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Implementation of International Arbitration Awards in Indonesia from the Perspective of Legal Value Theory

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ABSTRACT

Establishing an arbitral institution aims to resolve business disputes swiftly and conclusively, with arbitration's finality and binding nature being key principles. However, Indonesian arbitration law requires exequatur from the Central Jakarta District Court to enforce an international arbitration award, leading to delays and complications. A notable instance involved the annulment of an international arbitration award due to ambiguous norms. This study employs a normative research methodology with a theoretical approach to highlight the misalignment between international arbitration awards in Indonesia and Gustav Radbruch's Theory. The findings indicate that the lack of a balanced approach to justice, conflicting norms resulting in legal uncertainty, and the failure to provide benefits to all parties contribute to this misalignment. According to Radbruch, law aims to achieve justice, legal certainty, and expediency, with clear and logical provisions necessary for legal certainty and laws serving the diverse interests of all parties for expediency. The issuance of the Republic of Indonesia Supreme Court Regulation No. 3 of 2023 represents an effort to improve Indonesia's arbitration law. Revising Indonesian arbitration law is essential to align it with Radbruch's Theory, ensuring justice, legal certainty, and expediency in international arbitration awards.

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1. Introduction

Arbitration is one of the models of commercial dispute resolution, which is included in the dispute resolution model through Alternative Dispute Resolution (ADR). Arbitration has specific characteristics that are semi-formal in resolving disputes of the parties, based on the laws and regulations of their respective states, and also regulated in international conventions. In principle, the existence of arbitration is to break the deadlock of trade dispute settlement conducted by the general judiciary, which is very formalistic, expensive, time-consuming, and does not maintain the parties' confidentiality. Arbitration is a form of non-court dispute

resolution as an alternative dispute resolution that offers simplicity in the settlement process as a response to the conventional disillusionment with the public court system. [1]

Article 34 Paragraph (1) of Law No. 30 of 1999 stipulates that "dispute resolution by an arbitral institution may use a domestic or international arbitration institution based on mutual agreement". Based on this provision, arbitral proceedings are generally divided into 2 (two) types, namely domestic arbitration and international arbitration, and both domestic arbitration and international arbitration are further divided into 2 (two) types, namely permanent arbitration and additional arbitration (ad hoc arbitration). According to Sri Retno Widyorini, the definition of international arbitration is "arbitration between two or more states, or between a state with a citizen (another citizen), or two or more citizens of a different state, or two parties who are citizens of the same state, but prefer an international arbitration institution". [2] Understanding international arbitration awards under Law No. 30 of 1999 contained in Article 1 Number (9) is an award handed down by an arbitral institution or individual arbitrator outside the jurisdiction of the Republic of Indonesia or the award of an arbitration institution or individual arbitrator, which according to the provisions of the law of the Republic of Indonesia is considered an international arbitration award. Succinctly, the award was handed down by an arbitration institution outside the jurisdiction of a country.

The jurisdiction of a country covers a certain area that, under international law, is considered part of the jurisdiction of the country concerned. Therefore, to determine whether the arbitral award is a domestic or international arbitration award, it is based on the territorial principles and laws used to resolve such disputes. [3] International arbitration institutions are specifically designed for handling disputes with an international dimension.[4] Typically, international arbitration institutions are established by renowned international entities such as UNCITRAL (United Nations Commission International Trade Law) Model Law on International Commercial Arbitration, ICSID (International Centre for Settlement of Investment Disputes) under the aegis of the World Bank, and ICC (International Chamber of Commerce) governed by the World Chamber of Commerce and Industry.[5]

The distinction is important when we discuss the implementation of an arbitration award. The UNCITRAL Model Law outlines specific restrictions on arbitration that can be said to be international arbitration. Article 1 paragraph (3) letters a, b, and c of the UNCITRAL Model Law states that arbitration is considered international when:

a. The parties involved in an arbitration agreement have their respective business locations in different countries at the time the agreement was established; or

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[1] Supeno, 'International Trade Dispute Settlement through Dispute Settlement Body (DSB) and International Arbitration Body', *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 20.1 (2020), 147–62. https://doi.org/10.19109/nurani.v20i1.6043.

