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Grounds for the Annulment of Domestic Arbitration Awards in Indonesia (Recent Development)

A. Introduction

Under the Arbitration Law (Law No. 30 of 1999), a domestic arbitration award that has been registered by the arbitrator(s) or its proxy with the court can be annulled. The annulment request must be made in writing and submitted to the relevant district court within 30 days of the submission and registration date of the award in the registrar's office of the relevant district court.

Under Article 70 of the Arbitration Law, the following are the limited reasons underlying the request for the annulment:

a. After the award has been rendered, the letters or documents submitted for the examination are admitted or declared as false/forged.

b. After the award has been rendered, important decisive documents, which were previously concealed by the opponent, are revealed.

c. The award is rendered on the basis of a fraud committed by either of the disputing parties.

Before the Constitutional Court issued Ruling No. 15/PUU-XII/2014 on 11 November 2014 ("**2014 Constitutional Court Ruling**") and in accordance with the elucidation of Article 70 of the Arbitration Law, the above reasons for the request for annulment must be proven by a court decision. However, following the issuance of the 2014 Constitutional Court Ruling, the existence of a court decision proving the reasons for the request for annulment was no longer

required. As a consequence, any party who disagrees with the arbitration award can try to file the request for annulment with the relevant district court.

B. Sample of Cases

In recent years, the request for the annulment over domestic arbitration awards has become a trend in Indonesia. Nevertheless, we found that the Indonesian courts (which do not apply the stare decisis principle) do not have the same view on the applicability of the limited reasons under Article 70 of the Arbitration Law. From the available court decisions, below are some of the Indonesian courts' views and considerations regarding the request for annulment:

(1) Ruling No. 45/Pdt.G.Arbit/2019/PN.Jkt.Pst. dated 16 May 2019

- The Disputing Parties: Sekretaris Kementerian Perencanaan Pembangunan NASIONAL / Sekretaris Utama Badan Perencanaan Pembangunan Nasional (as the Claimant) v. PT Carbon Tropic (as Respondent I), PT Agrotropic Nusantara (as Respondent II), PT Energy Tropic (as Respondent III), and the BANI Arbitral Tribunal (as the Co-Respondent).

- The Claimant's arguments: The Claimant basically argued that:

  a) after the BANI Arbitration Award was rendered, there were decisive documents concealed by Respondent I (as per Article 70 point (b) of the Arbitration Law), namely when the parties entered into the agreement (containing the arbitration clause), Respondent I was not represented by the authorized president director and Respondent I never informed or provided the document related to the change of Respondent I's president director (the Shareholders Circular Resolutions and its notification from the Ministry of Law and Human Rights).

  b) Therefore, the agreement (including the arbitration clause) does not bind the parties and could not be used as the basis for Respondent I to file a request for arbitration to BANI. As a consequence, the BANI Arbitration Award was not valid because it was issued by the Arbitral Tribunal which was not authorized to examine and try the request for arbitration filed by Respondent I.

- Respondent I's arguments: Respondent I basically argued that:

  a) Respondent I never concealed the document related to the change of Respondent I's president director (the Shareholders Circular Resolutions and its notification from the Ministry of Law and Human Rights) and Respondent already informed the Claimant; and

b) in any case, the document related to the change of Respondent I's president director (the Shareholders Circular Resolutions and its notification from the Ministry of Law and Human Rights) is not a decisive document that can change the ruling under the BANI Arbitration Award because there is no dissenting opinion amongst the BANI Arbitral Tribunal (including from the arbitrator nominated by the Claimant).

- District Court's considerations: The District Court's Panel of Judges annulled the BANI Arbitration Award for the following considerations:

  a) Respondent I was not represented by the authorized president director when they entered into the agreement with the other parties (including the Claimant), and therefore the agreement does not meet the requirements for a valid agreement under Article 1320 of the Indonesian Civil Code. As such, the agreement can be declared null and void.

  b) from the District Court's Panel of Judges' view, the document related to the change of Respondent I's president director (the Shareholders Circular Resolutions and its notification from the Ministry of Law and Human Rights) is a decisive document concealed by Respondent I as described under Article 70 point (b) of the Arbitration Law. During the court proceedings, Respondent I failed to prove that Respondent I had informed or notified the Claimant about the existence of the document related to the change of Respondent I's president director (the Shareholders Circular Resolutions and its notification from the Ministry of Law and Human Rights).

(2) Ruling No. 327 B/Pdt.Sus-Arbt/2021 dated 15 March 2021 jo. Ruling No. 699/Pdt.G /2019/PN.Jkt.Pst. dated 19 May 2020

- The Disputing Parties: PT Juhdi Sakti Engineering (as the Claimant) v. PT Borneo Citra Kaltim Mandiri (as the Respondent), PT India Oil Tank IOT Sangata (as Co-Respondent I) and the BANI Arbitral Tribunal (as Co-Respondent II).

- The Claimant's arguments: The Claimant basically argued that during the arbitration proceedings at BANI, the Respondent submitted documents containing false statement or forged documents as follows:

  a) the Respondent's false statement related to the amount of the additional works; and

  b) the Respondent submitted a forged document by fabricating the Audit Report.

- Respondent I's arguments: The Respondent basically argued that:

a) the amount of the additional works was granted by the Arbitral Tribunal based on the Audit Report; and

b) the amount of the additional works should not be disputed anymore by the Claimant because it was based on reconciliation between the parties and the parties already had a clarification meeting.

