CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 131/PUU-XXII/2024

Concerning

Petition for Exequatur of International Arbitration Award

Petitioner	:	**PT Tanjung Bersinar Cemerlang, represented by Eric Kurniadi as President Director**
Type of Case	:	Judicial Review of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Law 30/1999) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	The provisions on the petition for enforcement and the nature of the decision and legal remedies in Article 67 paragraph (1) and paragraph (2), and Article 68 paragraph (1) and paragraph (2) of Law 30/1999 are contrary to the principle of legal certainty and equal treatment before the law, and are contrary to the principle of freedom from discriminatory treatment as guaranteed by Article 1 paragraph (3), Article 28D paragraph (1), and Article 28I Article (2) of the 1945 Constitution of the Republic of Indonesia
Verdict	:	To dismiss the Petitioner's petition in its entirety
Date of Decision	:	Friday, January 3, 2025
Overview of Decision	:	

Whereas the Petitioner describes its qualifications as a private legal entity in the form of a limited liability company named PT Tanjung Bersinar Cemerlang, which operates in the coal trading sector, it is represented by Eric Kurniadi as the President Director. In carrying out its business activities, the Petitioner has entered into many contracts, both purchase contracts and sales contracts for coal, with other companies, both domestic and foreign. According to the Petitioner, the use of the word "petition" in Article 67 paragraphs (1) and (2) of Law 30/1999 resulted in the Petitioner, as the executory respondent, not being summoned to provide a statement, and the examination of the executory "petition" was not conducted in a hearing open to the public. According to the Petitioner, the word "decision" in Article 68 paragraphs (1) and (2) of Law 30/1999 was interpreted by the Chairperson of the Central Jakarta District Court as a "determination," with the consequence that the granting or dismissal of an executory petition was carried out without "a decision pronounced in a hearing

open to the public." In addition, the Petitioner claims that, as a prospective executory respondent, it is disadvantaged and subjected to discriminatory treatment due to the phrase "may not be appealed or cassated" in Article 68 paragraph (1) of Law 30/1999. This is because, if the executory petition is granted, the Petitioner, as the executory respondent, has no right to file an appeal or cassation; whereas if the petition is dismissed, the executory applicant may file a cassation.

With respect to the Court's authority, the petition submitted by the Petitioner is a judicial review of the constitutionality of statutory norms, *in casu* the word "petition" in Article 67 paragraph (1) and paragraph (2), the word "decision" in Article 68 paragraph (1) and paragraph (2), and the phrase "may not be appealed or cassated" in Article 68 paragraph (1) of Law 30/1999 of the 1945 Constitution of the Republic of Indonesia. Therefore, the Court has the authority to hear the petition *a quo*.

With respect to the legal standing of the Petitioner, as a legal entity, the Petitioner has been able to explain its constitutional rights which are allegedly violated by the enactment of the statutory norms which are being petitioned for review, the said alleged violation arises due to the causal relationship (*causal verband*) between the norms for which this petition is submitted, namely Article 67 paragraph (1) and paragraph (2), and Article 68 paragraph (1) and paragraph (2) of Law 30/1999, and the losses which are specific (special) and actual or at least potential in nature which according to reasonable reasoning can be ascertained to be suffered by the Petitioner. This is because the Petitioner is a company involved in a dispute with a foreign company and the resolution is reached through international arbitration. If this petition is granted, then such loss will not occur. Therefore, regardless of whether the unconstitutionality of the norms of Article 67 paragraph (1) and paragraph (2), Article 68 paragraph (1) and paragraph (2) of Law 30/1999 being petitioned for review is proven or not, the Court is of the opinion that the Petitioner has the legal standing to submit the petition *a quo*.

Whereas since the petition *a quo* is clear, the Court is of the opinion that there is no urgency and relevance to hear the statements of the parties as intended in Article 54 of the Constitutional Court Law.

