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The International Arbitration Award as a Simple Proof Requirement in Bankruptcy

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Abstract

Bankruptcy and Arbitration are forms of mechanisms for resolving disputes among parties. The purpose of this research is to explore the use of international arbitration awards as a simple proof requirement in bankruptcy cases. The research methods employed include the statute approach and conceptual approach. The findings of this research indicate that international arbitration awards can be admissible as simple proof due to the final and binding nature of international arbitration awards when they meet certain requirements established by Indonesian positive law. Specifically, if an international arbitration award has been registered and requested for enforcement at the Central Jakarta District Court, the international arbitration award is considered valid. Meeting these criteria, international arbitration awards, as authentic evidence, fulfill the simple proof requirement. However, if an international arbitration award does not meet these requirements, it cannot be considered

authentic evidence in bankruptcy proceedings under Indonesian positive law, as the authenticity of international arbitration awards is only recognized when they have been registered and requested for enforcement.

KEYWORDS *Bankruptcy, Simple Proof, International Arbitration*

Introduction

Bankruptcy is a legal process where a debtor is declared insolvent by a court ruling. To be eligible for bankruptcy, an individual or a legal entity must have a minimum of two debts, one of which must be overdue and collectible. The debtor must be incapable of repaying the overdue debt to the creditor, as outlined in Law No. 37 of 2004, in conjunction with Law No. 4 of 1998 concerning Bankruptcy and Debt Payment Suspension Obligations[1]. Bankruptcy carries legal consequences, which means that the debtor's assets will be subject to the bankruptcy process. In simpler terms, the debtor forfeits their rights to the assets included in the bankruptcy once the court decision becomes legally binding, with a few exceptions:

1. All income generated by the bankrupt debtor during the bankruptcy process, including earnings from their own work, salaries from a position, pensions, waiting allowances, or any other income as determined by the supervising judge.
2. Funds provided to the bankrupt debtor to fulfill their legal obligations for providing maintenance, as specified by statutory regulations (Article 213, 225, 321 of the Civil Code)[2].
3. A specific sum of money determined by the supervising judge from income derived from rights, as outlined in Article 311 of the Civil Code[3].
4. Benefits received by the bankrupt debtor from their children's income in accordance with Article 318 of the Civil Code[4].

The primary objective of bankruptcy is to prevent creditors from unfairly seizing a debtor's assets and to discourage debtors from engaging in fraudulent

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[1] Presiden Republik Indonesia and DPR Republik Indonesia, "Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," Pub. L. No. LN. 2004/ No. 131, TLN NO.4443, accessed September 6, 2023, http://peraturan.bpk.go.id/Details/40784.

[2] R. Subekti and R Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata: Burgelijk Wetboek,* 37th ed. (Jakarta: Pradnya Paramita, 2006).

[3] Subekti and Tjitrosudibio.

[4] Subekti and Tjitrosudibio.

activities[5]. Moreover, when bankruptcy occurs within a company, it can disrupt economic stability. Therefore, bankruptcy cases must be adjudicated by a court with both absolute and relative jurisdiction in matters related to bankruptcy[6]. In bankruptcy proceedings, the burden of proof is kept straightforward, as articulated in Article 2, paragraph 1 of the 2004 Law No. 37, which stipulates that the judge has the authority to determine the simplicity of the evidence required[7].

Considering that the purpose of bankruptcy is to prevent disputes between creditors and debtors, it can be said that bankruptcy is one of the dispute resolution mechanisms that occur between the conflicting parties (creditors and debtors) [8]. In the bankruptcy process, it is relatively easy to proceed when both creditors and debtors agree to resolve the debtor's debt issues through settlement. However, not all debtors consent to settlement because when settlement occurs, the ownership rights over the debtor's assets, initially belonging to the debtor, transfer to the creditors. Consequently, this can lead to disputes or resistance from the debtor.

Concerning the resolution of conflicts between parties (creditors and debtors), in practical terms, prior to commencing bankruptcy and PKPU (Suspension of Debt Payment Obligations) procedures, it is customary for the involved parties to explore non-litigious dispute resolution methods aimed at finding mutually advantageous solutions. These methods encompass negotiation, mediation, and arbitration[9]. Usually, parties will initially seek mediation with the aid of a mediator to facilitate reaching a compromise on the

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[5] Rahayu Hartini, *Hukum Kepailitan* (UMMPress, 2020).

[6] Marihot Janpieter Hutajulu, "Kajian Yuridis Klausula Arbitrase dalam Perkara Kepailitan," *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2019): 175–92, https://doi.org/10.24246/jrh.2019.v3.i2.p175-192. *See also* Vania Shafira Yuniar, and Florentiana Yuwono. "The Comparison of Arbitration Dispute Resolution Process Between Indonesian National Arbitration Board (BANI) and London Court of International Arbitration (LCIA)." *Journal of Private and Commercial* Law 6, no. 1 (2022): 77-99.

[7] Nelson Kapoyos, "Konsep Pembuktian Sederhana dalam Perkara Kepailitan," *Jurnal Yudisial* 10, no. 3 (2017): 331–46, https://doi.org/10.29123/jy.v10i3.264. *See also* v Al-Anshori, Huzaimah, Emi Puasa Handayani, and Gautam Kumar Jha. "Reformulation of Commercial Court Authority Regulations Relation to the Arbitration Clause." *Journal of Law and Legal Reform* 5, no. 1 (2024): 305-332.

[8] Hutajulu, "Kajian Yuridis Klausula Arbitrase dalam Perkara Kepailitan."

[9] Lucky Dafira Nugroho, "Peluang Digunakannya Lembaga Mediasi Untuk Menyelesaikan Permasalahan Debitor Pailit," *Rechtidee* 12, no. 2 (2017): 245–66, https://doi.org/10.21107/ri.v12i2.3453.

disputes at hand. Should mediation fail to yield a compromise, parties will resort to arbitration.

In arbitration, the arbitration decision is conclusive and unalterable, implying that there are no other legal remedies available to challenge it, even in the context of international arbitration. The arbitration decision can only be annulled when there is evidence of counterfeit documents or concealed documents[10].

Dispute resolution through arbitration and dispute resolution through bankruptcy represent two markedly distinct mechanisms. Arbitration places a strong emphasis on the win-win solution principle, whereas dispute resolution through bankruptcy in commercial courts tends to prioritize the win-lose solution principle. These two legal domains, governed by the Arbitration Law and Alternative Dispute Resolution (ADR) Law, as well as the Bankruptcy Law and Suspension of Debt Payment Obligations (PKPU) Law, each have their unique dispute resolution processes[11], Therefore, it's entirely understandable that their resolutions might take different paths. However, in practice, it's not uncommon for arbitration to eventually lead to a bankruptcy resolution.

