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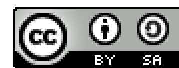

# EXPANSION OF THE MEANING OF THE WORD INTERNATIONAL IN INTERNATIONAL ARBITRATION DECISIONS IN INDONESIA

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**ABSTRACT**

An international arbitration award is a decision handed down by an arbitration institution or individual arbitrator outside the jurisdiction of the Republic of Indonesia, or a decision by an arbitration institution or individual arbitrator which according to the legal provisions of the Republic of Indonesia is considered an international arbitration award. From this understanding, it can be seen that Indonesia adheres to the territorial principle to determine whether an arbitration award is international or national. What about other foreign elements contained in an arbitration award, such as choice of law or choice of forum? The aim of this research is to find a new meaning for the word "International" in international arbitration decisions. The method used in this research is normative legal research. The research results state that the meaning of the word "international" in an international arbitration award should not only be territorial because the word international has a broader meaning which includes foreign elements contained in an arbitration award such as choice of law, choice of forum or choice of jurisdiction.

**Keywords:** Expansion. International. Arbitration Decisions.

## 1. Introduction

International Civil Law (furthermore abbreviated HPI), regulates the legal connection between parties and contracts arising from engagements. HPI encompasses all regulation and legal decision indication which legal system applies and what constitutes law if the relationships and events between citizens at a certain time show point of connection with the legal system and rules from one or more different countries within the local power circle. The field or scope of private international law includes *choice of law, choice of jurisdiction, condition des strangers and nationalities.* This Scope arranged the law that will apply to a legal connection, determines the jurisdiction or civil procedure during the trial, addresses the legal treatment of

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citizens, who are parties to a legal relationship, and discusses how to place the role and context of sovereignty inherent in the national government.[2]

In international contracts, determining the choice of law is very important to avoid conflict of law, considering that parties involved may have different citizenship, transaction locations, and relevant legal systems. Contract law, as a part of civil law, has several universal principles such as the principle of freedom of contract (party autonomy), pacta sunt servanda and consensualism. When parties involved in a contract or international agreement, where the agreed contents cross country bounderies, face a disputes, one possible resolution method is arbitration. The author refers to international commercial arbitration in this research.

Arbitration comes from the Latin word "arbitrare" which means the authority to do something wisely.[3] As for the legal basis of arbitration in Indonesia, it originates from Article 377 of the Herzein Inlandsch Reglement (hereinafter abbreviated as HIR) or Article 705 Rechtsreglement Buitengewesten (Hereinafter in RBg) which reads: "If person from Indonesia and person from a Foreign East will dispute, they are to be decided by a separator, and they are obliged to comply with court regulations that apply to Europeans".[4] As a general rule, which is regulated in Civil Procedure Regulations (RV) covers 5 (five) part namely:

a) Part One (615-623) regulates arbitration and appointment of an arbitrators;
b) Part Second (624-630) arrange about inspection of the arbitration body;
c) Part Third (631-640) arrange about arbitration decision;
d) Part Fourth (641-647) arrange about enforce the arbitration decision;
e) Part Fifth (648-651) arrange about ending events in arbitration.

[2] Susanti Adi Nugroho , Arbitration Dispute Resolution and Legal Application , ( Jakarta: Prenadamedia Group, 2016), page 324

[3] Subekti, Trade Arbitration , (Jakarta: Binabuat, 2004), p. 112

[4] Frans Hendra Winarta. 2013. Indonesian National and International Arbitration Dispute Settlement Law . Jakarta : Sinar Graphics.pg 3

The advantages of arbitration as a dispute resolution institution include producing fast, final and binding decisions. Because of this, many developed and developing countries have agreed to use of arbitration in settling trading dispute between countries. The decision made by arbitrators are them enforced in the country where the decision should be executed, even if it is not the country where the judgement was rendered. This acknowledgment is based on the consideration that arbitration is not a state body, and the decision taken will only be implemented based on or following the method of implementing the arbitral award from the country where the arbitration award will be executed.[5]

The advantages and disadvantages that arbitration institutions have when compared to courts include:[6]

1.1. Dispute resolution through arbitration is flexible,
1.2. Arbitration costs are more certain,
1.3. Arbitration awards are more satisfying because they are handled by neutral, independent arbitrators who have special expertise,
1.4. Guaranteed confidentiality of the parties,
1.5. Decisions are final and binding.

