



**ENFORCEMENT OF INTERNATIONAL ARBITRATION AWARD
IN ARBITRATION PRACTICE IN INDONESIA**

Frans H. Winarta

**AN UPDATE OF INVESTOR-STATE DISPUTE
SETTLEMENT POLICY IN INDONESIA**

Riyatno

**WIDER JURISDICTION OF THE TRIBUNAL
LIMITED PARTY AUTONOMY
ENGLISH LAW & INDONESIA LAW COMPARED**

Francis Lansakara



WIN-WIN SOLUTION



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Notes to contributors

If you are interested in contributing an article about Arbitration & Alternative Dispute Resolution, please sent by email to bani-arb@indo.net.id. The writer guidelines are as below :

- 1) Article can be written in Bahasa Indonesia or English 12 pages maximum
- 2) Provided by an abstract in one paragraph with Keywords (Bahasa Indonesia for English article & English for Bahasa Indonesia article)
- 3) The pages of article should be in A4 size with 25 mm/2,5 cm margin in all sides
- 4) The article used should be in Ms. Word format, Times New Roman font 12 pt
- 5) Reference / Footnote
- 6) Author Biography (100 words)
- 7) Recent Photograph

From the Editor

BANI celebrates its 40th anniversary

Proud as a member of APRAG, we also celebrate the appointment of BANI Chairman, M. Husseyn Umar as the President of APRAG

As far as the content of this Newsletter edition, we hope you enjoy reading the following articles written by distinguished National and International Arbiters.

Prof. Frans Hendra Winarta, in his article "Agreement Of International Arbitration Award In Indonesia" Restressed on the short comings of the Indonesia Arbitration Law, as he proposed the adoption of the model law or at least practice according to the international arbitration principles

Riyatno and Nova Herliangga Masrie, remind us on the importance of Foreign Direct Investment (FDI) into the economic development of the host country. However, he said, Indonesia is one of the country that consider investor – state dispute settlement (ISDS) should create a neutral forum that offers possibility of a fair hearing especially to the host government. All these explained the discontinuation of Indonesia bits that later on will be renegotiated with the recent model.

Finally, Francis Lansakara, in his article restated again the importance of jurisdiction of the tribunal for the authority who dealing with International Case. Award rendered without justification have no legitimacy. As BANI rules recognizes the jurisdiction of the tribunal, the "difference" between British Model Law compared to BANI Indonesian Law will not be relevant anymore since it reach the same results.

As we approaching the year 2018 we wish you all Happy New Year.

December, 2017



Enforcement of International Arbitration Award in Arbitration Practice in Indonesia

Prof. Dr. Frans Hendra Winarta, S.H., M.H., FCBArb., MCIArb.

Prof. Dr. Winarta is a well-known and reputable arbitrator. He has experience in various kinds of disputes from wide-ranging commercial issues. He has been awarded as a Fellow Chartered BANI Arbitrator (FCBArb.), given under the seal of the Indonesian National Board of Arbitration (BANI). Additionally, he functions as a Member of the Chartered Institute of Arbitrators (MCIArb) in London, the International Court of Arbitration of the International Chamber of Commerce (ICC) in Paris, Panel of Arbitrators in the Hong Kong International Arbitration Centre (HKIAC) and Panel of Arbitrators and IP Panel of Arbitrators in the Singapore International Arbitration Centre (SIAC).

ABSTRAKSI

Dewasa ini, Arbitrase merupakan salah satu alternatif cara penyelesaian sengketa perdagangan yang banyak digunakan dikalangan para pelaku usaha, terutama yang melibatkan transaksi bisnis internasional. Pemilihan forum arbitrase sebagai lembaga penyelesaian sengketa oleh para pelaku bisnis dilatarbelakangi oleh banyaknya keunggulan arbitrase dibandingkan jika bersengketa di pengadilan suatu negara.

Salah satu aspek hukum dalam arbitrase yang menarik untuk dikaji adalah pelaksanaan putusan arbitrase internasional dalam praktek beracara di Indonesia. Dalam perjalanannya, pelaksanaan putusan arbitrase internasional seringkali dihambat oleh pihak yang dikalahkan dengan cara meminta pembatalan putusan arbitrase internasional ke pengadilan.

Dalam tulisan ini, penulis akan membagikan beberapa aspek hukum dalam pelaksanaan putusan arbitrase internasional secara singkat, serta beberapa kasus (*landmark cases*) terkait permohonan pembatalan putusan arbitrase.

Kata Kunci : pelaksanaan putusan arbitrase internasional di Indonesia, arbitrase internasional di Indonesia

A. BACKGROUND INTRODUCTION TO ARBITRATION

In the business community, especially for business transactions involving business actors from different countries (international business transactions), arbitration is one of the preferred forums for business actors to resolve business disputes that may arise in their business activities/transactions. Likewise in Indonesia, arbitration itself has become an alternative dispute resolution that is quite popular among domestic business actors because it has its own advantages compared with the dispute resolution in court. Courts are also considered long-winded, wasting time, energy and high legal cost. Not surprisingly, in practice in the field, cooperation agreements with other parties always contain a commercial arbitration clause and want all business disputes to be resolved through national or international arbitration.

Recognition of international arbitration awards has been known in Indonesia for a long time. This is evidenced by the ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) through Presidential Decree No. 34 of 1981 on the Ratification of the New York Convention 1958. Then to support the procedure for the enforcement of international arbitration awards, the Supreme Court issued the Supreme Court Regulation No. 1 of 1990 on the Procedures for the Enforcement of Foreign Arbitral Awards.

Given the increasing interest of business actors in using arbitration in the dispute resolution process, the government then made a special regulation for arbitration through Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution ("**Arbitration Law**"). In its development, it is deemed necessary for the current Arbitration Law to be amended because it has been left behind by international arbitration practices such as the ICC Rules and Model Law (UNCITRAL).

B. RECOGNITION AND ENFORCEMENT OF INTERNATIONAL ARBITRATION AWARD IN INDONESIA

The Indonesian legal system has specially regulated international arbitration awards. It is shown in Article 1 paragraph (9) of the Arbitration Law which includes the definition of international arbitration awards which can be cited as follows:

"International Arbitration Award shall mean awards handed down by an arbitration institution or individual arbitrator(s) outside the jurisdiction of the Republic of Indonesia, or an award by an arbitration institution or individual arbitrator(s) which under the provisions of Indonesian law are deemed to be International arbitration awards."

The important part to be observed in the definition of international arbitration awards

in that article is that an award shall be considered as an international arbitral award if the arbitration award is rendered by an arbitration institution or an arbitrator outside the jurisdiction of the Republic of Indonesia. It means that, to determine the criteria that the arbitration award is included into the category of international arbitration awards or not, arbitrators use the territorial principle.

Furthermore, international arbitration awards can only be recognized and enforced through the Central Jakarta District Court, after fulfilling the criteria as stipulated in Article 66 of the Arbitration Law. In enforcing the international arbitration award in Indonesia, there are some important matters to be observed, i.e.:

a. Registration of International Arbitration Award

International arbitration awards shall be registered in the Central Jakarta District Court by the arbitrator or by their proxy. For the registration of international arbitration awards, there is no specific timeframe as in the registration of domestic arbitration awards which must be registered within 30 (thirty) days from the date on which the arbitration award is rendered. The registration of an international arbitration award is an important condition to be fulfilled if the winning party wishes to enforce the international arbitration award. This is what needs to be clarified in the new Arbitration Law in addition to practices and customs adopted by international arbitration such as the ICC Rules and Model Law (UNCITRAL).

b. Application for Enforcement of International Arbitration Award

After the registration of the award, the party can submit an application for the enforcement of the arbitral award to the Central Jakarta District Court by enclosing several documents as stipulated in article 67 paragraph (2) of the Arbitration Law (application for exequatur).

c. Exequatur¹

Only after obtaining an exequatur at the Central Jakarta District Court, can the international arbitration award be enforced. In the event that the court refuses to issue an exequatur, the party that received the award has the right to file a cassation with the Supreme Court. On the contrary, if the court issues an exequatur to enforce the international arbitration award, no legal remedy can be sought.

After the Chief Judge of the Central Jakarta District Court issues a writ of execution, then the subsequent enforcement is delegated to the Chief Judge of the District Court that has jurisdiction to enforce it.

C. OBSTACLES IN ENFORCEMENT OF INTERNATIONAL ARBITRATION AWARD IN INDONESIA

In practice, there are several possibilities that may hamper the enforcement of an international arbitration award in Indonesia, which can be elaborated as follows:

1. Refusal against International Arbitration Award

Article 66 of the Arbitration Law authorizes the Chief Judge of the Central Jakarta District Court to not recognize/to refuse the international arbitration award if the award does not meet the provisions stipulated in Article 66 of the Arbitration Law. In this case, the Arbitration Law does not clearly specify whether such rejection may be filed by the parties in the case, as regulated in Article V paragraphs (1) and (2) of the New York Convention. In practice, the parties in the case often mix between the refusal and the setting aside of the international arbitration award. In fact, these are clearly two different matters with different legal consequences. In this case, the Arbitration Law should be clarified and contain more friendly legislation since the

business community tends to use commercial arbitration rather than litigation in court which takes time and legal cost.

2. SETTING ASIDE OF INTERNATIONAL ARBITRATION AWARD

As previously described, parties who are not satisfied with the international arbitration award then submit an application for the setting aside of the arbitral award to the Central Jakarta District Court, whereas in fact referring to the provisions contained in Article V (i) (e) and VI of the New York Convention (International Arbitration), the possibility for an international arbitration award to be set aside is only by the court where the award is rendered. This clearly indicates that the one that has the right to hear an application for the setting aside of the international arbitration award is the court in which the commercial arbitration is held (*lex arbitri*).

