

The Dispute Settlement through International Arbitration between PT. Karaha Bodas Company against PT. Pertamina and PLN

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Article	Abstract.
Keywords: Arbitration; Dispute; Resolution.. Article History Received: 2022-08-22; Reviewed: 2022-09-20; Accepted: 2022-10-05; Published: 2022-10-05. DOI: http://dx.doi.org/10.30659/jdh.v5i3.23922	Arbitration is a dispute resolution institution that uses an adversarial approach with the result that win lose chosen as an alternative by business people. Alternative dispute resolution that is currently in demand is through arbitration because it is in line with the increase in commercial transactions in the business sector both nationally and internationally. Dispute resolution through arbitration provides benefits for the disputing parties. These advantages include the confidentiality of the disputing parties, relatively cheaper costs, a fast, efficient dispute resolution process and provide flexibility for the disputing parties. International arbitration dispute resolution has a uniqueness which adheres to the principle of final and binding (last resort and binding). An international arbitral award that has been decided abroad if it is brought to Indonesia, there are two possibilities, i.e. the International arbitral award asks to be enforced or annulled. The conclusion show that based on the dispute between PT. Pertamina against Karaha Bodas Company that Pertamina cannot cancel the arbitration award that has been handed down by the Swiss Arbitration Board. The reasons for rejection and cancellation are as stated in the New York Convention and the UNCITRAL Model Law. Keywords:
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1. Introduction

The dispute resolution can be divided into two, namely peaceful dispute resolution and adversary settlement. Amicable dispute resolution is better known as settlement by consensus, while adversarial settlement is better known as dispute resolution by third parties who are not involved in the dispute. Arbitration is a dispute resolution institution that uses an adversarial approach with a win-lose outcome that is chosen as an alternative by business actors. Currently, dispute resolution through arbitration is seen as very important, which is in line with the increase in commercial transactions in the business sector, both nationally and internationally. Dispute resolution through arbitration is a friendly dispute resolution process and is in great demand by business people. This is because dispute resolution through arbitration provides benefits for the disputing parties. These advantages include the confidentiality of the disputing parties, relatively cheaper costs, a fast, efficient dispute resolution process and provide flexibility for the disputing parties.

The word arbitration according to Subekti comes from the Latin, *arbitrare* which means the power to resolve something according to "wisdom". The linking of the term arbitration with wisdom seems to indicate that the arbitral tribunal does not need to pay attention to the law in resolving the disputes of the parties, but is sufficient to base it on discretion. This view is wrong because the arbitrator also applies the law like what judges do in court¹. Meanwhile, the definition of arbitration according to Article 1 point 1 of Act No. 30 of 1999 is a way of settling a civil dispute outside a general court based on an arbitration agreement made in writing by the disputing parties. From these two definitions, it can be concluded that there are three things that must be fulfilled, namely: the existence of a dispute; an agreement to hand over to a third party; and decisions are final and binding. Meanwhile, from the understanding in Article 1 point 1, it is known that the basis of arbitration is an agreement between the parties based on the principle of freedom of contract. While in the business world in this modern era, many turn to Alternative Dispute Resolution (ADR) or Alternative Dispute Resolution (APS),²

The resolution of international arbitration disputes is often chosen by business actors because it adheres to the final and binding principles. When compared to the decision of the district court, the arbitration award is final and binding for the parties, so that there is no legal appeal, cassation, or review. Although there is a possibility that the execution of the decision will be rejected in the country where the decision was made, however the decision remains valid and can be implemented in other countries with a time limit so that the arbitration award is considered more effective in resolving the case submitted, without the need to prolong the time that is detrimental to business actors. In addition, international arbitral awards adhere to the principle of reciprocity, namely a decision can be implemented anywhere as long as the country is also bound by an arbitration agreement to recognize and implement the award. Regarding the terms of reciprocity, international arbitral awards that can be enforced in Indonesia are arbitral awards originating from fellow members of the 1958 New York Convention or not from countries participating in the convention, but there is a bilateral agreement that has been made between Indonesia and a country that is not a party to the New York Convention 1958.