[2] Sri Retno Widyorini, 'Penyelesaian Sengketa Dengan Cara Arbitrase', *Jurnal Ilmiah Hukum Dan Dinamika Masyarakat*, 4.1 (2016), 64–76. https://doi.org/10.56444/hdm.v4i1.361.

[3] Yuanita Permatasari and Pranoto, 'Kewenangan Pengadilan Dalam Pembatalan Putusan Arbitrase Internasional Di Indonesia', *Jurnal Privat Law*, 5.2 (2017), 26–33. https://doi.org/10.20961/privat.v5i2.19384.

[4] Sashia Diandra Anindita and Prita Amalia, 'Klasifikasi Putusan Arbitrase Internasional Menurut Hukum Indonesia Ditinjau Dari Hukum Internasional', *Jurnal Bina Mulia Hukum*, 2.1 (2017), 40–48. https://doi.org/10.23920/jbmh.v1n1.6.

[5] Orin Gusta Andini, Nilasari, and Andreas Avelino Eurian, 'Restorative Justice in Indonesia Corruption Crime: A Utopia', *Legality: Jurnal Ilmiah Hukum*, 31.1 (2023), 72–90. https://doi.org/10.22219/ljih.v31i1.24247.

b. One of the following places is situated outside the state in which the parties have their places of business:
   1) The designated place of arbitration, or according to the arbitration agreement;
   2) Any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
c. The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution comprehensively addresses national and international arbitration. The core objective behind the regulation of international arbitration is to establish a framework that safeguards the execution of international arbitration awards within Indonesia. Regulations for the implementation of international arbitration awards are regulated in Chapter VI, Article 65 to Article 69 of Law No. 30 of 1999. International arbitration awards can be implemented in Indonesia after fulfilling several requirements stated in Article 66 of Law No. 30 of 1999, namely:

a. The award is handed down by an arbitrator or arbitration panel in a country where the government of that country is bound by an agreement with the Indonesian government regarding the recognition and implementation of international arbitration awards (both bilaterally and multilaterally);
b. Arbitration awards are limited to awards that, according to Indonesian law, fall within the scope of trade law;
c. The award does not conflict with public order;
d. The award is carried out after obtaining an exequatur measure from the Chairman of the Central Jakarta District Court Chief;
e. The award can only be implemented after obtaining an exequatur from the Supreme Court of the Republic of Indonesia (if the Republic of Indonesia is one of the parties to the dispute).

According to the provisions of Article 66 letter d, international arbitration awards can be implemented in Indonesia after obtaining exequatur from the Central Jakarta District Court Chief. This indicates that court intervention greatly determines the implementation of international arbitration awards in Indonesia. After being registered, the international arbitration award will be examined first, and if the award is deemed contrary to the statutory regulations and norms developing in society, the award will be rejected for implementation in Indonesia.[6]

What differentiates the research conducted from research conducted by other researchers in the same field is that in this research, the problem of implementing international arbitration awards in Indonesia is linked to Gustav Radbruch's Legal Value Theory. According to Gustav Radbruch's Legal Value Theory, a hallmark of effective legislation lies in its capacity to deliver justice, contain legal certainty, and accommodate the interests of all parties (expediency) all parties. Consequently, establishing and enacting good law within a state necessitates the harmonization of these three constituents. Referring to the theory of legal value by Gustav Radbruch, this study will extensively examine the intricacies of Indonesia's arbitration law seen in 3 (three) crucial dimensions that pertain to the orchestration of international arbitration

[6] Yordan Gunawan, Ghiyats Amri Wibowo, and Mohammad Hazyar Arumbinang, 'Foreign Fighters in the Ukrainian Armed Conflict: An International Humanitarian Law Perspective', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 6.2 (2023), 145–57. https://doi.org/10.24090/volksgeist.v6i2.9315.

awards within the country. Despite significant progress, Indonesia still confronts juridical issues that warrant a thorough and comprehensive investigation.[7]

2. Research Method

The research methodology employed in this study is normative juridical research, focusing on the analysis of laws and regulations. The approaches used are legislation, concept, and theoretical approach. Secondary data serves as the primary source, systematically selected to be relevant to the research subject. This entails a comprehensive review of materials from diverse sources, including books, journals, and articles, ensuring their pertinence to the research questions at hand. All data is collected and analysed using qualitative analysis methods and can ultimately be concluded deductively.

