



## The Settlement of Mining Disputes and The Implementation of International Arbitration Awards

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### Abstract

Article 154 of the Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining has regulated dispute resolution through domestic courts and arbitration. In fact, the dispute resolution such as the divestment cases of PT Newmont Nusa Tenggara and PT Kaltim Prima Coal was settled at the International Arbitration Institute. Furthermore, the resolution of the dispute over the divestment of mineral and coal mining shares against PT Newmont Nusa Tenggara and PT Kaltim Prima Coal through the International Arbitration Institute was accepted and some were rejected. The purpose of this research is to find the settlement of mineral and coal mining disputes and the implementation of international arbitration decisions. This research is important in the background that dispute resolution is not only carried out through national arbitration. The results of the study show that the settlement of mineral and coal mining disputes made by mining business actors with the Indonesian Government, both Contracts of Work and Coal Mining Concession Work Agreements, dispute resolution is carried out through International Arbitration institutions, while the implementation of international Arbitration decisions must meet several conditions, one of which is the decision is handed down. by an arbitrator or arbitral tribunal in a country with the Indonesian state bound by agreements, both bilaterally and multilaterally.

### A. Introduction

Mineral and coal mining is a natural resource sector that has an important role in the life of a nation's development. Mining products, both minerals, and coal which are operated and produced by a company holding a permit or contract are intended to provide benefits to companies holding permits or contracts. In addition, the country where the mineral and coal are located seeks to obtain the maximum benefit from the mining products for the prosperity of the people. This tug of interest in profits is what triggers conflicts between the host country and mining companies. There are also conflicts bet-

ween mining companies and communities around mining areas, conflicts between mining companies, and even conflicts between state agencies in terms of mining operations.

The larger context, namely the global context of mining companies, is not only seen as a conflict of interest between the parties but can be seen more broadly from the existence of political and ideological struggles between the parties. The ideological difference between the host country and the country of origin where the company carries out mining business activities will affect the atmosphere of the mining business relationship between the two parties. Ideologically

weak countries will be very easy to control. Not only weak in the ideology of the third world countries, even though they are ideologically strong but economically weak, they will be very easily controlled by the countries of origin of mining companies that exploit their mineral and coal resources.

Indonesia is the ruler and owner of natural mineral and coal resources. It means that Indonesia should enforce the national mining companies to provide the greatest prosperity of the people before carrying out mining activities. In practice, mining contracts or agreements between countries represented by the government and mining companies are more often detrimental to national interests. The regime of contracts or agreements that were made in the past and are still ongoing today from the Indonesian perspective is currently detrimental to the interests of the nation.

The distribution of very small royalties for the state is a very clear sign that Indonesia as the real owner of these mining natural resources is not able to fully enjoy its own natural wealth. The mining business which is currently being battered by globalization and capitalism which gave birth to capitalism in mineral and coal mining will continue to contradict the concept of nationalism that currently remains in the spirit of mineral and coal mining.

Mining permits have become a free-market commodity which means that the strong one will get permission. Being strong in finance, mining engineering, technology, and human resources will open more opportunities to the companies to get permits/contracts/agreements. This strength, of course, comes from big companies from the developed countries.

Disputes between countries and investors can occur if the host country provides national treatment to investors or there can also be a breach of contract committed by investors. Such violations can be in the form of violations of contracts (agreements) that have been agreed upon by the parties related to their obligations such as share divestment obligations, payment of taxes, and other non-tax state revenues such as royal-

ties, fixed fees, exploration fees, production fees, fixed fees, obligations to maintain and preserve the environment, obligations in the management and refining and added value of mining, empowerment of the surrounding community and other social responsibilities.

Settlement of disputes in Indonesia can be done both through the courts and outside the courts. The Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution has regulated several dispute resolutions in Indonesia which can be resolved out of court either through arbitration or employing consultation, negotiation, mediation, conciliation, or expert judgment .

Article 3 of the Law of the Republic of Indonesia Number 30 of 1999 concerning Alternative Dispute Resolution and Arbitration explains that Arbitration is a way of settling a civil dispute outside of a general court based on an arbitration agreement made in writing by the disputing parties. If the parties are bound by the arbitration agreement, the district court is not authorized to adjudicate the dispute between the parties.

