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The Ambiguity of Norms in Article 66 (C) of Law No. 30/ 1999 on Arbitration And Alternative Dispute Resolution: Causes, Implications And Resolutions

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Abstract
According to Article 66 Letter C of Law Number 30/1999, one of the requirements for an international arbitral award to be accepted and executed in Indonesia is that it does not violate public order. There is an issue with the norms' ambiguity; it concerns the definition and the application of the term "public order". As a result, international arbitration awards are more likely to be overturned based on quo conditions. This paper explores the causes and the implications of this ambiguous term. Following then, various potential resolutions to the problem were provided. but removing the article might not be a wise option. Although various publications have studied the recognition and execution of foreign arbitral awards, no comprehensive examination of Article 66 Letter C of Law Number 30/1999 could be identified.

Keywords: international arbitral awards; norms' ambiguity; public order; recognition.

Abstrak
Tidak bertentangan dengan ketertiban umum adalah salah satu syarat yang harus dipenuhi agar suatu putusan arbitrase internasional dapat diakui dan dilaksanakan di Indonesia. Ada persoalan kekaburan norma di dalamnya mengenai definisi dan penerapan frasa "ketertiban umum". Secara implikasi, putusan arbitrase internasional lebih mudah untuk tidak diakui dengan dasar syarat a quo. Tulisan ini menelusuri sebab dan implikasi dari kekaburan norma ini. Setelah itu, beberapa alternatif resolusi diajukan untuk menyelesaikan isu ini. Pembahasan mengenai pengakuan dan pelaksanaan putusan arbitrase internasional sebenarnya sudah dibahas dalam beberapa jurnal yang ada, tetapi pembahasan secara komprehensif mengenai Pasal 66 huruf c UU 30/1999 tidak dapat ditemukan.

Kata kunci: *kekaburan norma; ketertiban umum; putusan arbitrase internasional; pengakuan.*

Introduction

Including Article 66 Letter C in Law No. 30/1999 on Arbitration and Alternative Dispute Resolution ("Law 30/1999") is one of the difficulties with the law. Based on the article, an international arbitral award to be accepted and executed in Indonesia is that it does not violate public order (Arbitration Act and Alternative Dispute Resolution, 1999). The problem is that article a quo and its explanations do not provide adequate information about what public order is and what can be categorized as contrary to public order. As a result, the court can interpret and apply the meaning of public order without restrictions.

The ambiguity has made the norm a quo one of the justifications often used to deny

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the recognition and execution of an international arbitration award in Indonesia. The examples of this can be found in the Bankers Trust case vs. PT Mayora Tbk ("BT vs. M") and the Case of Pertamina and PLN vs. Karaha Bodas Company LLC ("P vs. KBC"). In both cases, the Indonesian parties lost in international arbitration. However, these two international arbitration awards were refused to be recognized and enforced by the Jakarta Pusat District Court for violating public order. However, there is no further reference of the definition and range of the referred-to public order in the legal considerations of each of the rejection decisions.

The implications that occur are also long-term. One of them is the emergence of the reluctance of foreign business people to do business in Indonesia. Certainty and law enforcement are crucial aspects in bringing in investors. The problem is that in Indonesia, even if the international arbitration party has won over a foreign party, the implementation of the award will also potentially not be recognized and implemented. With the lack of certainty of legal protection, these foreign companies will tend to avoid investing in Indonesia.

Research Problems

There are three issues to be answered in this paper: (1) does the a quo article contain ambiguity of norms?; (2) what are the implications of the ambiguity of the norms contained therein?; (3) what is the resolution that can be given to the issue of the ambiguity of norms in the a quo article?

Research Methods

The object of research from this paper is Article 66 Letter C of Law Number 30/1999. According to Article a quo, international arbitration awards, as referred to in Letter A, can only be executed in Indonesia, and are restricted to decisions that do not violate public order. Specifically, the main thesis of this paper is that the phrase "public order" contains an ambiguity of norms. Before answering the first question, we need to lay out the normative and sociological juridical context of the existence of Article 66 Letter C of the Law a quo. It needs to be done as the main descriptive basis of the object of this study. After obtaining that context, the researchers explore the comprehensive causes and implications of the ambiguity of a quo norm. To determine the cause of the ambiguity of norms in a quo article, a doctrinal review of the norm is carried out as a foundation to identify whether the article a quo contains ambiguity. Once the researchers have obtained an answer to this, the researchers trace the concrete implications of the norm ambiguity that occur, on the part of the Court, the parties to the dispute, and even the business people outside the dispute. Based on the elaboration above, the urgency of solving and the root of the problem are obtained to find the suitable resolutions to solve it.