One of the dispute cases related to an international arbitration award and its connection to bankruptcy involves a dispute between PT. Global Mediacom, Tbk and PT. KT. Corporation. PT. KT. Corporation initiated bankruptcy proceedings against PT. Global Mediacom Tbk. based on a previously requested determination by the Central Jakarta District Court regarding an International Arbitration Award. In the final ruling, the judge dismissed the petitioner's request, PT. KT. Corporation, on the grounds that the evidence presented in the dispute between PT. KT. Corporation and PT. Global Mediacom, Tbk. did not qualify as simple proof, resulting in the denial of the arbitration request. The specific details of the dispute between these two companies will be elaborated upon below.

I. Position Case

Party 1: The first party consists of 2 (two) companies, namely:

1. KTF Indonesia/KT Freetel, CO/ KT. Corporation
   KTF Indonesia Based on the Sale and Transfer Shares Agreement KT Freetel,.CO, Ltd replaced all Rights and Obligations of KTF Indonesia since September 23, 2006, and KT Freetel,.CO, Ltd Merged with KT

[10] Presiden and DPR, "UU No. 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa," 1999, https://peraturan.bpk.go.id/Home/Details/45348/uu-no-30-tahun-1999.

[11] Hutajulu, "Kajian Yuridis Klausula Arbitrase Dalam Perkara Kepailitan."

Corporation to merge into one, and what remains standing is KT Corporation.

2. Qualcomm Incorporated
   2nd party: PT Global Mediacom TBK, formerly known as PT Bimantara Citra TBK.

Case Chronology

A Put and Call Option Agreement (hereinafter referred to as the "Option Agreement") has been executed between party 1 and party 2 on June 9, 2006, to regulate the right to sell the shares of PT. MOBILE 8 TELECOM TBK owned by party 1, and the right to purchase shares by party 2, as detailed below:

1. Party 2 is obligated to purchase PT. Mobile 8 shares owned by Party 1 at the predetermined price if Party 1 sends a notice to exercise the put option.
2. Conversely, if Party 2 sends a notice to exercise the call option, Party 1 must sell their PT. Mobile 8 shares to Party 2 at the predetermined price.

Subsequently, a dispute arose concerning the execution of the buy-sell option agreement between Party 1 and Party 2 in 2006, in which Party 2 had committed a breach of contract. The dispute that emerged between the two parties mentioned above led to a dispute that was resolved through international arbitration, as explained in the subsection below.

II. Arbitration Cases

1. KTF Indonesia Against PT Global Mediacom TBK

KTF Indonesia filed for arbitration with the International Chamber of Commerce, International Court of Arbitration ("ICC International Arbitration Court") to resolve the dispute between KTF Indonesia and PT Global Mediacom TBK arising from whether KTF Indonesia is entitled to receive payment for the share price from Mobile-8 by PT Global Mediacom TBK, based on the 2006 Option Agreement.

The International Arbitration Tribunal that examined and rendered judgment on the case in the final arbitration award No. 16772/CYK ("ICC Arbitration Award No. 16772/CYK") dated November 18, 2010, explicitly stated the following:

(1) The Tribunal declares that it has jurisdiction over this dispute.
(2) The Tribunal finds that PT Global Mediacom TBK has breached the 2006 Option Agreement by failing to comply with the Notice of Exercise of the Sale Option dated May 6, 2009.
(3) The Tribunal orders the Respondent to pay KTF Indonesia an amount of USD 13,850,966, consisting of the Sale Price of USD 9,984,975 plus interest or return under the contract of USD 3,865,991.

(4) The Tribunal orders PT Global Mediacom TBK to pay pre-award interest to the Claimant on the amount of USD 13,850,966 at an annual simple interest rate of 5.75% from July 6, 2009, until the date of this Award.
(5) The Tribunal orders PT Global Mediacom TBK to pay post-award interest to KTF Indonesia on the amount of USD 13,850,966 from the date of this Award until the date of full payment of this Award at an annual simple interest rate of 5.75%.
(6) The Tribunal orders PT Global Mediacom TBK to pay KTF Indonesia an amount of USD 131,642 for legal costs and other expenses.
(7) The Tribunal orders PT Global Mediacom TBK to pay KTF Indonesia an amount of USD 238,000 as arbitration costs, including Tribunal fees and expenses, as well as ICC administrative expenses.

The International Arbitration Award has been registered at the Central Jakarta District Court under Registration Act for International Arbitration Award No. 01/PDT/ARB-IMT/2012/PN.Jkt.Pst, dated March 21, 2012. In connection with this matter, PT. Global Mediacom Tbk filed for the annulment of the International Arbitration Award that had been registered at the Central Jakarta District Court, in Case No. 188/Pdt.G/ARB/2012/PN.JKT.PST. The panel of judges declared that, regarding the absolute competence of the Central Jakarta District Court, it lacked authority to review this case. In the appeal decision No. 212 K/Pdt.Sus-Arbt/2013, the appellate court upheld the judgment of the District Court. In other words, as of now, the International Arbitration Award remains valid.

2. Qualcomm Incorporated versus PT Global Mediacom TBK

Qualcomm Incorporated also initiated dispute resolution through ICC International Arbitration No. 18062/VRO on October 11, 2012, involving Qualcomm Incorporated against PT Global Mediacom, Tbk (Respondent in Bankruptcy). Subsequently, the arbitration award was registered with the Civil Registry of the Central Jakarta District Court under Registration Act for International Arbitration Award, No. 21/Pdt/ARB-INT/2013/PN.Jkt.Pst.

In connection with this matter, PT. Global Mediacom Tbk filed for the annulment of the International Arbitration Award that had been registered with the Central Jakarta District Court in Case No. 534/Pdt.G/ARB/2013/PN.JKT.PST, where in the panel of judges declared that, concerning the absolute competence of the Central Jakarta District Court, it lacked authority to review this case. Additionally, there was an appeal No. 49 B/Pdt.Sus-Arbt/2016, where the court upheld the judgment of the District Court.In other words, as of now, the International Arbitration Award also remains valid.

Furthermore, regarding the settlement of the aforementioned international arbitration dispute, its execution process has not been carried out yet due to ongoing legal efforts by one of the parties, namely PT. Global Mediacom Tbk. In addition to this, KT Corporation has pursued another legal action by filing for bankruptcy against PT. Global Mediacom Tbk.

III. Bankruptcy Case

KT Corporation filed for bankruptcy with the Central Jakarta Commercial Court on July 28, 2020, under case registration number 33/Pdt.Sus-Pailit/2020/PN Niaga Jkt. Pst, which was subsequently amended by the petitioner on August 4, 2020, with PT Global Mediacom TBK as the respondent. In its verdict, the district court rejected the petitioner's bankruptcy application, based on considerations summarized as follows:

1) In the bankruptcy application, the petitioner could not prove the debt owed by the respondent to the petitioner, thus failing to meet the criteria for simple proof. This is based on the ongoing lawsuit in the Central Jakarta District Court under case number 431/Pdt.G/2010/PN.Jkt.Pst, initiated by the holding company of PT Global Mediacom TBK (a party outside the option agreement) against PT Global Mediacom TBK as the defendant and the parties to the option agreement, on the grounds of entering into the option agreement.
2) Regarding the existence of the debt owed to the Petitioner, where the Respondent has a debt to another Creditor, Qualcomm Incorporated, as evidenced by the ICC International Arbitration Award No. 18062/VRO dated October 11, 2012, between Qualcomm Incorporated and PT Global Mediacom, Tbk (the Respondent in Bankruptcy). Up to now, there has been no request for execution or notice to the Respondent.
3) Based on these considerations, the panel of judges deems that the elements of bankruptcy, namely the existence of at least 2 debts, one of which has matured, and the requirement for simple proof, have not been satisfactorily demonstrated in this case.