3. Result and Discussion

Gustav Radbruch, in his book entitled "*Einfuhrung in die Rechtswissenschaften*", expounds on the presence of three fundamental values within the law realm: justice (*gerechtigkeit*), legal certainty (*rechtssicherheit*), and expediency (*zweckmassigkeit*). These three fundamental values are, in principle, rooted in three essential sources/foundations in law, namely philosophical, legal, and sociological foundations. The philosophical foundation provides the basis for justice, legal certainty is rooted in the foundation of law itself, and the value of expediency is rooted in sociological foundations. Justice should be the moral foundation of law and a benchmark in a positive legal system. Radbruch stated that the highest justice comes from conscience.[8] According to Radbruch's observations, justice does not determine things that are indicators to qualify what is fair. Therefore, to this legal idea of justice, it is necessary to add the element of expediency or suitability for a purpose or purposiveness. Here, the understanding of relativism will play a role in answering the law's aim. Legal certainty can be obtained from laws or legal regulations whose substance contains clear and logical provisions to apply. As proof that the state plays a role in realizing the welfare of its people, the positive law that is created should be able to realize the expected legal objectives.

The element of justice must be seriously considered when compiling a legal product (idealism) because the aspect of justice is needed to accommodate the various interests that will be served by the law (sociological). The realization will be seen in the ideal legal product produced, where the legal product can guarantee (juridical) certainty.[9] Creating and enacting good law within a state necessitates the harmonization of these three constituents.[10] Therefore, the law must be able to create justice, accommodating diverse interests spanning individuals, communities, and states. It must also be a pillar of certainty, providing clear boundaries

[7] 'Cross-Border Trade Disputes: A Comparative Analysis of Indonesia and Australia', *Journal of Indonesian Legal Studies*, 9.1 SE-Research Article (2024). https://doi.org/10.15294/jils.vol9i1.6454.

[8] Firman Firdausi, 'Quo Vadis Penentuan Kaidah Hukum Bagi Sengketa Pegawai Negeri Sipil', *Jurnal Supremasi*, 10.2 (2020), 30–38. https://doi.org/10.35457/supremasi.v10i2.944.

[9] E. Fernando and M. Manullang, 'Misinterpretasi Ide Gustav Radbruch Mengenai Doktrin Filosofis Tentang Validitas Dalam Pembentukan Undang-Undang', *Undang: Jurnal Hukum*, 5.2 (2022), 459–68. https://doi.org/10.22437/ujh.5.2.453-480.

[10] Dino Rizka Afdhali and Taufiqurrohman Syahuri, 'Idealitas Penegakan Hukum Ditinjau Dari Perspektif Teori Tujuan Hukum', *Collegium Studiosum Journal*, 6.2 (2023), 555–61. https://doi.org/10.56301/csj.v6i2.1078.

containing no void of norms, conflicts of norms, or vague norms, so that the expected legal objectives can be realized as they should be. The principle of legal certainty translates to a scenario where the law holds concrete authority due to its inherent force. Based on Gustav Radbruch's Theory, we can reveal the inequalities present within Indonesian Arbitration Law, particularly on the aspects of justice, legal certainty, and expediency.[11]

3.1. Justice Aspects

Justice (*gerechtigkeit*) should be the moral foundation of law and a benchmark in a positive legal system. Gustav Radbruch stated in his book, *Rechct ist Wille zur Gerechtigkeit* which means that law is a form of desire for the realization of justice. Laws must be based on the value of justice to avoid arbitrariness. Radbruch states that the law must be fair, … *famously arguing that a role that is sufficiently unjust loses its status as a valid legal norm.*[12] Justice is likened to the spirit of the law.[13] Therefore, positive legal regulations as part of the law must reflect elements of justice. The justice referred to is fairness in the sense that each party can obtain their rights as they should.