Discussion

Normative and Sociological Aspects of Article 66 Letter C of Law 30/1999

In order to get a clear definition of the object of study, there are two comparisons that needed to be made. First, a comparison of Article 66 of Law 30/1999, which is an umbrella provision of Article 66 letter c, and Article 70 of Law 30/1999 is required. Both of them restrict the kind of objections that can be filed to an arbitral award. Thereafter, we compare Article 66 letter c, as a specific provision in Article 66, to Article 5 of the 1958 New York Convention; both discuss the recognition and execution of international arbitral awards. The identification of the comparisons made is the initial basis before further exploring the existential causes of Article 66 letter c of Law 30/1999.

1. **Article 66 and Article 70 of Law 30/1999**

   First, the two articles provide for two different remedies that can be made against an arbitral award. In arbitration, there are two fairly commonly known attempts against an arbitral award, namely the setting aside and the annulment of the award. In the first context, the judgment retains binding legal force but cannot be executed in the place where the judgment was issued. In the second case, the judgment is no longer binding legal authority, therefore it cannot be enforced automatically anyplace.

   Article 66 provides for the issue of refusal of recognition and execution of arbitral awards, which enter into the form of an award (Arbitration Act and Alternative Dispute Resolution, 1999). Refusing is not the same as negating his legal status. Because, even if the Court of state X refuses to recognize and implement it, the Court of state Z will probably recognize and implement it. Unlike the case in the context of Article 70, the phrase used in it is annulment (Arbitration Act and Alternative Dispute Resolution, 1999). An annulment of an arbitral award renders the award unenforceable or of no further enforceability.

   Furthermore, the second thing to compare is the scope of its applicability. Article 66 is contained within the Second Section on International Arbitration in Chapter VI on the Execution of Arbitral Awards. The object of its discussion is an international arbitration award (Arbitration Act and Alternative Dispute Resolution, 1999). Meanwhile, because it merely mentions "against the arbitral award," Article 70 does not explain the clarity of the subject of discussion. One case suggests that the Court may interpret that Article 70 (attempted annulment) may be imposed against an international arbitration award (Arbitration Act and Alternative Dispute Resolution, 1999). Nonetheless, the case has been annulled by the Supreme Court (MA) that an annulment mechanism can only be imposed against national arbitral awards (Arbitration Act and Alternative Dispute Resolution, 1999).

   Finally, what is compared is a specific comparison of the words in each norm that are often used as the basis in each attempt. In Article 66, a frequently used phrase is “public order” (Arbitration Act and Alternative Dispute Resolution, 1999). Meanwhile, in the context of Article 70, the phrase *tipu muslihat* (trickery) is often used as the basis for applying for annulment (Arbitration Act and Alternative Dispute Resolution, 1999).

The similarities between the two phrases is that their presence lacks clear limitations and scope, allowing parties wishing to submit each attempt to interpret each term broadly when filing a rejection or cancellation.

2. Article 66 letter c of Law 30/1999 and Article 5 of the 1958 New York Convention

In addition to being compared to Article 70, a comparison between Article 66 of Law 30/1999 and Article 5 of the 1958 New York Convention needs to be made. Unlike the previous comparison, these two norms both talk about rejecting an international arbitration award. The difference is that the first norm is a product made by the national legislature in Indonesia. In contrast, the second is a product from the United Nations (UN) which was later ratified through Presidential Decree 34/1981.

The most fundamental difference is that they contain different provisions. In the context of Article 66, there are 5 (five) cumulative conditions for an international arbitral award to be recognized and enforced: a. bound by a treaty; b. related to the scope of trade law; c. no violation of public order; d. get an *exequature* from the head of the Jakarta Pusat District Court; and e. get an *exequature* from the Supreme Court then devolved to the Chairman of the Jakarta Pusat District Court if Indonesia becomes one of the parties to the dispute (Arbitration Act and Alternative Dispute Resolution , 1999). Meanwhile, in Article 5 of the 1958 New York Convention, there are seven alternative grounds that can be used to reject an international arbitration award (UN, 1958). The definition of cumulative is that all requirements must be met, whereas the meaning of alternative is one of the factors that might be used as a reason to refuse.

The second difference is related to the issue of the burden of proof. In the context of Article 66, the burden of proof lies with the party who precisely wants the judgment to be recognized and implemented because the words used are "... only recognized and enforceable ..., if it meets the conditions ...". In contrast to Article 5 of the 1958 New York Convention, the burden of proof lies with the party wishing to reject the award because the words used are "the recognition and execution of the award may be rejected ... if the party applying for the refusal can prove that ...". In other words, Article 5 of the 1958 New York Convention, which addresses the denial of recognition, implicitly provides that an international arbitral award must automatically already be recognized and executed in the place where the state is going to run. Against such automatic recognition, the objecting party may file a refusal. In the context of Article 66, on the topic of recognition, an international arbitral award is not automatically recognized and enforced, but must first be confirmed by the court for recognition and enforcement.