Behind the advantages of arbitration, arbitration also has weaknesses, including:[7]

1.1. It is not easy to reconcile the wishes of the parties in an arbitration agreement that contains an agreement between both parties to submit dispute to an arbitration forum,
1.2. Challenges in obtaining recognition and enforcement of an international arbitral award, given that the arbitral institution does not have executorial authority and requires the assistance of a national court. Implementation becomes even more difficult if the

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[5] Gunawan Widjaya and Ahmad Yani, 2000, Arbitration Law, (Depok: Rajawli Grafindo Persada, 2000), p. 35

[6] Huala Adolf, International Commercial Arbitration Law , (Bandung: Keni Media. 2016), p. 2

[7] Sefriani, Commercial Arbitration in International Law and Indonesian National Law , (Yogyakarta : UII Press, 2018), p. 24

decision is addressed toward a state that has sovereignty and immunity before a national forum court,

1.3. Unknown legal precedents have the potential to give rise to conflicting decisions,

1.4. Arbitrage is not always quick and cheap,

1.5. There are legal remedies that can be taken by the losing party to oppose the implementation of the decision, such as rejection of the decision and annulment of the decision.

Arbitration does not actually fall under alternative forms of dispute resolution (hereinafter abbreviated as APS) or *Alternative Dispute Resolution* (hereinafter abbreviated as ADR) because arbitration essentially belongs to the group of *adjudicatory methods of settlement* or adjudication, which consists of 2 (two) prototypes, namely litigation in court ( *public adjudication* ) and arbitration ( *private adjudication* ).[8] Meanwhile, the ADR method is included in the *non-adjudication methods of settlement group* which includes mediation and conciliation.[9] Therefore, mediation and conciliation differ from arbitration because they cannot produce binding decisions that can be implemented.

Arbitration itself is not a new form of dispute resolution in Indonesia. It has been known since the Dutch East Indies era, we can see this in Article 377 HIR/705 Rbg and in Articles 615-655 RV. However, these rules only regulate national arbitration. To fill the legal void governing foreign/international arbitration in Indonesia, Indonesia ratified the 1958 New York Convention concerning The Recognation and Enforcement of Foreign Arbitration Awards through Presidential Decree Number 34 of 1981. Despite the existence of this Presidential Decree, issues with the recognition and enforcement of foreign arbitration award persist. The presence of Presidential Decree Number 34 of 1981 did not bring much change to the recognition and implementation of foreign arbitration awards in Indonesia. This is mainly because there is still a

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[8] Christian Buhring, *Arbitration and Mediation in International Business* , (The Hague: Kluwer Law International.1996), page 43

[9] Liem Lei Theng. *Court Connected ADR in Singapore.* delivered at the Court Connected ADR Seminar. Ministry of Justice of the Republic of Indonesia : Jakarta 21 April 1999

need to implementing regulations from the Presidential Decree. To address this, the Supreme Court issued PERMA Number 1 of 1990, outlining procedures for recognizing and implementing foreign arbitration awards in Indonesia. However, the presence of PERMA also did not bring significant changes in the recognition and implementation of foreign arbitration awards in Indonesia.

The 1958 New York Convention uses the term 'foreign arbitral award', whereas UUAAPS use term 'decision arbitration international'. According to Article 1 paragraph (1) of the 1958 New York Convention, a foreign arbitration award is an arbitration award made in a country's territory of a country other than the country where recognition and execution are requested for the arbitral award in question.[142] Meanwhile, according to Article 1 number 9 UUAAPS, an international arbitration award is a decision handed down by an arbitration institution or individual arbitrator outside the jurisdiction of The Republic Indonesia or if the decision is made by an arbitration institution or individual arbitrator in accordance with the legal provisions of the Republic of Indonesia, it is considered a decision arbitration international.[10] From this understanding, it can seen that what is meant by a decision arbitration international is any decision handed down outside the territory of the Republic of Indonesia. In international law, what is referred to as the legal territory of a country is the territory of the country concerned plus the area where diplomatic representatives in various countries are located. It means when an international arbitration decision is rendered in the vicinity of Indonesian diplomatic locations abroad, therbitration award, including decision arbitration national, is considered.