The advantages of dispute resolution through arbitration are that the parties' dispute confidentiality is guaranteed, delays caused by procedural and administrative matters can be avoided, the parties can choose an arbitrator who in their belief has sufficient knowledge, experience, and background regarding the disputed issue, is honest and fair, and parties can determine the choice of law to resolve the problem as well as the process and venue for the arbitration, and the arbitrator's decision is a decision that is binding on the parties and through simple procedures or can be directly implemented (Harahap 2003).

In addition, the advantages of arbitration are there is no possibility of taking sides in the decision-making process, decisions are taken by an Arbitrator or Arbitration Tribunal who are experts in their respective fields, are faster than litigation, are less hostile than litigation, apply internationally, there is a potential opportunity to make an improvement, it is not confrontational, the Arbitration process

is carried out in a simple and not too formal form, and the court is not authorized to adjudicate disputes whose parties have been bound by the arbitration agreement (Widnyana 2009). From the above provisions, it can be found that there are two types of arbitration whose existence and authority are recognized to examine and decide disputes that occur between the parties to the agreement, namely (Harahap, Arbitrase 2004):

1. Ad Hoc Arbitration. Ad hoc arbitration is also known as 'voluntary' arbitration. Article 615 Rv paragraph (1) regulates ad hoc arbitration institutions. The definition of ad hoc arbitration itself is arbitration that is specially formed to resolve or decide certain disputes, thus, the presence and existence of ad hoc arbitration is incidental or not permanent. Its position and existence are only to serve and decide certain dispute cases. After the dispute is examined or decided, the duties of the ad hoc arbitrators according to their formation will automatically end. In principle, ad hoc arbitration is not bound and linked to any of the arbitration institutions.
2. Institutional Arbitration. Institutional arbitration is an institution or arbitration body as a means of resolving disputes that are permanent in nature so that it is called a "permanent arbitration body", what is meant here is that in addition to being permanently managed and organized, its existence is also continuous for an indefinite period. In addition, its existence does not only depend on when there is a dispute. That is, whether there is an incoming dispute or not, the institution remains standing and does not dissolve even after the dispute it handles has been completed. This is different from ad hoc arbitration which will dissolve and end its existence after the dispute being handled has been decided

In Indonesia, there are currently several arbitration institutions that provide arbitration services, for example, the Indonesian National Arbitration Board (BANI), the Natio-

nal Sharia Arbitration Board (Basyarnas), the Indonesian Capital Market Arbitration Board (BAPMI), the Indonesian Muamalat Arbitration Board (BAMUI), and the Association of Market Legal Consultants Capital (HKHPM) (Nugroho 2017). Besides, there are also international-minded institutional arbitrations that have existed and have been established for a long time, among others, ICC (The International Chamber of Commerce), UNCITRAL (United Nations Commission on International Trade Law), SIAC (Singapore International Arbitration Convention), and ICSID (The International Center for Settlement of Investment Disputes) (Margono 2000).

Advantages of International Arbitration according to estimates of International contracts include an arbitration clause in it. International arbitration is widely used in the sale and purchase of merchandise (e.g., chocolate, coffee, tea, wheat, fodder, lubricating oil, sugar, iron, rice, and so on), buildings (e.g., hospitals, roads, and factories in developing countries), the law of the sea (e.g., disputes regarding charter parties), joint ventures (e.g., to carry out large projects), agreements regarding service providers (e.g., hotels, and brand use permits, loan agreements). The reasons why such considerations were chosen can be described as follows (Girsang 1992):

1. The expertise of the arbitrator. The expertise includes not only technical and juridical experts but also fame in practice. Nationally, this expertise is an important factor in arbitration selection;
2. To a stronger degree, this applies to international agreements which in general court judges are less familiar with the intricacies of international agreements. Both national and international arbitrations apply that arbitration is limited to one level (*een instance*). There are exceptions to appeal, but in International arbitration, this is rarely done (except for commercial arbitration);
3. In both national and international arbitrations, it is applicable that arbitration is not open to the public (*niet openbaar*). In the world of trade this is

usually important, so that competition is maintained. Whereas if a dispute must be decided by a national judge, at least one of the parties is not familiar with the process (procedure) of that country;