Here are some examples of international arbitration cases for which an application for the setting aside of the international arbitral award is submitted to the Central Jakarta District Court:

- **2007 - *Perusahaan Pertambangan Minyak dan Gas Bumi Negara (Pertamina) v. Karaha Bodas Company LLC*.**

In this case, Pertamina submitted an application for the setting aside of an international arbitration award under the UNCITRAL Rules rendered in Geneva. In the first instance, the application from Pertamina was granted at the district court level. But at the appeal level, however, the Supreme Court declared otherwise and refused the setting aside application. According to the Supreme Court, an application for the setting aside of an international arbitration award can only be submitted to the

¹ Also see Supreme Court Regulation No. 1 of 1990 on the Procedures for the Enforcement of Foreign Arbitral Awards

competent court where the award is rendered. In this regard, the Supreme Court refers to the provisions of Article V (1e) of the New York Convention.

- **2010 - PT Bungo Raya Nusantara v. PT Jambi Resources Limited**

In this case, Bungo submitted an application for the setting aside of an international arbitral award to the Central Jakarta District Court. This case was decided in Singapore based on the SIAC Rules. Like the case of Pertamina v. Karaha Bodas, the Supreme Court was of the opinion that the Indonesian court had no jurisdiction to hear and rule upon the application for the setting aside of the international arbitral award filed by Bungo.

- **2010 - Pertamina v. PT Lirik Petroleum**

In this case, Pertamina submitted an application for the setting aside of an international arbitral award to the Central Jakarta District Court. The arbitration case was decided in Jakarta under the ICC Rules. An interesting point to observe in this

case is that the Supreme Court was of the opinion that the arbitration award was an international arbitration award because were are foreign elements, i.e. language, currency, foreign arbitration institution and foreign arbitration rules.

In such case, the Supreme Court rejected the application from Pertamina and stated that the application from Pertamina was baseless by stating that the international arbitration award had violated public order.

Based on the experience from the existing cases, there are some shortcomings that need to be accommodated in the arbitration law in Indonesia. Many have suggested that Indonesia adopt the model law or at least practice international arbitration principles. Given that Indonesia's principle for the enforcement of international arbitration awards was adopted from the New York Convention, the Indonesian Arbitration Law must be adjusted to the principles adopted in the New York Convention.

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An Update of Investor-state Dispute Settlement Policy in Indonesia

Riyatno*
Nova Herlangga Masrie**

Riyatno, Head of Legal Assistance Center of Investment Coordination Board (BKPM)

Republic of Indonesia, earned his law degree from Faculty of Law, University of Gadjah Mada Yogyakarta with cum laude in 1993. In the same year, Riyatno was accepted to work for Bureau of Law and Legislation, Cabinet Secretariat of the Republic of Indonesia. In 1997 he obtained a scholarship from Ausaid to conduct LL.M program at Faculty of Law, The Australian National University, Canberra, Australia and graduated with honors. Subsequently, in 2000 Riyatno continued his doctoral studies program at the Faculty of Law, University of Indonesia, Jakarta, with a scholarship from the Asia Foundation. To complete the dissertation Riyatno conducted a research at the School of Law, University of Washington, Seattle, USA. Riyatno currently works as Director of the Legal Assistance Center of Investment Coordinating Board of the Republic of Indonesia. Riyatno has also been recorded as a member of the Bilateral Investment Treaty Negotiator Team with the United States in 2008-2009.

ABSTRAK

Artikel ini bertujuan untuk memberikan gambaran atas kebijakan pemerintah terkait dengan ketentuan investor-state dispute settlement (ISDS) dalam bilateral investment treaty (BIT) yang telah ditandatangani oleh Pemerintah Indonesia. Beberapa kasus arbitrase internasional yang melibatkan Pemerintah Indonesia menggunakan ketentuan ISDS sebagai dasar untuk mengajukan gugatan. Atas dasar banyaknya kasus arbitrase tersebut, Indonesia kemudian melakukan kajian atas semua BIT dan selanjutnya melakukan diskontinu atas BIT secara bertahap. Hasil dari review tersebut adalah kebijakan baru atas ketentuan ISDS yang nantinya diharapkan tidak hanya memberikan perlindungan kepada investor, tetapi juga perlindungan kepada Pemerintah dari gugatan oleh investor yang tidak berhak.

Kata kunci: Investment treaty, international arbitration, investor-state dispute settlement.

I. INTRODUCTION

It has been recognized that foreign direct investment (FDI) can have significant contributions to the Host State. FDI is considered as “an integral part of an open and effective international economic system and a major catalyst to development”¹. FDI can give economic benefits, such as technology spillovers, human capital formation support, enhancement of competitive business environment, contribution to international trade integration, and improvement of enterprise development². With the benefits, host country usually gives additional protection to the foreign investor during their operation by signing investment treaty with home state.

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¹ The Organisation for Economic Co-operation and Development, “Foreign Direct Investment for Development Maximising Benefits, Minimising Costs: Overview,” <https://www.oecd.org/investment/investmentfordevelopment/1959815.pdf>, p. 3, accessed 12 January 2018.

² Selma Kurtishi-Kastrati, “The Effects of Foreign Direct Investments for Host Country’s Economy,” *European Journal of Interdisciplinary Studies*, Vol. 5, Issue 1, 2013, <http://www.ejist.ro/files/pdf/369.pdf>, accessed 10 January 2018.

One feature of investment protection in investment treaty is called investor-state dispute settlement (ISDS) mechanism. ISDS is a system through which investors can sue countries to the international arbitration for alleged discriminatory practices. The aim of ISDS mechanism is “to create a neutral forum that offers the possibility of a fair hearing before a tribunal unencumbered by domestic political considerations”³. According to UNCTAD:

“The ISDS mechanism was designed for depoliticizing investment disputes and creating a forum that would offer investors a fair hearing before an independent, neutral and qualified tribunal. It was seen as a mechanism for rendering final and enforceable decisions through a swift, cheap, and flexible process, over which disputing parties would have considerable control”⁴.

Even though international arbitration has been acknowledged with several advantages, in practice, there are also concerned regarding systemic deficiencies in ISDS regime, such as legitimacy and transparency, problem of consistency and errors decisions and costs and time of arbitral procedures⁵. The discourse regarding reform of ISDS mechanism has been raised in recent year. “Academics have begun to question whether ISDS delivers benefit it is supposed to, in the form of increased foreign investment”⁶. Several countries have been changed their policy regarding ISDS. Brazil continues to receive lots of foreign investment, despite its long-standing refusal to sign any treaty with an ISDS mechanism.

South Africa and India considering to withdraw from treaties with ISDS clauses. Australia briefly forswore ISDS in the wake of a complaint but its new government says it will consider allowing ISDS in future treaties⁷.

Indonesia is one of the concerned states that consider the ISDS mechanism has to be reformed. Begin in 2013, through the Indonesia Investment Coordinating Board (BKPM), Indonesia has conducted a review of all Indonesia’s bilateral investment treaties. The purpose of this review is to promote the national interest because the Indonesian government is currently difficult to make policies and legislation that emphasizes the protection of the national interests. One main issue on this review is ISDS provision because this provision seems to be problematic and their benefits are far from clear⁸. As a result of this review, Indonesia has made several policies including discontinuing the existing bilateral investment treaties. This paper discusses the recent policy on ISDS. It will begin with the importance of FDI and its treatment in Indonesia, continue with the trend on ISDS, and last part is discussion regarding the development of ISDS policy in Indonesia.

II. THE IMPORTANCE OF FDI AND ITS TREATMENT IN INDONESIA

The economic growth of a country can be measured by the change of Gross Domestic Product (GDP) which one of its components is investment. The greater the investment, the greater the level of economic growth that will be achieved⁹. Conversely, if investment

³ The United Nations Conference on Trade and Development, *Investor–State Disputes: UNCTAD Series on Issues in International Investment Agreements II*, (New York and Geneva: United Nations, 2014), p. 13.

⁴ The United Nations Conference on Trade and Development, “Reform of Investor-State Dispute Settlement: In Search of a Roadmap,” http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d4_en.pdf, No. 2, June 2013, p. 2.

⁵ *Ibid.*

⁶ The Economist, “Investor-state dispute settlement: The arbitration game,” <https://www.economist.com/news/finance-and-economics/21623756-governments-are-souring-treaties-protect-foreign-investors-arbitration>, accessed 10 January 2018.

⁷ *Ibid.*

⁸ Abdulkadir Jailani, “Indonesia’s Perspective on Review of International Investment Agreements,” in *Rethinking Bilateral Investment Treaties Critical Issues and Policy Choices*, ed. Kavaljit Singh and Burghard Ilge, (Amsterdam and New Delhi: Both Ends, Madhyam, Somo, 2016), p. 115-116.

⁹ Badan Pusat Statistik, *Laporan Perekonomian 2017*, (Jakarta: Badan Pusat Statistik, 2017), p. 115.

decreases it can be assumed that economic growth will decrease as well. If reviewed based on contributions to GDP formation from the usage side, investments have the second largest contribution after household consumption. In 2016, investment that is very close to the gross fixed capital formation (PMTB) component reached 32.57% grew by 4.48% although it was still below the target of 7.3%¹⁰.

The government had set a target for investment in 2015-2019 is Rp 3,518 trillion. The target is doubled than in 2010-2014 which only Rp 1,629 trillion. In national mid-term planning (RPJMN) 2015-2019, the realization of FDI and Domestic Direct Investment (DDI) are targeted to Rp 933 trillion by 2019, with an increase of DDI contribution of 38.9 percent¹¹. The government change investment target to Rp 863.0 trillion in 2018 from the initial target of Rp 792.5 trillion¹².

Based on BKPM data, investment realization consistently continues to increase (Figure 1). On the third Quarter/Q3 (July-September) 2017, investment realization reaches Rp 176.6 trillion, consists of Rp. 64.9 trillion of DDI and Rp. 111.7 trillion of FDI. The investment realization in Q3 of 2017 grew by 13.7% compared to the same period in 2016. In the first nine month of 2017, from January-September 2017, investment realization cumulatively reached Rp. 513.2 trillion, achieving 75.6% of national target in 2017 (Rp. 678.8 trillion)¹³.