The Petitioner filed a cassation appeal with the Supreme Court under case number 1435 K/Pdt.Sus-Pailit/2020, and in the cassation ruling, the judges upheld the decision of the Commercial Court judges and rejected the petitioner's application.

Fundamentally, regarding the enforcement of International Arbitration Awards in a country, registration and determination by the relevant court are necessary to allow execution in accordance with the principle of international arbitration awards, which is final and binding. Although final and binding, in

the implementation of international arbitration awards that require recognition and enforcement determination, the process may involve other legal efforts by parties dissatisfied with the arbitration result. An example is the case between Astro Malaysia Holdings and the Lippo Group, resolved through SIAC in Singapore, where SIAC ruled against the Lippo Group. Lippo then appealed the decision to the High Court of Singapore, which ruled in favor of the Lippo Group, dispute between Cemex Asia Holding and the Indonesian government, Pertamina dispute against Commerz Asia Emerald[12]. Another example is the case between KT Corporation and PT. Global Mediacom Tbk, which the author raises as an example of parties seeking other legal remedies outside of arbitration to seek justice, including the attempt to use an International Arbitration Award as simple evidence in bankruptcy, due to the inability to execute the international arbitration award by KT Corporation in Indonesia despite registering it with the relevant court because the object of the dispute was litigated in court by PT. Global Mediacom Tbk. Consequently, KT Corporation's recourse was to file a Bankruptcy Petition against PT. Global Mediacom Tbk based on the international arbitration award.

Based on this, there is an interesting legal issue for the authors to explore, where arbitration or non-litigation resolutions are brought into the realm of litigation or bankruptcy. In this context, the issues the author raises are whether an International Arbitration Award can be used as the basis for filing for Bankruptcy and what is the meaning of simple evidence in bankruptcy cases.

The authors attempted to search for previous research relevant to the research topic through lens.org over the past 5 (five) years and found 4 (four) studies discussing the jurisdiction of the court in annulling International Arbitration Awards [13], Then, there is one study that discusses the meaning of

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[12] Rahmatsyah Rahmatsyah, "Analisis Hukum Terhadap Putusan Perjanjian Arbitrase (Studi Kasus Putusan Nomor 891 K/Pdt.Sus/2012) dari Sisi Kepastian Hukum Dan Keadilan," *Spektrum Hukum* 19, no. 1 (2022), https://doi.org/10.35973/sh.v17i1.1186.

[13] Yuanita Permatasari and Pranoto, "Kewenangan Pengadilan dalam Pembatalan Putusan Arbitrase Internasional di Indonesia," *Jurnal Privat Law* 5, no. 2 (2017): 26–33, https://doi.org/10.20961/privat.v5i2.19384; Supeno Supeno, Muhtar Dahri, and Hafid Zakariya, "Kedudukan Asas Hukum Dalam Penyelesaian Sengketa Melalui Arbitrase Berdasarkan Undang-Undang Nomor 30 Tahun 1999," *Wajah Hukum* 3, no. 1 (2019): 51–59, https://doi.org/10.33087/wjh.v3i1.45; Ayu Atika Dewi, "Problematika Pelaksanaan Putusan Arbitrase Internasional di Indonesia (Kajian Terhadap Konsep Keadilan dalam Perspektif Filsafat Hukum dan Filsafat Hukum Islam)," *Jurnal Panorama Hukum* 2, no. 2 (2017): 185–202, https://doi.org/10.21067/jph.v2i2.2036; Astri Maretta and Hudi Asrori S, "Proses Pembatalan Putusan Arbitrase Ditinjau Dari UU No. 30 Tahun 1999 (Studi Putusan No. 86/PDT.G/2002/PN.JKT.PST)," *Jurnal Privat Law* 5, no. 2 (2017): 13–18, https://doi.org/10.20961/privat.v5i2.19380.

simple proof in bankruptcy decisions[14], and the last one is related to the relationship between arbitration and bankruptcy[15]. Of all the relevant studies mentioned, none of them are identical to the research that the author is conducting, which is focused on the theme of International Arbitration Awards as a requirement for simple proof in bankruptcy, as well as the meaning of simple proof in bankruptcy.

The purpose of this research is to determine whether an International Arbitration Award can be used as a basis for filing for bankruptcy and to understand the meaning of simple proof in bankruptcy cases. Simple proof as a basis for deciding bankruptcy cases must have a clear legal meaning. In this regard, the author feels that the meaning of simple proof may have legal ambiguities, especially when linked to International Arbitration Awards that already have the force of law as a basis for bankruptcy filing. Additionally, there is a need for further research regarding the outcomes of International Arbitration Awards as a basis for litigation. These two aspects provide the foundation for the author to discuss the issue related to International Arbitration Awards as a Requirement for Simple Proof in Bankruptcy.

The benefit of this research is to contribute to the body of knowledge for academics and provide insights for legal practitioners, particularly judges, in deciding on bankruptcy dispute resolutions related to arbitration awards.

The research method employed in this study is a normative juridical[16] research method due to normative ambiguities. The approach adopted by the author is a statute approach, case approach and comparative approach, where the author examines bankruptcy rulings related to international arbitration awards. The steps taken by the author include, firstly, gathering legal materials, namely relevant laws such as Law No. 37 of 2004 on Bankruptcy and PKPU (hereinafter referred to as the Bankruptcy and PKPU Law)[17], Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (hereinafter referred to as the APS and Arbitration Law)[18], Insolvency, Restructuring and

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[14] Kapoyos, "Konsep Pembuktian Sederhana dalam Perkara Kepailitan."

[15] Hutajulu, "Kajian Yuridis Klausula Arbitrase dalam Perkara Kepailitan."

[16] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005).

[17] Republik Indonesia and Republik Indonesia, Undang-undang Nomor 37 Tahun 2004 tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.

[18] Presiden Republik Indonesia and DPR Republik Indonesia, "Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa," Pub. L. No. LN. 1999/ No. 138, TLN NO. 3872, accessed September 6, 2023, http://peraturan.bpk.go.id/Details/45348/uu-no-30-tahun-1999.

Dissolution Act (IRDA) 2018 Singapore[19] and International Arbitration Act (IAA) 1994 Singapore[20], as well as relevant legal journals. After that, the author identifies and analyzes the rulings being studied, specifically the rulings related to the dispute between PT Global Mediacom Tbk and KT Corporation, in relation to existing legal regulations and the opinions of legal experts. Finally, the results and conclusions will be obtained.

