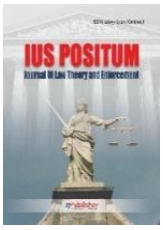

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Juridical Issues in Enforcing Final and Binding Arbitral Awards in Indonesia

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ABSTRACT

Arbitration constitutes a form of Alternative Dispute Resolution (ADR) conducted outside the judicial framework, specifically addressing disputes related to commerce and trade at both domestic and international levels. For arbitration to be applicable, there must be a contractual agreement to utilize an arbitration institution. Despite the widespread adoption of arbitration institutions for resolving business disputes, their efficacy, particularly in the enforcement of arbitral awards, remains a contentious issue. Arbitral awards may be executed voluntarily, provided there is full awareness and good faith. In instances where voluntary compliance is absent, an application may be submitted to the Chief Judge of the District Court to enforce compliance upon the respondent. The practical execution of these awards often encounters significant challenges, including prolonged durations and substantial costs, which can erode legal certainty.This study aims to examine the issues surrounding the enforcement of final and binding arbitral awards in Indonesia. The research method used is normative legal research which is descriptive in nature with a statutory approach and a conceptual approach which is then supported by empirical research to enrich the depth of the research process. The results of this research are the obstacles and legal efforts in overcoming the execution of final and binding arbitration awards.

Keywords: *Arbitration, Execution, Verdict*

INTRODUCTION

Conflict refers to a situation where two or more parties have differing interests, yet it does not escalate into a dispute as long as the aggrieved party only experiences dissatisfaction or concern without taking further action. A conflict changes or develops into a dispute if the party who feels aggrieved expresses dissatisfaction or concern directly to the party considered to have caused the loss or to other interested parties.[1] Controversy is its continuation. What initially begins as agreement and conflict will transform into a dispute if it cannot be resolved between the parties involved. A dispute is a continuation of a conflict which at first may produce an agreement, but if it cannot be resolved between the parties involved, the conflict becomes a dispute. Conflict can be understood as a clash between parties who may initially have agreed to resolve a problem, but if it is not properly resolved it can damage the relationship between the parties to the agreement.[2] As long as both parties are able to resolve their respective problems properly, no dispute will occur. If, however, both parties cannot agree on resolving their problems, a dispute will arise.

In the last decade, many parties who initially faced conflict and ended in dispute chose to resolve their cases through litigation, which is known as court-based dispute resolution, and later shifted to settlement outside the courts or Alternative Dispute Resolution (ADR).[3]

ADR is an out-of-court dispute resolution forum through consultation, negotiation, mediation, conciliation, or expert judgment in accordance with procedures agreed by the parties. Law No. 30 of 1999 does not elaborate in detail on each alternative.[4]

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[1] Susanti Adi Nugroho, *Penyelesaian Sengketa Arbitrase Dan Penerapan Hukumnya*, 1st ed. (Jakarta: Kencana, 2015); M. Sumampouw and R. Subekti, "Pilihan Hukum Sebagai Titik Pertalian Dalam Hukum Perdjandjian Internasional" (Universitas Indonesia, 1968), https://lib.ui.ac.id/detail?id=20449447&lokasi=lokal; Rully Desthian Pahlephi, "Pengertian Arbitrase Adalah: Prosedur, Jenis, Dan Contohnya," *Detikjabar*, last modified 2022, accessed September 11, 2023, https://www.detik.com/jabar/berita/d-6231677/pengertian-arbitrase-adalah-prosedur-jenis-dan-contohnya.

[2] Frans Hendra Winarta, *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia Dan Internasional* (Jakarta: Sinar Grafika, 2012); Apriliani Indri Ningtyas Putri and Devi Siti Hamzah Marpaung, "Kedudukan Putusan Arbitrase Internasional Di Indonesia Sebagai Alternatif Penyelesaian Sengketa Bisnis Berdasarkan Undang-Undang Nomor 30 Tahun 1999," *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 9, no. 3 (2022), https://jurnal.um-tapsel.ac.id/index.php/Justitia/article/view/4056.

[3] Gatot Sumartono, *Arbitrase Dan Mediasi Di Indonesia* (Jakarta: PT. Gramedia, 2006); Sudargo Gautama, *Hukum Perdata Internasional Indonesia* (Bandung: Alumni Bandung, 1961); Muskibah, "Arbitrase Sebagai Alternatif Penyelesaian Sengketa," *Jurnal Komunikasi Hukum* 4, no. 2 (2021): 139–149, https://repository.unja.ac.id/id/eprint/17562%0A.