The international significance of an international arbitration decision is based on the place where the arbitration award is handed down and the law chosen by the parties to resolve arbitration disputes. For example, in a business contract, the parties may agree to use foreign law as the basis for

[10] Article 1 point 9 Law Number 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution

settling dispute. Although the decision is imposed within the jurisdiction of the Republic of Indonesia, the arbitration award still is still considered an international arbitration decision. An instance of a dispute that has occurred in Indonesia is the international arbitration decision between PT. Petrolium's lyrics against PT Pertamina. In this international arbitration decision, it was determined that PT Pertamina had to pay compensation to PT Lirik Petrolium. PT Pertamina submitted a cassation request to the Supreme Court, arguing that the arbitration award was a national arbitration award since it was decided within the territory of the Republic of Indonesia. As a result, the decision should be rendered in accordance with the phrase "For The One Almighty God". However, what about the choice of law and the choice of forum agreed upon by the parties, namely the ICC and the ICC Rules? Aren't the choice of law and the choice of forum one of the most important parts of international private law? Shouldn't the term "international" in an international arbitration award have a broader meaning than just a decision imposed outside the territory of the Republic of Indonesia?

## 2. Reseach Method

The method in this research is normative legal research with a conceptual approach, case approach and statutory approach. The legal materials used are primary legal materials consisting of national and international legislation relating to arbitration as well as secondary legal materials consisting of textbooks, research results as well as articles and dictionaries. This research is normative in nature because the main source of this research is primary legal material consisting of statutory regulations. The research approach used is descriptive analysis.

## 3. Results and Discussion

Arbitration, as a dispute resolution institution, promises to resolve disputes quickly, *final and binding* without involving judicial bodies in making decisions. Therefore, many developed and developing countries have

agreed to use arbitration in the settlement of trade disputes between countries. In this process, the decisions handed down by the arbitrators will be executed in the country where the decision should be carried out, even if that country is not the one where the decision was initially made. This is acknowledged based on the consideration that arbitration is not a state agency. The decision will only be implemented following the method outlined in the arbitral award from the country where the arbitral award is enforced.[11] The principles of dispute resolution through arbitration include:

3.1. The principle of autonomy of the parties

This principle is often referred to as the legal principle of the parties because the agreement agreed upon by the parties constitutes the law for them. Any legal action that does not align with the agreed-upon terms is null and void. Through this principle, the parties themselves, based on the agreement, determine which arbitral procedure law will be applied by the arbitrator or arbitral tribunal in resolving disputes.[12] Based on this principle, the parties are also free to determine the procedural law. If the parties do not determine it, the arbitrator or arbitral tribunal can either direct the procedural law or have it determined through collaboration with the parties.

3.2. Kompetenz-kompetenz principle

This principle establishes the authority of arbitration institutions. Based on the authority derived the parties' appointment of the arbitrator, the arbitral institution, in this case, has the authority to determine its own competence. The arbitrator possesses the authority to consider and decide on matters falling within their jurisdiction. [13]

3.3. Principles of Pacta Sunt Servanda

[11] Gunawan Widjaya, *Op.Cit* , page 114

[12] Nigel Blackaby, et.al, *Redfern and Hunter on International Commercial Arbitration* , (London: Oxford University Press, 2015), p. 363

[13] Sefriani, page 28

This principle states that the agreement produced by the parties is binding for them, like a law, and must be carried out in good faith. The parties are not only bound by an agreement to submit their case to arbitration but must also respect and implement the arbitral award, even if they are the losing party in the decision. The principle of *Pacta Sunt Servanda* exists before, during, and after the arbitration process takes place.

3.4. Principles of Audi Alteram et Partem

This principle applies generally in every trial. This principle states that arbitrators, in carrying out arbitration proceedings, are obliged to listen to both parties. The arbitrator or arbitration panel must give the applicant an the respondent an equal opportunity to be heard.[14] This principle is found in Article 29 UUAAPS, which states that the disputing parties have the same rights and opportunities to expressing their opinions in the arbitration process.

3.5. Principle of Fair and Equitable Treatment

The principle of *fair and equitable treatment* can be interpreted as an important and fundamental principle in every justice system in the world. This principle requires that the arbitrator or panel of arbitrators must provide equal fair treatment all parties, without showing preferential treatment to one of the parties. Additionally, this principle emphasizes the need for the arbitrator or arbitration panel to maintain neutrality throughout the arbitration trial process.