International Arbitration Award as a Condition for Filing Bankruptcy

International arbitration serves as a method to resolve business disputes through arbitration outside Indonesia's borders. It is a commonly employed approach when at least one party involved in the dispute is a legal entity, whether an individual or a corporation, situated beyond the jurisdiction of Indonesia[21]. When settling international arbitration disputes, the selected arbitration institution renders a conclusive verdict enforceable by the involved parties[22]. These decisions in international arbitration result from the process of resolving business conflicts and are determined by arbitration entities located outside the Republic of Indonesia's boundaries. The regulations governing arbitration procedures in Indonesia, spanning domestic, national, and international contexts, are outlined in Law No. 30 of 1999 on arbitration and alternative dispute resolution (Law 30/1999 on arbitration and ADR). Article 1, paragraph 9 of this law clarifies that international arbitration decisions stem from arbitration processes conducted beyond the Republic of Indonesia's territory or decisions issued by an arbitration body or individual arbitrator that, in compliance with Indonesian law, qualify as international arbitration decisions[23].

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[19] "Insolvency, Restructuring and Dissolution Act 2018" (2018), https://sso.agc.gov.sg:5443/Act/IRDA2018.

[20] "International Arbitration Act 1994" (1994), https://sso.agc.gov.sg:5443/Act/IAA1994.

[21] Bakti Sukwanto and Taufik Siregar, "Pelaksanaan Putusan Arbitrase Internasional di Indonesia," *Jurnal Mercatoria* 3, no. 1 (2010): 1–19, https://doi.org/10.31289/mercatoria.v3i1.589.

[22] Syaiful Khoiri Harahap, "Telaah Kritis Putusan Arbitrase Sebagai Dasar Permohonan Pailit," *Jurnal Hukum & Pembangunan* 52, no. 3 (2022): 612–32, https://doi.org/10.21143/jhp.vol52.no3.3363. *See also* Jafar Sidik, et al. "Choice of Arbitrators Regarding Dispute Settlement (Comparing Indonesia and Russia)." *Journal of Law and Legal Reform* 5, no. 1 (2024): 109-136.

[23] Republik Indonesia, "Undang Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa," accessed January 5, 2023, https://peraturan.bpk.go.id/Home/Details/45348/uu-no-30-tahun-1999.

In relation to the regulation of International Arbitration, apart from being stipulated in Law No. 30 of 1999 on Arbitration and ADR (Alternative Dispute Resolution) [24], the regulation concerning international arbitration is also found in Presidential Decree No. 34 of 1981, which pertains to the ratification of the 'Convention on the Recognition and Enforcement of Foreign Arbitral Awards' signed in New York on June 10, 1958, and came into effect on June 7, 1959 (the 1958 New York Convention). With the ratification of the 1958 New York Convention in Indonesia's positive law, all provisions of the 1958 New York Convention are considered valid and binding in Indonesian law[25].

The New York Convention regulates the procedures for the recognition and enforcement of international arbitral awards in countries that have not detailed such matters. Therefore, the technical aspects related to the implementation of international arbitral awards are governed by Supreme Court Regulation No. 1 of 1990 concerning the Procedures for Implementing Foreign Arbitral Awards (Perma 1/1990). After the enactment of Law No. 30 of 1999 on arbitration and ADR, which also regulates the enforcement of international arbitral awards in Articles 65 to 69[26], even though Perma 1/1990 is not explicitly repealed, based on the legal principle of *lex superior derogat legi inferior*, where higher-ranking legal regulations override lower-ranking ones, Perma 1/1990 is considered no longer applicable. This is due to the position of the law being higher than Supreme Court regulations (Perma) in the hierarchy of legislation in Indonesia, as stipulated in Law No. 13 of 2022 on the Second Amendment to Law No. 12 of 2011 concerning the Formation of Legislation[27].

The regulations regarding the enforcement of international arbitral awards in Law No. 30 of 1999 on arbitration and ADR explain that, for an International Arbitral Award to have legal force in Indonesia, the necessary steps are to register it with the Central Jakarta District Court and submit an execution

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[24] Republik Indonesia and Republik Indonesia, Undang-undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

[25] Presiden Republik Indonesia, "Keputusan Presiden (KEPPRES) Nomor 34 Tahun 1981 Tentang Mengesahkan 'Convention on The Recognition and Enforcement Of Foreign Arbital Awards', Yang Telah Ditandatangani Di New York Pada Tanggal 10 Juni 1958 Dan Telah Mulai Berlaku Pada Tanggal 7 Juni 1959," Pub. L. No. LN. 1981 No. 40, accessed September 6, 2023, http://peraturan.bpk.go.id/Details/66483/keppres-no-34-tahun-1981.

[26] Republik Indonesia and Republik Indonesia, Undang-undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

[27] "Undang-Undang Nomor 13 Tahun 2022 Tentang Perubahan Kedua Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," accessed September 6, 2023, http://peraturan.bpk.go.id/Details/212810/uu-no-13-tahun-2022.

request to the Chief Justice of the Central Jakarta District Court. These provisions can be found in Articles 65 to 69 of Law No. 30 of 1999 on arbitration and ADR[28]. Not much different from Indonesia, Singapore, which has an arbitration institution among the top two in the world in 2021[29], the Singapore International Arbitration Centre (SIAC), also has legal regulations regarding international arbitration, specifically the "International Arbitration Act 1994 (IAA)". The IAA explains that international arbitration awards also need to be registered and requested for enforcement[30].

The recognition of international arbitral awards in positive Indonesian law has legal consequences related to whether or not an international arbitral award can be enforced in Indonesia. In the author's opinion, the recognition of international arbitral awards in positive Indonesian law primarily concerns their enforceability rather than their legality or validity within the Indonesian legal system, which has implications for their implementation.

One of the legal consequences of the recognition of international arbitral awards in positive Indonesian law is related to the potential use of these awards as authentic evidence in disputes between parties. This can be observed in cases such as the dispute between PT Global Mediacom TBK, KT Corporation, and Qualcomm Incorporated, where an international arbitral award is utilized as evidence in a bankruptcy petition.

Based on the background provided in the case description, concerning the issues between PT Global Mediacom TBK, KT Corporation, and Qualcomm Incorporated, if we relate it to the conditions for a valid bankruptcy application, there are specific requirements that must be met (Article 2, paragraph 1 of the bankruptcy law), which include[31]:

1. Having a minimum of 2 debts.
2. One of the debts has already matured.
3. At the debtor's own request or at the request of one or more creditors.

In relation to the first requirement, it involves having a minimum of two debts. Regarding the definition of debt itself, it is already stipulated in Article

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[28] Republik Indonesia and Republik Indonesia, Undang-undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

[29] Arbitrase Internasional, "2021 Survei Arbitrase Internasional – Menyesuaikan Arbitrase dengan Dunia yang Berubah," Arbitrase Internasional Informasi Arbitrase Internasional oleh Aceris Law LLC, December 27, 2021, https://www.acerislaw.com/2021-international-arbitration-survey-adapting-arbitration-to-a-changing-world/.