Justice is closely related to conscience. The role of conscience will be very important, because conscience is related to the deepest feelings and thoughts. Radbruch stated, *summum ius summa inuiria*, which means that the highest justice originates from conscience. According to Radbruch's observations, justice does not determine things that are indicators to qualify what is fair. Therefore, to this legal idea of justice, it is necessary to add the element of usefulness or suitability for a purpose or purposiveness. Here, the understanding of relativism will play a role in answering the law's aim. The validity of law comes from the law's value, meaning, and purpose, namely justice. In essence, justice has a normative and constitutive nature for law. A law does not deserve to become law without being based on justice aspects.[14]

Justice, within literary discourse, is often defined as attitude and character. The attitude and character drive individuals to undertake actions and hope for justice. The fundamental goal of the legal framework is to champion justice, with the expectation that arbitral institutions will dispense impartial awards. Thus, the aim of a person submitting a business dispute resolution to an arbitration institution is, in principle, to obtain justice. This includes making valid claims and seeking to enforce the counterparty's obligations, especially when agreements have yet to be adequately fulfilled.

The realization of justice and social equity in the state of the law is the most complicated, broad, structural, and abstract element.[15] The arbitrator's award at an arbitration institution is identical to the nature of the award, which is final and binding in that the final arbitration

[11] Yordan Gunawan and others, 'Perspective of International Law on Maritime Territorial Dispute: Case Between Kenya and Somalia', *Jurnal Hukum Unissula*, 37.2 (2021), 69–84. https://doi.org/10.26532/jh.v37i2.16241.

[12] Lars JK Moen, 'Ideal Theory and Its Fairness Role', *The Journal of Value Inquiry*, 2.1 (2022), 1–16. https://doi.org/10.1007/s10790-022-09905-6.

[13] Endy Purwanto and Marsudi Dedi Putra, 'Ajaran Etis Tujuan Hukum', *Syntax Idea*, 6.3 (2024), 1464–75. https://doi.org/10.46799/syntax-idea.v6i3.3132.

[14] Ariefulloh Ariefulloh and others, 'Restorative Justice-Based Criminal Case Resolution in Salatiga, Indonesia: Islamic Law Perspective and Legal Objectives', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.1 (2023), 19–36. https://doi.org/10.18326/IJTIHAD.V23I1.19-36.

[15] Purwanto, 'Perwujudan Keadilan dan Keadilan Sosial dalam Negara Hukum Indonesia: Perjuangan yang Tidak Mudah Dioperasionalkan', *Jurnal Hukum Media Bhakti*, 10.3 (2017), 1–19 https://doi.org/10.32501/jhmb.v1i1.2.

award has permanent legal force and binds the parties. Therefore, the dispute resolution mechanism through arbitration expedites the resolution process and offers streamlined procedures, cost-efficiency, and the preservation of parties' interests.[16]

Before an international arbitration award is implemented, the arbitration award must be registered with the Central Jakarta District Court by the arbitrator or his attorney to obtain an exequatur. Exequatur is a legal procedure in which the District Court Chief grants executorial title to an international arbitration award, which results in the arbitration award being enforced by force with the assistance of state instruments in the territory of Indonesia. The exequatur is granted by affixing an exequatur sign to the international arbitration award.

The need for exequatur from the Central Jakarta District Court and the Supreme Court (if the Republic of Indonesia is one of the parties to the dispute) to implement international arbitration awards means that arbitration institutions do not have the authority to execute the awards they produce themselves. Moreover, this provision also indicates that the arbitration institution is subordinate to the District Court.[17] An application to enforce an international arbitration award can be made after the award is submitted and then registered by the arbitrator or his proxy with the Central Jakarta District Court Registrar. This condition gives the impression that judges in Indonesia have significant authority to examine the results of international arbitration awards. As we know, arbitration awards have the same execution power as court awards. Moreover, the requirement to obtain an exequatur from the Central Jakarta District Court is often used as an excuse by the losing party to delay the implementation of the arbitration award.