[4] Mahkamah Agung RI, *Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Tata Cara Penyelesaian Perkara Ekonomi Syariah* (Indonesia, 2016); Mahkamah Agung Republik Indonesia, *Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2023 Tentang Tata Cara Penunjukan Arbiter Oleh Pengadilan, Hak Ingkar, Pemeriksaan Permohonan Pelaksanaan, Dan Pembatalan Putusan Arbitrase* (Indonesia, 2023).

Prior to Indonesia's independence, during the Dutch colonial era in the Dutch East Indies, arbitration was governed by several legal instruments, including the Civil Procedure Regulation (Reglement op de Rechtsvordering, Staatsblad) Nos. 615–651, particularly Article 1847:52 or Rv, as well as Article 377 of the Criminal Code. The latest version, Het Herziene Indonesisch Reglement, Staatsblad 1941:44 or HIR, and the Regulation of Proceedings Outside Java and Madura (Rechtsreglement Buitengewesten, Staatsblad 1927:227) or RBg Article 705, remain in force after independence.[5]

The term arbitration is a contemporary legal issue in dispute resolution that is both important and current. It has contributed significantly to the business field in this last decade, alongside the digitalisation of supporting hardware and software, from cryptocurrencies to Artificial Intelligence (AI).[6]

In national and international trade and commerce over the past ten years, entrepreneurs and commercial actors frequently enter into commercial contracts. They are generally more familiar with the provisions of the agreements they sign and prefer arbitration institutions over state courts for resolving business disputes. Over time, disputing parties increasingly resort to arbitration institutions and their use has become more familiar, popular, and more frequent.

The end product of arbitration is an award, with the expectation that the losing party will fulfil its obligations. Any decision, whether by state judges or arbitrators as private judges, has little practical value if what is determined cannot be implemented.[7]

Nevertheless, it often happens that, even though an award has been issued by the arbitrator, the party bearing the consequences of losing in the enforcement of law or the respondent in the execution process through the bailiff is reluctant to carry out what has been stipulated in the award.[8] In such conditions, upon the

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[5] *Undang-Undang Republik Indonesia Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa* (Indonesia, 1999); Lembaran Negara Republik Indonesia Tahun 1970 Nomor 74, *Undang-Undang Republik Indonesia Nomor 14 Tahun 1970 Tentang Pokok-Pokok Kekuasaan Kehakiman* (Indonesia, 1970).

[6] Gunawan Widjaja Ahmad Yani, *Hukum Arbitrase* (Jakarta: RajaGrafindo Persada, 2000); Gusri Putra Dodi, *Arbitrase Dalam Sistem Hukum Indonesia* (Prenada Media, 2022).

[7] M. Husseyn Umar and A. Supriyani Kardono, *Kertas Kerja Ekonomi, Hukum Dan Lembaga Arbitrase Di Indonesia* (Jakarta: Komponen Hukum Ekonomi Proyek ELIPS, 1995); Irwan Soerodjo, *Kepastian Hukum Hak Atas Tanah Di Indonesia* (Surabaya: Arkola, 2003); Rifqani Nur Fauziah Hanif, "Arbitrase Dan Alternatif Penyelesaian Sengketa," *Kementerian Keuangan Direktorat Jenderal Kekayaan Negara*, last modified 2020, accessed September 11, 2023, https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13628/Arbitrase-Dan-Alternatif-Penyelesaian-Sengketa.html; Anis Iswanti and Dr. Karim, "Policy Considerations in Providing Performance Allowances for the Process of Examining Disciplinary Violations for Structural Officials Within the Ministry of Law and Human Rights in View of Distributive Justice," *Journal of Court and Justice* (August 23, 2024): 89–103, https://journal.jfpublisher.com/index.php/jcj/article/view/632.

[8] Jonaedi Efendi and Johnny Ibhrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Jakarta: Prenada Media Group, 2016).

application of the prevailing party as the applicant, a request for execution may be submitted to the Chief Judge of the District Court. Upon that submission, the court bailiff may enforce the arbitral award through compulsory execution.