- District Court's considerations: The District Court's Panel of Judges annulled the BANI Arbitration Award for the following considerations:

a) during the court proceedings, the Panel of Judges found that there were 2 versions of the Audit Report submitted as evidence by the Claimant and the Respondent, respectively,

b) from the Claimant's version of the Audit Report, it was found that there was no audit on the additional works, while from the Respondent's version of the Audit Report, there was an audit on the additional works (which was used by the Arbitral Tribunal to grant the request on the amount of the additional works),

c) the Claimant submitted evidence from the party who conducted the audit and issued the audit report, a clarification letter stating that the audit by the auditor was only related to the Respondent's receivables against the Claimant. As such, there is no audit on the additional works, and

d) from the expert statement presented by the Claimant. The phrase "after the award has been rendered, the letters or documents submitted for the examination are admitted or declared as false/forged" under Article 70 point (a) of the Arbitration Law means that after the dispute in the arbitration proceedings is decided, a party may become aware that the letter or document submitted as evidence was false or forged. There is then a statement from a competent party stating that the letter or document submitted as evidence is a false or forged document.

- Supreme Court's considerations: The Supreme Court's justices uphold the District Court by re-emphasizing that, from the statement letter, the auditor never conducted an audit over the additional works and therefore it was proven that there was a forged document added to the audit report.

(3) Ruling No. 126 B/Pdt.Sus-Arbt/2021 dated 8 February 2021 jo. Ruling No. 66/Pdt.G/2020/PN Btm. Dated 25 June 2020

- The Disputing Parties: PT Fagioli Lifting and Transportation Indonesia (as the Claimant) v. Badan Arbitrase dan Alternatif Penyelesaian Sengketa Konstruksi

- Indonesia (BADAPSKI) (as Respondent I) and PT Waagner Biro Indonesia (as Respondent II).

- The Claimant's arguments: The Claimant basically argued that the arbitration award issued by an arbitration body which based its decision on a fraud committed by Respondent II for the following reasons:

  a) as a foreign investment company from Italy, the Claimant does not have any Indonesian staff (who understand Bahasa Indonesia language) when the Claimant entered into the Subcontract Agreement with Respondent II,

  b) during the negotiation of the Subcontract Agreement, there were several changes to the draft. However, Respondent II intentionally did not adjust the Bahasa Indonesia version. As a result, the Subcontract has several clauses where the English version is different with the Bahasa Indonesia version,

  c) one of the clauses related to arbitration is different (in the English version, the parties agreed to settle disputes at SIAC while in the Bahasa Indonesia version, the dispute settlement shall be referred to BADAPSKI).

- Respondents' arguments: The Respondents basically argued that the arbitration award was not issued by the tribunal based on the fraud committed by Respondent II for the following reasons:

  a) during the arbitration proceedings, the Claimant (acting in bad faith and without proper and valid reasons) did not attend the hearings, and therefore the Claimant is not entitled to file the request for the annulment of the award,

  b) BADAPSKI properly commenced the arbitration proceedings based on the Subcontract Agreement,

  c) during the arbitration proceedings, BADAPSKI's action in evaluating the Subcontract Agreement by using its Bahasa Indonesia version is a proper action based on the Language Law, the Construction Law and the Indonesian Civil Code,

  d) the reason for the annulment used by the Claimant does not meet the limited reasons under Article 70 of the Arbitration Law because the Claimant only conveyed the negotiation process of the Subcontract Agreement while, in fact, the Claimant indeed signed the Subcontract Agreement.

- District Court's considerations: The District Court's Panel of Judges annulled the BADAPSKI Arbitration Award for the following considerations:

a) under the Subcontract Agreement, the parties agreed that if there was a conflict between languages, the English language should prevail and, in this case, the Claimant referred to the dispute settlement through arbitration at SIAC (by using the English version) while Respondent II referred to the dispute settlement through arbitration at BADAPSKI (by using the Bahasa Indonesia version),

b) the difference between the Claimant and Respondent II shows that there is no agreement on how to commence the arbitration to settle the dispute,

c) during the court proceedings, the court found that Respondent I had issued a letter stating that the request for arbitration filed by Respondent II cannot be continued, and therefore,

d) the arbitration award should be annulled because it was issued based on the existence of fraud committed by a party as regulated under Article 70 point (c) of the Arbitration Law.

- Supreme Court's considerations: The Supreme Court's justices overruled the district court's ruling by stating that the district court's panel of judges had misapplied the law for the following reasons:

a) the Subcontract Agreement specifically regulated that arbitration proceedings can be commenced at BADAPSKI before, during or after the commencement of the works, and therefore the district court does not have any jurisdiction to try the dispute between the parties as per the Arbitration Law, and

b) the Language Law states that an agreement must be made in Bahasa Indonesia language and if an agreement is made in dual language versions, then Bahasa Indonesia language should prevail. Therefore, there was no fraud during the commencement of the arbitration proceedings at BADAPSKI.

C. Conclusion

The recent developments on the annulment of a domestic arbitration in Indonesia are as follows:

(1) after the issuance of the Constitutional Court's Ruling, the requirement to first obtain a court decision to prove fraud as the reasons for the annulment under Article 70 of the Arbitration Law is no longer mandatory.

(2) the Indonesian court tries and examines the reasons for the annulment under Article 70 of the Arbitration Law on a case-by-case basis and, so farthere have been no clear guidelines on this matter.

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