3. Existential Reasons Article 66 letter c of Law 30/1999

The background of the political and economic environment when Law 30/1999 was enacted is crucial to understand the reasons for the a quo article's existence. The law a quo was created when a monetary crisis hit Indonesia. At that time, there were many international trade disputes involving parties originating from Indonesia and foreign countries. In such situations, a safeguard is necessary to protect the state from losses

that may result from the execution of an international arbitral award. One of the efforts that can be seen leading to such protection is the existence of Article 66 letter c in which it states, "international arbitration awards ... can only be enforced in Indonesia limited to judgments that are not contrary to "public order" (Arbitration Act and Alternative Dispute Resolution, 1999). This argument is evident in the reality of the P vs KBC case.

As a State-Owned Enterprise appointed by the Government to explore and develop geothermal resources in Indonesia (Presidential Decree 45, 1991), P collaborates with other parties in the form of Joint Operation Contracts, one of which is KBC. In short, KBC's responsibility in building geothermal power generation units was not realized at all due to the existence of Presidential Decree No. 39 of 1997 and Presidential Decree No. 5 of 1998, which suspended the JOC agreement between P and KBC. In the second section of the Presidential Decree a quo, it is contained that the forwarding of the projects contained therein, including the P and KBC projects, will further complicate efforts to overcome the turmoil caused by the monetary crisis (Presidential Decree 39, 1997). KBC filed a case against the international arbitration body in Geneva, Switzerland, on April 30, 1998, more than a year before Law 30/1999 was adopted. On December 18, 2000, more than a year after the promulgation of Law 30/1999, the arbitral tribunal ruled that P and PLN had breached the agreement and were required to pay USD 261,100,000 in compensation (at the time equivalent to Rp. 4,177,600,000,000 or four trillion more), plus interest at 4% per annually as of January 1, 2001. The nominal consists of USD 111,100,000 for the costs suffered by KBC and USD 150,000,000 for the profit that KBC should have earned.

Then on December 18, 2000, Pertamina made an application for rejection of the recognition of an international arbitration award a quo to Jakarta Pusat District Court. Under Judgment No.86/PN/Jkt.Pst/2002, Jakarta Pusat District Court accepted the application based on an arbitral award a quo contrary to public order. If Jakarta Pusat District Court does not do so or does not have a justification that the arbitral award a quo is contrary to public order, the government will find it increasingly difficult to cope with the turmoil of the monetary crisis (PLN vs Karaha Bodas, 2002). Despite the losses that KBC has suffered, reimbursement for these losses will potentially aggravate Indonesia's economic condition at that time which was still unstable. Referring to the opinion of Louise (1997), provisions such as "public order" were included as an "emergency brake" (notbremse) to declare a foreign law could not apply in his country. In other words, the existence of the phrase "public order" is used to save the existence of the Indonesian state even though it harms other parties.

Public Order: An Ambiguous Norm?

1. The Ambiguity of The Norm

1.1. Understanding and Causes of The Ambiguity of a Norm

According to the Kamus Besar Bahasa Indonesia (Indonesian Dictionary), the word kabur (ambiguous) means something that is less clear, vague, or less accurate (KBBI, 2022). Meanwhile, the word norma (norm) means a rule that binds the community and is used as a guide in behavior (KBBI, 2022). So, a norm can be said to be vague if the norm is not clear or difficult to understand its purpose or scope. When interpreted broadly, the concept of a quo can tend to be derogatory. In fact, when studied through how a norm is made, the actual nature of ambiguity is never being separated from a norm, even if it will always be contained in it. Several legal experts argue that there is a close relationship between law and language, which is also related to the cause of norm ambiguity.

According to Rahardjo (2006), a norm has undergone a reduction in meaning when an initial idea is transformed into written sentences in the norm format. Therefore, in order to achieve the objectives of the law, it is not enough to rely solely on the text, but also the human beings who can understand and carry out the substance behind the text. Another opinion was put forward by Van Apeldoorn (1993), who stated that justice could not be equalized, but rather is relative because it must be weighed individually. With this viewpoint, Apeldoorn appears to believe that reducing the meaning of norms is necessary in order for them to be changed when applied in diverse issues that occur in society.

According to Christie (1964), vagueness is an attribute of language that cannot be avoided. Meanwhile, in the creation of norms, language elements are an essential part of the process of their preparation. Endicott (2021) of Stanford University revealed - through the results of his research - that law is closely related to language. The relationship that arises is that the use of language is a crucial thing in a legal system, and conversely, the law acts as an authoritative solution provider for various disputes arising from the use of language.

Furthermore, Asgeirsson shared his thoughts on the norm-making process and the impact of language on the nature of norm ambiguity. The beginning of a norm being created is through a speech. Thus, causally speaking, the content of a norm is determined by what the norm-makers say. Often, the speech expressed is ambiguous; although the utterance is clear, it is not necessarily that the content contained therein is clear. This is where; the nature of obscurity appears, where inevitably, a norm will inevitably contain a vague nature. Moreover, this also gives rise to the term that the law is to some extent vague (Asgeirsson, 2020). Thus, the norm will always contain a vague nature due to the process of its creation relating to language, speech and the process of speech by jurists. Therefore, the question arises that does the ambiguous that will always be inherent in a norm have a bad impact on the process of its interpretation or even contribute well to the implementation of a norm?