Whereas according to the Petitioner, the word "petition" in Article 67 paragraphs (1) and (2) of Law 30/1999, which was not interpreted as an "*inter partes* petition," resulted in the Petitioner, as the executory respondent, not being summoned to provide a statement. Furthermore, because the Head of the Central Jakarta District Court did not interpret or give meaning to the word "decision" in Article 68 paragraphs (1) and (2) of Law 30/1999 as "a decision pronounced in a hearing open to the public," but instead interpreted it as a "determination," the granting or dismissal of an executory petition was not rendered through "a decision pronounced in a hearing open to the public." This practice remains unchanged even after the enactment of Supreme Court Regulation 3/2023. Although the executory product is now termed a "decision" rather than a "determination," such "decision" is still not pronounced in a public hearing. In addition, the Petitioner argues that the word "decision" in Article 68 paragraphs (1) and (2) of Law 30/1999 is a term commonly used within court proceedings. However, the Head of the Central Jakarta District Court has effectively created his/her own rule by interpreting the term "decision" in those provisions as "determination." By replacing it with "determination," the executory respondent is not placed in an equal position with the executory applicant, thereby undermining the executory respondent's right to equality before the law. According to the Petitioner, the phrase "may not be appealed or cassated" in Article 68 paragraph (1) of Law 30/1999 is discriminatory. This is because, if the executory petition is granted, the Petitioner, as the executory respondent, has no right to file an appeal

or cassation; whereas if the executory petition is dismissed, the executory applicant may file a cassation.

Whereas the Court is of the opinion that arbitration is a method of resolving a civil dispute outside the general courts by appointing an arbitrator as a neutral and impartial third party to settle the dispute between the parties. Arbitration is based on civil agreements, which are common in the fields of business, trade, industry, or finance, made in writing by the disputing parties. Such agreements are executed by the parties, with the substance and terms governed according to their mutual consent in line with the principle of freedom of contract. This means that when the parties agree in their contract to submit any dispute arising from its implementation to arbitration, they are bound to submit themselves to and comply with the award rendered by such arbitration, as stipulated in the agreement. Moreover, this is consistent with universal principles that govern international agreements/contracts, particularly the principle of "*pacta sunt servanda*", which means that every agreement must be kept or honored. Accordingly, an agreement made consciously, without coercion, not in violation of social norms or public order, and based on the principle of freedom of contract, is valid and binding as law for the parties. These principles are also reflected in the Indonesian legal system, as stipulated in Article 1338 of the Indonesian Civil Code, which provides that every legally executed agreement has the force of law for the parties and must be performed in good faith. In Indonesia, international arbitration awards must undergo a recognition (executorial) process before the Central Jakarta District Court in order to be recognized and enforced [*vide* Article 67 of Law 30/1999]. The party that wins the arbitration must submit a petition for exequatur or ratification for the implementation of the international arbitration award at the Central Jakarta District Court. Exequatur is permission from the court so that an arbitration decision may be enforced in Indonesia. Next, the Central Jakarta District Court will examine the petition to ensure that the arbitration award does not conflict with the competence of the arbitration institution and/or public order in Indonesia.

Whereas the Court does not summon the respondent in the exequatur process to appear in the proceedings, as would typically be done in civil trials of an *inter partes* nature, because the dispute between the parties has essentially been resolved through the international arbitration award issued by the arbitrator chosen by the parties pursuant to their agreement. Accordingly, in arbitration, the resulting award is final and binding on the parties in accordance with the arbitration agreement. If the exequatur petition were to be construed as an *inter partes* petition, as argued by the Petitioner, it would effectively create a new dispute between the parties on the same matter, despite the fact that they had agreed to arbitration as the method for resolving their dispute. Such an approach would undermine the very principle of arbitration, that the award is final and binding. Therefore, an international arbitration award is deemed final, complete, and it cannot be contested by the parties (inviolable), so there is no need for any additional dispute-resolution process involving both parties before the courts. Moreover, the exequatur process before the Central Jakarta District Court is essentially a petition for the enforcement of an international arbitration award, which is administrative in nature and is submitted by the exequatur applicant when the exequatur respondent does not voluntarily comply with the award. In this process, the court does not review the substance of the dispute or the merits of the arbitration award. The court's examination is limited to matters of formal completeness, the validity of the submitted documents, and ensuring that the award does not contravene the competence of the arbitration institution and/or public order. Accordingly, there is neither a need nor any relevance to summoning the exequatur respondent in this process. With respect to summoning the exequatur respondent, a warning (*aanmaning*) will be issued to prompt the exequatur respondent to comply with the arbitration award before enforcement is carried out