Arbitration is the most popular dispute resolution forum for business people. International arbitration has been widely used by business people who incidentally are often related to economic cases, especially trade with the nominal figures in dispute are quite astonishing for people in general. Dispute resolution through ADR has advantages compared to dispute resolution through litigation, including the voluntary nature of the process because there is no element of coercion, fast procedures, non-judicial decisions, confidential procedures, flexibility in determining the terms of problem solving, economical time and cost-effective, high probability of executing agreements and maintaining working relationships. Arbitration as a form of arbitration in the field of

¹Subekti, (1981). *Kitab Undang-Undang Hukum Perdata*, Pradnya Paramita, Jakarta, p. 1

²Hutrin Kamil, M.Ali Mansyur, "KAJIAN HUKUM ONLINE DISPUTE RESOLUTION (ODR) DI INDONESIA BERDASARKAN UNDANG-UNDANG NOMOR 30 TAHUN 1999", *Jurnal Pembaharuan Hukum*. Volume I No 2 May - August 2014, (Semarang: UNISSULA), p. 111
URLs :<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewixktPPhof5AhUa7jgGHTeaBvkQFnoECACQAQ&url=http%3A%2F%2Fjurnal.unissula.ac.php%2Findex.php%2Fdownload%2F1461%2F1129&usg=AOvVaw1hDJ-RepD4O8ZHVwidQhoC>

judicial processes outside the general court is a very helpful tool in resolving disputes or disputes that occur in the implementation of agreements or contracts, especially in private law, both national and international in nature, such as in the implementation of commercial agreements or contracts of commercial agreements and investment agreements (investment)³. One of the international arbitration cases that is quite interesting to be raised in this legal writing is the case between PT. Karaha Bodas Company (KBC) against PT. Pertamina and the State Electricity Company (PLN).

The beginning of the feud between PT. Pertamina by happening on November 28, 1994, one of the state-owned enterprises (BUMN), namely PT. Pertamina entered into Cooperation contacts with private electricity investors, namely KBC under a Joint Operation Contract (JOC). Then the State Electricity Company (PLN) as the buyer who will be under the Energy Sales Contract (ESC) contract. Form of Cooperation between PT. Pertamina with KBC is in terms of entering into an agreement regarding the development of geothermal energy in Garut (Karaha Bodas) and in Tasikmalaya (Telaga Bodas). There are two types of agreements between the three parties, namely: the first agreement or contract, namely the JOC between KBC and PT. Pertamina is responsible for managing operations in the geothermal, while KBC acts as a contractor who is obliged and responsible for developing "Geothermal Energy" and its electric power and providing funds, while the second agreement or contract, namely ESC between Pertamina and PLN, in which PLN agrees to exceed buying from Pertamina, in the form of electricity generated by the power generation facility from the Karaha Bodas Geothermal Geothermal generated by the generator built by the contractor Karaha Bodas Company LLC up to 400 Mega Watt (MW), in this case PLN as the buyer. In the agreement PT. Pertamina and KBC agreed on the choice of forum and the choice of law, that in the event of a dispute between the parties, it will be resolved by arbitration based on the provisions of the UNCITRAL Arbitration Rules⁴.

However, in 1997 there was a global monetary crisis that caused many world-class companies to fall. The same thing happened to Indonesia in 1997 which was marked by the depreciation of the Rupiah by more than 300% (three hundred percent) against the US Dollar. The crisis that hit Indonesia at that time caused many companies to enter into agreements with their trading partners abroad by using a globally accepted currency benchmark such as the US Dollar. At that time Indonesia asked for financial assistance from the International Monetary Fund (IMF). Then the IMF asked the Indonesian government to review development projects. At that time the government's policy was to suspend several projects, one of which was the suspension of the Karaha Bodas project implemented by PT. Pertamina and KBC by issuing Presidential Decree (Keppres) No. 39 year 1997⁵ and Presidential Decree No. 5 of 1998.