1.2. A Norm Requires Ambiguity

In reality, not all norms are ambiguous, but most are vague. On the positive side, the ambiguity of a norm is needed in the process of legal interpretation. According to

Asgeirsson (2020), ambiguity in a norm serves to overcome cases that the norm cannot implement literally. Thus, the ambiguity of these norms is present to assist interpreters or legal practitioners in adjusting norms to leading cases, then devising the most concrete and appropriate solutions in overcoming a quo case. In line with what Asgeirsson expressed, Peter Lang (2005) stated that vagueness in a norm is essential because of the characteristics of an impersonal norm but simultaneously seeks to follow human behavior that is difficult to predict. On the one hand, norms must be determinant and precise, but they must also be flexible and adaptable. In its execution, ambiguity is precisely needed for legal practitioners so that norms can be interpreted according to the circumstances that occur, while balancing the two properties of norms that are reversed.

In addition, according to Christie, the vagueness in a norm plays a role in providing flexibility for the norm. That is, vagueness helps law enforcement officers who understand what general idea to achieve, but are unsure of what specific rulings to formulate for a particular case. In other words, vagueness is used as a standard or base that can later be developed and adjusted as society changes. Christie gives a hypothesis, which if a norm is made too specific from the beginning, law enforcers will later be faced with the need to change their own language through the constant creation of vagueness to save himself from his own improvidence (Christie, 1964). However, in addition to its various benefits, the ambiguity can also be a two-sided blade when used arbitrarily and unwisely.

1.3. When is the ambiguity of a norm stated to be problematic?

On the negative side, the ambiguity of a norm might be counter-productive. An ambiguous norm can be said to be problematic if the norm a quo does not have certain components capable of limiting the blurring contained in the norm a quo. Christie elaborated on this point. Looking back on how ambiguity occurs in the norm, it is commonly discovered that the courts created ambiguity to defend their judgements. Alternatively, legislators deliberately create ambiguity in a norm to give the court the freedom to decide cases according to their needs (Christie, 1964). Both of these things actually aim to make it easier for law enforcement to implement them.

The problem arises when the court genuinely surpasses its freedom in carrying out legal interpretation, so that the level of freedom is not what the legislators intended when the norm a quo was created. This technique is considered an abuse of the benefits offered by the ambiguity in the norm itself. In fact, Christie also revealed that if even the slightest trace of vagueness is found in a norm, the trace is likely to be exploited into a scapegoat (Christie, 1964). The same thing was also expressed by Satjipto who stated that the existence of vague norms could be a legal loophole for the rulers (Christie, 1964). Thus, a vague norm can be a problem when the vagueness is actually abused by law enforcement - or law enforcers abuse the freedom offered by the blur - to interpret the norm solely as a postulate.

2. Public Order

Black s's Law Dictionary defines public order or "public policy" as a foundation conceived and formed by lawmaking institutions or courts that are important to the whole society (Campbell, 1968). The phrase public order is composed of two words, "order" and "public". Ketertiban in the KBBI is defined as an orderly and good state that exists in society. It is taken from the word "tertib" which is etymologically taken from the Arabic رَتَّبَ 'rataba' which means 'fixed' or invariable (KBBI Online, 2022). Meanwhile, the word "umum" in the KBBI is defined as "orang banyak" which is taken from the Arabic word عُمُوْمٌ 'umūm'; the use of the word "umum" usually refers to a large or even unspecified number of its number and majority (KBBI Online, 2022).

Thus, public order can be defined: (1) a state that is considered orderly by the crowd or society; or (2) a state of crowds or an orderly society. Therefore, in the first context, the crowd or society becomes the determinant of whether and when a state is considered orderly and good. While in the second context, the situation is related to the condition of the crowd or the community. The subject who conducts the assessment does not have to be the crowd or the society, but it can be the government or other subjects.

Although linguistic understanding has been obtained, public order, terminologically, does not have a single definition between one country and another. This distinction is impacted by variances in each country's philosophy of life, political situation, and national personality (Harianto, 2003). Brocher divided the notion of the principle of public order into internal public order and external public order (Brocher C & Rivie, 1882). In the context of the principle of public order in the provisions of international arbitration, the principle of public order in question is external public order because it involves more than individual relations in it. According to Brocher, the violation of international public order referred to in this case is the circumstance when the foreign law that must be applied according to international civil law becomes unenforceable because it is contrary to the national values and laws of a country (Brocher C & Rivie, 1882).

