IMPLEMENTATION OF THE 1958 NEW YORK CONVENTION IN SEVERAL ASIAN COUNTRIES: THE REFUSAL OF FOREIGN ARBITRAL AWARDS ENFORCEMENT ON THE GROUNDS OF PUBLIC POLICY

Erman Radjagukguk

Abstract
The national character of public policy indicates that the decision is up to the court of national country concerned. Therefore, each country can rule whether public policy and its related issues are part of the country’s public policy. Courts around the world have recognized that Article V of the Convention is discretionary. The courts of Civil Law countries appear to be interpreting public policy broadly. This is quite evident from decisions made by courts in Indonesia, The People’s Republic of China, Japan and Korea. The Indonesian Court considered Article V (2) (b) of the New York Convention which states that the court may deny the enforcement of an arbitral award if enforcement would violate public policy of the place of enforcement. In addition, before the enactment of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the Court referred to Indonesian Supreme Court Regulation No. 1 of 1999, which provides that the enforcement of foreign arbitral awards in Indonesia imitatively applies to awards which do not violate public policy order in terms of all underlying principles of the Indonesian legal system and society. In Indonesia, Bakrie Brothers v. Trading Corporation of Pakistan Ltd., was the first case in which the Indonesian court rejected the enforcement of foreign arbitral awards for the reason of violating public policy.

Introduction
Some 125 states have ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), including some Asian countries such as Indonesia, The People’s Republic of China, India, Japan, Korea, and Singapore. Under Article V (2) (b) of the New York Convention, the courts of member states can refuse enforcement of foreign arbitral awards if such enforcement is contrary to the public policy of the state concerned. The New York Convention leaves the interpretation of the abovementioned public policy to the courts of the member states concerned.

The courts of several Asian member states of the New York Convention have different interpretations of public policy. Courts of civil law country have a

1 Professor of Law at Faculty of Law University of Indonesia.
3 Kenneth R. Davis, Ibid.