Countries usually liberalize their FDI regimes and pursued other policies to attract investment. “They have addressed the issue of how best to pursue domestic policies to

Figure 1. Investment Realization Target for 2016 – 2019 (In USD Billion)

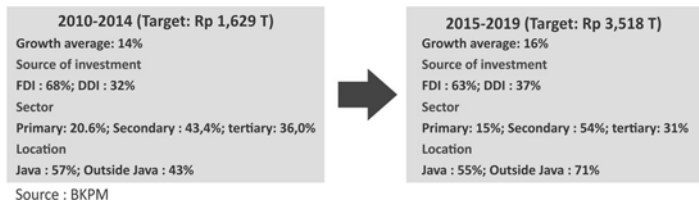
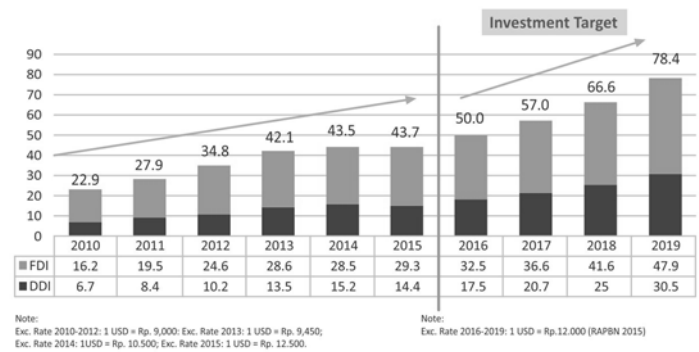
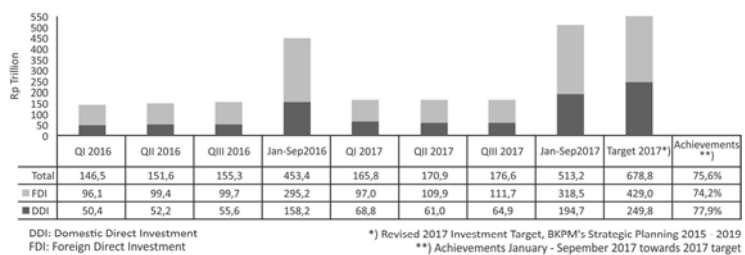


Figure 2. Investment Realization in Quarter III 2017



- Investment value in Quarter III 2017 is the investment realization during three consecutive months of reporting period (July-September 2017) based on the investment realization report from DDI and FDI companies in Indonesia.
- Oil and Gas, Banking, Non-Bank Financial Institution, Insurance, Leasing, and Home Industry are excluded.
- The investment values is in Rp Trillion (T) and the currency rate of US\$ 1 = Rp 13,400 based on Revised National Budget 2017 for Quarter III 2017 (Law Number 8 of 2017).
- Investment Realization in Quarter III 2017: Rp 176.6 T, increase around 3.4% from Quarter II 2017 (Rp 170.9 T) or increases around 13.7% from Quarter III 2016 (Rp 155.3 T).
- Investment realization in January - September 2017: Rp 513.2 T, increases around 13.2% from that in January - September 2016 (Rp 453.4 T).

Quarter III 2017	Y-o-Y	Q-o-Q
DDI	16.8%	6.4%
FDI	12.0%	1.6%
TOTAL	13.7%	3.4%

Jan-Sep 2017	Y-o-Y
DDI	23.1%
FDI	7.9%
TOTAL	13.2%

Source : BKPM

maximise the benefits of foreign presence in the domestic economy”¹⁴. Since 2015, Indonesia has issued various policy packages as a stimulus for the economy and investment. Those packages not only to improve investment climate, but also to provide a positive signal to investors with the

¹⁰ Ibid, p. 45-46.

¹¹ Badan Perencanaan Pembangunan Nasional, *Rencana Pembangunan Jangka Menengah Nasional (RPJMN) 2015-2019*, (Jakarta: Badan Perencanaan Pembangunan Nasional, 2014), hal. 106.

¹² “BKPM Pasang Target Realisasi Investasi Rp863 Triliun di 2018,” <http://ekonomi.metrotvnews.com/mikro/Wb77dmdmb-bkpm-pasang-target-realisasi-investasi-rp863-triliun-di-2018>, accessed 9 November 2017.

¹³ Badan Koordinasi Penanaman Modal, “Realisasi Penanaman Modal PMDN-PMA Triwulan III dan Januari – September Tahun 2017, 30 Oktober 2017,” http://www2.bkpm.go.id/images/uploads/file_siaran_pers/Paparan_INDO_TW_III_2017_FINAL_update.pdf, accessed 5 January 2018.

¹⁴ The Organisation for Economic Co-operation and Development, “, op cit, p. 5.

ease of doing business in Indonesia. The latest policy published by the Government on the acceleration of business implementation announced on 31 August 2017 (Economic Package 16). The objective of this package is to speed up the issuance of business license and to provide greater certainty on the cost and time involved and to improve coordination between ministries and provincial administrations¹⁵.

In order to attract more FDI, host state in most cases giving preferential treatments to the foreign investor during their operation. In Indonesia, the treatments can be found in:

1. Investment Legislation

Law No. 25 Year 2007 (Investment Law) contains several provisions to protect foreign investors, such as guarantee for non-nationalization¹⁶, flexibility of transfer and repatriation of profit¹⁷, and international arbitration for investment disputes¹⁸.

2. Investment contracts

The contract made by government and investor may protect investors from changes in law or regulation which adversely affect their interests. Investment contracts often contain stabilization clauses. The disputes may arise concerning difference in interpretation of terms, failure to meet contract obligations, unilateral action by a party, contract compliance, and settlement dispute provision. Contract of Work between the Government of Indonesia and PT Freeport Indonesia is one example that contains this treatment¹⁹.

3. Bilateral/regional/multilateral investment treaty

The investment treaties commonly include provisions which establish specific protections for investors from the respective states, i.e. protection from expropriation without compensation, most favored nation, national treatment, fair and equitable treatment, full protection and security, and free transfer of investment and returns. Breach of those provisions can be brought under ISDS mechanism in investment treaty that signed by Indonesia and other countries.

III. TREND OF ISDS IN INTERNATIONAL INVESTMENT AGREEMENTS

Nowadays, International Investment Agreements (IIAs) still be used as an instrument to promote investment flows, depoliticize disputes between investors and states, promote the rule of law, and provide compensation for certain harms to investors²⁰. This argument is supported by the fact that the number of IIAs signed by countries continues to grow. UNCTAD reported that 37 IIAs (30 Bilateral Investment Treaties/BITs and 7 treaties with investment provisions/TIPs) were concluded in 2016, and the total number of agreements to 3,324 treaties (2,957 BITs and 367 TIPs) by year-end²¹. The BIT basically provides foreign investors with a substantive legal protection, including the article on fair and equitable treatment, full protection and security, free transfer, and expropriation and compensation. Meanwhile, the TIPs cover a variety of international agreements with investment protection,

¹⁵ "Govt launches 16th economic package to boost investment," <http://www.thejakartapost.com/news/2017/08/31/govt-launches-16th-economic-package-to-boost-investment.html>, August 31, 2017, accessed 11 January 2018.

¹⁶ Article 7 Law No. 25 Year 2007.

¹⁷ Article 8 Law No. 25 Year 2007.

¹⁸ Article 32 (4) Law No. 25 Year 2007.

¹⁹ Contract of Work between the Government of Indonesia and PT Freeport Indonesia Company signed in 1991. Article 21 of the CoW contains settlement dispute provision stipulates that the Government and the Company consent to submit all disputes between the Parties either by conciliation or arbitration with the UNCITRAL Rules. <https://www.sec.gov/Archives/edgar/data/831259/000083125901500022/exh101.txt>.

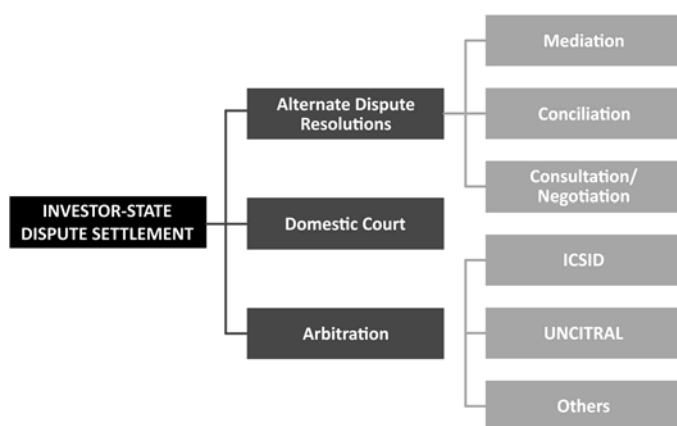
²⁰ Lise Johnson, Brooke Skartvedt Güven, and Jesse Coleman, "Investor-State Dispute Settlement: What Are We Trying to Achieve? Does ISDS Get us There?" <http://ccsi.columbia.edu/2017/12/11/investor-state-dispute-settlement-what-are-we-trying-to-achieve-does-isds-get-us-there/>, accessed on 8 January 2018.

²¹ The United Nations Conference on Trade and Development, World Investment Report 2017: Investment and The Digital Economy (Geneva: United Nations, 2017), p. 111.

promotion and/or cooperation provisions other than BITs.

OECD has surveyed a sample of 1,660 BITs and other bilateral agreements with investment chapters (mainly Free Trade Agreements, FTAs) that contains ISDS provisions. This provision is a major component of investment IIAs. OECD found that 93% of the sample treaties allow access to international arbitration²². Basically, the investor can resolve disputes by using domestic courts and tribunals, through international arbitration including International Centre for Settlement of Investment Disputes (ICSID), United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, and other agreed rules, or alternative dispute methods: mediation, conciliation, consultation/negotiation (Figure 3). Nevertheless, there are a great deal of diversity in ISDS provisions that are more than 1,000 different rule sets on ISDS among only 1,660 bilateral treaties has been surveyed by OECD²³.

Figure 3. ISDS Mechanism in BIT



The increase of IIAs has been paralleled by an increase of investor-state disputes. According to UNCTAD, the number of ISDS cases remains high. As of 31 July 2017, investors brought at least 35 known investor

-State arbitrations pursuant to international investment agreements. The number of known cases for 2016 has gone up from 62 to 69 cases. The total number of publicly known arbitrations against host countries has reached 817 cases. This number could be higher considering the arbitration can be kept confidential under certain circumstances²⁴. Eighty percent of investment arbitrations were brought under BIT and the remaining based on TIPs²⁵.