Execution of a decision determined for implementation in civil matters is a series of coercive law enforcement actions. It can only be carried out by the Chief Judge of the District Court as stipulated in Article 54 paragraph (2) of Law of the Republic of Indonesia No. 48 of 2009 concerning Judicial Power, and it is an integral part of the completion of a dispute.[9] As a legal action to implement a decision, the procedures and process of execution are regulated in legislation. This is governed in Article 69 paragraph (3) of Law No. 30 of 1999. The District Court, as mandated by law, is the institution authorised to execute arbitral awards.

Based on this, whether ad hoc arbitration or permanent institutional arbitration, there is no authority in Indonesia to execute its own awards. Regarding authority to execute arbitral awards, Mauro Rubino Sammartano states:

"The arbitrations rules, as we have seen, tend to keep the courts away from arbitral proceedings. In spite of this, Court intervention becomes even more important at the end of the proceedings, when the award is rendered, in jurisdictions in which the award cannot be enforced, even in the place of arbitration, unless it has first been adopted by that legal system through a court order, such as in Islamic law countries, or at least through the filing of the award".[10]

While courts are not meant to intervene in arbitration proceedings, both the district court and the religious court have responsibilities in enforcing arbitral awards as stipulated by law.[11] If the losing party fails to comply voluntarily, the court is authorized to take action to ensure execution of the award.

In practice, execution still encounters obstacles. In implementing arbitral awards that have been rendered, several factual impediments make voluntary compliance difficult, and the process often takes considerable time and incurs relatively high costs beyond the authority of the arbitration institution. There are even cases where awards are annulled or declared unenforceable by courts, which warrants serious attention in order to find solutions. Disputes arising between parties can undermine the efficiency and effectiveness that arbitration is supposed

[9] M. Yahya Harahap, *Arbitrase* (Jakarta: Pustaka Kartini, 1991); Staatsdrukkerij, *Reglemen Acara Untuk Daerah Luar Jawa Dan Madura (Rechtsreglement Buitengewesten / RBg)*, 1927; Dahris Siregar, "Insurance Companies' Legal Obligations for Acts of Default Related to Consumer Protection," *Journal of Court and Justice* (July 4, 2025): 1–16, https://journal.jfpublisher.com/index.php/jcj/article/view/743.

[10] Mauro Rubino Sammartano, *International Arbitration Law* (Kluwer Law and Taxation Publishers, 1990); Munir Fuady, *Arbitrase Nasional Alternatif Penyelesaian Sengketa Bisnis* (Jakarta: PT. Citra Aditya Bakti, 2000).

[11] M Natsir Asnawi, *Hermeneutika Putusan Hakim: Pendekatan Multidisipliner Dalam Memahami Putusan Peradilan Perdata* (Yogyakarta: Yogyakarta UII Press, 2014); Ni Putu Rosita Novanda, Ni Luh Made Mahendrawati, and Ni Komang Arini Styawati, "The Legal Protection of Minority Shareholders against Company Consolidation in the Perspective of the Limited Liability Company Law," *Journal of Court and Justice* (June 26, 2025): 1–19, https://journal.jfpublisher.com/index.php/jcj/article/view/762.

to deliver, and thus the legal certainty sought and achieved in other jurisdictions. As a consequence, Indonesia is sometimes considered unfriendly to arbitration.

Further examination reveals a well known example that is widely recognised nationally and internationally. Case Number 86/PDT.G/2002/PN.JKT.PST concerned a dispute between Pertamina and PT PLN (Persero) against Karaha Bodas Company LLC (KBC). The parties had consented to resolve the matter through arbitration, and on December 18, 2000, the International Arbitration Tribunal in Geneva, Switzerland, rendered a decision finding Pertamina and PT PLN (Persero) in breach of contract and ordering them to pay compensation. Ironically, even after 23 years, the award was once annulled by the Central Jakarta District Court on the ground that the arbitration law could not be applied if it violated public order. Later, however, the Appellate Decision of the Supreme Court No. 01/Banding/Wasit-Int-2002 stated that it could not be implemented if it potentially violated public order, but the court lacked authority to annul an arbitral award because competence differed. As a result, the party entitled to relief faced delay, and the perception arose that Indonesia is not yet arbitration friendly.[12]

In light of these issues, the author examines this matter under the title Juridical Issues in Enforcing Final and Binding Arbitral Awards in Indonesia and Conflicts of Arbitral Awards That May Be Annulled or Deemed Unenforceable.