by force. If the exequatur petition were processed as an *inter partes* petition, the court proceedings would become impractical, prolonged, and unnecessarily lengthy, even though the international arbitration award has already been rendered and is final. Therefore, conducting the exequatur process in an *inter partes* manner is inconsistent with, and contrary to, the nature and purpose of arbitration itself, which is intended to resolve disputes quickly, efficiently, and fairly outside the courts. Accordingly, there is no need for an *inter partes* process in exequatur proceedings, as this would undermine the effectiveness, efficiency, and finality of arbitration and would be contrary to the basic principles underlying international arbitration. Moreover, the procedures for carrying out the enforcement of arbitration awards are conducted in accordance with the general rules of civil procedural law [*vide* Article 69 paragraph (3) of Law 30/1999]. In addition, treating the exequatur petition not as an *inter partes* petition provides legal certainty for the parties, particularly those who have resolved or agreed to resolve their disputes through international arbitration. The Court is of the opinion that the absence of a summons for the parties to provide statements in the proceedings does not render Article 67 paragraph (1) and paragraph (2) of Law 30/1999 *a quo* contrary to the 1945 Constitution of the Republic of Indonesia. The said provisions, in fact, has ensured fair legal certainty.

Whereas the Court is of the opinion that Article 66 letter d of Law 30/1999 stipulates that the enforcement of an international arbitration award must first be requested through an exequatur petition submitted to the Head of the Central Jakarta District Court. In this regard, if the exequatur petition is dismissed, the dismissal will be issued in the form of a legal product, namely a decision. In this case, the issuance of a legal product in the form of a decision was made *ex officio* by the Head of the Central Jakarta District Court, who has the authority to determine whether the said international arbitration award violates the competence of the arbitration institution and/or public order [*vide* Article V number 2 letters a and b of the 1958 New York Convention; and Article 66 letters a, b, and c of Law 30/1999]. This means that the legal product in the form of a decision issued by the Head of the Central Jakarta District Court is appropriate, as it constitutes a judicial act that refuses to recognize and enforce the said international arbitration award [*vide* Article 68 paragraph (2) of Law 30/1999]. Thus, because the decision of the Head of the Central Jakarta District Court remains within the scope of the petition process for the enforcement of an international arbitration award, the presence of the parties is not required, as would ordinarily be the case in an *inter partes* judicial proceeding.

Whereas the Court is of the opinion that it is necessary to re-emphasize the final and binding nature of international arbitration awards. Doctrinally, this final and binding character is grounded in several fundamental principles that reflect the very purpose of establishing arbitration, namely: (i) Aspects related to the autonomy of the parties, namely in arbitration, the parties are free to determine the mechanism for resolving their dispute, including the selection of arbitrators, the applicable law, and the seat of arbitration, and, having exercised this autonomy, voluntarily accept the arbitration award as a final and non-appealable settlement; (ii) Aspects of efficiency and legal certainty, in that international arbitration is intended to provide a swift and predictable path to dispute resolution, and the absence of finality would prolong disputes and hinder the parties from returning to their economic or business activities; (iii) Aspects of freedom from judicial intervention, meaning that arbitration operates independently from national courts and allows parties to resolve disputes through private procedure as an alternative, with national courts in various jurisdictions respecting and recognizing arbitration awards; and (iv) Aspect of compliance with the agreement, because by entering into an arbitration agreement, the parties effectively agree and commit to accept the outcome of the arbitration proceeding, whatever the decision may be, as a consequence of their initial consent; (v) The aspect of international trade order, namely that arbitration

awards contribute to the stability of international trade and business relations by preventing prolonged disputes that could undermine trust and cooperation between states, companies, or other business actors; (vi) The aspect of effectiveness of enforcement, namely that final and binding arbitration awards ensure effectiveness and fair legal certainty for states and judicial institutions to recognize and enforce such awards without re-examining their substance, thereby promoting efficiency in cross-border enforcement.

In conclusion, international arbitration awards are final and binding on parties who have chosen to resolve their disputes through international arbitration. When a business agreement/contract stipulates international arbitration as the mechanism for resolving disputes, compliance with the arbitration proceeding and its outcome constitutes the parties' adherence and commitment to the cooperation agreement they have previously entered into. Therefore, it must also be understood that exequatur is an integral follow-up procedure for the recognition and enforcement of international arbitration awards in a given country. This means that the parties may not obstruct the final and binding nature of an international arbitration award that a national court, through its decision, recognizes and enforces. Therefore, when an exequatur petition is submitted by the exequatur applicant, the national court cannot re-evaluate the subject matter of the dispute or the substance of the said international arbitration award. This is consistent with the principle of non-intervention by courts in arbitration, which in the international legal system, and widely applied in many countries, including Indonesia, requires national courts to refrain from interfering in the arbitration proceeding and limits their role to recognizing and enforcing arbitration awards.