Meanwhile, Harahap defines public order as a broad phrase containing ambiguous meanings (Harahap, n.d.). However, when interpreted narrowly, violations of public order, according to Harahap, can be defined as violations of positive law and the joints of Indonesian national values. Therefore, when viewed casuistically, the refusal to implement an international arbitration award, on the basis of being contrary to public order, is usually based on the reason for the violation of Indonesian laws and regulations (Brocher C & Rivie, 1882).

In Indonesia, public order was first regulated in Article 23 of the *Algemeene Bepalingen Wetgeving voor Indonesie* (AB). However, according to van Brakel, the definition of public order in Article 23 AB needs to be distinguished from the understanding of public order in international civil law (HPI). In the formulation of Article 23 AB, decency falls within the scope of its understanding. At the same time, in HPI, the notion of public order does not include elements of decency (Gautama, 1977).

Provisions regarding the principle of public order are also regulated in Article 1337 of the Civil Code which is closely related to the halal clause. Furthermore, Article 1337 of the Civil Code states that a cause can be said to be halal if it does not conflict with the law and public order. Therefore, what is meant in national law as public order is not necessarily considered in the same sense in HPI.

3. Public Order as An Ambiguous Norm

From the previous two explanations, the standard of blurring of a norm and definition of public order has been obtained. The next question is: can public order be categorized as a fuzzy norm? One basic thing that needs to be proven is how multi-interpretation the understanding of public order is. As the definition of public order previously stated, public order mean a state that is judged by society as an orderly state or a state of society that is judged as an orderly state. The main things that need to be observed are: (1) what the standard says is an orderly state of affairs; (2) who has the legitimacy to declare that a state of affairs is orderly and good. In fact, these two things are the reason why to this day, there is no single definition of the principle of public order. Hartono (1989) argues that it is difficult to have a single definition because the principle of public order is difficult to formulate clearly because the definition is influenced by the place, time, and philosophical values of each country.

It can be seen in the numerous variations in understanding of public order. *First*, in its development, political considerations are often used as a handle to reject foreign rules in the implementation of national arbitration awards based on the principle of public order. It is because the principle of public order is used as a protector of state sovereignty influenced by many factors of international political constellations. This argument is in line with Allof's(2001) opinion that "sovereignity is not a fact but a theory", so it can develop over time due to political influence. One example can be seen in the case between National Oil and Libyan Sun oil. In this case, the panel of judges rejected the arbitral award on the grounds that Libya is a country notorious for supporting international terrorists. Despite declaring this, the panel of judges affirmed that the United States still recognizes Libya as a sovereign state and has no intention of declaring war (National Oil vs Libya Sun Oil, 1990). The panel of judges in the case also added that “policy defense as a parochial device protective of national political interests would seriously undermine the (New York) Convention's utility (National Oil vs Libya Sun Oil, 1990).”

Secondly, there are times when public order is understood as the absolute competence of the court. One example is AAAN PLC vs. PT APM. This case is classified as a violation of "public order" which is seen through the aspects of intervention in the orderly law and absolute interests issued by the court. The case was initiated by AAAN PLC's application to the Jakarta Pusat District Court to execute SIAC Judgment No. 062/2008 (ARB 062/08/JL) (AAAN PLC vs PT APM, 2008). This application was rejected by the Jakarta Pusat District Court on the grounds that in (AAAN PLC vs PT APM, 2009) the judgment a quo, there was an order to stop the proceedings of case No.

1100/Rev.G./2008/PN. JKT. SEL is considered to have intervened in court proceedings in Indonesia, thus violating public order. The ex-strong rejection from the Jakarta Pusat District Court was then followed by an appeal and Review from AAAN PLC against PT APM to MA. However, both still ended with the defeat of AAAN PLC the Supreme Court equally rejected on the grounds that the SIAC Ruling had violated public order (AAAN PLC vs PT APM, 2016).

Third, there are times when order is perceived as a violation of moral values and justice in society. In the case of Parsons & Whittemore Overseas Co., Inc. v. Société Générale de l'Industrie du papier (RAKTA) which occurred in the United States, Judge J. Smith interpreted the principle of narrow interpretation by stating "where enforcement would violate the forum state's most basic notions of morality and justice." In addition, there is also a context of such violations of public order manifesting in positive law violations. In the Indonesian context, this interpretation also occurs in the case of E.D. &F. Man Sugar Ltd v. Yani Haryanto (E.D. & F. Man Sugar Ltd. vs Yani Haryanto, 1999) and Astro Group v. Lippo Group (Astro Group v. Lippo Group).

In fact, there are times when public order is connected with economic interests. In the case of Dongfeng Garments Factory of Kai Feng City and Taichun International Trade (HK) Co. Ltd., v. Henan Garments Import & Export (Group) Co. (1992) when Chinese courts rejected international arbitration awards due to state interests. The international arbitration award in the case requires the domestic party to pay a certain amount of compensation which, if interpreted broadly, the court considers to have violated public order because it adversely affects the Chinese economy (Heve, 2004). This occurrence is similar to the context of P v. KBC that occurred in Indonesia, where the monetary crisis could be the basis for rejecting the implementation of an international arbitral award.

