) Head office in Tangerang city cq. PT Angkasa Pura II (Persero) Bandung Husein Sastranegara Airport branch office as the Respondent in a dispute examined and tried at the Indonesian National Arbitration Board in the jurisdiction of Medan, North Sumatra, Indonesia as referred to in the decision of the Indonesian National Arbitration Board Number: 14/VII/ARB /BANI-Mdn/2019.

From this decision it is very interesting to study because there are legal issues today due to the fact that the petition for execution was submitted not based on the position/domicile of the Respondent. Even though at a glance Law Number 30 of 1999 governing requests for the execution of a decision of the Indonesian National Arbitration Board stated that in essence the application for filing the execution of an Indonesian National Arbitration Board decision was submitted to the District Court covering the jurisdiction of the domicile of the Respondent in the dispute .

From the Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019, it must be carefully studied regarding the legal basis of the Indonesian National Arbitration Board and the District Court in the arbitration award number: 14/VII/ARB/BANI-Mdn/2019 accepting the application for implementation execution that has been received and registered to be carried out, even though the domicile of the Respondent is not included in the jurisdiction of the district court where the delegation of execution execution was received.

Based on the explanation above, this research aims to provide an overview of legal knowledge regarding the settlement of legal disputes through a national arbitration body and how the execution of a

decision of a national arbitration body is based on statutory provisions. Therefore it will review and focus on the formulation of the problem **regarding legal certainty over a decision of the Indonesian National Arbitration Board in resolving a legal issue in an arbitral award number: 14/VII/ARB/BANI-Mdn/2019.**

METHOD STUDY

In analyzing the formulation of the problem, using research that is qualitative in nature based on the data obtained is then associated with laws and regulations and based on research in the field, to find the truth based on the scientific logic of law which will later be drawn a conclusion. (M. Kadir , 2004).

The approach method used in this research is empirical juridical, namely research based on regulations and also using research based on facts, reality and problems in the field . This empirical juridical is a method or procedure used to solve research problems by examining secondary data first and then proceeding with examining primary data in the field. So the empirical juridical approach is a research that examines related legal regulations with Implementation on Decision Arbitration Number: 14/VII/ARB/BANI-Mdn/2019. (Soerjono Soekanto , 1986).

RESEARCH RESULTS AND DISCUSSION

implementation of the national arbitral award is regulated in Articles 59-64 of Law Number 30 of 1999. Basically, the parties must carry out the award voluntarily. In order for an arbitral award to be enforced, said award must be submitted and registered at the district court clerk's office, by registering and submitting the original sheet or an authentic copy of the national arbitration award by the arbitrator or his attorney to the district court clerk, within 30 (thirty) days after the arbitral award be spoken.

In Article 61 of the Law on Arbitration and Alternative Dispute Resolution it is emphasized that "In the event that the parties do not carry out the arbitral award voluntarily, then it has a logical consequence that the decision is carried out based on the order of the Head of the District Court at the request of one of the parties to the dispute" therefore in terms of implementation execution if it is not carried out in good faith by the losing party to the Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019 then Bani's Decision should be registered in the jurisdiction of the Tangerang City Head Office Angkasa Pura II, namely through the Tangerang Class 1 A District Court Special. Therefore, if the Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019 is not registered through the competent district court, it is feared that there will be obstacles in carrying out the arbitration award, which include:



Power of Execution Determination of Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019 at the Bandung District Court

Refer to Terms Article 1 number 4 of the Law Arbitration And Alternatives Completion Dispute District Court is The court whose jurisdiction covers the place Live or domicile Respondent , p this emphasize and limit that registration Decision Arbitration Number : 14/VII/ARB/BANI- Mdn /2019 no as well as immediately could registered in the jurisdiction any district court , by reason of an arbitrator or registered attorney _ Decision Arbitration Number : 14/VII/ARB/BANI- Mdn /2019 must refers to the provisions contained in the Regulations Legislation . Article 1 number 4 as a normative legal provision then this is an indication that registration is mandatory in nature or the legal domicile of the respondent does not refer to the object in dispute, but registration of the execution of the Arbitration Award Number: 14/VII/ARB/BANI- Mdn/2019 refers to the object in dispute, namely in the Bandung District Court , this of course refers to a legal principle, namely *the Rei Sitae Forum* , meaning that both the lawsuit and its execution are based and based on a place or immovable object which is the object of the dispute in the Arbitration Award. Quoting Maria SW Sumardjono's opinion, the concept of legal certainty "normatively, legal certainty requires the availability of a set of laws and regulations that operationally support its implementation. Empirically, the existence of these Laws and Regulations needs to be implemented consistently and consequently by human resources including its supporting tools, therefore it is necessary to know that a set of regulations regarding the provisions for registration of Arbitral Awards Number: 14/VII/ARB/BANI-Mdn/ 2019 is very clearly spelled out and confirmed in the Arbitration and Alternative Dispute Resolution Law, but empirically only the implementation is slightly deviated so that it is not consistent with what has been stipulated in the Law .