3.6. Place theory

The theory states that even though parties in arbitration disputes have the freedom to choose procedural law, the national law governing the place where arbitration occurs also play a role in

[14] Huala Adolf, 2019, Arbitration Regulations and Procedures, ( Bandung: CV Keni Media) p. 3

binding or influencing procedural law. In arbitration studies, this theory is also called *the seat theory.* This provision is contained in the arbitration law of the country where the arbitration takes place (*Lex Arbitri*). According to this theory, the arbitration law in the jurisdiction where the arbitration is held must be enforced. The nature of arbitration is binding, even if the parties agree to choose a certain arbitration rule, such as the BANI arbitration rules, the legal rules related to arbitration within rules also apply.

There are several types of arbitration, namely:

3.1. Ad hoc arbitration

In the arbitration agreement, it must be determined in advance whether the arbitration will be carried out by an arbitral institution or through *ad hoc arbitration. Ad hoc* arbitration is aimed at a particular case for one-time appointment. This arbitration is not bound by an arbitral body, so it does not have separate rules of procedure regarding the appointment of arbitrators or examination procedures. *Ad hoc arbitration* is thus subject to full compliance with the procedural rules specified in the legislation. The parties can agree to use a set of rules made by themselves or use the adopt the procedures of a particular arbitration institution. [15]

3.2. Institutional arbitration.

International arbitration is an arbitration institution or body established as a permanent means of resolving disputes, known as a "*permanent arbitral body*". [16] The term ‘permanent’ signifies that the existence of this institution does not depend on whether there are cases or not, it will persist even after a dispute is resolved. The purpose of establishing an arbitration institution can

[15] Eman Suparman, Arbitration & Dilemmas of Justice Enforcement , (Jakarta: PT. Fikahati Aneska, 2012) p. 104

[16] *The New York Convention* 1958, Articles 1 and 2 mention this institutional arbitration with the term "permanent arbitral bodies" as opposed to the meaning of ad hoc arbitration which is referred to as " *arbitrators appointed for each case* "

be understood from the statutes of the institution. For instance, the Indonesian National Arbitration Board (abbreviated as BANI) whose founded with the aim of providing fair and prompt resolution in civil disputes related to matters of trade, industry and finance, both nationally and internationally.

The 1958 New York Convention uses the term 'foreign arbitral award', whereas UUAAPS use the term 'international arbitration decision'. According to Article 1, paragraph (1) of the 1958 New York Convention, what is meant by foreign arbitral award is an arbitral award made in the territory of the state other than the country where the confession is requested, and the execution is carried out on the arbitral award in question.[17] Meanwhile, according to Article 1 number 9 of the UUAAPS, an international arbitration award is a decision handed down by an arbitration institution or individual arbitrator outside the jurisdiction of the Republic Indonesia. Alternatively, if the decision is made by an arbitration institution or individual arbitrator in accordance with legal provisions of the Republic of Indonesia, it is considered an international arbitration decision.[18]

The term 'international' in the context of international arbitration award has a very broad meaning. The term can refer to cases that truly international, involving institutions established through multilateral agreements, utilizing independent procedural law distinct from those of any specific country.[19] In practice, the term 'international' is often used to distinguish such case from those that are national or domestic. However, even if a dispute is handled by a national arbitration body, it may be considered international if it involves parties of different nationalities or utilizes procedural laws independent of any specific country. Similarly, if a dispute involves parties of the same nationality but is resolved in arbitration forum outside their country, the resulting decision is termed an international arbitral award. In essence, the term 'international

[17] New York Conventions 1958, Article 1

[18]P origin 1 number 9 of Law Number 30 of 1999 concerning Arbitration and Alternative SettlementsDispute

[19]Sefriani, p 53

arbitral award' actually refers to foreign elements present in the dispute, such as elements related to the institution, the procedural laws employed, or the fact involved. There is no universal understanding or agreement on what constitutes an international arbitral award, which in the end, each country may has different standards regarding the definition of an international arbitration award.

The international nature of an arbitration decision is determined based on the place where the arbitral award was rendered, as well as the law chosen by the parties to resolve the arbitration disputes. For instance, in a business contract, the parties may agree to use a foreign law as the basis for settlement dispute. Although decision imposed within the jurisdiction of the Republic of Indonesia, the arbitral award is still considered an international arbitration award. This is evident in the case of PT Lirik Petrolium against PT Pertamina, which never happened in Indonesia. In this case, the decision is clearly an international arbitration decision due to the presence of foreign elements in the business contract, such as the choice of law and forum agreed upon by the parties.