IV. INDONESIA’S POLICIES ON ISDS

To picture the development of ISDS policy in Indonesia, the description will be divided into three periods of time. First period (1967-1990) is the period when Indonesia enacted Law No. 1 Year 1967 concerning Foreign Investment and signed its first BITs; Second period (1990-2013) is when Indonesia began to sign BITs after some time and enacted Law No. 25 Year 2007; and Third period (2013-Present) is the period after Indonesia review of all BITs and begin to discontinue all its BITs with other countries.

A. Period of 1967-1990

The rule of ISDS in Indonesia can be traced back to 1967 when the Government of Indonesia enacted Law No. 1 Year 1967. This Law provides for the dispute settlement regarding compensation for nationalized investment/revocation of ownership rights of foreign capital enterprises, or take steps to restrict the rights of control and/or management of the enterprises concerned. If no agreement reached between two parties on type and method of payment of compensation, arbitration shall take place on both parties. The arbitration shall be conducted by a board arbitrators consisting three person²⁶. Nevertheless, “The Foreign Investment

²² The Organisation for Economic Co-operation and Development, *Dispute settlement provisions in international investment agreements: A large sample survey*, [http://www.oecd.org/investment/internationalinvestment agreements/50291678.pdf](http://www.oecd.org/investment/internationalinvestment%20agreements/50291678.pdf), p. 5, accessed on 8 January 2018.

²³ *Ibid*, p. 5-6.

²⁴ The United Nations Conference on Trade and Development, *Special Update on Investor–State Dispute Settlement: Facts and Figures*, November 2017, Issue 3, [http://unctad.org/en/PublicationsLibrary/ diaepcb2017d7_en.pdf](http://unctad.org/en/PublicationsLibrary/diaepcb2017d7_en.pdf), p. 2, accessed on 8 January 2018.

²⁵ *Ibid*, p. 3

²⁶ Article 22 Law No. 1 Year 1967.

Law does not specify what rules should govern the arbitration, where the arbitration should be held, or how the third arbitrator should be chosen in the event of a deadlock”²⁷.

Indonesia became a member of ICSID in 1968 when ratified the ICSID Convention with Law No. 5 of 1968 concerning the Settlement of Disputes between States and Nationals of other States on Capital Investment. Under the Convention, investment disputes between a foreign investor and the host government arising out of an investment may, with the consent of the parties, be submitted to arbitration under ICSID²⁸. The ratification of the Convention does not mean that the Government directly give its consent to the ICSID Rules. It still needs a written consent by the Government before the case can be brought to the Tribunal²⁹. With respect to the consent, ICSID has provided a model of Arbitration Agreement or Arbitration Clause that can be used by the party to consent³⁰.

In the past, the Government’s model of investment application form included an arbitration clause. Therefore, by its approval of the investment application, the Government consents to the settle the dispute to the jurisdiction to the Centre.

“D. Arbitration. With the explicit preclusion of disputes concerning tax matters, it is requested that in all disputes arising between the Joint Venture Company and the Government of the Republic of

Indonesia regarding the interpretation or the implementation of this investment application (project proposal) approved by the Government of the Republic of Indonesia, which cannot be settled amicably, shall be settled under the Rule of the Settlement of Investment Disputes between States and Nationals of Other States, to which the Republic of Indonesia is a member”³¹.

This arbitration clause in investment application had been used by the foreign investor to sue the Government in *Amco Asia v. Indonesia*³². An ICSID tribunal determined that it had jurisdiction over a claim by two foreign companies and their wholly-owned Indonesian subsidiary against the Indonesian government for compensation arising out of an alleged taking of a hotel investment. Base on that case, BKPM had not included any model ICSID arbitration clause in its model form investment application³³.

In this period, Indonesia signed its first BIT with Denmark on 30 January 1968 and continue with several countries³⁴. The diversity of ISDS provisions can be found in the first period of Indonesia’s BITs. Indonesia-France (1973) and Indonesia-Switzerland BIT (1974) do not have ISDS provision but Indonesia-Netherland BIT (1968) has ISDS provision with procedure in which granting the investor of the other contracting party to submit conciliation and arbitration to ICSID³⁵. Under Indonesia -Belgium BIT (1968), Contracting Party

²⁷ Robert N. Hornick and Mark A. Nelson, “Foreign Investment in Indonesia,” *Fordham International Law Journal*, Volume 11, Issue 4, 1987, Article 2, p. 751-752.

²⁸ Article 25 (1) Convention on The Settlement of Investment Disputes Between States and Nationals of Other States.

²⁹ Article 2 Law No. 5 Year 1968.

³⁰ Sudargo Gautama, “*Arbitase Internasional Mengenai Perselisihan Penanaman Modal*,” *Majalah Hukum dan Pembangunan*, Vol 11, No 4 1981, p. 329-330, <http://jhp.ui.ac.id/index.php/home/article/view/853/777>, accessed 14 January 2018.

³¹ Robert, *op. cit.*, p. 750.

³² *Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1.

³³ Robert, *op. cit.*, p. 750-751.

³⁴ Germany (1968), Netherlands (1968), Norway (1969), Belgium (1970), France (1973), Switzerland (1974), United Kingdom (1977).

³⁵ Indonesia - Netherland BIT (1968), Art. XI “The Contracting Party in the territory of which a national of the other Contracting Party makes or intends to make an investment, shall assent to any demand on the part of such national and any such national shall comply with any request of the former Contracting Party, to submit, for conciliation or arbitration, to the Centre established by the Convention of Washington of March 18, 1965, any dispute that may arise in connection with the investment.”

irrevocably and anticipatory gives its consent to submit to conciliation and arbitration any dispute relating to a measure contrary to this Agreement, pursuant to the ICSID Convention³⁶.

Beside BITs, Indonesia also signed regional investment agreements with the Organisation of the Islamic Conference (OIC)³⁷ and the Association of Southeast Asian Nations (ASEAN)³⁸. Both agreements consist of ISDS provisions. Article 17.1 of OIC Agreement states that “until an organ for the settlement of disputes is established, disputes that may arise shall be entitled through conciliation or arbitration”. There follows procedures for the bringing of claims through conciliation and to arbitration. Article X (Arbitration) of ASEAN Agreement for the Promotion and Protection of Investments provide the right of ASEAN investor to conciliation or arbitration against the host state if amicable settlement failed. The dispute may be brought before ICSID, UNCITRAL, the Regional Centre for Arbitration at Kuala Lumpur or any other regional centre for arbitration in ASEAN, whichever body the parties to the dispute mutually agree to appoint for the purposes of conducting the arbitration.

B. Period of 1990-2012

Since Indonesia-the United Kingdom BIT signed in 1977, there were no BIT signing until the Government signed BIT with Singapore in 1991. After that, abundance of BITs and TIPs with ISDS provision have been signed. The ISDS provisions ranging from offering a very limited jurisdiction over specific compensation issues to broad options to arbitrate any

(contractual or treaty-based) investment dispute. Most of Indonesia’s BITs contain quite similar wording and phase on ISDS provision³⁹. First, it regulates that any dispute between a Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the territory of the former, shall be settled amicably through consultations and negotiations. Second, if such a dispute cannot be settled within certain a period of time (mostly six months) from the date of a written notification either party requested amicable settlement, the dispute shall, at the request of the investor concerned submitted, either to the judicial procedures provided by the Contracting Party concerned or to international arbitration or conciliation. Third, the party consent or investor is entitled to submit the case to international arbitration (the Court of Arbitration of the International Chamber of Commerce, UNCITRAL, and/or ICSID). Nevertheless, there are some modifications on ISDS provisions in some BITs that:

1. Emphasizes a dispute not only from an alleged breach of any right conferred or created by this Agreement with respect to an investment by such investor but also an obligation entered into by that Contracting Party with the investors of the other Contracting Party regarding an investment by such investor⁴⁰.
2. Limit the scope of a dispute regarding the amount of compensation resulting from expropriation that may be submitted to the tribunal⁴¹.

³⁶ Art. 10, Indonesia-Belgium BIT (1968).

³⁷ Agreement on Promotion, Protection and Guarantee of Investments Among Member States of the Organisation of the Islamic Conference, entered into force on 23 September 1986.

³⁸ Agreement among the Government of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore, and the Kingdom of Thailand for the Promotion and Protection of Investments, signed in Manila, 15 December 1987.

³⁹ For example, Indonesia-Lao BIT (1994), Indonesia-Kyrgyz BIT (1995), Indonesia-Jordan BIT (1996), Indonesia-Cuba BIT (1997), Indonesia-Bangladesh BIT (1998), Indonesia-India BIT (1999), Indonesia-Bulgaria BIT (2003).

⁴⁰ Art. VII.1 Indonesia-Malaysia (1994).

⁴¹ Indonesia-China BIT (1994), Art. IX:” If a dispute involving the amount of compensation resulting from expropriation cannot be settled as specified in paragraph 1 of this Article within six months, it may be submitted to an ad hoc arbitral tribunal...”. See also art IV (Expropriation) Indonesia-Turkmenistan (1994).

3. Include fork-in-the-road clauses typically provide that a choice to submit an investment dispute to one of the alternatives, provided in a treaty, will be a final. Thus, investors should effectively choose whether they use domestic courts or international arbitration⁴².
4. Added with some provision contains that the award shall be final and binding, and neither Contracting Party shall pursue the dispute through diplomatic channel once a dispute has been submitted to competent tribunal or international arbitration⁴³.
5. States the Party commitment to execute the award according to its national law⁴⁴.

Generally, dispute resolution in Indonesia is governed by Law No. 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution. This Law recognizes and regulates both domestic and foreign arbitration. The Arbitration Law is not based on the UNCITRAL Model Law on International Commercial Arbitration and most parts of the Arbitration Law concern domestic arbitration and provides the procedure and requirements for enforcing an international arbitration award⁴⁵.