[30] International Arbitration Act 1994.

[31] Tivana Arbiani Candini and Reisar Alka, "Insolvensi Tes Sebagai Dasar Permohonan Pailit dalam Hukum Kepailitan di Indonesia," *Gloria Justitia* 2, no. 2 (, 2022): 181–93, https://doi.org/10.25170/gloriajustitia.v2i2.3900.

1, number 6 of the Bankruptcy Law, which states[32]: 'Debt is an obligation expressed or expressible in a sum of money, in either Indonesian or foreign currency, whether direct, future, or contingent, arising from an agreement or the law and must be fulfilled by the Debtor, and if not fulfilled, gives the Creditor the right to seek satisfaction from the Debtor's assets.' R. Subekti defines debt as an obligation that can be demanded, whether arising from an agreement, an unlawful act, or the management of another person's interests not based on an agreement[33].

Based on bankruptcy laws and according to Subekti's definition of debt, when related to the dispute between PT Global Mediacom TBK, KT Corporation, and Qualcomm Incorporated, concerning these debts, the author divides them into two categories: debts before the resolution of the international arbitration dispute and debts after the resolution of the international arbitration dispute. Before attempting to resolve the dispute through international arbitration, these debts between PT Global Mediacom TBK, KT Corporation, and Qualcomm Incorporated originated from an agreement, namely the OPTION AGREEMENT. However, after the dispute between PT Global Mediacom TBK, KT Corporation, and Qualcomm Incorporated, where the dispute resolution was carried out through International Arbitration, and the international arbitration decision was subsequently registered with the Central Jakarta District Court, these debts are no longer based on the agreement but on the law. In this case, it's due to the international arbitration decision that has been registered with the Central Jakarta District Court.

Still pertaining to the minimum requirement of having two debts, in the option agreement between PT Global Mediacom TBK, KT Corporation, and Qualcomm Incorporated, it's important to note that KT Corporation and Qualcomm Incorporated are two distinct legal entities. In other words, they each have their own legal actions and legal responsibilities. Therefore, in this option agreement, it can be considered that there are two creditors. If we simplify it in terms of the definition of creditors according to R. Subekti[34], which is someone or a legal entity with the right to receive something from a debtor, based on this definition, KT Corporation and Qualcomm can be

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[32] Republik Indonesia and Republik Indonesia, Undang-undang Nomor 37 Tahun 2004 tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.

[33] Kusumaningrum Marthasia, "Perkembangan Pengertian Utang Menurut Undang-Undang Kepailitan di Indonesia", *Thesis.* (Semarang: Diponegoro University, 2011), http://eprints.undip.ac.id/52096/.

[34] Andika Persada Putra, *Hukum Perbankan Analisa Mengenai Perjanjian Kredit dan Keterkaitannya dengan Batalnya Perkawinan Debitur Serta Alternatif Penyelesaiannya* (Scopindo Media Pustaka, 2021).

considered as creditors because they have the right to claim a certain amount of money from PT. Global Mediacom Tbk.

The next condition is that one of the debts has matured, where the maturity period of the agreement is determined when one party issues a buy or sell order, with KT Corporation issuing a buy order on May 6, 2009. In other words, the maturity requirement, as stipulated in the option agreement, has been met for bankruptcy filing. Regarding the maturity period, it occurs when a decision becomes legally binding, which in this case is when the international arbitration decision is registered with the Central Jakarta District Court, as per the arbitration law, which states that an arbitration/international arbitration decision is final and binding, meaning it is legally conclusive and no further legal recourse is available. A decision meeting the legal criteria is considered final, in other words, an international arbitration decision registered with the Central Jakarta District Court carries final legal authority[35].

When referring to Law No. 30 of 1999 concerning arbitration and alternative dispute resolution outside the court (Law 30/1999), concerning the annulment of international arbitration decisions, Article 70 stipulates that it can only be annulled if the documents used in the arbitration process are found to be forged after the decision is rendered, the existence of determining documents after the decision is made, and lastly, if there is deception or fraud by one of the disputing parties[36]. Based on the aforementioned, aside from those provisions, international arbitration decisions are still considered valid and binding for the parties.

If we refer to Law 30/1999, then the International Arbitration Decision is still VALID, and it has even been registered with the Central Jakarta District Court in accordance with the provisions of Law 30/1999. To execute the International Arbitration Decision within the territory of Indonesia, it must be registered with the Central Jakarta District Court and a request for execution must be submitted (Articles 66-69 of Law 30/1999)[37].

Based on the explanation above, regarding the international arbitration decision between PT. Global Mediacom Tbk and KT Corporation and Qualcomm, it holds legal binding force because it meets the requirements for bankruptcy according to the laws and regulations[38]. Furthermore, the

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[35] Cicut Sutiarso, *Pelaksanaan Putusan Arbitrase dalam Sengketa Bisnis* (Yayasan Pustaka Obor Indonesia, 2011).

[36] Republik Indonesia and Republik Indonesia, Undang-undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

[37] Republik Indonesia and Republik Indonesia.

[38] Republik Indonesia and Republik Indonesia, Undang-undang Nomor 37 Tahun 2004 tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang.

International Arbitration Decision remains VALID and legally binding as it has been registered and requested for execution at the Central Jakarta District Court in accordance with Law 30/1999. An International Arbitration Decision can be used as grounds for bankruptcy when the conditions for filing bankruptcy are fulfilled, which include having a minimum of 2 debts, and one of them being overdue. Both of these conditions have been met with the presence of 2 creditors, Qualcomm and KT Corporation. Additionally, the second condition regarding the maturity of one of the creditors has also been satisfied, as evidenced by the International Arbitration Decision that has been registered and requested for execution

Essentially, the resolution of business disputes through arbitration, whether domestic or international, and resolution through bankruptcy are two different matters. Arbitration is a non-litigation dispute resolution method with a win-win solution principle, while bankruptcy is a litigation resolution method with a win-lose solution principle. However, in practice, both international arbitration and bankruptcy will not pose issues if the disputing parties can accept all decisions made by the arbitration tribunal.

The problem with using international arbitration awards as a basis for bankruptcy lies in the jurisdiction of the country requiring registration and determination by the competent authorities for enforcement. This process may face obstacles, such as the international arbitration award between KT Corporation and PT Global Mediacom Tbk, where the execution process could not proceed due to a lawsuit on the disputed object. Debt arising from disputes resolved by court rulings on breaches of business contracts causing financial loss to one party differs from bankruptcy processes arising from financial debts in borrowing and lending.

The bankruptcy process stemming from borrowing and lending can be proven by the debtor's acknowledgment of their debt and inability to pay, making bankruptcy a viable solution for the parties involved. However, using a court ruling as a basis for filing bankruptcy will create conflict for the losing party. This situation would not occur if the parties adhered to the arbitration tribunal's decision, particularly concerning international arbitration disputes. Therefore, one recourse is to file for bankruptcy against the losing party based on the international arbitration award, which is a legal effort to obtain justice and legal certainty.