Inconsistency of normative legal provisions with practice in the field, especially in the implementation of the Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019 due to an error in interpreting the object of the dispute with the domicile of the parties, to guarantee legal certainty before rejecting or accepting the decision of execution by the head of the district court, the head of the district court first studies the arbitral award regarding whether or not a decision of execution can be issued by looking at various points of view of the provisions of the legislation, especially Article 1 point 4 of the Arbitration Law and Alternative Dispute Resolution.

Bandung District Court's decision on Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019 can be said to be a judgment that does not have legal certainty

and does not have complete binding power because the decision issued is not in accordance with statutory provisions, because The determination of the implementation of the execution of the Arbitral Award Number: 14/VII/ARB/BANI-Mdn/2019 will at least inevitably encounter obstacles resulting from the existence of a determination that is not based on the legal domicile of the Respondent . it _ due to the Stipulation of the Arbitration Award Number: 14/VII/ARB/BANI- Mdn /2019 through the Bandung District Court cannot be implemented due to legal defects and the Arbitral Award Number: 14/VII/ARB/BANI-Mdn/2019 cannot be registered or delegated through the Tangerang District Court because it has passed the time limit set as stated in 61 Jo. Article 62 paragraph 1 of the Law on Arbitration and Alternative Dispute Resolution that "In the event that the parties do not voluntarily implement the arbitral award, the award is carried out based on an order from the Chairperson of the District Court at the request of one of the parties to the dispute and is given a maximum period of 30 (thirty) days after the execution of the request.

Therefore _ if the Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019 is re-registered through the Tangerang District Court if accepted, there will be two different Decisions from 2 (two) District Courts against the same object , namely Arbitration Award Number: 14/ VII/ARB/BANI-Mdn/2019 and of course both of them have the same power as a legal basis in carrying out executions.

Authority of the Tangerang District Court for Determining the Execution of Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019

The role of the District Court is crucial in providing justice in society, John Rawls emphasizes in his theory *Justice As Fairness* (justice as honesty) states that the law must create an ideal society (Margono , 2019) , namely a society that tries to increase happiness and reduce unhappiness, the justice referred to in this study is justice based on fulfilling the rights of the parties against an ongoing legal dispute in accordance with statutory provisions so that it is based on something concrete as stated in the Arbitration and Alternative Dispute Resolution Laws and the Judicial Powers Act. In carrying out its main function, the Court is always required to provide legal certainty to people who are having disputes or differences of opinion, as stated in the Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019 . The court is authorized by the state through Article 59 paragraph 3 of the Judicial Powers Act to issue an Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019 , so that legal certainty from the parties can be protected according to their respective portions. One of these powers is the authority to execute Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019 as



stipulated in Law Number Arbitration and Alternative Dispute Resolution.

If Referring to the Rules of Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019 at number 9 which states that " Ordered the secretary of the assembly to submit and register the official derivative of this arbitral award at the clerk's office of the Bandung district court, at the expense of the applicant and the respondent within the time limit as stipulated by law number 30 of 1999 concerning arbitration and alternative dispute resolution " number 9 stated that since the Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019 it was ordered to immediately register the arbitral Award through the Bandung District Court, but this order is not in accordance with the provisions of Article 1 point 4 of the Arbitration Law and Alternative Dispute Resolution who wants where in the implementation of the decision submitted through the court which includes the residence of the respondent. So that when talking about the authority to issue a stipulation on the Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019, the authority for the stipulation is the Tangerang district court matter the based on:

- a. Article 1 point 4 of the Law on Arbitration and Alternative Dispute Resolution "District Court is the District Court whose jurisdiction covers the residence of the respondent";
- b. Article 61 of the Law on Arbitration and Alternative Dispute Resolution "In the event that the parties do not voluntarily enforce the arbitral award, the award is implemented based on an order from the Head of the District Court at the request of one of the parties to the dispute";
- c. Article 59 paragraph 3 Law Number 48 of 2009 Concerning Judicial Power "In the event that the parties do not voluntarily implement the arbitration award, the decision is implemented based on an order from the chairman of the district court at the request of one of the parties to the dispute";

CONCLUSION

Legal certainty regarding the implementation of the stipulation of Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019 through the Bandung District Court has very fundamental obstacles because it does not refer to the provisions of the Arbitration Law and Alternative Dispute Resolution, implementation of the decision can only be carried out if the stipulation is amended and replaced through a stipulation from the Special Class 1 A Tangerang District Court by way of prior improvement through the Arbitration Award Number: 14/VII/ARB/BANI-Mdn/2019. If the decision has been corrected, a new stipulation will appear through the Tangerang court so that based on Article 1 number 4 and its provisions, it already has a valid legal

basis and has binding legal certainty for the parties.

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