4. In international arbitration based on rules, this imbalance will not occur, because both parties have previously known the contents of the arbitration rules which are usually very simple. Whereas in international arbitration only one institution (namely the arbitral tribunal) is authorized, in the absence of an arbitration agreement, but national judges from various countries feel they are authorized over the same international transaction;
5. Arbitration has an informal nature (informal character) so that the arbitral tribunal and the parties can bring up the main issues more quickly. Whereas foreign parties (*buitenlandse partij*) do not trust judges from a foreign country (*vreemd land*), especially if the foreign country is a country from another party;
6. The application of material law. The National Judge is somewhat inclined (understandably) to apply his own laws since these are the laws he knows best. Symptoms like this are reduced in International Arbitration. Besides that, International Arbitrators are also more inclined (*meer gespitst*) to use international trade (*internationale handel*). Some even postulate that a new mercantoria law has emerged, which concerns the implementation of international decisions.

Dispute resolution through international arbitration can certainly attract business players in the joint venture sector, and joint ventures are a form of foreign investment in the mineral and coal mining sector. The existence of a joint venture as a form of business in the mineral and coal mining sector in Indonesia has been explained by Amien Bendar in the implementation of foreign investment law for Indonesian mining (Bendar 2018).

Article 154 of the Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining has regulated the settlement of disputes in the mineral and coal mining sector to be resolved through courts and domestic arbitration following the provisions of laws and regulations.

The purpose of the order of Article 154 of the Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining is that the settlement of mineral and coal mining disputes is resolved only in two ways, namely through courts and domestic arbitration. Domestic arbitration can be in the form of BANI, BAPMI, or BAMUI.

The disputes occurred between mineral and coal mining companies such as the case of the PT Newmont Nusa Tenggara divestment dispute with the Indonesian side. The Indonesian side filed a lawsuit with the UNCITRAL International Arbitration Institute. The Indonesian side, through the Ministry of Energy and Mineral Resources of the Republic of Indonesia, has announced its victory by ordering PT Newmont Nusa Tenggara to carry out its obligations, namely (Ministry of Energy and Mineral Resources of Republic of Indonesia):

1. To order PT Newmont Nusa Tenggara to implement the provisions of article 24.3 of the Contract of Work;
2. To declare that PT Newmont Nusa Tenggara has defaulted (a breach of agreement);
3. To Order PT Newmont Nusa Tenggara to divest 17% of its shares, consisting of the 2006 divestment of 3% and the 2007 divestment of 7% to the Regional Government. Meanwhile, for the year 2008, it was 7%, to the Government of the Republic of Indonesia. All obligations mentioned above must be carried out within 180 days after the date of the arbitration award;
4. The divested shares must be free from pledge ("Clean and Clear") and the source of funds for the purchase of the shares is not the business of PT Newmont Nusa Tenggara;
5. To order PT Newmont Nusa Tenggara



to reimburse the costs that have been incurred by the Government for the Arbitration in this case, and must be paid within 30 days after the date of the Arbitration award.

This is different from the dispute resolution of mineral and coal mining companies in the case of the PT Kaltim Prima Coal share divestment dispute against the East Kalimantan Regional Government as the Indonesian side. PT Kaltim Prima Coal through its attorney P.D.D Dermawan filed a lawsuit at the ICSID Arbitration Institute, the ICSID Arbitration Council stated that it did not have jurisdiction to hear the case (Hayuningtri 2014).

There is an opinion that foreign arbitral awards are binding on the parties who made them. It means that the parties are obliged to implement the arbitral award. While binding means binding on the national court bodies where the arbitration was held, the national courts whose countries have bound themselves to the 1958 New York Convention concerning the recognition and Implementation of Foreign Arbitration Awards legally has an international obligation to implement the contents of the Convention including implementing international arbitral awards if a national court is asked to implement it (Adolf 2016).

The Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining has regulated dispute resolution through domestic courts and arbitration, while in fact in the example cases of PT Kaltim Prima Coal and PT Newmont Nusa Tenggara divestment disputes were resolved in the International Arbitration Institution.

Some of the settlement of share divestment disputes at the International Arbitration Institute for mineral and coal mining companies PT Kaltim Prima Coal vs. the Indonesian side and PT Newmont Nusa Tenggara vs. the Indonesian side were accepted and some were rejected by the International Arbitration Institution. Based on the background elaborated above, the present study is aimed at finding out how to resolve mineral and coal mining disputes and how to implement international arbitration awards.