According to the legal provisions in the Bankruptcy and Suspension of Debt Payment Law (UUK and PKPU), there is no prohibition against using an international arbitration award as a basis for bankruptcy. Thus, based on the principle of legality, an international arbitration award can be used as evidence in a bankruptcy petition. For consideration, in Singapore, the Insolvency,

Restructuring, and Dissolution Act 2018 does not contain provisions prohibiting the use of international arbitration awards as evidence in bankruptcy petitions. This Act only outlines the requirements for filing bankruptcy, whether by individuals or companies, with specific minimum debt requirements and proof of inability to pay the debt. Although Singapore does not require simple evidence as in Indonesia, both countries allow international arbitration awards to be used as a basis for bankruptcy petitions.

Based on the above, an arbitration award can be used as a basis for a bankruptcy petition provided it meets the requirements for bankruptcy, namely having at least two debts, one of which is due. Not all international arbitration awards can be used as grounds for bankruptcy; only those that substantively include at least two creditors, with one debt due, can be grounds for bankruptcy. This is because it is possible that an international arbitration award involves only one creditor, which does not meet the bankruptcy requirements under the bankruptcy and PKPU law.

Analysis of Simple Proof in Bankruptcy Cases Study of PN.Niaga Decision No. 33/Pdt.Sus-Bankrupt/2020/PN Niaga Jkt. Pst

The commercial court is a court with absolute competence to examine and decide on bankruptcy cases and debt payment suspension (PKPU) cases, in addition to other business-related cases. In relation to this function, the court is required to uphold the principle of justice, ensuring that it does not favor any party involved in the dispute[39].

In relation to bankruptcy issues, apart from the requirement of having at least 2 creditors, one of whom has already matured, in bankruptcy proceedings, the judge is related to the burden of proof in bankruptcy cases is the simple proof (Article 8 paragraph 4 of the Bankruptcy and PKPU Law). As for what constitutes simple proof itself, the law does not provide a clear explanation. Therefore, the concept of simple proof in this context is based on the judge's interpretation, where different judges may have varying views on the interpretation of simple proof[40]. This raises questions about how justice can be achieved[41].

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[39] Hutajulu, "Kajian Yuridis Klausula Arbitrase dalam Perkara Kepailitan."

[40] Adam Permana and M. Faiz Mufidi, "Aspek Sederhana Gugatan Pailit yang Dilakukan PT Relys Trans Logistic dan PT Imperia Cipta Kreasi kepada PT Mahkota Sentosa Utama atas Periklanan Proyek Meikarta Dihubungkan dengan Asas Kepastian Hukum," *Prosiding Ilmu Hukum* 6, no. 1 (2020): 286–90, https://doi.org/10.29313/.v6i1.19318.

[41] Kapoyos, "Konsep Pembuktian Sederhana Dalam Perkara Kepailitan."

In relation to the bankruptcy petition filed by KT Corporation against PT. Global Mediacom Tbk, where the court's verdict rejected the petitioner's bankruptcy application on the grounds that complex evidence was required, an appeal was filed, and the appellate court upheld the decision of the Central Jakarta Commercial Court.

Regarding this matter, the author has a different understanding compared to the judge's reasoning, which can be summarized as follows:

1) In the bankruptcy petition case, the petitioner couldn't prove the debt owed by the respondent to the petitioner, thus not meeting the requirement for simple proof. This was based on the existence of a lawsuit in Central Jakarta District Court, Case No. 431/Pdt.G/2010/PN.Jkt.Pst., filed by PT Bhakti Investama, the holding company of PT Global Mediacom Tbk (a party outside the option agreement), against PT Global Mediacom Tbk as the defendant, and the parties in the option agreement, based on the Share Sale and Purchase Agreement (PMH) involving an option agreement.
2) Regarding the debt owed to the Petitioner, where the Respondent had a debt to another Creditor, Qualcomm Incorporated, as evidenced by the ICC Arbitration Award No. 18062/VRO dated October 11, 2012, in the case of Qualcomm Incorporated versus PT Global Mediacom, Tbk (the Respondent in bankruptcy). Until now, there has been no execution request or summons served on the Respondent.
3) Based on these considerations, the panel of judges deemed that the elements of bankruptcy, namely the existence of at least 2 debts, one of which had matured, and the requirement for simple proof, were not met in this case and could not be proven simply.

Regarding the judge's considerations mentioned above, it should be noted that the lawsuit in Central Jakarta District Court, Case No. 431/Pdt.G/2010/PN.Jkt.Pst, is a Share Sale and Purchase Agreement (PMH) lawsuit filed by the holding company against its subsidiary. This lawsuit is based on the claim that the holding company suffered losses due to an option agreement entered into by its subsidiary, which resulted in a decrease in the value of assets held by the holding company due to the devaluation of the subsidiary's shares. Indeed, the legal relationship between a parent company and its subsidiary is related to the parent company's role as the majority shareholder of the subsidiary's shares[42]. Therefore, the parent company has the right to

[42] Andyna Susiawati Achmad and Astrid Athina Indradewi, "Hubungan Hukum Antar Perusahaan Dalam Sistem Perusahaan Grup Ditinjau dari Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," *Jurnal USM Law Review* 4, no. 2 (2021): 470–83, https://doi.org/10.26623/julr.v4i2.3912.

demand compensation from the subsidiary for the losses incurred by the parent company regarding the shares it owns.

Regarding the lawsuit filed by the holding company to have the option agreement annulled and declared legally non-binding, it is important to note that the legal status of the subsidiary and the holding company is separate. In other words, any legal actions taken by the subsidiary with third parties are the sole responsibility of the subsidiary itself. In essence, such legal actions are valid. However, it should be noted that when a subsidiary wishes to engage in legal actions, it should obtain approval from the General Meeting of Shareholders (RUPS). If the subsidiary engages in legal actions with third parties without the approval of the board of commissioners, such actions are still legally valid. However, if the subsidiary incurs losses, the board of directors is personally and jointly responsible, unless they can prove that the losses were not due to their negligence (Article 97 Company Law). Furthermore, Article 104 of the Company Law states that if the legal actions taken by the board of directors are done for and on behalf of the company, with good intentions, even without the approval of the General Meeting of Shareholders (RUPS), they are still binding on the company.

As for the judge's reasoning for rejecting the bankruptcy petition on the grounds that the petitioner could not prove the debt, thereby failing to meet the simple proof requirement, the judge should consider the nature of the International Arbitration/Arbitration Award. Such an award can serve as simple proof of the existence of the debt[43]. An arbitration award is an authentic instrument, and its authenticity does not require further verification. Therefore, the authenticity of an international arbitration award can be considered as simple proof. Article 165 of the Dutch East Indies Civil Code (HIR) and Article 285 of the Indonesian Civil Code (Rbg) stipulate that authentic deeds can be considered complete evidence, meaning that evidence from authentic deeds is valid and comprehensive[44]. The International Arbitration Award, which has been submitted for confirmation to the Central Jakarta District Court, also constitutes authentic evidence. If we refer to Article 165 of the Dutch East Indies Civil Code (HIR) or Article 285 of the Indonesian Civil Code (Rbg), it fulfills the requirement of simple proof.