³Ichsan, Akhmad, (tt), *Kompedium Tentang Arbitrase Perdagangan Internasional (Luar Negeri)*, Cetakan Pertama, Pradnya Paramita, Jakarta, p. 1

⁴Sukwanto Bakti, Ningrum Natasya Sirait, Siregar Taufik, "Pelaksanaan Putusan Arbitrase Internasional di Indonesia (Pertamina Melawan Kahara Bodas Company LLC)", *Jurnal Mercatoria*, Volume. 1 No. 1 (2008).p.25, <https://ojs.uma.ac.id/index.php/mercatoria/article/view/725/638>

⁵Irsan, Dwiputri, Anggie, (2011). "Analisis Yuridis Permohonan Ganti Rugi Terhadap Joint Operation Contract (JOC) yang Ditangguhkan oleh Pemerintah dalam Kasus antara Karaha Bodas Company LLC (KBC) dengan Perusahaan Pertambangan Minyak dan Gas Bumi Negara (PERTAMINA)", p. 56-57, <https://lib.ui.ac.id/file?file=digital/2016-9/20323000-S21561-Anggie%20Dwiputri%20Irsan.pdf>

The two Presidential Decrees mentioned above contain the suspension of several projects, including the JOC project. PT. Pertamina, which did not fulfill its achievements in the JOC contract, stated that the issuance of the Presidential Decree was a force majeure event and was carried out for the sake of public order. Meanwhile, KBC feels that the issuance of the two Presidential Decrees is not an excuse for PT. Pertamina and PLN not to carry out the contract that has been agreed between the two parties in the contract. KBC felt aggrieved and refused to acknowledge the existence of the two Presidential Decrees, and considered PT. Pertamina and PLN have defaulted, in accordance with the contract that has been made, KBC has filed a default lawsuit against PT. Pertamina and PLN to the arbitration forum in Geneva, Switzerland. In the Geneva arbitration forum, Switzerland, the PT. Pertamina was declared defeated, so PT. Pertamina filed a lawsuit to the Central Jakarta District Court, with one of the reasons being that the Geneva Arbitration Tribunal had exceeded its authority because it did not apply Indonesian law as agreed in the agreement between the two parties. Therefore, both parties are still adamant in their initial opinion so that the process continues to the Judicial Review process by the Supreme Court.

In this case, there are several factors that have become reasons for Pertamina and KBC in defending their arguments in court, which include:

- KBC felt aggrieved because of the cancellation of the Karaha Bodas Project contract due to the issuance of the Presidential Decree of the Republic of Indonesia.
- KBC felt that they had won with the Swiss Geneva Arbitration Award, which sentenced Pertamina to pay compensation.

Meanwhile, Pertamina also has strong reasons to defend its arguments in this dispute, which include:

- Pertamina considered that the cancellation of the Karaha Bodas project was due to the Government of Indonesia's decision to reduce the impact of the monetary crisis that hit Indonesia at that time.
- Pertamina feels that it has won in the Central Jakarta District Court, with the issuance of the Central Jakarta District Court's decision No. 86/ PDT.G/2002/PN.JKT.PST. However, in the end, at the appeal level, they must acknowledge the decision of the Supreme Court of the Republic of Indonesia No. 01/BANDING/WASIT JNT/2002, which canceled the decision of the Central Jakarta District Court because it was deemed not authorized to examine and decide on the plaintiff's lawsuit (Pertamina and PLN).

In the case of the dispute described above, the author will discuss dispute resolution through international arbitration between KBC and PT. Pertamina and PLN in terms of legal certainty regarding the implementation of the international arbitration award related to foreign investment in Indonesia and whether the Central Jakarta District Court has the authority to overturn the Geneva arbitration award related to the KBC dispute against PT. Pertamina and PLN.