In HPI, the choice of law is one part of the most important elements as it concerns the main problem of HPI. The choice of law in HPI shows the elements of legal philosophy, it also contains legal theory, legal practice and legal politics. The choice of law is serve as a form of primary point of contact in HPI. The primary linkage point involve factors or circumstances, or a bunch of facts that give birth to or create HPI relationships. Differentiation through linkage point implies identifying which factors, circumstances, or fact can distinguish a particular incidents or connection, including whether it falls within the category of HPI or not.

As for factors classified as primary linkage points, the include nationality, flag of ships and aircraft, domicile, place of residence, nationality of legal entity and choice of law. By listing the ICC Rules as options in the dispute between PT Lirik and PT Pertamina, this dispute includes categorized as an HPI disputes. Unfortunately, the UUAAPS itself provides the limitation,

defining an international arbitration award as only decision imposed outside the territory of the Republic of Indonesia. Consequently, disputes that contain other foreign elements often lead to multiple interpretations. Therefore, a change is needed in the definition of an international arbitration award that goes beyond characteristic of territorial.

In the practice of drafting international business contracts, the Choice of clause can also be referred to as Governing or Applicable Law. Choice of law clauses provides predictability for the parties regarding which country's legal system or international convention will apply to resolve disputes that may arise between them in the given day. [20] The law system they choose will be applied in settlement dispute among the parties. There are 2 (two) types of choice law know in law civil international [21]

3.1. Choice of law in a firm manner

For example, to resolve a case of buying and selling that arises between Indonesian businessman and an American, where it is stated in the contract an additional clause stating that the sale and purchase agreement applies to the provision of Indonesia law.

3.2. Choice of law in a flexible manner

In a choice of law like this, the parties do not specify any law that will apply, but that choice of law will emerge through interpretation regarding the contents of the contract/agreement or the wishes of the parties. For example, in the document agreement, the parties quotes several chapters of the American Union Civil Law. Therefore, it is not directly evident that the parties want a contract that is subjected to American Union Law.

But if the parties do not give any instructions at all, the arbitrator, who judges the case, must look for the law that is most appropriate for resolving the dispute. The method used by the arbitrator usually involve considering

[20] Morton Moskin , *Commercial contract : Strategies for Drafting and negotiating* as in quote by Afifah kusumandara. p 78

[21] Susanti Adi Nugroho. p 318

facts like the citizenship of the parties, the place where the contract was made, where the obligation stated in the agreement are carried out, the place of business implementation, and the location of the object in the agreement. From these facts, the arbiter will determine the law of the country that will apply.

Dot, dot, dot relationship (connecting factors or point of contracts) is a thing or condition that causes the operation of a certain law system. In HPI, there are many kinds of point relationships, namely primary linkage point (differentiating linkage point) and secondary linkage point (point servant relantionship).

3.1. Point affinity Primary (Primary Link Differentiator)

Primary link points are factors, circumstances, or groups of facts that give rise to or create a connection in HPI.[22] The point of differentiating link means that the factors, circumstances or facts that can differentiated whether something is incident or connected are included in the HPI category or not. [23] The factors that belong to the primary link point is :[24]

3.1.1. Citizenship, the difference in citizenship (nationality) of parties that perform a legal deed are connected by law will give rise to HPI problem. for example, an individual from Indonesia marrying an individual from Singapore.

3.1.2. Flags of ships and aircraft, the nationalities of ships and aircraft are determined based on the exact location where ships and planes are registered.

3.1.3. Domicile, factors that differ in the domicile of the legal subject conducting a legal relationship can also give rise to a legal relationship.

[22]Sudargo Gautama, Introduction to Indonesian Private International Law, (Jakarta: National Legal Development Agency, Ministry of Justice), p 27

[23]CFG Sunarjati Hartono, Principles of Private International Law, (Bandung: Bina Cipta, 1989), p. 83

[24]Ridwan Khanrandy, Introduction to Indonesian Private International Law, (Yogyakarta: Gama Media, 1999) , p 31-33

3.1.4. Place of residence, in the common law system, domicile is differentiated from residence, residence refers more to daily living space.

3.1.5. The nationality of the legal entity, the nationality of the legal entity is determined based on place or country in where the legal entity is established and registered.