According to Dadang A. Van Gobel, the implementation of International Arbitration for the Settlement of Investment and Trade Disputes is based on Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, further under Law no. 25 of 2007 concerning Investment (Gobel 2014).

In contrast to this research, which does not only examine dispute resolution as regulated in Law no. 25 of 2007 concerning Investment, but the dispute resolution which was regulated before the issuance of Law no. 25 of 2007 concerning Investment, namely Law no. 1 of 1967 concerning Foreign Investment along with several implementing regulations, research has been carried out.

Although mining dispute resolution can be done through mediation (Sari 2013), this study does not discuss it and focuses more on dispute resolution through arbitration, while the implementation of international arbitration decisions in this study is only limited to the New York Convention.

This is different from the research of Bakti Sukwanto and Taufik Siregar which came to the case of PERTAMINA against Karaha Bodas Company LLC (Sukwanto dan Siregar 2010).

## **B. Methods**

The method administered in this research is normative legal research or library law research. As normative legal research, this research is undertaken based on an analysis of legal norms in the sense of regulations with a statutory and regulatory approach related to legal issues in order to find out the settlement of mining disputes and the implementation of international arbitration awards.

## **C. Result and Discussion.**

### **1. Mineral and Coal Mining Dispute Resolution**

Mining business in Indonesia through Article 33 Paragraph (3) of the Law of the Republic of Indonesia has regulated that the earth, water, and natural resources contained therein are controlled by the State to realize its goal, namely the welfare of the people. The rights owned by the State in Article 33

Paragraph (3) of the Law of the Republic of Indonesia, regarding control over its natural resources, provide a broad interpretation.

This is confirmed by the phrase state control as interpreted by the Constitutional Court in Decision Number 001-021-022/PUU-I/2003 on December 21, 2004, namely: The definition of being controlled by the state which has become the constitution of the State of Indonesia means that the people collectively give a mandate to the state to make policies, management actions, regulation, management, and supervision of natural resources in its territory and as a way to achieve its goals, specifically for the prosperity of the people, with the five meanings of control, the State of Indonesia can exercise a monopoly on the wealth of its natural resources. The concept of state control works when the five functions are not separated or one of them is missing. All of which must be carried out by the state.

State power over natural resources in practice can be seen from the interpretation in one of the laws and regulations governing natural resources such as the issuance of laws on the mineral and coal mining sector. Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining is a new regime for mineral and coal mining business which is no longer through a contract but rather through a licensing system, both Mining Business License (hereinafter called IUP), Special Mining Business License (hereinafter called IUPK) and Community Mining License (hereinafter called IPR).

Article 154 of the Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining has regulated dispute resolution in the implementation of IUP, IPR, or IUPK in the mineral and coal mining sector to be resolved through domestic courts and arbitration in accordance with the provisions of laws and regulations. However, Ahmad Redi has another opinion that (Redi 2016): Dispute settlement in Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining is not regulated only in Article 154 of Law of the Republic of Indonesia Number 4 of 2009

concerning Mineral and Coal Mining.

Mining operations through contracts made by the Indonesian side with mining entrepreneurs are based on Article 10 of the Law of the Republic of Indonesia Number 11 of 1967 concerning Mining Principles, which briefly explains that the Minister can appoint other parties as contractors if necessary to carry out works that are not can be implemented by Government Agencies or State Companies by entering into a work agreement with a contractor.

Business entities in the form of contracts both Contract of Work (hereinafter called KK) and Coal Mining Concession Work Agreement (hereinafter called PKP2B) expire when the period specified in the contract expires. The contractor can stop the mining business at any time if it is not profitable after fulfilling its obligations in the contract and the Indonesian government can terminate the contract unilaterally if the contractor fails to carry out his obligations, including not pay a fixed fee, tax, or Exploration fee (Trihastuti 2013).

The existence of a business entity holding a contract in mineral and coal mining business refers to Article 169 Paragraph (a) of the Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining. KK and PKP2B which existed before the enactment of Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining remains in effect until the expiration of the contract/agreement. While the Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining does not regulate dispute resolution against business entities holding contracts, both KK and PKP2B.