2. Research Methods

The research method was a science that presents how or the steps that must be taken in a research systematically and logically so that the truth can be accounted for. The collection of data in a study requires an appropriate method, so that what was to

be achieved in a research can be justified scientifically. The purpose of a study itself was expected to find the reality of the object being studied. Researchers generally had a goal to study or find the truth of a science. In essence, humans want to know in something by using existing techniques and methods. In the research method, especially in the field of law, it was explained about the reasoning of the arguments and the background of each step in the process that was usually chosen in legal research activities and then provides alternatives and compare the elements in the framework of the study.⁶

3. Result and Discussion

3.1. Dispute Resolution Through International Arbitration between PT. Karaha Bodas Company against PT. Pertamina and PLN

Arbitration is the voluntary submission of a dispute to a neutral third party that issues a final and binding decision (binding). Arbitration bodies are now increasingly popular and are increasingly being used in resolving international disputes⁷. Arbitration is a method of resolving disputes outside of litigation or judicial institutions held by the parties to the dispute, on the basis of agreements or contracts that have been entered into before or after the dispute. The arbitrators are selected and determined by the disputing parties, with the task of resolving any disputes that arise between them. Meanwhile, according to Munir Fuady, technically referring to people who resolve disputes where arbitration is a dispute resolution method which is often also referred to as a referee court so that the "arbitrators" in arbitration courts function like a "referee" (referee).⁸ One alternative dispute resolution that has been known for a long time in international law is international arbitration. Dispute resolution using an arbitration institution will result in an Arbitration Award. According to Act No. 30 of 1999, the arbitrator or arbitral tribunal must immediately issue an arbitration award no later than 30 days after the completion of the examination of the dispute by the arbitrator.⁹ International arbitration has differences with national arbitration, one of the requirements is that international arbitration generally must meet foreign elements between the parties.¹⁰ In the dispute that occurred between PT. Pertamina and PLN, which are State-Owned Enterprises (BUMN) against foreign legal entities, namely KBC.

The choice of dispute resolution through arbitration is intended for the parties to obtain a fast, inexpensive and effective dispute resolution. It is hoped that the agreement of the parties will not be denied in accordance with the principle of *pacta sunt servanda* in the event of a dispute, to resolve it through arbitration. In this case, often purely business decisions in arbitration, are associated with political pressure or

⁶Ronny Hanitijio Soemirto, (1995), *Metodologi Penelitian Hukum Dan Jurimetri*, Ghlmia Indonesia, Jakarta, p. 9.

⁷Adolf, Huala, (2004), *Hukum Penyelesaian Sengketa Internasional*, Cetakan Pertama, Sinar Grafika, Jakarta, p.23

⁸Fuady, Munir, (2000), *Arbitrase (Alternatif Penyelesaian Sengketa Bisnis)*, Bandung: Citra Aditya Bakti, p. 12

⁹Safa'at, Rachmad. (2004), *Advokasi Dan Alternatif Penyelesaian Sengketa: Latar Belakang, Konsep, dan Implementasi*, Surya Pena Gemilang, Malang

¹⁰Dimas Pratama Yuda, Jawade Hafidz, "PERLINDUNGAN HUKUM BAGI TENAGA KERJA PELAUT DENGAN SISTEM KONTRAK", *Jurnal Hukum Khaira Ummah*, Vol. 12 No.3 September (2017), p.55.

interference by certain powerful countries that pressure one of the litigants. Based on the normative rules, if the parties agree to resolve the dispute through arbitration, in fact there is no longer the authority of the District Court to examine the substance of the dispute. However, with various possible reasons and justifications, often arbitral awards are re-examined by district courts in Indonesia¹¹.

The arbitral award which was reexamined by the District Courts in Indonesia shows that there is ambivalence in the court system in Indonesia to be able to accept binding force that is final and has the power of execution for a case decision made through arbitration, especially by international arbitration. In fact, according to the Indonesian legal system, the arbitrator himself can be filed for punishment. Article 22 paragraph 1 of Act No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that a claim for denial can be filed against an arbitrator if there are sufficient reasons and sufficient authentic evidence to raise doubts that the arbitrator will not perform his duties freely and will take sides in making decisions.