In 2007, Indonesia enacted its new investment law with Law No. 25 Year 2007. This Law addresses key issues that are faced by investors in doing a business in Indonesia including the settlement of investment disputes mechanism. The

Investment Law states that any investment disputes arise between the government and investors must first be settled through negotiation in order that an amicable solution be reached. If this approach fails, the disputing parties may either bring the dispute before a court or attempt to settle it through alternative dispute resolution or arbitration. The Investment Law further provides that the government and domestic investors may go to arbitration for a settlement based on an agreement of the parties, and if a dispute settlement through arbitration is not agreed on, then the dispute settlement shall be made in a domestic court. Meanwhile, disputes between the government and foreign investors can be settled through the international arbitration mechanism of the disputing parties' choice⁴⁶.

The scope of investment dispute in Law No. 25 Year 2007 is quite different with previous Law. This law states that all investment disputes can be brought to the international arbitration that must be agreed on by the parties. BIT/FTA/Contract may include automatic consent from the government that gives access to an investor to bring any dispute against the host state to international arbitration⁴⁷. If there is no such written consent from the Government, the investor may go to domestic court. The scheme of investment dispute settlement shows below in Figure 4.

⁴² Indonesia-Mauritius BIT (1997), Art. IX: 'If any dispute cannot be settled as specified in paragraph 1 of this Article within six months, it may be submitted to an ad hoc arbitral tribunal. The provisions of this paragraph shall not apply if the investor concerned has resorted to the procedures specified in paragraph 2 of this Article'. See also art. XI Indonesia- Saudi Arabia BIT (2003).

⁴³ Art. IX Indonesia-Chile BIT (1999).

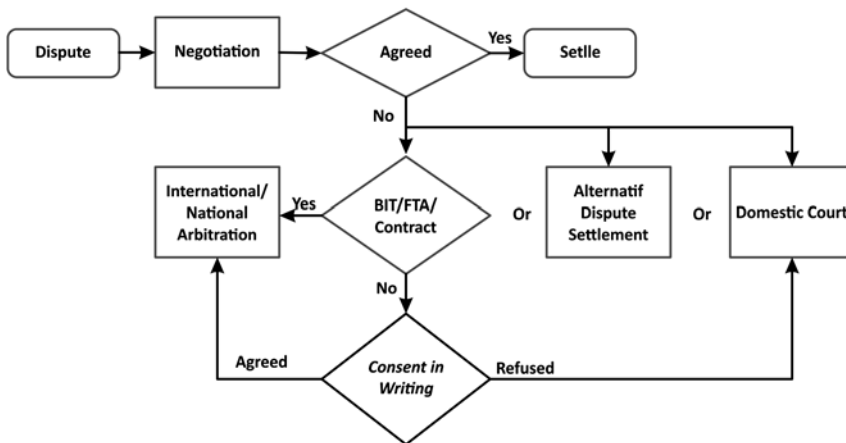
⁴⁴ Art. X Indonesia-Spain BIT (1995).

⁴⁵ Indonesia already ratified the New York Convention on 5 August 1981 under Presidential Decree No. 34 Year 1981, and this Convention has been in force in Indonesia since 5 January 1982.

⁴⁶ Article 32 Law No. 25 Year 2007.

⁴⁷ Indonesia-Bangladesh BIT (1998), Art. VII.3: "Each Contracting Party hereby consents to submit any dispute arise between that Contracting Party and a national of the other Contracting Party concerning an investment of that national in the territory of former Contracting Party to the International Centre for Settlement Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between State and Nationals of other States opened for signature at Washington D.C. on 18 March 1965. See also Art. VII.3 and Indonesia-Algeria BIT (2000).

Figure 4. Investment Dispute between Government of Indonesia and Investor



In this period, Government’s model of investment application for principle license included a clause that states:

“5. foreign investment companies, in the event of a dispute between the company and the Government of the Republic of Indonesia which can not be settled amicably, the Government of Indonesia consent to settle the dispute in accordance with the provisions of the Convention concerning the settlement of disputes between States and Nationals of other States on Capital Investment in accordance with the law number 5 years 1968”⁴⁸.

Therefore, by the approval of the investment application, the Government consent to the settle the dispute to the jurisdiction to the ICSID. Nevertheless, by the Regulation of Chairman of Indonesia Investment Coordinating Board Model No. 5 Year 2013 that particular clause had been removed⁴⁹. This policy continues in the latest BKPM’s regulation No. 13 Year 2017 concerning Guidelines and Procedures for the Implementation of Capital Investment Licensing and Facilities on 22 December 2017.

In 2009, the ASEAN Comprehensive Investment Agreement (ACIA) was adopted in 2009. The agreement replaces two prior agreements: the ASEAN Investment Guarantee Agreement (1987) and the ASEAN Investment Area Agreement (1998). One component of the ACIA is its ISDS and the promotion of alternative dispute resolution methods. ASEAN Investors under ACIA may benefit from access to the ISDS

mechanism. According to Jan Knoerich and Axel Berger that “ACIA has the most elaborate ISDS provisions, comprised of a whole section in the agreement. The provision is limited to certain investors and recent cases, and it applies only to specific IIA provisions”⁵⁰. ASEAN - Australia - New Zealand Free Trade Area/ AANZFTA (2009) agreements and the Indonesia-Japan Economic Partnership Agreement/IJEPA (2007) also have elaborate ISDS provisions.

ASEAN investors can resolve disputes by using domestic courts and tribunals, through international arbitration including ICSID, UNCITRAL, and other agreed rules, and by means of alternative dispute methods: mediation, conciliation, consultation, and negotiation. A disputing investor must show that it incurred a loss or damage by reason of or arising out of the breach of the host ASEAN member state of its obligations under ACIA relating to the management, conduct, operation or sale or other disposition of a covered investment⁵¹. The process of an action under ISDS is described in the flowchart below (Figure 5).

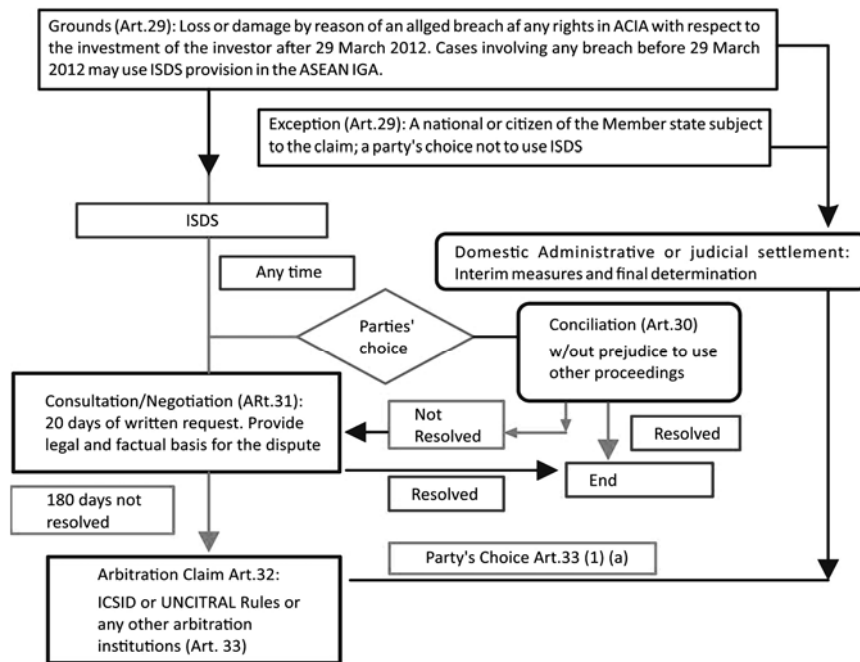
⁴⁸ Appendix IV, Regulation of Chairman of the Investment Coordinating Board No. 12 Year 2009 concerning the Guidance and Procedure of Investment Applications.

⁴⁹ Regulation of Chairman of the Investment Coordinating Board No. 5 Year 2013 concerning the Guidelines and Procedures for Licences and Non-Licences for Capital Investment.

⁵⁰ Jan Knoerich and Axel Berger, “Friends or Foes? Interactions between Indonesia’s International Investment Agreements and National Investment Law,” Studies (Bonn, Deutsches Institut fur Entwicklungspolitik), p. 99.

⁵¹ ASEAN Secretariat, *ASEAN Comprehensive Investment Agreement: A Guidebook for Business and Investors*, (Jakarta: ASEAN Secretariat, 2013), p. 23.

Figure 5. Dispute Settlement Mechanism in ACIA



Source: ASEAN Comprehensive Investment Agreement: A Guidebook for Business and Investors

During this period, Indonesia has been involved in several international investment arbitration cases based on treaty or contract. *Cemex Asia Holdings Ltd v. Indonesia* (ICSID Case No. ARB/04/3); *Rafat Ali Rizvi v. Republic of Indonesia* (ICSID Case No. ARB/11/13); *Nusa Tenggara Partnership B.V. and PT Newmont Nusa Tenggara v. Republic of Indonesia* (ICSID Case No. ARB/14/15); *Himpura Energy v. Republic of Indonesia*; *Karaha Bodas v. Republic of Indonesia*, *Hesham Talaat M. Al-Warraq v. Republic of Indonesia*, and *Churchill Mining v. Indonesia*⁵². The Churchill Mining case has been considered as a triggered Government of Indonesia to review its policy regarding investment treaty including ISDS provision.

⁵² In this case, claim arising out of the unilateral revocation by the Government of mining licenses in which the claimants held interests. The amount of the claim was 1315.00 million USD. *Churchill Mining and Planet Mining Pty Ltd v. Republic of Indonesia* (ICSID Case No. ARB/12/40 and 12/14), <http://investmentpolicyhub.unctad.org/ISDS/Details/452>, accessed 12 January 2018.

⁵³ Abdulkadir Jailani, *op. cit.*, p 113.

⁵⁴ Argentina, Belgium, Bulgaria, Cambodia, China, Egypt, France, Germany, Hungary, India, Italy, Kyrgyzstan, Laos, Malaysia, Netherland, Norway, Pakistan, Romania, Singapura, Slovakia, Spain, Switzerland, Turkey, United Kingdom, and Vietnam.