Enlisting international arbitral awards with the Central Jakarta District Court primarily serve as an administrative formality, affirming the issuance of the award.[18] However, the requirement to submit an exequatur request to the Central Jakarta District Court results in an award that becomes impracticable, starkly diverging from the principles of justice. The legal framework undeniably maintains a pronounced proclivity towards granting state courts significant influence over arbitration proceedings. Meanwhile, the integrity of arbitration has been mentioned to minimize judicial interference with substantial results.[19] It is a fact contained in Law No. 30 of 1999 that an arbitral institution, as an alternative institution for dispute resolution, has no legal force without interference from the court, so the arbitral award will not be final and binding without the interference of the court law. This is especially relevant to international arbitration awards, which require acknowledgment from the Central Jakarta District Court for practical implementation within the confines of Law No. 30 of 1999.[20]

Suppose the government of Indonesia has the political will to make the arbitration forum one of the forums to resolve trade disputes. In that case, the alignment of arbitration and the district court becomes imperative. This can be done by making amendments to Law No. 30 of 1999.

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[16] Sundaresh Menon, 'Arbitration's Blade: International Arbitration and the Rule of Law', *Journal of International Arbitration*, 38.1 (2021), 1–26. https://doi.org/10.54648/JOIA2021001

[17] Lona Puspita, 'The Dilemma of International Arbitration Awards in Indonesia', *International Journal of Social Science Research and Review*, 6.1 (2023), 114–21. https://doi.org/10.47814/ijssrr.v6i1.745.

[18] Intan Setiyo Wibowo and Zakki Adlhiyati, 'Problematika Pelaksanaan Putusan Arbitrase Internasional Di Indonesia', *Verstek*, 8.1 (2020), 168–73. https://doi.org/10.20961/jv.v8i1.39624.

[19] Andrea K Bjorklund, 'The Diversity Deficit in International Investment Arbitration', *Journal of World Investment & Trade*, 21.2 (2020), 410–440. https://doi.org/10.1163/22119000-12340177.

[20] Soeleman Djaiz Baranyanan, 'Simplification of Law Regulations in Copyright Criminal Act Settlement', *Journal of Human Rights, Culture and Legal System*, 1.2 (2021), 81–92. https://doi.org/10.53955/jhcls.v1i2.9.

Several articles that still subordinate arbitration to the district court should be revoked and replaced with provisions that give status to arbitration so that it is equivalent to a district court. Arbitration institutions as alternative dispute resolution institutions must be equal to other courts. Thus, arbitration institutions have full authority in resolving business disputes and providing execution, just as the government gives absolute authority to traditional institutions by using local customs to resolve problems that occur in society. This can be done if the government has excellent "good intentions" to do so. Succinctly, through this description, the researchers noted that there are indications of unfair treatment by the government towards arbitral institutions in resolving trade disputes, namely:

a. Mandatory requirements for submitting recognition of an international arbitration award to the Central Jakarta District Court. This shows that international arbitration institutions are subordinate to district courts. In Article 58 of Law No. 48 of 2009 on Judicial Power has stated that: "Efforts to resolve civil disputes can be carried out outside state courts through arbitration as an effort to resolve or alternative dispute resolution." This indicates that arbitration institutions have an equal position to district courts. The action to submit an exequatur request for an international arbitration award to the Central Jakarta District Court is deemed inappropriate, considering that the position of the District Court and the arbitration institution are both places for resolving first-level disputes. The reinstatement of arbitration as an effort to resolve civil disputes outside of court in Law No. 48 of 2009 gives the impression that the Supreme Court also supervises arbitration as an alternative dispute resolution institution in carrying out law enforcement duties in Indonesia. It would be more appropriate if an exequatur request for an international arbitration award were submitted to the Supreme Court, because the Supreme Court has the position of being the highest state court;
b. The obligation to seek approval from a district court to enforce an international arbitration award. This shows that international arbitral institution does not have absolute authority;
c. The obligation to submit an exequatur request to the Supreme Court to enforce an international arbitral award if one of the parties to the dispute is the Indonesian government. This shows the application of the dominant most-favoured-nation principle;
d. An application must be submitted to obtain recognition of the international arbitration award to the Central Jakarta District Court. If the request is not accepted, the arbitration award will be deemed to have "never existed". For international arbitration awards whose implementation is rejected by the Central Jakarta District Court, cassation can be submitted to the Supreme Court. The final and binding nature of an arbitration award becomes meaningless with this provision.[21]