Business entities holding contracts in the mining sector are also based on Article 8 of the Law of the Republic of Indonesia Number 1 of 1967 concerning Foreign Investment which briefly explains that foreign investment in the mining sector can be in the form of a KK or other forms following the laws and regulations. Legislation in the mining sector as regulated in the general provisions of Law of the Republic of Indonesia Number 3 of 2020

concerning Amendments to Law of the Republic of Indonesia and Number 4 of 2009 concerning Mineral and Coal Mining has explained the existence of a form of PKP2B.

Article 1 of the Law of the Republic of Indonesia Number 25 of 2007 concerning Investment no longer distinguishes capital originating from domestic or foreign. In addition, Article 32 of Law of the Republic of Indonesia Number 25 of 2007 on Investment regulates if a dispute in investment occurs.

In brief, Article 32 of the Law of the Republic of Indonesia Number 25 of 2007 concerning Investment is as follows:

1. If a dispute in the field of investment between the Government and the investor occurs, the parties shall first resolve the dispute through deliberation and consensus;
2. If a dispute resolution through deliberation and consensus is not reached, the dispute resolution can be carried out through arbitration or alternative dispute resolution or court in accordance with the provisions of the legislation;
3. If a dispute in the investment sector between the Government and a domestic investor occurs, the parties may resolve the dispute through arbitration based on the agreement of the parties, and if the dispute resolution through arbitration is not agreed upon, the dispute resolution will be carried out in court;
4. If a dispute in the field of investment between the Government and a foreign investor, the parties will resolve the dispute through international arbitration which must be agreed upon by the parties.

The settlement of disputes in the field of investment, both domestic and foreign capital can be done through deliberation and consensus before going through the courts. However, if deliberation and consensus are not reached, it is recommended to resolve them through arbitration and other alternative dispute resolution. In particular, dispute resolution on domestic investment with the

Indonesian government is resolved through the courts, while foreign investment with the Indonesian government will settle disputes at the International Arbitration Institute.

The complexity of mining disputes such as criminal, state administrative disputes, state administrative disputes, and civil disputes, are not only disputes between business entities and the mining community, but can also be disputes between local governments and the central government, disputes between the government and their own business entities.

Mineral and coal mining business before the issuance of Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining was in the form of a contract, either a Contract of Work or a Coal Mining Concession Work Agreement.

The main provisions of the Contract of Work and Coal Mining Concession Work Agreement in one of the legal aspects of the conflict can be resolved peacefully. If it cannot be solved in a peaceful way, it can be fixed through the International Arbitration institution, namely "The Uncitral Arbitration Rules" set by the United Nations Organization (UN) (Bendar 2018).

The main provisions of the Contract of Work and Coal Mining Concession Work Agreement are clauses or contents enclosed in the contract. Contract clauses contained in the Contract of Work and Coal Mining Concession Work Agreement, as the business entity holding the contract before the issuance of Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining have been resolved through International Arbitration.

Settlement of disputes against mining business entities with types of licenses (Mining-Business Licenses, Special Mining Business Licenses, and Community Mining Licenses) in accordance with the provisions contained in Article 154 of the Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining is resolved through Courts and Arbitration Institutions domestic disputes. On the other hand, the settlement of disputes against mining busi-

ness entities of the type of Contract of Work and Coal Mining Concession Work Agreements shall be resolved through the International Arbitration Institute.

## **2. The Implementation of International Arbitration Awards.**

International arbitration is the opposite of national arbitration, which is a dispute resolution carried out through arbitration bodies both inside and outside the country where one of the parties has a different nationality or foreign element. Foreign elements referred to in an arbitration agreement are (Purba 2013):

1. The parties who make clauses or have an arbitration agreement and have their place of business in different countries at the time of making the agreement;
2. If the place of arbitration specified in this arbitration agreement is located outside the country where the parties have their business;
3. If the place where the most important part of the obligations or trade relations of the parties must be carried out or the place where the object of the dispute is most closely related is outside the country of business of the parties;
4. If the parties have explicitly agreed that the object of their arbitration agreement relates to more than one country.

The interpretation of international arbitral awards is explicitly explained in Indonesian national law through Article 1 point 9 of the Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The decision is a result handed down by an arbitration institution or an individual arbitrator outside the jurisdiction of the Republic of Indonesia, or a decision by an arbitration institution or an individual arbitrator which according to the laws of the Republic of Indonesia is considered an international arbitration award (Adolf, Dasar-Dasar Prinsip dan Filosofi Arbitrase 2013).