Based on the descriptions of the situations above, it is possible to conclude that the result of judgments based on the idea of public order varies. Because of the multi-interpretation of understanding of public order, Niboyet stated that the problem of understanding public order is considered one of the problems in HPI that is difficult to resolve because of disagreements that never to reach “une &s moins bien equilibries de la matiere” (Gautama, 2007). In practice, countries with common law legal systems see public order as an "unruly horse" since it frequently leads to ambiguous outcomes in the courts (Arfazadeh, 2002). Meanwhile, in countries with civil law legal systems, public order is analogous to a “chameleon” because of its changes that cannot provide legal certainty to the parties to the dispute even though ambiguity is still needed.

Implications of the Ambiguity of the Phrase "Public Order"

The implications of an ambiguous norm have an influence on the obstruction of the implementation of a norm (legal interpretation), especially in achieving its goals when implemented in society. According to Lawrence M. Friedman, a legal system has three components that are continuous with each other: substance, structure, and culture

(Friedman, 1969). The first element, substance, is known further as legal norm/legal substance (content of law), which is the regulation, doctrine, and basis used in law enforcement (Friedman, 1969). The second element, the structure or legal administration (legal structure), is a device in the form of a system that functions to process or implement legal substances for the public, such as judges, legislators, governors, and prosecutors. The third and final element is culture or culture of law. Those are the values, attitudes, views that are contained in the legal awareness of the community and can affect the passage of the law (Friedman, 1969). This third element is important because it binds the legal system and determines the role of the legal system in the culture of society as a whole (Friedman, 1969).

If any of these three elements cannot perform their functions properly, legal system obstacles will also arise. In the context of the occurrence of too broad a blurring of norms, it means that there is a problem with the legal element substantively (legal norm). Of course, this fallacy can hinder the implementation of that norm as well in society. Furthermore, this section elaborates on its implications for some important subjects associated with international arbitral awards.

1. Against the Court

   Based on Article 25 of Law 48/2009 concerning Judicial Power, the Judicial Body consisting of the General Judiciary, Religious Courts, Military Courts, and State Administrative Courts, judges are authorized to examine, adjudicate, decide, and resolve disputes in accordance with each field (Judicial Power Act, 2009). In adjudicating, one of the roles that a judge performs is to find the law. Legal discovery is the legal formation process by a judge or other legal officer to carry out the law against an existing legal event (Mertokusumo, 2019). Legal discovery is conducted because a judge cannot reject or postpone a decision because the current law is insufficient or imprecise (Mertokusumo, 2019). Thus, when a law is incomplete or unclear, the judge must seek and find the law (rechtsvinding) (Mertokusumo, 2019).

   Legal discovery is carried out by exploring the legal values that develop in society (Ahmad, 2014). According to Sudikno, there are two ways of finding the law: (1) interpretation or interpretation; (2) legal construction (Mertokusumo, 2019). The implications of ambiguous norms on the courts pertain to aspects of interpretation or interpretation, not legal constructions. The interpretation takes the form of an explanation that leads to a proper implementation by the public regarding the legal regulation of a concrete event (Umam, 2017). In other words, the method of interpretation is a means or tool in knowing the meaning of law (Umam, 2017). According to Jonsson, the method of interpretation serves to fill in the legal gaps caused by fuzzy norms (Jonsson, 2009).

   In reality, a general judge is faced with two different points of view between the interpreted text and the views of the interpreter himself (Khalid, 2014). It can be influenced by the magnitude of the period between the time the law was made and the time the law was implemented, and the breadth of meaning the law has. Therefore, the role of the judge here is to concoct these two views in accordance with aspects of justice, legal certainty, predictability, and expediency (Khalid, 2014). Thus, it is important for judges need to be able to understand the norms they want to apply.

According to Aharon Barak, a judge is a product of society because it follows the dynamic values that exist within it (Barak, 2006). Micro-wise, judges are also seen as ordinary human beings with psychological and social sides (Rahardjo, 2003). The judge's consideration in the process of interpretation is a mental activity that is not bound by rules, but rather takes place beyond the limitations of thinking outlined by the rules (Maya, 2019). Through this perspective, the judge's interpretation can be seen as a mental activity for the judge that forms a horizon of view covering the extent of the case and his conscience (Maya, 2019). In line with Barak's understanding, Derrida argues that the judge's interpretation is capable of revealing a hidden meaning in a statutory text (Maya, 2019). Thus, the legal paradigm that judges have gives the color of interpretation, and the interpretation of judges will also be influenced by the interpreter's perspective on the law. (Maya, 2019).