In Malaysia, an international arbitration award must receive recognition from the High Court before implementation. The position of the high court in Malaysia is to hear cases of the first instance and also as the level of appeal for the Session Courts and Magistrates Courts. In the event of an international arbitration award enforcement, the Singapore High Court is obligated to recognize and enforce the awards.[22] Singapore is known as a country with a good reputation for supporting the recognition and implementation of arbitration awards. In Singapore, the judiciary is made up of the Supreme Court and the Subordinate Courts. The Supreme Court

[21] Tri Ariprabowo and R. Nazriyah, 'Pembatalan Putusan Arbitrase oleh Pengadilan dalam Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014', *Jurnal Konstitusi*, 14.4 (2017), 717 https://doi.org/10.31078/jk1441.

[22] Esther Emmanuella Wijaya, 'Penerapan Konsep Public Policy Sebagai Alasan Penolakan Pengakuan Dan Eksekusi Putusan Arbitrase Internasional Di Indonesia Dan Singapura', *Jurnal Hukum Visio Justisia*, 1.1 (2021), 51–70. https://doi.org/10.19166/vj.v1i1.3778.

hears both civil and criminal matters and is separated into the Court of Appeal and the High Court. Submission of all requests for exequatur of international arbitration awards to the Supreme Court needs to be considered by the Indonesian government so that arbitration as an alternative dispute resolution institution is not placed as subordinate to district courts.[23]

The requirement to submit a request for exequatur of an international arbitration award to the Central Jakarta District Court, which in Law No. 30 of 1999 does not state the time limit given to the judges at the Central Jakarta District Court to decide on the exequatur request. This results in the protracted implementation of international arbitration awards in Indonesia because the parties have to wait for the award on the exequatur application. Moreover, the incompleteness of this provision also creates international distrust towards the Indonesian government, especially if one of the parties to the dispute is the Indonesian government, which must first obtain an exequatur from the Supreme Court. Whereas international arbitration institutions have earned an outstanding reputation for resolving international business disputes, so there is no doubt about their credibility.[24]

Such measures seem to disregard foundational principles of justice. Firstly, to the parties to the dispute where, from the outset, it has submitted its settlement to the arbitral institution based on the agreement of both parties, whereas the agreement is legal for the parties to be upheld by all parties, including the government. Secondly, unfair treatment of the arbitral institution by placing the arbitral institution as a subordinate to the district court. The arbitral institution is not granted self-execution and wields limited authority in resolving trade disputes.[25]

The element of justice in resolving trade disputes is a fundamental principle. It is upheld in arbitration practice because arbitration must apply the principle of *ex aequo et bono*, namely the principle of applying the law based on propriety and justice.[26] This principle of arbitration practice aligns with the aspects of justice put forward by Gustav Radbruch. The emphasis of legal ideas according to Radbruch is justice in the form of guarantees and protection of equality. Justice should be the moral foundation of law and a benchmark in a positive legal system. Laws must be based on the value of justice to avoid arbitrariness. Justice is likened to the spirit of the law. Therefore, positive legal regulations as part of the law must reflect elements of justice. The justice referred to is fairness in the sense that each party can obtain their rights as they should. Moreover, the principle of *res judicata pro veritate habetur* also applies to the results of awards to resolve trade disputes, which states that the contents of a award apply as truth.[27]

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[23] Mohammad Hazyar Arumbinang, Yordan Gunawan, and Andi Agus Salim, 'Prohibition of Child Recruitment as Soldiers: An International Regulatory Discourse', *Jurnal Media Hukum*, 30.1 (2023), 21–32. https://doi.org/10.18196/jmh.v30i1.19322.