LITERATURE REVIEW

The Concept of Arbitration and the Arbitrator as a Profession

Arbitration is the authority to resolve a dispute based on discretion or settlement by an arbitrator or referee, submitting a decision to someone and formally accepting that decision, and providing a solution through a designated judge. This decision, being final and binding, is expected to be easy to implement because it is based on the mutual agreement of the parties in choosing arbitration as a dispute resolution method. According to Abdulkadir Muhammad, arbitration is a private judicial institution outside the general court system, particularly in the corporate or commercial field, and it is a court based on the voluntary choice and decision of the parties, expressed in a written agreement either before or after the dispute arises, based on the principle of freedom of contract.[13] Another view from R. Subekti states that arbitration is a method of dispute resolution carried out by one or more referees based on an agreement made by the parties, whereby the decision rendered by the referee will serve as the basis for the parties.[14] According to Anandyo Susetyo, S.H., M.H., CPArb, CPM, CPLi., Head of the East Java Service Office of the Indonesian Dispute Board (DSI), arbitration is an alternative

[12] Suleman Batubara and Orinton Purba, *Arbitrase Internasional* (Jakarta: Raih Asa Sukses, 2013); Tiong Min YEO, *The Role of Public Policy, Overt and Camouflaged, in International Litigation and Arbitration* (Singapore: National University of Singapore, 1997); Anik Entriani, "Arbitrase Dalam Sistem Hukum Di Indonesia," *An-Nisbah: Jurnal Ekonomi Syariah* 3, no. 2 (April 3, 2017), http://ejournal.iain-tulungagung.ac.id/index.php/nisbah/article/view/617.

[13] Abdulkadir Muhammad, *Pengantar Hukum Perusahaan Indonesia* (Bandung: Citra Aditya Bakti, 1993); Staatsdrukkerij, *Het Herziene Indonesisch Reglement (HIR)* (Indonesia, 1941).

[14] R. Subekti, *Arbitrase Perdagangan* (Bandung: Bina Cipta, 1979).

dispute resolution based on mutual agreement between parties either before the dispute occurs (known as Pactum De Compromittendo) or after the dispute arises by executing a Kompromis Deed expressing willingness to submit the dispute to arbitrators (referees).

Based on the experts' views above, arbitration is essentially a special form of adjudication or dispute resolution but is not conducted by the state. Arbitration is carried out by arbitrators who act as judges, as described in Article 1 point 7 of Law No. 30 of 1999, which defines an arbitrator as a person appointed either by the parties or the court or by an arbitration institution to resolve a particular dispute. In line with this, Amran Suadi, Chair of the Religious Chamber of the Supreme Court of the Republic of Indonesia, in a direct interview during the DSI Arbitrator Technical Training, defined an arbitrator as a person acting like a referee who has received arbitrator certification from a competent training institution and is officially recognized by the state. Based on the type, arbitration agreements are known in two (2) forms:

1. Pactum De Compromittendo

   This form is regulated in Article 2 of Law No. 30 of 1999, which includes the ability to reach an agreement between the parties to submit any future disputes to arbitration. This is done by including an arbitration clause in the main agreement or in a separate document from the main agreement.
2. Compromise Deed

   The legal requirements for a compromise deed are stated in Article 9 of Law No. 30 of 1999, which provides that it must be made after the dispute has arisen, in written form, and signed by all parties. If a party does not sign, it must be made in a notarial deed.

Arbitration Legal System in Indonesia

Dispute resolution through arbitration is valid if the parties agree in writing to use arbitration as the dispute settlement method. In Indonesia, the legal system only recognizes arbitration within an absolute competence framework as follows:

1. National Arbitration: A national arbitral award refers to a decision made under Indonesian law by an Indonesian arbitration institution.[15]
2. International Arbitration: International arbitration arises when the dispute involves parties from more than one country or contains international elements, such as international contracts or cross-border investments.
3. Islamic Law Arbitration (Sharia Arbitration): Sharia arbitration is the process of resolving disputes in accordance with Islamic legal principles. Therefore, in resolving such conflicts, it is necessary to appoint

[15] R. Usman, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan* (Bandung: Citra Aditya Bhakti, 2013); Republik Indonesia, *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)*, n.d., https://jdih.mahkamahagung.go.id/legal-product/kitab-undang-undang-hukum-perdata/detail?utm.

arbitrators with comprehensive expertise and competence in Islamic economic dispute resolution.[16]