Based on the a quo explanation, a judge's interpretation is influenced by the internal nature of the judge himself (interpretation as a mental activity). Thus, if it is related to the implications of the phrase "public order" in the courts, there are three possibilities that can occur. The first possibility is that the phrase a quo's broad meaning allows judges to interpret it in a way that is not constrained by obvious bounds. At the same time, it must be comprehensive and applicable to other circumstances. A commonly used method of interpretation of the phrase "public order" is an extensive method of interpretation. This method is carried out by the judges by means of extensibility of the scope of the term to be interpreted. In this way, the issue is that judges can extenuate without any clear boundaries, according to their preference for the case being resolved (Christianto, 2010).

The second possibility is that the judge may experience confusion as to how to understand the norm in question and why a case can be considered a violation of "public order." This confusion occurs because the ambiguous term puts the judge in a dilemmatic situation due to the absence of a juridical explanation capable of being a handle on the underlying. As a result, a judge's personal interpretation of the law (mental activity) might have an impact on the implications of a rule in court. Moreover, the relevant norms are unclear and vague.

2. Against the Parties to the Dispute

There are two affected parties that need to be observed. The first party is the losing party (the party applying for the rejection of an international arbitration award). Meanwhile, the second party is prevailing in its international arbitration hearings.

For the losing side, there are two implications that we need to look at in proportion. The existence of such a phrase can protect the parties against situations beyond their control that have an impact on their business. On the other hand, the broad interpretation of the term "public order" allows that party to exploit a legal loophole to minimize the effect of losses or even avoid implementing it at all. As Scott Howe wrote in Scott Howe's article entitled "The Perilous Psychology of Public Defending", there is a kind of possibility of a dangerous psychic reaction from a person who is faced with a defense in a dispute (Howe, 2015). In essence, the efforts made are to avoid the consequences of accountability that will be accepted as much as possible.

It is in accordance with the Benefit-Cost Analysis (BCA) in Law and Economics. BCA is a method of determining possible future losses and comparing them with possible gains (FEMA, n.d.) . The BCA method is related to both laws whose values

are produced by legislation and laws formed as a result of BCA (Zerbe, 1998). According to Zerbe, there are three rules to follow while using the a quo technique to make decisions: (1) The role of BCA is to present information relevant to decisions, not to make decisions; (2) BCA is primarily based on current values, rather than missing values or as a tool to create new values; and (3) BCA is founded on legal and psychological references (Zerbe, 1998). As the losing party to an international arbitration award, they may use (Zerbe, 1998) the BCA method in making a legal decision and weigh the disadvantages and advantages of the execution of a quo award. With this, the losing party is able to use BCA as a benchmark in estimating the loss or profit that can be obtained, which will later affect the decision of the losing party either to implement or not to implement the arbitral award.

Leaning on these two theories, in the context of this study, we see that the phrase a quo has the potential to be used to avoid the liability that should be assumed; moreover, there are some foreign international arbitration awards that have been refused to be recognized and implemented in Indonesia under the pretext of the phrase a quo.

For the winning party, the chances of rejection of an international arbitration award in Indonesia are greater. Although an international arbitration tribunal has granted its request for arbitration, it is not necessarily that the award is recognized and enforced in Indonesia. As in the case of P v. KBC, AAAN PLC v. PT APM, E.D & F.Man (Sugar) LTD v. YH, and others, although the international arbitration tribunals have granted the foreign parties' pleas, the Jakarta Pusat District Court does not recognize it on the contrary basis of public interest. Not surprisingly, this is one of the reasons Indonesia is considered unfriendly to international arbitration awards. One major domino effect that may occur is the reluctance to build business relationships in Indonesia with such realities - in the next section it is explained in more depth about the implications for the business and investment climate.

3. Against the Country and the Business and Investment Climate

The ambiguity of the phrase public order has an effect on the decline in the quality of the climate and business and investment in Indonesia. This basic argument is concerned with the issue of certainty and fairness in dispute resolution.

The phrase public order does not provide a definitive resolution of the dispute. From the explanation that has been described in the section "Public Order: An Ambiguous Norm?" in this paper, it can be seen that the argument about the existence of an ambiguity of norms in Article 66 letter c of Law Number 30/1999 occurs due to the absence of further parameters and provisions on the principle of public order. Although the interpretation of the phrase public order is needed, too varied results of decisions make the resolution of business disputes unpredictable for business people. It makes it difficult for business actors to make decisions after dispute resolution.

In fact, the certainty of dispute resolution is one of the indicators of a friendly investment. The business climate of a country is influenced by many factors, one of the factors is the inflow of investment into the country (Harjono, 2007). Investment flows are a determining factor in the large business climate because the internalization patterns of multinational companies are largely preceded by investment in a company. To create a good international investment climate, Dhaniswara K. Harjono mentioned that there are several things that a country must do (Harjono, 2007):

1. simplifying the procedures and licensing processes related to investment;

2. opening up many of the originally closed accesses to foreign investment;
3. providing various assistance, as in the form of incentives, to the parties;
4. reviewing and refining legal products to always develop according to the needs of the times;
5. improving an effective and fair dispute resolution process;
6. improve the duties, functions, and authorities of relevant agencies in carrying out services;
7. opening up larger ownership of foreign capital;

Based on the explanation above, it can be seen that creating an effective and fair dispute resolution is one of the steps that must be taken to create a good international investment climate in Indonesia. Dispute resolution is a very important factor because this is where a country provides legal protection to businessman.