3.1.6. Choice of law, the choice of law agreed upon by the parties listed in a written agreement.

3.2. Point affinity Secondary (Point link determinant)

Secondary points of connection are factors or a set of facts that determine the law to be used or appliedin connection with HPI. The secondary point of connection include:

3.2.1. The placer where it lies differently (lex situs or lex rei sitae);

3.2.2. Citizenship or domicile of the owner of movable objects;

3.2.3. The place where the legal deed takes place (lex loci actus);

3.2.4. The place where the deed opposing the law occurs (lex loci delicti commission);

3.2.5. The place where the wedding is celebrated ( lex loci celebrationis);

3.2.6. The Place where the contract is signed ( lex loci contractus);

3.2.7. The place where the contrac is exactly carried out ( lex loci solutionist);

3.2.8. Choice of law;

3.2.9. Citizenship (Lex patriae);

3.2.10. Flag of the boat and aircraft;

3.2.11. Place of residence, And

3.2.12. Place of position or nationality of the legal entity.

In connection with the determinant link points, in the law system of Indonesia, there are 3 (three) main rules of HPI arranged according to personal law, according to Articles 16.17 and 18 AB. Article 16 AB regulates the law regarding a person's nationality. Article 17

AB regulates the laws of the country where the object is located. Article 18 AB must be regulated based on the place where the legal deed implemented. According to RH Graverson, in conclding an HPI case, 3 (three) matters must be noted:[25]

3.2.1. What anchor points a particular HPI system selects can be applied to a bunch of fact that are concerned;

3.2.2. Based on which legal system among the various legal systems that is relevant to the case, the link point will be determined.

3.2.3. After the second problem is set, then determine how the two regulations are limited by the legal system that will be enforced.

3.3. Qualification in Law Civil International

Qualification involve the "translation" or conversion of everyday facts in legal terms. These facts are categorized into specific legal domain, classes, or sections of existing law. In the HPI field, facts must be placed within a particular juridical category. [26] In HPI, apart from the facts stated in qualify, legal rules also needed in qualification, so in HPI there 2 (two) types qualifications ie:[27]

3.3.1. Qualification of fact (Classification of Facts) is the process carried out on a set of facts in a legal event for one or more legal incidents based on legal categories and the legal rules of the law system that should apply.

3.3.2. Legal Qualifications (Classification of law) are whole division legal rules into certain legal categories has set previously.

[25] Bayu Seto, Basics of International Private Law, (Bandung: Citra Aditya Bakti, 2001), p. 15

[26] Sudargo Gautama. p. 85

[27] Ridwan Khairandy. p. 41

According to Sudargo Gautama, There is 3 (three) theory Which develop in HPI, namely:[28]

3.1. Theory qualification according to lex fori

This theory was pioneered by Franz Kahn from Germany and Bartin from France. According to theory, qualification is based on the law material of the judge who hears the case in question. The adherents of this theory generally argue that there are a number of exceptions to qualification of lex fori which include:

3.1.1. Qualification of citizenship
3.1.2. Qualification of movable and immovable objects
3.1.3. Qualification for which there is a choice the law
3.1.4. Qualification based on international conventions
3.1.5. Qualification that oppose the law
3.1.6. Understandings used by International Courts

3.2. Theory qualification according to lex cause

The theory of qualification according to lex cause developed by Wolff. According to theory this theory, qualifications must be carried out in accordance with the system and objectives of the entire law that pertains to the case. Qualifications are intended to determine the HPI rules of lex fori, which are closely related to the law that should apply (lex cause).

3.3. Qualification in a way autonomous

This theory was pioneered by Rabel. Essentially, autonomous qualifications use the method of comparing laws to build a system of qualification that applies universally. Qualification are determined regardless of the incorrectness of one legal system.

From the description above, it can be concluded that what is meant by International arbitration awards is not only decisions handed down outside the territory of the Republic of Indonesia because they correspond to the link points in the HPI still many factors or other foreign elements that create a

[28] Sudargo Gautama. pp. 125-132

dispute That is dispute civil international. According to the author, the international arbitration decision should mean the decision handed down by an arbitration tribunal or individual arbitrator, either outside or inside the territory of the Republic of Indonesia, which contains foreign elements. This approach prevents multiple interpretation in interpreting international arbitration awards and naturally provides legal certainty for the parties involved.

## 4. Conclusion

The term "International" in international arbitral awards should not solely imply a territorial in nature because there are still many known differentiating points of contact in international private law, such as choice of law, choice of forum and choice of jurisdiction. Therefore, the definition of an international arbitral award should be "a decision handed down by the arbitral tribunal or individual arbitrators containing foreign elements, whether handed down within or outside the jurisdiction of the Republic of Indonesia".

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