Arbitral Awards

An award is the final product of a dispute submitted to an arbitration institution and is binding on the parties, except where the agreement provides otherwise. A decision that complies with the applicable legal provisions, contains sufficient legal reasoning, and has a clear and complete verdict can be considered valid and executable in theory. It also serves as convincing evidence of the facts found by the arbitrator during the proceedings. The award constitutes proof of the determination of the rights and obligations of the parties concerning the subject matter of the dispute. It can be executed voluntarily or mandatorily by state instruments in accordance with applicable regulations.[17]

The nature of an arbitral award is final and legally binding, meaning that the award cannot be appealed, submitted for cassation, or reviewed. If a party fails to fulfill its obligations, the prevailing party may submit an application for enforcement to the court.

RESEARCH METHODOLOGY

This study applies a combination of normative and empirical legal research methods, commonly known as a normative-empirical approach. The integration of these two methods aims to provide a thorough understanding of the legal framework regulating the enforcement of arbitral awards in Indonesia, as well as the practical obstacles encountered in their implementation within judicial practice. In its normative dimension, this research is grounded in the examination of primary legal materials, such as statutory regulations including Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, Law No. 48 of 2009 on Judicial Power, and related Supreme Court Regulations. It also considers international legal instruments that have been ratified and are relevant to international arbitral award enforcement, such as the New York Convention ratified by Presidential Decree No. 34 of 1981. These sources are analyzed systematically to identify legal norms, principles, and procedures that form the legal basis for enforcing both national and international arbitral decisions.

In addition to statutory materials, this research also draws from secondary legal materials, such as doctrines found in scholarly books and journal articles, expert opinions, and previous research discussing the role of the judiciary in

[16] Fadia Fitriyanti, Ani Yunita, and Muhammad Khaeruddin Hamsin, "Peningkatan Kualitas Kompetensi Arbiter Syariah Di Badan Arbitrase Syariah Nasional (BASYARNAS)," *Jurnal Pengabdian Kepada Masyarakat* 4, no. 3 (2020), https://download.garuda.kemdikbud.go.id/article.php?article=1716534&title=PENINGKATAN+KUALITAS+KOMPETENSI+ARBITER+SYARIAH+DI+BADAN+ARBITRASE+SYARIAH+NASIONAL+BASYARNAS+WILAYAH+DIY&val=10000.

[17] Priyatna Aburrasyid, *Arbitrase Dan Alternatif Penyelesaian Sengketa* (Jakarta: Fikahati Aneska, 2002).

arbitration, the limits of enforcement, and issues surrounding public order (ordre public) as a ground for refusal of enforcement. Authors such as Frans Hendra Winarta, Gatot P. Soemartono, and Doni Gusri Putra are consulted for their expertise on arbitration law in Indonesia.

To complement the normative analysis, the empirical component of this research involves gathering data from actual practices in the field. This includes qualitative data obtained through semi-structured interviews with relevant stakeholders such as arbitrators at the Indonesian Dispute Board (Dewan Sengketa Indonesia), court officials in the East Java region, and legal practitioners who have been involved in arbitration enforcement proceedings. These interviews aim to uncover the practical constraints, procedural bottlenecks, and interpretative tendencies of judges when faced with requests for arbitral award execution.

The empirical findings serve not only to validate the normative framework but also to reveal discrepancies between law and practice, particularly in cases where arbitral awards, despite being final and binding, remain unexecuted due to procedural ambiguity, delays in court processes, or resistance from losing parties. This methodological combination is considered essential in the context of this research, as it enables the formulation of a more grounded and realistic understanding of the juridical issues in the enforcement of arbitral awards in Indonesia, both from the perspective of legal doctrine and institutional practice.

RESULT AND DISCUSSION

Enforcement of Arbitral Awards That Have Legal Force

Arbitration can be categorized into two forms: ad hoc arbitration, which is conducted voluntarily, and institutional arbitration, which is organized by a permanent arbitration body. Both arbitration bodies have equal authority to adjudicate and decide disputes arising between parties who have entered into agreements. The difference between the two types lies in the coordination: ad hoc arbitration (not coordinated by any institution) and institutional arbitration (coordinated by an institution).[18] Dispute resolution through arbitration according to Law No. 30 of 1999 and the Indonesian Dispute Board (DSI) consists of several stages as follows:

1. Arbitration Application

   The applicant submits a request to the DSI Secretariat at the Central Office, Provincial Office, or City/Regency Office. The appointment of arbitrators is set forth either through Pactum De Compromittendo or through Kompromis Deed made in a notarial deed or under-hand deed. The application must be accompanied by registration and administrative fees arising from the arbitration dispute resolution process.