The final and binding international arbitration award in accordance with the provisions of the source of the engagement in Indonesia, namely Article 1320 of the Civil

Code (Burgerlijk Wetboek Voor Indonesie), states that the conditions for a valid agreement must meet several conditions, such as an agreement between the parties, the parties must carry out legal actions, agreements regarding certain matters, and the object of the agreement must be about causes that are lawful or do not violate the law.

Based on the Objective Terms as regulated in Article 1320 of the Civil Code when reviewed according to Article 5 of the Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, disputes that can be resolved through arbitration are only disputes in the trade sector and the ones regarding rights which according to law and laws and regulations are fully controlled by the disputing parties. Instead, disputes that cannot be resolved through arbitration are disputes which according to the laws and regulations cannot be reconciled.

Article 67 of the Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The submission of the application for the implementation of the International Arbitration Award must enclose the original sheet or an authentic copy of the International Arbitration Award, the original sheet or an authentic copy of the agreement that forms the basis of the International Arbitration Award which is the basis of the provisions regarding the authentication of foreign documents, the official translation text in Indonesian, and a statement from the diplomatic representative of the Republic of Indonesia in the country where the International Arbitration Award is stipulated, which states that the applicant country is bound by an agreement, both bilaterally and multilaterally with the Republic of Indonesia regarding the recognition and implementation of the International Arbitration Award.

An application for the implementation of International Arbitration in Indonesia cannot be carried out without the presence of the Central Jakarta District Court. International Arbitration Award is only recognized and can be enforced in the jurisdiction of the



Republic of Indonesia if it fulfills several conditions. Article 66 of the Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. They are:

1. The decision is rendered by the arbitrator or arbitral tribunal in a country with Indonesia bound to an agreement, both bilaterally and multilaterally, regarding the recognition and implementation of the International Arbitration Award;
2. The decision is in accordance with the provisions of Indonesian law, including within the scope of trade law;
3. The decision can be implemented and does not conflict with public order;
4. The decision can be implemented in Indonesia after obtaining an exequatur from the Head of the Central Jakarta District Court, and;
5. The decision concerning the Republic of Indonesia as a party to the dispute can only be implemented after obtaining an exequatur from the Supreme Court of the Republic of Indonesia which is delegated to the Central Jakarta District Court.

Some of the International Arbitration Institutions are ICC (The International Chamber of Commerce), SIAC (Singapore International Arbitration Convention), UNCITRAL (United Nations Commission on International Trade Law), or ICSID (The International Center For Settlement of Investment Disputes).

ICC arbitration aims to promote international trade throughout the world, for example by providing policies or other support specifically to international organizations and governments. SIAC arbitration is in the context of resolving investment disputes between countries, especially among Asian countries according to the 1958 New York convention. ICSID Arbitration is intended to bridge the distance between parties to disputes in foreign investment cases and to protect capital flows from developed countries to developing countries so that developing countries can encourage economic growth (Adolf,

Arbitrase Komersial Internasional Edisi Revisi 1993).

The SIAC Arbitration Award according to the general provisions of point 12 SIAC Rules 2016 is binding on the parties from the date it was made and undertakes to carry out the order or award without delay. The parties also irrevocably waive their right to any form of appeal, review, or recourse to a State court or other judicial authority.

Besides existing on the SIAC Arbitration Rules, the final and binding decision is also stated in Article 32 Paragraph (2) of the UNCITRAL Arbitration Rules which briefly states that the UNCITRAL arbitration award is final and binding, and it is not permissible for the parties to renege on their decision which can have an impact on delaying the decision. Dealing with the Arbitration Institution ICSID, no arrangement of Arbitration awards was found in the ICSID Arbitration Rules. Referring to Article 25 of the ICSID Convention, the Center has the authority or jurisdiction to only cover legal disputes that are directly caused by investments between convention participants or subdivisions or agents of members. Article 25 of the ICSID briefly states:

1. The jurisdiction of the Center shall include any legal dispute arising directly from an investment between a Contracting State or any subdivision or constituent body of a Contracting State designated by that State for the Center and a national of that State party other Agreements, which the parties to the dispute agree in writing to submit to the Center. When the parties have given their consent, neither party can withdraw their consent unilaterally;
2. A national of the other Contracting State means that any natural person who has the nationality of a Contracting State other than that of the disputing State Party on the date on which the parties agree to submit the dispute to conciliation or arbitration and on the date on which the request it is registered but does not include any person who on both dates also held

the nationality of the State Party to the dispute; and any legal entity which is a national of a Contracting State other than the State party to the dispute on the date the parties agree to submit the dispute to conciliation or arbitration and any legal entity which has the nationality of the Contracting State of the dispute on that date and which, because foreign control, the parties have agreed to be treated as nationals of the other Contracting State for the purposes of the Convention;

3. Approval by a subdivision or constituent body of a Contracting State shall require the consent of that State unless that State notifies the Center that such consent is not required;
4. Any Contracting State may, at the time of ratification, acceptance, or approval of this Convention or at any time thereafter, notify the Center of the class or class of disputes which it will or will not consider submitting to the jurisdiction of the Centre.

In addition to the ICSID Convention, the provisions of international law as the legal basis for international arbitral awards are also regulated by the 1958 New York Convention. The points contained in the 1958 New York Convention include, among others, the meaning of foreign arbitral awards which explain arbitral awards made in the territory of other countries from the country where the recognition and execution of the arbitral award are requested, the principle of reciprocity, restrictions as long as the trade dispute is in writing, the arbitration has absolute competence, the arbitral award is final and binding, execution is subject to *ius sanguinis* (Harahap, Arbitrase ditinjau dari Reglement Acara Perdata (Rv) Peraturan prosedur BANI International Centre for the Settlement of investment disputes (ICSID), UNCITRAL Arbitration Rules Convention on The Recognition and Enforcement of Foreign Arbitral Award Perma No. 1 tahun 1990, 2003).

Provisions of international law such as Article 3 of the New York Convention stipulates that each Contracting State (New York

Convention 1958) is obliged to recognize the arbitral award as binding and enforce it in accordance with the procedural rules of the territory in which the award will be relied upon in accordance with the conditions described (Nugroho 2017). No more severe conditions shall be imposed or the imposition of higher costs in connection with the recognition and enforcement of arbitral awards in accordance with the 1958 New York Convention, compared to the conditions applied to the recognition and enforcement of domestic arbitral awards (Adolf, Dasar-Dasar Prinsip dan Filosofi Arbitrase 2013) .

The State of Indonesia is one of the participants who participated in ratifying the 1958 New York Convention. This was marked by the Decree of the President of the Republic of Indonesia Number 34 of 1981 concerning the ratification of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards which was signed in New York on June 10, 1958, and has entered into force on June 7, 1959 (Gautama 1986).

Based on Article 3 of the New York Convention above, basically, the arbitration award is in the nature of every request for recognition and execution from one of the participating countries to other country participants. The execution must be carried out. However, Article 5 of the New York Convention provides the possibility for a participating country to refuse it.

In brief, several reasons for refusal are regulated in Article 5 of the New York Convention. The Arbitration Agreement is made invalid in terms of the applicable law. The parties authorized to make the arbitration or the law in force in the country where the request for execution is requested, one of the parties does not get the same opportunity. It is reasonable to defend its interests. The arbitration award handed down is not in accordance with the affirmation given. The arbitration enforcement deviates so that it is not following the procedures determined by the parties in the agreement, and the arbitration award is not yet binding (Redi 2016).

## D. Conclusion

The settlement of mineral and coal mining disputes is not only regulated in Article 154 of the Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining concerning domestic courts and Arbitration before the issuance of Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining. Contracts made by mining business actors with the Government of Indonesia, both Contracts of Work and Coal Mining Concession Work Agreements, dispute resolution are carried out through International Arbitration institutions, and the implementation of international arbitral awards according to Indonesian law must meet several conditions, one of which is that the decision is handed down by an arbitrator or arbitral tribunal in a country with the Indonesian state bound by agreements, both bilaterally and multilaterally.