With respect to international arbitration decisions, the courts of law in Indonesia can deny the recognition (denial of awards) of the substance that has been decided by the international arbitration institution, as well as the execution of the object of arbitration in the jurisdiction of Indonesian law. This is supported by the existence of Article 65 of Act No. 30 of 1999 under the sub-heading of international arbitration which states that the authority to handle the issue of recognition and implementation of international arbitral awards is the Central Jakarta District Court. From the meaning of the article, not only does the court have the authority to refuse to execute an arbitral award, it even has the authority to refuse recognition of material that has been decided by an international arbitration institution.

Furthermore, Article 11 paragraph 2 of Act No. 30 of 1999 stipulates that the District Court must refuse and will not intervene in a dispute that has been determined through arbitration, except in certain cases stipulated in this law. However, if one party considers that their civil dispute is a bankruptcy dispute based on Act No. 37 of 2004, then that party will see a gap to examine the case to the Commercial Court, which is one of the District Court's instruments. In the bankruptcy decision, there are several legal consequences for the bankrupt debtor, one of which results in the authority to act on the bankrupt debtor in the field of property law.¹² This results in the debtor's authority being very limited. The entire authority for managing his assets has been transferred to the curator. The curator is not bound by the arbitration agreement that was originally made by the bankrupt debtor with his business partners¹³.

In this case, Pertamina's reasoning is that both JOC and ESC contracts which have expired through Presidential Decree No. 5 of 1998, so that the two contracts are canceled also cannot be used as a reason for the cancellation of the arbitration award. This is supported by the existence of Article 10 of the Arbitration Law which states that the arbitration agreement does not become void just because of the expiration or

¹¹Erni Dwita Silambi, "Penyelesaian Sengketa Ekonomi dan Bisnis Melalui Arbitrase Internasional (Studi Kasus Pertamina Vs Karaha Bodas), *Jurnal Ilmu Ekonomi & Sosial*, Tahun III, No.6, 2012.

¹²Sembiring, Sentosa. (2006), *Hukum Kepailitan dan Peraturan Perundang-undangan yang Terkait dengan Kepailitan*, Nuansa Aulia, Bandung

¹³Erni Dwita Silambi, Loc. cit.

cancellation of the main agreement. So, if there is a dispute in the termination of the contract, the arbitration forum will still be used in resolving the existing dispute, even though the main agreement has been canceled or ended. Article 3 jo. Article 11 of the Arbitration Law also regulates the prohibition of the District Court from rejecting any case that has an arbitration clause that is registered to be resolved at the District Court. The cancellation of Pertamina's International Arbitration Award with Karaha Bodas has also violated the provisions of Article V paragraph 1 (e) of the New York Convention. In this case, the Indonesian arbitration law is used as *lex arbitri* because it is used as a choice of law to resolve the dispute between Pertamina and KBC, however, this does not make Indonesia a country of origin because the decision was not handed down in Indonesia. Thus, the Indonesian District Court, is not a "country of origin" that can annul the arbitration award, because the place where the decision is held and the decision is made in this case is in Switzerland and not in Indonesia. So, the element of Indonesia as a "country of origin" is not fulfilled in this case. and the Indonesian District Court should not be able to overturn an arbitral award. The Indonesian District Court only has the right to determine whether or not the Swiss arbitration award can be enforced in Indonesia or not, because the Indonesian District Court is the competent authority and not the country of origin in the case of annulment of this international arbitral award. Although the agreement that became the subject of the dispute was made under Indonesian law, because both parties agreed to choose Geneva as the place of arbitration, automatically the *lex arbitri* was Swiss law¹⁴.