In the context of bankruptcy, considering the specificity of commercial courts and in accordance with Article 8 paragraph 4 of the Bankruptcy and

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[43] Rulman Ignatius Rongkonusa, Yuhelson Yuhelson, and Cicilia Julyani Tondy, "Diskresi Penentuan Pembuktian Sederhana Dalam Persidangan Permohonan Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU)," *SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum* 2, no. 2 (2023): 137–45, https://doi.org/10.55681/seikat.v2i2.466.

[44] Rongkonusa, Yuhelson, and Tondy.

PKPU Law, which requires simple proof, the judge, in the process of providing evidence, may need to consider relevant rulings to seek the fairest possible justice[45].

Sutiarso, in his book on 'The Implementation of Arbitration Awards in Business Disputes,' argues that an award is also evidence of the rights and obligations of the disputing parties[46]. In line with Sutiarso's perspective, the author interprets that an award is conclusive evidence, its authenticity unquestionable, and can thus be categorized as authentic evidence. Consequently, its proof can be categorized as simple proof[47].

Regarding the simple proof of recognizing foreign awards made in Indonesia, one cannot overlook the concept of state sovereignty, where a state holds the absolute right to acknowledge or reject the implementation of foreign awards within its territory.

According to L.A. Hart's views on the concept of state sovereignty and the law governing it, the legal sovereignty of a state is considered absolute[48]. This means that the law applicable within a state's territory is valid in that state. Therefore, when applying a law or executing an international arbitration award within a national legal system, approval from the concerned state is required. In this context, L.A. Hart's perspective on state legal sovereignty remains relevant, especially in the processes of registration and enforcement that are suitable for the implementation of international arbitration awards.

Furthermore, delving into the issue of sovereignty, it should be emphasized that sovereignty cannot be separated from the concept of supreme authority within the governance of a nation. Sovereignty essentially refers to an understanding of the highest authority in controlling a nation. Key aspects of the concept of sovereignty encompass the scope of power and the domain of power[49]. The scope of sovereignty relates to the activities encompassed by sovereign authority, while the domain of sovereignty concerns who becomes the

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[45] Rongkonusa, Yuhelson, and Tondy.

[46] Sutiarso, Pelaksanaan Putusan Arbitrase dalam Sengketa Binis.

[47] Pramudita Pramudita, "Pembuktian Sederhana Pengajuan Permohonan Pailit Oleh Pekerja Atas Dasar Upah Yang Tidak Dibayar," *Jurist-Diction* 4, no. 5 (2021): 1921–36, https://doi.org/10.20473/jd.v4i5.29826.

[48] Ayu Nrangwesti, "Konsep Kedaulatan Dalam Perspektif Hukum Internasional," *Hukum Pidana dan Pembangunan Hukum* 5, no. 1 (2022): 11–24, https://doi.org/10.25105/hpph.v5i1.15873.

[49] Fachrudin Alfian Liulinnuha, "Konsep Kedaulatan Negara Dalam Pemikiran Abu Bakar Ba'asyir (Studi Analisis Terhadap Buku Tadzkiroh)", *Thesis.* (Yogyakarta: Universitas Islam Negeri Sunan Kalijaga, 2014), https://digilib.uin-suka.ac.id/id/eprint/14820/.

subject and holder of the highest authority as a representation of the concept of full power (the sovereign).

When connecting this with an arbitration award as authentic evidence in bankruptcy as a form of simple proof, it is crucial to remember that, in the legal context, state sovereignty also affects the legal process, particularly concerning the recognition of international arbitration awards as authentic evidence in simple proof. A valid and authentic arbitration award can be used as compelling evidence in bankruptcy cases, but consideration must be given to how the award is applied in accordance with the principles of state sovereignty and the extent of authority within a specific jurisdiction.

In the context of the recognition and enforcement of international arbitration awards in Indonesia, this effort reflects the principle of the rule of law, as stipulated in Article 1, Paragraph 3 of the 1945 Constitution[50]. At the level of recognizing international arbitration awards within the national legal system, the authority for this process is granted by law to the Supreme Court or the lower courts, with the Supreme Court holding the key to whether or not an international arbitration award can be considered authentic evidence in bankruptcy proceedings.

The recognition of international arbitration awards by the Supreme Court or these lower courts plays a role as the highest authority in rendering legal decisions or determinations within the Indonesian legal system, in accordance with the provisions of Article 65 of Law No. 30/1999 concerning arbitration and Alternative Dispute Resolution. This also includes the designation of the relevant court to recognize international arbitration awards as valid legal decisions that can be enforced, as stipulated in Articles 66-69 of Law No. 30/1999 concerning arbitration and Alternative Dispute Resolution[51].

Within the framework of the theory of state sovereignty, particularly regarding the registration process of international arbitration awards, it has legal consequences as authentic evidence in simple proof in bankruptcy proceedings. The recognition or non-recognition of international arbitration awards will always be linked to the state's acknowledgment of such awards, as it is related to the state's sovereignty.

Based on the principle of state sovereignty, it implies that a nation has the absolute right to regulate and manage affairs within its own territory, including legal matters and its judicial system. Therefore, the act of registering

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[50] Presiden and DPR, Pedoman Resmi UUD 1945 & Perubahan, 1st ed. (Jakarta: Wahyumedia, 2014).

[51] Republik Indonesia and Republik Indonesia, Undang-undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa.

international arbitration awards can be seen as an interference with a state's sovereignty. However, the sovereignty of a state is not absolute when the state itself has given tolerance and openness to external rules entering its territory, in this case, rules related to the recognition of international arbitration awards into the Indonesian legal system.

The recognition and registration of international arbitration awards are part of a state's responsibility in international law to comply with and implement valid and applicable international arbitration awards for execution. This obligation arises from a state's participation in adhering to and fully complying with international agreements governing international arbitration, such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which Indonesia has ratified. By becoming a party to such a convention, Indonesia is bound and committed to enforce it.

In this context, international law can be applied after obtaining legitimacy in national law through the registration process. When we view it in terms of the legal relationship between international law and national law, the registration of international arbitration awards in the Central Jakarta District Court can be considered as a representation of the dualism stream, where the legality of international law must be integrated into national law.

Regarding the legal consequences, the impact of the legal relationship, whether through dualism or monism, has similar effects on enforcement. However, the difference in the approach to the legal relationship between international law through dualism and monism lies in legitimacy as an expression of state sovereignty. In the context of international arbitration, the territorial principle is applied, where the enforcement of international arbitration awards in a country can only be done according to the laws of that country. In other words, the key to the enforcement of international arbitration awards in a country lies in the availability and willingness of that country to execute the awards in accordance with its legal regulations. Therefore, the success or failure of the implementation of international arbitration awards in a country depends on the quality of the laws in that country and the enforcement of those laws, in other words, the legal certainty.