## E. References

- Adolf, H. 2013. *Dasar-Dasar Prinsip dan Filosofi Arbitrase*. Bandung: Keni Media.
- 2016. *Hukum Arbitrase Komersial Internasional*. Bandung: Keni Media.
- 1993. *Arbitrase Komersial Internasional Edisi Revisi*. Jakarta: Citra Niaga Rajawali.
- Batubara, S & Orinton P. 2013. *Arbitrase Internasional Penyelesaian Sengketa Investasi Asing Melalui ICSID UNCITRAL dan SIAC*. Jakarta: Raih ASA Sukses.
- Bendar, A. 2018. *Hukum Penanaman Modal Asing Implementasi untuk Pertambangan Indonesia*. Jakarta: UII Press.
- Civil Code (*Burgerlijk Wetboek voor Indonesie*)
- Gobel, D. 2014. *Penyelesaian Sengketa Investasi Asing Dalam Bidang Pertambangan Melalui Arbitrase Internasional*. Lex Et Societatis, Vol 2 No. 3
- Decree of the President of the Republic of Indonesia Number 34 of 1981
- Decision on Case Number 001-021-022/PUU-I/2003 Included in the State Gazette of the Republic of Indonesia Number 102 of 2004.
- Gautama, S. 1986. *Arbitrase Dagang Internasional*. Jakarta: PT Citra Aditya Bakti.
- Girsang. 1992. *Arbitrase*. Jakarta: Research and Development and Training of the Supreme Court of the Republic of Indonesia.
- Hayuningtri, D. 2014. *ICSID jurisdiction as the foreign investment dispute settlement forum; case study ICSID award on jurisdiction no ARB/07/3 in the proceeding between GPEK v. PT. Kaltim Prima Coal and others*. Jakarta: Universitas Indonesia.
- Harahap, Y. 2004. *Arbitrase*. Jakarta: Sinar Grafika.
- Harahap, Y. 2003. *Arbitrase ditinjau dari Reglement Acara Perdata (Rv) Peraturan prosedur BANI International Centre for the Settlement of investment disputes (ICSID), UNCITRAL Arbitration Rules Convention on The Recognition and Enforcement of Foreign Arbitral Award Perma No. 1 tahun 1990*. Jakarta: Sinar Grafika.
- ICSID Convention.
- Law of the Republic of Indonesia Number 3 of 2020 concerning Amendments to Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining.
- Law of the Republic of Indonesia Number 25 of 2007 concerning Investment.
- Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining.
- Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.
- Law of the Republic of Indonesia Number 1 of 1967 concerning Foreign Investment.
- Law of the Republic of Indonesia Number 11 of 1967 concerning Mining Principles.
- Law of the Republic of Indonesia Number 5 of 1968 concerning Settlement of Disputes between the State and Foreign Citizens Regarding Investment.
- Margono, S. 2000. *Alternative Dispute Resolution dan Arbitrase: Proses Pelembagaan dan Aspek Hukum*. Jakarta: Ghalia Indonesia.
- Ministry of Energy and Mineral Resources, retrieved from <https://www.esdm.go.id/id/media-center/arsip-berita/keputusan-arbitrase-atas-sengketa-divestasi-saham-pt-newmont-menangkan-indonesia>
- Ministry of Energy and Mineral Resources, retrieved from <https://www.esdm.go.id/id/media-center/arsip-berita/keputusan-arbitrase-atas-sengketa-divestasi-saham-pt-newmont-menangkan-indonesia>
- New York Convention.
- Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008 concerning Mediation Procedures in Courts.
- Redi, A. 2016. *Hukum Penyelesaian Sengketa Pertambangan Mineral dan Batubara*. Bekasi: Sinar Grafika.
- Sari, N. 2013. *Penyelesaian Sengketa Di Bidang Pertambangan Melalui Mediasi*, Thesis: Universitas Airlangga.
- SIAC Rules 2016
- Susanti, A. N., 2017. *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya*, Jakarta: Kencana.
- Sukwanto, B. & Siregar, T. 2010. *Pelaksanaan Putusan Arbitrase Internasional di Indonesia*. Jurnal Mercatoria, Vol 3 No 1
- Trihastuti, N. 2013. *Hukum Kontrak Karya Pola Kerjasama Pengusahaan Pertambangan di Indonesia*. Malang: Setara Press.
- UNCITRAL Rules.
- Widnyana, I. 2009. *Alternatif Penyelesaian Sengketa*. Jakarta: PT Fikahati Aneska.