[18] Usman, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan*.

2. Registration

   After the applicant submits the request, the Secretariat registers the application in the DSI case register. The DSI Secretary will review the application to determine whether the arbitration agreement provides sufficient grounds for DSI's jurisdiction over the dispute. The arbitration application letter includes the applicant's demands submitted to the DSI. The required contents include the parties' identities, information on the facts supporting the application, and the claims, which can be enforced either voluntarily or mandatorily.

3. Response to the Claim

   The respondent is required to submit a response within thirty (30) days, stating the reply accompanied by other supporting documents.

4. Reply to Counterclaim

   If the respondent submits a counterclaim (reconvention), the original applicant, now the respondent, has the right to provide a response to the counterclaim.

5. Final Decision

   The panel is required to render the final award no later than thirty (30) days after the closing of the hearing. The panel also has the right to issue preliminary, interlocutory, or partial awards. Any dissenting opinions among the arbitrators must be included in the award. The decision must be signed by the arbitrators and state the date and place of issuance.

6. Award Registration

   After the award is delivered to the parties, a copy must be registered by the arbitrator at the District Court. The purpose of this registration is to make the award enforceable and to ensure that the parties comply voluntarily. Registration of the award is imperative. Without registration, an enforcement request cannot be accepted.

Arbitral awards must be registered at the District Court or Religious Court for the following reasons:[19]

1. As mandated by law
2. As part of law enforcement
3. To equate the legal power of arbitral awards with court decisions
4. To enable execution since only the District Court has the apparatus to enforce the award
5. As judicial control over the implementation of dispute resolution

The registration of arbitral awards in court consists of several stages. Within thirty (30) days of the award being rendered by the arbitrator, the original document or authentic copy of the award must be submitted to the Registrar of the District Court. Next is payment of Non-Tax State Revenue (PNBP), followed by the

[19] Dodi, *Arbitrase Dalam Sistem Hukum Indonesia*.

issuance of a registration receipt and a registration deed with a registration number. The junior registrar signs the registration deed, and the deed is handed to the applicant, with the registration documents being archived. The losing party must implement the decision as regulated by law.

The legal consequence of an unenforced award is that it harms the prevailing party, who expects to receive what is rightfully theirs. Time to obtain these rights becomes delayed. Arbitration is chosen because it is expected to be more time and cost efficient than court litigation. Ironically, non-implementation due to lack of initiative by the losing party becomes a barrier to justice seekers.

The enforcement process should begin with the expectation that the losing party will comply voluntarily. In practice, however, the losing party must be compelled to comply, thus delaying execution. Therefore, the award should specify a time limit for voluntary enforcement so the prevailing party may file for enforcement at the relevant court.[20] The Chief Judge of the District Court will summon the respondent for enforcement. This summons serves as a warning of the applicant's request for compulsory enforcement of the arbitral award. This summons and warning by the court are known in civil procedure law as *aanmaning*.

Obstacles in Final and Binding Arbitral Awards

The obstacles to enforcing arbitral awards that are final and binding include several complex legal and practical issues. One of the most common challenges is non-compliance by the losing party. Although the award is legally final, the losing party often resists execution, sometimes by filing for annulment. Even though an arbitral award is declared final and binding, it cannot be executed immediately because the losing party is entitled to request annulment on specific legal grounds.[21] Annulment serves as a judicial mechanism by which one party asks the court to invalidate or refuse to recognize the award, and this process may vary according to the jurisdiction in question.

In Indonesia, Article 70 of Law No. 30 of 1999 stipulates that annulment can be requested if: (a) the documents submitted during the examination are proven to be false or forged after the award is rendered; (b) new decisive documents are found that were previously concealed by the opposing party; or (c) the award is based on fraud committed by one of the parties during the proceedings. These conditions make annulment an additional legal safeguard against fraud in arbitration. However, it also weakens arbitration's intended strength, its speed and finality. The annulment process extends the dispute into court proceedings that are often more time-consuming and costly, depending on procedural laws. Furthermore, the word "may" in the provision allowing courts to use annulment decisions as "consideration" gives judges broad discretion, enabling them to reexamine disputes without fully respecting the arbitral award. This undermines the very essence of

[20] Nugroho, *Penyelesaian Sengketa Arbitrase Dan Penerapan Hukumnya*.
[21] Cicut Sutiarso, *Pelaksanaan Putusan Arbitrase Dalam Sengketa Bisnis* (Yayasan Obor Indonesia, 2011).

arbitration, which is designed to be a simple, fast, and low-cost dispute resolution mechanism.