In practice, especially in the implementation of international arbitration awards under Law No. 30/1999 on arbitration and ADR, Article 67 stipulates that international arbitration awards must be registered with the Central Jakarta District Court to obtain validation and allow for enforcement, with the requirements outlined in Article 66 of the same law. This rule shows that this process reflects the relationship between international law and national law based on the dualism stream. In this framework, the court has the decision to recognize or not recognize and register the international arbitration award.

This practice creates a situation where there is interference with state sovereignty but also creates a compromise between state sovereignty and international obligations to respect the principles of international law and resolve disputes peacefully. Thus, to maintain a balance between state sovereignty and the principles of international law, it is essential that international arbitration awards align with the legal principles applicable in a country. If the awards do not conform to the legal principles of a country, they will not be acknowledged and enforced in that country[52].

Regarding the bankruptcy judge's decision in the dispute between KT Corporation and PT. Global Mediacom.Tbk, where the judge rejected the petitioner's bankruptcy application, reasoning that the evidence was not simple, the author disagrees. Simple proof in relation to bankruptcy disputes, which are related to International Arbitration Awards, cannot be separated from the awards themselves, as long as the international arbitration awards are still valid (excluding international arbitration awards falling under the criteria of Article 70 of Law No. 30/1999), these awards can be used as a condition for simple proof. Regardless of any claims made by other parties (non-contracting parties) as long as it does not relate to Article 70 of Law No. 30/1999, which does not affect the annulment of international arbitration awards, these awards can be considered as a condition for simple proof.

If there is a denial from one of the parties (Debtor) related to simple proof, it can no longer be considered simple proof[53]. Simple proof will become much more complex if, during the trial, the debtor rejects all claims made by the lending party[54]. The debtor will present a defense argument through the concept of exceptio non adimpleti contractus, which is used to show that the debtor will allege that the lending party did not fulfill its obligations as agreed upon in the agreement (reciprocal agreement). This is a step taken by the debtor to avoid a bankruptcy decision. In other words, simple proof can only be provided if the debtor acknowledges its debt. However, if the evidence used is authentic evidence whose correctness is beyond doubt, in the author's opinion, it can be used as a reference in determining whether proof is simple or not.

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[52] M Khoidin, *Hukum Arbitrase Bidang Perdata, 3rd ed.* (Yogyakarta: CV. Aswaja Pressindo, 2013).

[53] Devi Andani and Wiwin Budi Pratiwi, "Prinsip Pembuktian Sederhana Dalam Permohonan Penundaan Kewajiban Pembayaran Utang," *Jurnal Hukum IUS QUIA IUSTUM* 28, no. 3 (2021): 635–56, https://doi.org/10.20885/iustum.vol28.iss3.art9.

[54] Nanda Chandra Pratama Negara and R. Murjiyanto, "Implementasi Prinsip Pembuktian Sederhana Sebagai Alasan Penolakan Pailit Dengan Dasar Cessie Atas Sebagian Piutang Cedent," *Kajian Hasil Penelitian Hukum* 4, no. 2 (2022): 909–22.

Based on the explanations provided by the author above, international arbitration awards can be used as simple proof in bankruptcy applications in commercial courts because the nature of international arbitration awards is authentic. In the author's opinion, to be considered authentic, international arbitration awards must meet two (2) requirements:

1) The international arbitration award is still valid.
   International Arbitration Awards do not meet the requirements specified in Law No. 30/1999 concerning Arbitration and Alternative Dispute Resolution, specifically in Article 70, which outlines the conditions for the annulment of international arbitration awards.
2) The International Arbitration Award has been registered and/or execution has been requested.
   The registration of international arbitration awards in the Central Jakarta District Court serves as a form of legality related to the recognition of the foreign award within the Indonesian legal system. Once an international arbitration award is registered, it holds legal binding force within the Indonesian jurisdiction, whether or not execution has been requested. In other words, when an international arbitration award is registered, it can already be considered as authentic evidence. The reference to execution is more about enabling the enforcement of a won dispute.

If we look at the legal regulations in Singapore under the Insolvency, Restructuring and Dissolution Act 2018, there is no requirement for simple evidence in bankruptcy petitions as there is in Indonesia. Therefore, if an arbitration award is used as evidence in a bankruptcy petition in Singapore, according to the bankruptcy requirements stipulated in the Insolvency, Restructuring and Dissolution Act 2018, the international arbitration award can be used as evidence in bankruptcy based on the principle of legality, as there is no provision prohibiting it.

In practice, arbitration awards, which should be final and binding and executable without further legal processes, can be enforced if the parties comply voluntarily or if there is execution based on an executorial decision by the Supreme Court[55]. However, if one party in the dispute pursues other legal avenues regarding the disputed object, causing a delay in the execution process, then filing for bankruptcy is a legal mechanism used by creditors to obtain their rights. If simple evidence in bankruptcy is interpreted as the absence of opposition from the parties, then a bankruptcy petition based on debt arising from a dispute resolved by an international arbitration award on a breach of a

[55] Intan Setiyo Wibowo and Zakki Adlhiyati, "Problematika Pelaksanaan Putusan Arbitrase Internasional di Indonesia," *Verstek* 8, no. 1 (2020).

business contract, as explained in the previous subsection by the author, as a legal remedy for creditors based on the arbitration award will never be fulfilled.

In the bankruptcy dispute process, the court will consider all available evidence, including international arbitration awards. International arbitration awards can be deemed as simple evidence because they demonstrate an agreement reached by the parties involved in the dispute, resulting in a decision by the arbitral panel. However, it's important to remember that the court is not obligated to accept international arbitration awards as sufficient evidence. The court can reject this evidence if they have sufficient reason to doubt the credibility or validity of the arbitration award. Therefore, while international arbitration awards can be considered as simple evidence in bankruptcy disputes, the court will still independently assess this evidence before making a decision.

Based on the explanations provided above, the possibility of using international arbitration awards as simple evidence in bankruptcy proceedings represents a legal breakthrough that will positively impact the development of the economy in Indonesia. This would provide legal certainty and alternative legal remedies for investors, creditors, and debtors in Indonesia, as well as enhance international confidence in the legal certainty in Indonesia.

Conclusion

An International Arbitration Award can be used as a requirement in bankruptcy, which is the requirement of the existence of debtor's claims against the debtor, provided that the international arbitration award contains details regarding one party's fulfillment to another party. Concerning the fulfillment requirement in bankruptcy, which involves having 2 creditors with one of them having overdue claims, in accordance with the bankruptcy and PKPU law's requirements, when connected with an International Arbitration Award, it must be assessed whether the substance of the international arbitration award addresses this matter or not. Furthermore, an International Arbitration Award that can be used as simple evidence in bankruptcy must meet two (2) criteria: it cannot be annulled and has been registered in the Central Jakarta District Court and/or an execution request has been made. A valid international arbitration award holds authentic power as simple evidence in proving bankruptcy disputes.

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