Based on the dispute between PT. Pertamina and PLN against KBC that it is true that Pertamina cannot cancel the arbitration award that has been handed down by the Swiss Arbitration Board. This is because, under the New York Convention and the UNCITRAL Model Law, the reasons for rejection and cancellation as stated in the New York Convention and the UNCITRAL Model Law, such as the absence of a valid arbitration agreement, violations of the principles of propriety and fairness in litigation (due process of law), for example regarding irregularities in the selection of arbitrators or the arbitration process, the absence of proper notification or the provision of fair/balanced opportunities for self-defense, the process of selecting arbitrators that are contrary to the agreement, arbitrators acting outside their authority and disputes that are decided cannot be arbitrated ,

3.2. Cancellation of the Geneva Arbitration Award Regarding The Dispute Between KBC And PT. Pertamina And PLN When Viewed From The Perspective of Indonesian Law

An international arbitral award that has been decided abroad if it is brought to Indonesia, there are two possibilities, namely the international arbitration award asking to be implemented or cancelled.¹⁵ In the event that an international arbitration has become a decision, then in accordance with the provisions of Article 67 of the

¹⁴Astri Marchta & M. Hudi Asrori, Proses Pembatalan Putusan Arbitrase Ditinjau Dari UU No.30 tahun 1999 (studi Putusan No.86/PDT.G/2002/PN.JKT.PST), *Jurnal Hukum*, Vol. 5, No.2, 2017.

¹⁵Mahpudin, Akhmad Khisni, Pelaksanaan Klausul Penyelesaian Sengketa Dalam Akad Perbankan Syariah Pasca Putusan Mahkamah Konstitusi Republik Indonesia Nomor : 93/PUU-X/2012 Pada Bank Syariah Mandiri KCP Indramayu, *Jurnal Akta*. Volume 5 No 1 March 2018, p. 150.

Arbitration Law, it is stated that for execution, the award must be submitted and registered by the arbitrator to the Central Jakarta District Court, only after that the implementation of the International Arbitration Award is requested. In terms of formality, the International Arbitration award must meet the conditions specified in Article 66 of the Arbitration Law. In an International Arbitration Award that is requested to be annulled, essentially the annulment process is usually not regulated in the context of an international agreement, but is regulated in the national law of a country.¹⁶

In the event that the application for the cancellation of the arbitral award is submitted based on the reasons as stated in Article 70 of the Arbitration Law, the applicant for the annulment should prove a valid suspicion that the arbitral award contains elements of forgery, deceit, or concealment of facts or documents. Whereas in the Arbitration Law it is not clearly explained what is meant by the word conjecture or the word element as referred to in Article 70. The Arbitration Law also does not provide a definition of what is meant by the word forgery, deception, or concealment of facts or documents as contained in that Article.¹⁷ If the explanation of the article is considered and understood in its entirety or complete, then the court examining the request for the cancellation of the arbitration award is given the authority by the Arbitration Law to assess or decide whether the reasons put forward by the applicant for cancellation are reasonable or not.

Article 72 Paragraph (2) of the Arbitration Law states that the Head of the District Court is authorized to examine claims for annulment if requested by the parties, and to regulate the consequences of the cancellation in whole or in part of the arbitral award concerned. The Head of the District Court may decide that after the cancellation has been pronounced, the same arbitrator or another arbitrator will re-examine the dispute in question or determine that it is impossible for a dispute to be resolved again through arbitration. This provision also implies that there is great authority given to the court to examine and decide on an application for annulment of the arbitral award.¹⁸

The function and authority of the court in examining an application for annulment of an arbitral award is different from the function and authority of the court in examining an application for the execution of an arbitral award. In examining the application for the execution of the arbitral award, the function of the court is more administrative in nature, so in examining the application for the cancellation of the arbitral award, its function is judicial / adjudicating.¹⁹ Therefore, the party won by the arbitration award should also be heard by the court as well as the information from the arbitrator who issued the arbitration award. The court's authority in examining an application for

¹⁶Yuhassarie Emmy & Endang Setyowati, (2003). "Rangkaian lokakarya tentang Arbitrase dan Mediasi", diterbitkan pertama kali oleh Pusat Pengkajian Hukum bekerjasama dengan Pusdiklat Mahkamah Agung RI dan Konsultan Hukum EY, Ruru, & rekan, Jakarta, p. 84

¹⁷Tony Budidjaja, "Pembatalan Putusan Arbitrase di Indonesia", <https://www.hukumonline.com/berita/a/pembatalan-putusan-arbitrase-di-indonesia-hol13217>, accessed on 8 June 2022.