In addition to annulment, the recognition and enforcement of international arbitral awards face particular technical challenges. Such awards can only be executed in Indonesia if they do not contradict public policy. However, the scope of "public policy" remains ambiguous and contested. An international arbitral award that violates Indonesian public order cannot be recognized or enforced domestically. Citing Jan Van den Berg, Setiawan emphasizes that public policy is closely tied to the principle of territorial sovereignty.[22] Meanwhile, Sudargo Gautama asserts that public policy should function "as a shield and not as a sword," meaning it should protect the integrity of the Indonesian legal system without obstructing legitimate enforcement of foreign awards. This principle is essential, as the failure to enforce arbitral awards damages not only the interests of disputing parties but also Indonesia's international reputation as a reliable and investment-friendly jurisdiction. In today's globalized economy, a credible and efficient legal enforcement system is indispensable to attract foreign investment and sustain the nation's legal credibility.

Improving the efficiency of award enforcement in Indonesia is thus not merely a technical concern but a strategic imperative. Strengthening enforcement mechanisms supports the rule of law, enhances confidence in Indonesia's arbitration system, and improves the country's economic competitiveness in the global market. Other practical obstacles include the losing party's financial inability to pay damages, the complex legal process required to seize or transfer assets, and the frequent use of legal remedies to delay execution.

To overcome these challenges, the prevailing party must remain proactive in ensuring compliance. When voluntary execution fails, the party may seek enforcement through the District Court, which has jurisdiction to compel compliance. Moreover, international recognition and enforcement should be continuously strengthened to guarantee that arbitral awards, both domestic and foreign, can be executed effectively, fairly, and in accordance with Indonesia's commitment to the rule of law.

CONCLUSION

The registration of an arbitral award with the District Court serves as an essential and mandatory procedure that reflects the principle of voluntary compliance among the disputing parties. This process must be undertaken by the arbitrator or their authorized legal representative to ensure that the arbitral decision attains formal legal standing for execution. The act of registration signifies the parties' good faith and acknowledgment of the arbitration's binding nature, reinforcing the legitimacy of the arbitral process within Indonesia's legal system.

[22] S. H. Setiawan, *Aneka Masalah Hukum Dan Hukum Acara Perdata* (Bandung: Alumni, 1992).

Should the arbitrator neglect to register the award, the decision, regardless of its substance or fairness, loses its executory force and cannot be implemented through judicial enforcement mechanisms. Consequently, registration functions not only as a procedural formality but also as a safeguard ensuring that arbitral outcomes are respected and capable of being realized within the framework of legal certainty.

Furthermore, the enforcement of both domestic and international arbitral awards in Indonesia operates under a dual legal framework comprising national law and international treaties ratified by the state, particularly through Presidential Decree No. 34 of 1981. This decree formalized Indonesia's adherence to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, aiming to harmonize national enforcement mechanisms with global standards. Despite this robust legal foundation, practical implementation remains problematic. In many cases, the enforcement of international arbitral awards encounters resistance and procedural delays, primarily due to judicial interpretations that invoke the doctrine of public order. Decisions within the Supreme Court's jurisdiction have, at times, ruled that an arbitral award may not be executed if it is deemed to conflict with Indonesia's public order principles. Such interpretations, while intended to protect national legal integrity, have often been criticized for creating uncertainty and diminishing Indonesia's attractiveness as a jurisdiction that fully supports arbitration as an efficient and final means of dispute resolution.

SUGGESTION

The settlement of disputes through arbitration should be established by mutual agreement between the parties, with a clear commitment to voluntarily comply with the resulting award. Furthermore, a judicial review of the principle of public order should be carried out to ensure that Indonesia becomes more receptive to the recognition and enforcement of international arbitral awards. In addition, it is important to conduct a judicial review of the arbitration framework itself so that, in the future, arbitrators may be granted the authority to directly enforce their own awards without relying on court intervention for execution procedures.

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