In September 2012, the President of Indonesia issued Presidential Decree No. 31 Year 2012 to exclude disputes arising from state administrative decisions issued by Regencies (Kabupaten) from the types of disputes that may be settled by ICSID. This reservation is based on Article 25 Paragraph (4) of ICSID Convention that entitles the signatory country to make notification to the Centre on the types of disputes which it would or would not consider submitting to the jurisdiction of the Centre.

C. Period of 2013 - present

In the beginning of 2013, Indonesia has begun reviewing of all Indonesia' BITs. "The review envisages a critical evaluation of the impact of existing IIAs on the Indonesian national economy and formulation of a new approach towards IIAs, which will be fine-tuned in favor of its interest in pursuing national development goals"⁵³. The policy to discontinue the BITs was taken as a result this review. The first BIT discontinued by Indonesia was Indonesia-Netherland BIT with entry into force on 1 July 2015. Up to August 2017, Indonesia has discontinued 25 of 64 of its BITs⁵⁴.

Although those BITs has been discontinued, investor protections remain in place for the existing investments due to to a provision known as the 'survival clause'. This provision allows the existing investors, who have had their investments

made or acquired prior to the date of discontinuation, to enjoy continues protection for a certain amount of time (usually 10 to 15 years). Beside the BITs, the investor can also seek a protection from regional investment agreement in ACIA and other ASEAN-Dialogue Partners investment agreement/chapter.

In the review, the expert recommended renegotiating all the Indonesian BITs with the purpose of obtaining a better agreement including ISDS provisions⁵⁵. The choice to exclude ISDS from BITs was not advised in this review, according to Abdulkadir Jailani: “..... excluding ISDS provisions altogether might not be a wise approach. Therefore, Indo-nesia considers limiting the scope of application of the ISDS provision”⁵⁶. In that article, Jailani highlights the result of the review on the limitation of ISDS provision, substantively and procedurally as describe below:⁵⁷

1. Substantive limitations

- a. Limiting the definition of investment (a combination between an asset-based and enterprise-based approach that targets particular investments). Portfolio investment is excluded from the definition.
- b. Limiting the scope of National Treatment (NT) provision which only covers the post-establishment phase. The NT clause also considers excluding special treatment in favor of domestic small and medium-sized enterprises, measures affecting certain sectors related to development needs, particularly natural resources and sectors that have close ties to national security.
- c. Limiting the scope of Most-Favored-Nation (MFN) provision with some exclusions: pre-establishment measures; any existing or future

regional FTAs and EPAs; existing and future IIAs; ISDS provisions; and any preferential system for least-developed countries.

- d. Replacing Fair and Equitable Treatment (FET) with Standard Treatment provision, which shifts the focus from investor rights to protection from denial of justice. In this provision, assurances were made regarding the fact that investors shall not be subjected to denial of justice in criminal, civil or administrative proceedings.
- e. Excluding the provision on indirect expropriation. This also means that any measures that have effect or consequences that amount to expropriation shall be excluded from the clause of direct expropriation. This is done to preserve a greater degree of regulatory space for Indonesia to pursue its development goals.

2. Procedural limitation

An investor may bring a case to international arbitration if the investor and the host state have expressed their consent to settle the case through arbitration. A special agreement to settle a dispute through international arbitration would be required on a case-by-case basis. This approach would be expected to cut down the number of ISDS claims in international arbitration. At the same time, it will also promote settlement of investor-state disputes through the domestic courts or alternative dispute resolutions.

From those descriptions, it is obvious that the new ISDS provisions will be more comprehensive yet restrictive than the general ISDS provisions in Indonesia’s BITs. With the new provision, the BIT will only

⁵⁵ Indonesia Investment Coordinating Board, *Review of Indonesian Bilateral and Multilateral Investment Treaty*, (Unpublished: 2014), p. 163.

⁵⁶ Abdulkadir Jailani, *op. cit.*, p 122.

⁵⁷ *ibid.* p. 123-126

cover specific investment and limit the enforceability of ISDS on several cases. It also requires separate agreement if the investor wishes to settle the dispute in an international tribunal. Thus, it is interesting to look at how the Government of Indonesia negotiates this provision in future negotiation since, after the pending of all the BIT negotiations⁵⁸, Indonesia has begun to negotiate with another country. Indonesian Foreign Minister said that Indonesia “was able to reach an agreement for a new BIT with the United Arab Emirates, and now negotiating with Qatar. Next, we’ll be negotiating with Singapore”⁵⁹ The negotiation is a good signal for foreign investor on the Government of Indonesia policy to invite more FDI to Indonesia by signing a new BIT.

Regarding dispute in international arbitration, Churchill Mining case is still ongoing. The claim has been dismissed by the Tribunal, but the case is still pending because of the Claimant has filed for annulment⁶⁰. In 2015, Indonesia has been sued India Metals Ferro Alloys. The claim is filed with the Permanent Court of Arbitration in The Hague and use UNCITRAL Rules. The claim arising out of alleged overlaps between the claimant’s coal mining permits and those of other companies, resulting in conflicting rights to mine coal in the same territory. The claim is US\$ 559.00 million and was filed under Indonesia-India BIT(1999)⁶¹. Recently, a new claim was filed against Indonesia by Oleovest Ltd. under Indonesia-Singapore BIT (2005). The nature of the dispute is not made public yet, but Oleovest won a \$3.4

million arbitral award in 2014 from an Indonesian government-owned palm plantation company, according to financial filings by Oleovest’s former parent, Mission NewEnergy Ltd. of Australia⁶². The latest development on this case is the acceptance of Stanimir Alexandrov (Bulgarian) regarding appointment as presiding arbitrator after appointment by the Chairman of the Administrative Council⁶³.

V. CONCLUSION

To summarize, it is undoubtedly that Indonesia needs FDI to increase economic growth. Numerous economic policies have been launched by the Government in order to attract more FDI in Indonesia. The recent condition shows that Indonesia has been sued by the investor base on the investment treaties. Indonesia began the review of Indonesia’s BITs. This policy is followed by discontinuation of its BITs and will be renegotiate with the recent model.

This discontinuation does not mean that the Government of Indonesia does not protect the investor. This policy is taken by the Government as an effort to make a better investment agreement that suits in the recent condition. Further, this policy is not only to protect the investor but also give the Government space to make its development policy. The new ISDS provision was drafted not only to limits the substantive but also the procedural with the aim to limit investment dispute in international tribunal. This new provision is expected can be accommodated in the investment treaty negotiation.

⁵⁸ The negotiation pending is only related to BITs, other agreement especially in FTA or CEPA still on going. Right now Indonesia is in the process of negotiating investment agreement in ASEAN Regional Partnership Agreement (RCEP), Indonesia-EFTA Comprehensive Economic Partnership Agreement (IE-CEPA), and Indonesia-European Union Comprehensive Economic Partnership Agreement (IU-CEPA).

⁵⁹ “FM Retno Marsudi on Indonesian Foreign Policy in 2017,” <http://insight.jakartaglobe.id/fm-retno-marsudi-on-2017-foreign-policy/>, accessed on 12 January 2018.

⁶⁰ Churchill Mining Plc and Planet Mining Pty Ltd, formerly ARB/12/40 v. Republic of Indonesia (ICSID Case No. ARB/12/40 and 12/14), <https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB/12/40%20and%2012/14>, accessed 12 January 2018.

⁶¹ Indian Metals & Ferro Alloys Ltd v. Republic of Indonesia (PCA Case No. 2015-40), <http://investmentpolicyhub.unctad.org/ISDS/Details/682>, accessed 18 January 2018.

⁶² JackNewsham, *Biofuels Co. Demands Indonesia Arbitrate Dispute At ICSID*, <https://www.law360.com/articles/827407/biofuels-co-demands-indonesia-arbitrate-dispute-at-icsid>, accessed 12 January 2018.

⁶³ *Oleovest Pte. Ltd. v. Republic of Indonesia* (ICSID Case No. ARB/16/26), <https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB/16/26>, accessed 18 January 2018.



London Arbitration case 1/15 **Wider Jurisdiction of The Tribunal Limited Party Autonomy**

English law & Indonesian law compared

Francis Lansakara, Master Mariner. LLM (maritime law). MCI Arb

Francis Lansakara, a master mariner and Director JMC NAUTICAL PTE LTD Singapore, in 2009 he was awarded Master of Laws (LLM) with specialization in Maritime Law from University of London. His research area include articles on maritime law on salvage, compensation on marine pollution, carriage of goods by sea, duties of harbor authority and arbitration. He is also the author of the web page www.fslawstudies.com. In 2014 he was awarded a fellowship by Nautical Institute of London in recognition for his work contributed to maritime education and training.

Abstract

Jurisdiksi majelis arbitrase sangat penting sebagai dasar kewenangan dan kekuatan pembentukan putusan dari para arbiter. Putusan yang diberikan tanpa jurisdiksi tidak memiliki legitimasi. Oleh karena itu sangat penting untuk menyelesaikan masalah jurisdiksi pada tahap awal suatu proses arbitrase. Ada kesamaan tentang jurisdiksi majelis menurut hukum Indonesia dan hukum Inggris. Jurisdiksi majelis tergantung pada kesepakatan para pihak (*party autonomy*), sebagaimana juga dalam hal kesepakatan batas waktu, biaya, dan pilihan hukum.

Sebagai kesimpulan, semua negara penganut Model Law termasuk Inggris mengakui klausul arbitrase yang memiliki jurisdiksi yang lebih luas; tetapi dari kasus yang dibahas menunjukkan jurisdiksi lebih luas tersebut tunduk pada perumusan persyaratan dan otonomi para pihak dalam menentukan batas-batas jurisdiksi pengadilan arbitrase. Perbandingan antara dua rezim hukum antara Inggris dan Indonesia menunjukkan bahwa dalam hal pembentukan majelis arbitrase, pemahaman kedua hukum adalah sama.

Kata kunci : Jurisdiksi majelis, otonomi para pihak, hukum Indonesia, hukum Inggris.