In the context of the legal provisions in force in Indonesia, the judicial authority designated to handle the recognition and enforcement of international arbitration awards is the Central Jakarta District Court [*vide* Article 65 of Law 30/1999]. Furthermore, in accordance with Article 66 of Law 30/1999, an international arbitration award is only recognized and may be enforced in the jurisdiction of the Republic of Indonesia, if it meets the following requirements: a. The international arbitration award must be issued by an arbitrator or arbitration tribunal in a country that has a bilateral or multilateral agreement with Indonesia regarding the recognition and enforcement of international arbitration awards; b. The international arbitration award referred to in letter a is limited to awards that, under Indonesian law, falls within the scope of trade law; c. The international arbitration award referred to in letter a may be enforced in Indonesia only if it does not conflict with public order; d. The international arbitration award may be enforced in Indonesia after obtaining an exequatur from the Chairperson of the Central Jakarta District Court; and e. The international arbitration award referred to in letter a that involves the Republic of Indonesia as a party to the dispute may only be enforced after obtaining an exequatur from the Supreme Court of the Republic of Indonesia, which will then be delegated to the Central Jakarta District Court.

Whereas the decision of the Head of the Central Jakarta District Court, or the competent court, that recognizes and enforces an international arbitration award may not be appealed or brought to cassation. This is because such recognition constitutes the granting of an exequatur, which signifies the court's acceptance of the contents of the international arbitration award that has already resolved the dispute between the parties. Conversely, when the court refuses to recognize and enforce an international arbitration award, an appeal may be filed. This is because the exequatur applicant is adversely affected when the court declines to recognize and enforce the award. Without the availability of cassation as a legal remedy, a dismissal by the Head of the Central Jakarta District Court could not be reviewed for its legal correctness by a higher judicial body, *in casu* the Supreme Court, which supervises the lower courts. Furthermore, such a situation could render the international arbitration award unenforceable if one of the parties defaults on their obligations.

Furthermore, with regard to the Petitioner's argument that the exequatur respondent should also be granted the right to file a cassation appeal when the exequatur petition is granted, the Court is of the opinion that such a mechanism would in fact create legal uncertainty. This is because the very existence of an exequatur petition arises from a default committed by one of the parties, in this case, the exequatur respondent. Therefore, if the exequatur respondent objects to the agreement or to matters decided by the international arbitration tribunal based on reasons discovered after the arbitration award was rendered, the proper remedy is to submit a petition for annulment of the arbitration award before the said exequatur petition is submitted. It is not appropriate for the exequatur respondent simply to refuse to comply with the arbitration award without first pursuing the available annulment procedure. Thus, granting the exequatur respondent the right to file a cassation appeal when the exequatur petition is granted would open the door to new or further disputes, which is clearly inconsistent with the principle that every case must eventually reach an end (*litis finiri oportet*). In addition to these legal considerations, the Court also emphasizes that once an exequatur petition is granted, enforcement of the said international arbitration award will proceed according to the enforcement procedures governed by the generally applicable rules of civil procedural law [*vide* Article 69 paragraph (3) of Law 30/1999]. Therefore, if in the enforcement stage, which is the subsequent process following the exequatur petition, the exequatur respondent ultimately becomes the enforcement defendant, then that enforcement defendant (formerly the exequatur respondent) may submit objections/counter-arguments as a legal remedy against the enforcement proceedings being carried out. Such objections or rebuttals are permitted under the applicable civil procedural law, ranging from objections/counter-arguments at the first instance in the district court up to cassation before the Supreme Court.

Whereas the Court is of the opinion that the term "petition" in Article 67 paragraph (1) and paragraph (2), the term "decision" in Article 68 paragraph (1) and paragraph (2), and the phrase "may not be appealed or cassated" in Article 68 paragraph (1) of Law 30/1999 have been shown not to conflict with the principles of the rule of law, legal certainty, equal treatment before the law, or the principle of freedom from discriminatory treatment as guaranteed by the 1945 Constitution of the Republic of Indonesia, contrary to the Petitioner's argument.

Accordingly, the Court subsequently passes down a decision which verdict states to dismiss the Petitioner's petition in its entirety.