This is in line with what Erman Rajagukguk expressed that the role of law in economic development has to do with whether the law is capable of creating "stability", "predictability", and "fairness" (Rajagukguk, 1997). The stability function is a legal function used in balancing and accommodating disputed interests (Rajagukguk, 1997). Meanwhile, the predictability function is used as a determinant of subsequent steps when entering economic relations. An effective and fair dispute resolution process is one of the factors that must be improved because business people hope to find a win-win solution and certainty for a problem resolution (Rajagukguk, 1997). In a situation when dispute resolution is of poor quality, it is very difficult for business actors to predict the outcome of dispute resolution that will determine the next decision making. Therefore, dispute resolution institutions are expected to play an active role in protecting the rights of the parties by creating effective and fair dispute resolution.

According to the statistics, the cause of the decline in the ease of doing business (EoDB) ranking from 72 to 73 out of 190 nations is the quality of judicial process index, which also includes the actuality of dispute resolution in arbitration. The World Bank report in 2019: Training for Reform reported that Indonesia has an investment climate index that is quite worrying for foreign business people. Indications of a downgrade in EoDB's rating have actually been seen in the decline in the foreign investment index (FDI) by 20% in the same year. One of the weaknesses highlighted in this report is the quality of judicial process index which is below the average figure (World Bank, 2019). Indonesia's quality of judicial process index is at a fairly poor figure, which is only at 8.9 out of 18 (World Bank, 2019). For the decline in the index that occurred, experts assessed that Indonesia needs to make many improvements to raise the EoDB level, especially in the (World Bank, 2019)quality of judicial process index in order to improve the investment climate in Indonesia (Christiawan, 2018).

The legal ambiguity of a norm as a form of legal uncertainty certainly has an impact on many things, including a country's business and investment climate. This argument is evidenced by the results of research conducted by the World Bank in 2005 with the finding that the barriers to investment entry for a country are macroeconomic instability, regulatory inconsistencies, and high levels of corruption (World Bank, 2019). The regulatory inconsistency referred to in the study is defined as a regulation that does not provide legal certainty to the parties to the dispute. This is similar to the finding of an ambiguity of norms that occurs in the principle of public order Article 66 letter c of Law Number 30/1999, because the phrase public order has been shown to often produce judgments with too broad an interpretation.

Based on the definition explained by a World Bank study in 2005, it can be concluded that the ambiguity of norms in Article 66 letter c of Law Number 30/1999 is a form of regulatory inconsistency that can be a factor inhibiting the entry of investment into a country

Conclusion

From the elaboration in the previous sections, we conclude that in resolving the issues arising from Article 66 letter c of Law 30/1999, there are two interests that need to be considered. On the one hand, the blurring of the phrase "public order" opens up a wider space to reject an international arbitration award, so that the interests of business people are disturbed due to the lack of predictability of recognition and implementation of international arbitration awards in Indonesia. Meanwhile, norm ambiguity is required in the formulation of a norm so that scenarios that are unpredictable when the a quo law is adopted can enter its scope. In addition, it is clear that, in many cases, public order is required to preserve national interests.

Suggestion

According to the findings of the previous sections' research, the elimination of the a quo article is less strongly accepted. Although this option can immediately uproot the root cause, other problems will arise. The abolition of article a quo could actually potentially create a legal vacuum. Instead, an option to consider is how to make a relatively more restrictive, rather than extensive, scope regarding public order. One way that can be done to improve the regulation is to add in the explanation section of article a quo about what matters fall within the scope of public order.

One situation that can enter into it is force majeure or force majeure. In principle, arbitration law researchers need to conduct further research on what situations are deemed necessary to enter the universe of public order. Another situation relates to violations of the basic laws of the countries where international arbitration awards are to be recognized and implemented in accordance with reports from the UN Committee (UN ECOSOC) and the UNCITRAL Secretariat.

In addition to the issue of norms, related subjects also need to be considered. From the side of the judges in the District Court, the interpretation carried out against public order must be carried out carefully. The main paradigm that judges must adhere to is that there are two interests that must be preserved when faced with causes of public order: the civil interests of the disputing parties and the interests of the nation. Both must be judged proportionately and fairly. Meanwhile, from the side of the parties to the dispute, the principle of good faith must be applied. By orientation, dispute resolution in arbitration is to look for who (the subject of law) is responsible for what (the object of law) is fairly and proportionately. In other words, provided legal remedies such as denial of recognition of arbitration should be used in the context of that orientation rather than to find loopholes in order to avoid liability.

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