¹⁸Wahyu Murni Setyoningsih, Achmad Sulchan, Peran Hakim Pengawas Dan Pengamat (KIMWASMAT) Terhadap Pelaksanaan Putusan-Putusan Pengadilan Dalam Sistem Peradilan Pidana, Konferensi Ilmiah Mahasiswa UNISSULA (KIMU5), Semarang, p.55.

¹⁹Dodik Hartono, Maryanto, Djauhari, Peranan Dan Fungsi Praperadilan Dalam Penegakan Hukum Pidana Di Polda Jateng, Jurnal Daulat Hukum. Vol. 1 No. 1 March 2018, p. 55.

annulment of an arbitral award is also broader than the court's authority in examining an application for the execution of an arbitral award.

The Geneva arbitration award in the dispute between KBC and Pertamina is final, binding and has executable power after being decided in Geneva, Switzerland. However, under certain conditions, the nature of the final and binding award can be set aside by filing a lawsuit to cancel the arbitration award if the request for cancellation is accepted by the competent court, then this final and binding nature will no longer be attached to the Geneva arbitration award, and will be deemed to have never existed. However, if the arbitration award is rejected (refused) by the competent court, then it is final and binding it stays attached. So the rejection by the Swiss Federal Court of the Geneva arbitration award between KBC and PT. Pertamina and PLN, will not eliminate the nature of *final and binding* on the decision. This award is still binding and has permanent legal force for the parties to the dispute even though the Swiss Court expressly refuses to cancel the Geneva arbitration award.²⁰

In the case of a dispute between KBC and PT. Pertamina and PLN, when viewed from the perspective of Pertamina and PLN, can be described as follows: First, the suspension of the contract is based on the Presidential Decree which has caused the JOC and ESC to be discontinued, this is not an act of default on the part of Pertamina and PLN but because both must obey and do not violate the Presidential Decree, because both are SOEs. Second, the issuance of the Presidential Decree should not be considered as a breach of contract, but as a force majeure situation that relieves the Defendant's duties (because the Presidential Decree was issued on the instructions of the IMF). And Third, Pertamina has tried to cancel the Presidential Decree, so that the project can continue but the government remains firm in its stance that the project is temporarily suspended.

Meanwhile, on the other hand, KBC felt aggrieved so that KBC filed for Arbitration in Geneva, Switzerland, and was won by KBC later, PT. Pertamina filed a lawsuit for the cancellation of the international arbitration award at the Court in Switzerland, but it was rejected because PT. Pertamina is proven not to have paid the deposit as required by Court. Then, PT. Pertamina made another legal effort to cancel the arbitration award by submitting it to the Central Jakarta District Court. In its decision number 86/PN/Jkt.Pst/2002, on September 9, 2002, the Central Jakarta District Court finally granted Pertamina's claim by canceling the international arbitration award, UNCITRAL, in Geneva, Switzerland.

As for the reasons for the cancellation of the arbitration award made by PT. Pertamina, among others: First, the appointment of an arbitrator which was not carried out as agreed and the arbitrator was not appointed as desired by the parties. The agreed arbitrators must be Indonesian and understand Indonesian law, but in fact the arbitrators formed without the knowledge of PT. Pertamina and PLN as well as the arbitrators are all foreigners and none of them are familiar with Indonesian law. Therefore, Pertamina and PLN submitted a request for rejection of the acknowledgment and exequatur of foreign arbitral awards, referred to as "limitative" in Article V

²⁰Nugroho Suryo Ircham, "Kewenangan Pengadilan Negeri Jakarta Pusat Dalam Pembatalan Putusan Arbitrase Di Janewa Swiss (Studi Kasus PT. Pertamina dan PT. PLN melawan Karaha Bodas Company)", *Journal Lex Renaissance* No. 3 Vol. 5. Edition July 2020, p. 550.

paragraph (2) of the 1958 New York Convention. Second, because the arbitration examination process did not use Indonesian law, in accordance with the provisions of the JOC and ESC. Third, PT. Pertamina was not given proper notice regarding this arbitration and was not given the opportunity to defend itself. The arbitral tribunal has misinterpreted force majeure, so Pertamina should not be held responsible for something beyond its capabilities.