"The jurisdiction of the tribunal is fundamental to the authority and decision making power of the arbitrators. Award rendered without jurisdiction have no legitimacy. The absence of jurisdiction is one of the few recognized reason for a court to set aside or refuse recognition and enforcement of an award. Accordingly it is often necessary to resolve the issues of jurisdiction at an early stage. The question may arise before an arbitration tribunal as well as before a state court." (Lew, Mistelis & Kroll, Comparative International Commercial Arbitration, 329) Article 18 of BANI Rules has a similar legal interpretation.

In the above maritime arbitration case in London which involved a dispute under bill of lading (BL) dated 12.10.2011, No..S003, No.. S004 and No..S005. On 30th Oct 2013 the parties agreed to the appointment of sole arbitrator but, later during the submission of claims on 23rd December 2013 the respondent's

London solicitors accepted that notice of arbitration had properly been given in respect of all bills of lading, but that in respect of bill of lading S003 (which represented some 75% of the quantum of the claims) the number was wrongfully mentioned by the claimant in appointing the arbitrator using different set of numbers bearing letter "A" instead of "S" and therefore the tribunal should decide a preliminary issue namely whether the claimant had validly commenced arbitration in respect of a claim under bill of lading No. ...S003 and /or whether their claim was time barred. In reply the claimant maintained that the notice of arbitration had contained a clerical error that in respect of bill of lading S003 there was an "A" rather than "S". The claimant further argued that it was only a clerical error the sole arbitrator so appointed has the jurisdiction to hear the case because English law recognizes the wider jurisdiction of the tribunal accordingly it was said there could have been no doubt in the mind of a reasonable recipient of the notice to which contract of carriage is referred. In support of their argument the claimant had sighted several authorities *inter alia* were S31 of UK Arbitration Act and contract law principles.

The tribunal held: Where an arbitrator was asked to accept an appointment in respect of a specific contract and notice of his appointment in that regard was subsequently given, it was for the appointing party to make sure that the reference to the contract that was given was correct. The same was true of any specific event or claim that was relied upon. While it might be preferably possible to make an appointment in general terms and to give notice similarly and validly, if a party chooses to purport to limit its appointment to a specific purported contract, or in other possible cases specific events or disputes the jurisdiction of the arbitrator is limited by that choice. Although it might be that there was no bill of lading having the relevant "A" number in existence the tribunal did not see how its appointment could be said to encompass the bill with the equivalent "S" Number in respect of which it was not appointed. The tribunal had therefore had no substantive jurisdiction in that regard.

In my opinion on this case regardless of UK or Indonesian law there are three main issues for the tribunal to consider and followed by cost of arbitration:

- (a) the jurisdiction of the tribunal to hear the dispute;
- (b) the validity of the appointment of the single arbitrator for subject matter in dispute BL 003S or his jurisdiction with regard to BL 003S;
- (c) The issue of time bar and;
- (d) Cost: arbitration cost of the of the parties

As for the jurisdiction of the tribunal to hear the dispute there is little in doubt because of doctrines of competence-competence and separability well established under English law ensures the tribunal has the jurisdiction to hear any dispute including any objections with respect to the existence or validity of the arbitration agreement and, even the though the main contract is invalid, inoperative or incapable of performance the tribunal has the jurisdiction to hear the dispute. S30 of UK Arbitration Act 1996 has made it clear *inter alia* that the tribunal has the competence to rule on its own jurisdiction with regard to whether there is a valid arbitration agreement and what matters have been submitted to arbitration are in accordance with the arbitration agreement and, S7 of the same act establishes that otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement (whether or not in writing) shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and it shall for that purpose be treated as a distinct agreement.

It is apparent from the facts the appointment of sole arbitrator and parties intention to arbitrate were not in dispute except that the subject matter for arbitration was wrongfully declared by the claimant. There were no challenges neither to the validity of the main contract nor to the validity of the arbitration clause therefore test laid down by the case *Sojuznefteexport v Joc Oil* (Bermuda Court of Appeal 7July 1989)

“(I) whether the parties have indeed concluded a contract containing an arbitration clause at all, if there is no contract at all legal basis for arbitrators power is also missing (II) When the attack is not on the main contract but, on the validity of the arbitration agreement whether for instance it conformed to the requirements for conclusion of a valid arbitration agreement under the proper law of the agreement here the tribunal is competent to pass upon that question..” conditions generally satisfied. Analyzing further on the issue of jurisdiction whether the issue was raised in a timely manner, S31 of the UK Act states that “an objection that the arbitration tribunal lacks substantive jurisdiction must be raised by a party not later than the time he takes the first step in the proceedings” similarly Article 16(2) Model Law provides that “any objections to the jurisdiction of an arbitral tribunal has to be raised no later than the statement of defense”. In line with all above authorities the respondent has raised the challenge at the time of submitting his response to the claimant as per paragraph 2 above: respondent’s London solicitors accepted that notice of arbitration had properly been given in respect of all bills of lading, but that in respect of bill of lading S003 (which represented some 75% of the quantum of the claims) the number was wrongfully mentioned by the claimant in appointing the arbitrator using different set of numbers bearing letter “A” instead of “S” and therefore the tribunal should decide a preliminary issue namely whether the claimant had validly commenced arbitration in respect of a claim under bill of lading No. S003...With above findings it is clear there were no arguments as to the timely response as the respondent solicitors raised the challenge at the time submitting his response.

The parties arguments have mostly centered on the next issue which is the validity of the single arbitrator for the subject matter in dispute, this could be understood by using the basic contract law principle of offer and acceptance it appeared the tribunal has accepted the request from the parties to arbitrate by completing a legally binding agreement. Applying the objective principle per Blackburn j in *Smith v Hughes* “if whatever a man’s real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party, and that other party upon that belief enters into the

contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party’s terms.” by applying the facts to the principle of contract law whatever materials submitted for arbitration would objectively be regarded as within the limits for arbitration therefor the claimants submission of subject matter i.e BL S004, S005 and A..(by mistake) would be considered as subject matter/s of arbitration. Conversely the same Blackburn j principle could be applied to judge the claimant’s argument that the notice of arbitration had contained a clerical error that in respect of bill of lading S003 there was an “A” rather than “S” and that there could have been no doubt in the mind of a reasonable recipient of the notice to which contract of carriage is referred.... Where ,a party is claiming the existence of notice of arbitration for which he has not given a notice the tribunal will look in-depth for evidence of their conduct and in this case the tribunal appeared not to have found any objective evidence in claimant’s favor. It appeared that claimant’s argument is subjective and could not be supported by any of the authorities.

The effect of parties’ autonomy on the case could be summarized (Lew, Mistelis & Kroll *Comparative International Commercial Arbitration*, 4.): “The principle characteristic of arbitration is that it is chosen by the parties. However fulsome or simple the arbitration agreement the parties have ultimate control of their dispute resolution system. Party autonomy is the ultimate power determining the form, structure and system and other details of the arbitration. In the main national arbitration law seeks only to give effect to, supplement and support the agreement of the parties for their disputes to be resolved by arbitration. Most laws are largely permissive and aim to support and enforce the agreement to arbitrate rather than to intervene only where the parties are silent as to some aspect of the arbitration process will national laws impose their provisions..” and, UK Act S.1 (b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest. In line with these academic and statutory provisions the tribunal shall respect

what was submitted by the parties unless they are against the public interest. The wider jurisdiction recognized by English law provisions on doctrines of competence- competence and separability as described above will still be subject to party's autonomy therefore the arbitrator will not extend his jurisdiction beyond a claim what was submitted.

One suggestion is if the claimant had made a general or broader submission such as ... "BL S004, S005, A.. and all other BL and documents related to or in connection with the claim where claimant has reserved his rights" could possibly have saved his printing error and consequences to follow because this will qualify as a general or broader term which the arbitrator has indicated (above tribunal held) as a possibility where his jurisdiction could have extended to consider.

The issue of time bar, BL is governed by Hague Visby Rules and is a schedule under UK Carriage of Goods by Sea Act 1971 (COGSA UK Act) where, no other conflicting law issues are in existence BL in dispute will be governed by the Hague Visby Rules as such the suit is to be bought within one year from the time goods were delivered or should have been delivered unless parties agreed to extend the time limit.

The BL dated was 12 October 2011 and the parties have agreed to appoint the single arbitrator on 23rd December 2013 it appeared there were no arguments as to whether the suit was bought within one year of the delivery of the goods therefore assumed it was in line with UK Act whether the suit is bought within one year of the delivery of the goods or extended with parties agreement. Since the respondent has rejected the claimant's submission the claimant will be required to submit a fresh claim after making the necessary correction to his printing error. This constitute a submission of a new claim where one year time bar has been expired the parties will be required to agree on the extension of time frame since, the respondent has already rejected the claim it will be time bared under COGSA and the claimant will lose his rights under BL S003. There are two other options available to the claimant where both appeared to be not in his favor: The

six year time limit applicable under UK Limitation Act 1980 was not available as this argument had been rejected by House of Lords in the case of *Aries* it was held that effect of HVR article 3(6) was not only to bar the remedy but also to extinguish the right therefore limitation act cannot be relied upon. The claimant could appeal to the courts under S12 Arbitration Act 1996 for extension of time where the courts have certain discretion when a. the issue is outside the reasonable contemplation of the parties or, b. that the conduct of one party makes it unjust to hold the other party to the strict terms of the provision however, it appeared the issue in this case is a wrongful declaration of subject matter for arbitration and is outside the courts discretion available under a or b as described above. Under the Indonesian law time bar is limited one year as per Indonesian commercial code and there are no exceptions under any other applicable laws.

Cost of arbitration although not stated in the case notes but the general principle of costs to follow the event most likely to be adopted in this case. The cost of arbitration in this case includes expenses on solicitors, arbitration tribunal, administration, disbursements and other related expenses. One of the possible outcome here claimant therefore has to bear his own costs as well as the respondent's costs for arbitration. Where, 75% of the quantum of the claim appeared to have rejected the tribunal may order the claimant bear his own cost plus 75% of the respondents cost provided claims on other two Bills of lading were successful.