The existence of Presidential Decree No. 39 of 1997 is a decision to postpone the implementation of the contract agreement, the suspension in question means that one time the contract agreement can be resumed after certain circumstances. So it can be concluded that there is economic recovery in Indonesia or after exiting the economic crisis, Pertamina will resume the implementation of the JOC agreement. This can be seen in the clause in Article 15.3 (c) of the JOC, that if the contractor's activities are postponed due to a Force Majeure incident, regarding the period of implementation of the agreement, it will also be postponed and will start again when the force majeure situation is over. Therefore, the Central Jakarta District Court Assembly considered that the Geneva Arbitration Tribunal had made a mistake in interpreting force majeure. The cancellation of the Karaha Bodas project through the Presidential Decree aims to secure the sustainability of the economy and the course of national development. Therefore, if both parties or one party violates the Presidential Decree, then the agreement is a prohibited cause and is automatically null and void by law.

In addition, when viewed from the perspective of Indonesian law, the Arbitration Tribunal in its decision made a mistake in examining and deciding the *a quo* case, causing losses to Pertamina and PLN, because it did not apply Indonesian law. Thus, the Geneva Arbitration Tribunal was deemed to have exceeded its authority because it had overruled Indonesian law, whereas in the contract between the parties it was agreed that in the event of a dispute, Indonesian law would be used. The problem in this case is the authority of the District Court to overturn international arbitral awards. The Panel of Judges is of the opinion that the Geneva Arbitration Panel of Judges has exceeded its authority because it does not apply Indonesian law as stated in the JOC between PT. Pertamina with KBC and ESC between PT. Pertamina and PLN.

4. Conclusion

The cancellation of Pertamina's International Arbitration Award with Karaha Bodas has also violated the provisions of Article V paragraph 1 (e) of the New York Convention. In this case, the Indonesian arbitration law is used as *lex arbitri* because it is used as a choice of law to resolve the dispute between Pertamina and KBC, however, this does not make Indonesia a country of origin because the decision was not handed down in Indonesia. The Indonesian District Court only has the right to determine whether or not the Swiss arbitration award can be enforced in Indonesia or not, because the Indonesian District Court is the competent authority and not the country of origin in the case of annulment of this international arbitral award. With respect to international arbitral awards, Courts of law in Indonesia can deny the acknowledgment of the substance that has been decided by the international arbitration institution, as well as the execution of the object of arbitration in the jurisdiction of Indonesian law. This is because, under the New York Convention and the UNCITRAL Model Law, the reasons for

rejection and cancellation as stated in the New York Convention and the UNCITRAL Model Law, such as the absence of a valid arbitration agreement, violations of the principles of propriety and fairness in litigation (due process of law), for example regarding irregularities in the selection of arbitrators or the arbitration process, the absence of proper notification or the provision of a fair/balanced opportunity for self-defense, the process of selecting an arbitrator that is contrary to the agreement. When viewed from the perspective of Indonesian law, the Arbitration Tribunal in its decision made a mistake in examining and deciding the a quo case, causing losses to Pertamina and PLN, because it did not apply Indonesian law. Thus, the Geneva Arbitration Tribunal was deemed to have exceeded its authority because it had overruled Indonesian law, whereas in the contract between the parties it was agreed that in the event of a dispute, Indonesian law would be used. The problem in this case is the authority of the District Court to annul the international arbitration award, if there are facts or indications that the arbitrator has committed an omission in carrying out the duties and powers granted under the arbitration agreement.

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