The Choice of law under Indonesian Civil code- The parties to a dispute is permitted under the principle of freedom of contract, embodied in the article 1338 of the Indonesian Civil code the choice their law of contract, a contract governed by English Law is legally permitted for arbitration in Indonesia. **BANI rules Article 15. Applicable Law** 1. Governing Law

The law that shall govern the substance of the dispute shall be the law that has been designated so to govern in the underlying commercial agreement between or among the parties in connection with which the dispute has arisen. In the absence of any such prior agreement by the parties as to the law that shall govern, the parties shall be free to designate the governing law on their mutual

agreement. In the absence of any such agreement, the Tribunal shall have the authority to apply such rules of law as it deems appropriate, considering the circumstances of the matter.....

Indonesian Arbitral institution (BANI Rules) recognizes the jurisdiction of the tribunal, in Article 18

The Tribunal shall have the power to rule on any objection that it does not have jurisdiction, including any objection with respect to the existence or validity of the agreement to arbitrate.

The Tribunal shall be empowered to determine the existence of validity of an agreement in which the arbitration clause constitutes a part. For the purposes of this Rule an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A determination by the Tribunal that a contract is annulled by law shall not automatically annul the validity of the arbitration clause.

Above clause will be sufficient for the resolution of the first issue the jurisdiction of the tribunal to hear the case.

Indonesian Civil Code Article 1320 provides for the general conditions by which a contract is valid. Article 1320 stipulates that for a contract to be valid, it must comply with 4 (four) conditions: (a) consent between those who bind themselves (the parties); (b) capacity of the respective parties to conclude an obligation; (c) a certain (specific) subject matter and; (d) a legal cause. On the same subject Indonesian law also considers the consent of the parties or whenever one party has not obtained the capacity to conclude an obligation (conditions a & b above), does not invalidate such contract but, often only raises the possibility for the other party to claim that the contract is void. On the contrary, whenever the subject matter is not certain or whenever the cause is not legal (conditions c & d above), such defects on the object of the contract result in the contract being void by law. The above case refers to declaration of wrong subject matter therefore

the arbitration contract for BLS003 is void under Indonesian law due to uncertainty, even without the respondent raising the question in his defence the stance on English law is different as the S31 of UK Act requires an objection to be raised at the time of defence.

Indonesian Commercial Code (ICC) Article 513 provides a one-year time bar for: (a) Legal claims related to the payment which must be made by the consignee with regard to the transportation. (b) Legal claims against the carrier with regard to the carriage of passengers and luggage (counted as of the commencement of the voyage). (c) Legal claims for compensation of cargo damages (after the delivery of cargo or the day the cargo is to be delivered). By the parties' agreement, the statute of limitation can be extended or reduced and the amount of limitation of liability can be stipulated in the contract of carriage. Similar provisions are granted under the English law and the parties position under the Indonesian law will not differ in any case.

Article 60 Indonesian Arbitration law provides expressly that arbitral award is final and binding and under article 70 annulment of an award is possible only when, there is a fraud or concealing of documents which are decisive in making the award however, will not be applicable in this case as the issues are not related to a fraud or concealing of documents.

In conclusion all model law countries including UK recognizes the arbitration clause having a wider jurisdiction however this case shows when such wider jurisdiction subject to construction of terms and the party autonomy in varying the limits of the jurisdiction of the arbitral tribunal. The comparison between the two legal regimes between English and Indonesian proved that the tribunals at both ends will arrive at the same results.

TRADEMARK ANNOUNCEMENT AND NOTICE

1. Whereas our client is the legal owner of the following trademark:



a. 'BADAN ARBITRASE NASIONAL INDONESIA'

registration no. IDM000379661, as a renewal from No. 553488, which registered since **5 December 2003**;



BANI ARBITRATION CENTER

b. '(d/h Badan Arbitrase Nasional Indonesia)'

registration no. IDM000474220 , which registered sinc **29 April 2015**

to protect services in class 45, which are: Arbitration and Alternative Dispute Resolution services;

2. Whereas based on Article 1 paragraph (5) Law No. 20 of 2016 concerning Trademark and Geographical Indication ("Trademark Law 2016"), our client has an exclusive right to use the trademark or to grant permission to other party to use it;
3. Whereas the ownership of the



"BADAN ARBITRASE NASIONAL INDONESIA"

and



BANI ARBITRATION CENTER

"(d/h Badan Arbitrase Nasional Indonesia)"

trademarks are uphold by the Commercial Court at the Central Jakarta District Court with Court Decision No. 34/PDT.SUS-Merek/2017/PN.Niaga Jkt.Pst. dated 11 September 2017, which has legal binding effect;

4. Whereas our client is aware of the use of a trademark that is similar to our client by other party without our client's prior approval. This act is considered as an infringemet of a trademark;
5. Whereas Article 100 paragraph (2) Trademark Law 2016 stipulates that:
"Any party who without right uses a trademark that has principle similarity with a registered trademark owned by another party for similar type of goods and or services that produced or traded, is subject to maximum 4 years of imprisonment and or maximum fine of IDR 2.000.000.000,00 (two billion Rupiah)."
6. Whereas based on the above matter, we admonish a party who uses the word "BANI", "BADAN ARBITRASE NASIONAL INDONESIA", or "BANI ARBITRATION CENTER", which has principle similarity with our client's trademarks to CEASE from using such mark;
7. Whereas if in the near future we still find a party who still uses "BANI", "BADAN ARBITRASE NASIONAL INDONESIA", or "BANI ARBITRATION CENTER" ", which has principle similarity with our client's trademarks, our client will take necessary legal actions both civil and criminal action, without prior notice.

Jakarta, 9 January 2018

Attorney of BADAN ARBITRASE NASIONAL INDONESIA

Roosdiono&partners

a member of  ZICO law

Endra Agung Prabawa, S.H.

Ajeng Yesie Triewanty, S.H.

News & Events

Upcoming Events

1. ICCA Congress, Sydney, Australia, 15-18 April 2018

Date : April 15-18, 2018

Venue : International Convention Centre (ICC Sydney), Darling Harbour

The ICCA Congress is the premier biennial International Arbitration conference, offering the highest calibre programming and attracting delegates from around the globe. In 2018, this conference will be hosted in beautiful, dynamic Sydney.

Further information : <https://icca2018sydney.com/>

2. AMINZ – ICCA INTERNATIONAL ARBITRATION DAY MAKING ARBITRATION WORK IN A CHANGING WORLD: A PACIFIC VIEW

Date : April 19-20, 2018

Host : The Arbitrators' and Mediators' Institute of New Zealand, AMINZ

Venue : Heritage Hotel, Queenstown, New Zealand



3. Arbitrators Competence Assessment

Jakarta, 17 January 2018

Venue : Menara 165, Jakarta

Indonesia Arbitrators Institute

4. The 2nd ICC/KLRCA Pre-Moot for The Willem C. Vis International Commercial Arbitration Moot

Kuala Lumpur, Malaysia, 1-4 March 2018

Venue : Bangunan Sulaiman, Jalan Sultan Hishamuddin, 5000 Kuala Lumpur, Malaysia

Host : Kuala Lumpur Regional Centre for Arbitration

Past Events

BANI 40th Anniversary Week

1. Arbitration and Alternative Dispute Resolution Advance Training

Jakarta, 07-08 November 2017

Venue : Menara 165, Jakarta

Host : Indonesia Arbitrators Institute



2. Memorial Visit to Historic Figures of BANI

Solo and Jakarta , 26 and 29 November 2017

As on of the events in the 40th anniversary of BANI, the Board, all Representative Offices and Arbitrators visited the funerals late chairmen of BANI to commemorate and pray.

3. BANI Moot Arbitration Competition

Bandung and Jakarta, 27 to 29 November 2017

The event was a competition for law students, attended by 12 Indonesia universities. The team of Universitas Negeri Semarang won the Best Team, while Best Oralist was Universitas Gajah Mada (B), an the Best Memo was Universitas Indonesia.

The competition was held by the cooperation between BANI and Universitas Padjadjaran Bandung.



4. Anniversary Lectures

Solo, 27 November 2017

The Lecture was held in Universitas Negeri Sebelas Maret (UNS), Solo, Law Faculty, in cooperation with BANI. The event took "Indonesia and the Development of International Arbitration", attended by academicians and practitioners in Central Java, presented BANI and UNS expert speakers. It is a part of 40th BANI Anniversary Week. In this occasion, both chairmen signed the Memorandum of Understanding.

5. International Seminar

"Indonesia and The Development of International Arbitration"

Time : 28 November 2017

Venue : Shangri-La Hotel - Jakarta

Host : Badan Arbitrase Nasional Indonesia (BANI Arbitration Center)

This major event in the 40th anniversary of BANI was attended by around 190 respectful officers, arbitrators, lawyers, academicians and the businessmen. Officially opened by the H.E. Supreme Court Judge and H.E. Minister of Law And Human Rights, with Keynote Speech by Indonesia Chambers Of Commerce and Industry (KADIN Indonesia).



6. Celebration of 40th Anniversary of BANI

Jakarta, 30 November 2017

Venue : Shangri-La Hotel – Jakarta

7. Cyber Space, Cyber Security, Liability and ADR

Jakarta, 5 December 2017

Speaker : Prof. Anis Bajrektarevic, Professor dan Chairman of International Law and Global Politic Studies, Vienna, Austria, Europe

Venue : Balai Kartini, Jakarta

Host : Indonesia Arbitrators Institute and BANI Arbitration Center

The discussion topics are how to secure the information from the parties, what are the self-inflicted or expected ethical, and prescribed legal obligations, cyber security, cyber-authentication, encryption of the information.



8. Media Visit

Recently the Board of BANI visited some prominent media to maintain the communication in broader public sector of law and arbitration. BANI has visited Kompas (19 Dec.), Republika (13 Nov.), SoloPos & Tribun Solo (25 Nov) and TVRI (13 Nov.). The courtesy visit with the Director of TVRI was continued to the Dialog Indonesia Hari Ini, a live broadcasted program of TVRI (20 Nov).



Kompas, 19 December 2017



TVRI, 20 November 2017



Tribun Solo, 25 November 2017



SoloPos, 25 November 2017