[24] Loukas Mistelis and Giammarco Rao, 'The Judicial Solution to the Arbitrator's Dilemma: Does the Extension of the Arbitration Agreement to Non-Signatories Threaten the Enforcement of the Award?', *Journal of International Arbitration*, 39.3 (2022), 357. https://doi.org/10.54648/JOIA2022015.

[25] Rachel Georghea Sentani and Mathijs ten Wolde, 'The Legal Policy of Executability in the International Arbitral Tribunal Decision', *Bestuur*, 9.2 (2021), 144–55 <https://doi.org/10.20961/bestuur.v9i2.54451.

[26] Rahmat Ihya and others, 'Arbitration in Agreement Dispute (Perspective of Law Number 30 Year 1999)', *Rechtsnormen Journal of Law*, 1.3 (2023), 141–150 https://doi.org/10.55849/rjl.v1i3.458.

[27] Araceli Turmo, 'Procedural Law as an Exercise in Reconciling Public Interest and Individual Rights: The Example of Res Judicata', *UCL Journal of Law and Jurisprudence-Special Issue*, 1.1 (2018), 65. https://doi.org/10.55849/rjl.v1i3.458.

The implementation of international arbitration awards based on aspects of justice can be realized easily if the provisions regarding international arbitration awards in Law Number 30 of 1999 are revised and structured in such a way, starting from placing arbitration institutions with equal status to district courts and then setting time limits for the Central Jakarta District Court to grant exequatur of international arbitration awards.

3.2. Legal Certainty Aspects

In the theory of legal certainty (*rechtssicherheit*) presented by Gustav Radbruch, it is stated that four fundamental things are closely related to the meaning of legal certainty itself, namely as follows: positive laws are legislation; laws are based on fact; the facts must be clearly defined so they can be easily executed; and positive laws should not undergo facile changes. Based on Gustav Radbruch's opinion regarding legal certainty, it can be concluded that the law holds an intrinsic value in governing the interests of all individuals. Fundamentally, legal certainty encapsulates a distinct state, encompassing regulations and statutes alike.

Legal certainty refers to the certainty of laws or legal rules. Legal certainty can be obtained from laws or legal regulations whose substance contains clear and logical provisions to apply. The norms or content material in these regulations must contain basic legal principles. The law as a written norm (law) will be the basis for every interested party, as with Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, especially the provisions regarding the implementation of international arbitration awards. With legal certainty, every individual can know with certainty what actions are permitted and what actions are prohibited. That way, every individual will be protected from arbitrary actions.

Legal certainty is interpreted as a state's legal instrument that can guarantee the rights and obligations of every citizen. At its core, the key distinction between ordinary court verdicts and arbitration is the nature of the award. Ordinary court verdict remains susceptible to further legal recourse, such as appeals, cassations, and reviews. In contrast, arbitration awards stand as conclusive and immediately possess enduring legal potency, binding the involved parties unequivocally. (Article 59 Paragraph (2) of Law No. 48 of 2009, the Power of Justice and Article 60 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution).[28]

Moreover, Article 54 paragraph (1) of Law No. 30 of 1999 stipulates that an arbitral award must include the sentence "For the Sake of Justice Based on the Divinity of the Supreme One" at the head of the verdict. The head of the award containing the sentence "For the Sake of Justice Based on the Divinity of the Supreme One" serves as a standardized expression and distinctive hallmark of Indonesian court verdicts. The verdict's phrasing, invoking 'For the Sake of Justice Based on the Divinity of the Supreme One', signifies that the arbitral award carries the same legal power as a court verdict. This is in accordance with Article 2 of Law No. 48 of 2009 Paragraph (1) on the Power of Justice, which states that the judiciary is conducted for the Sake of Justice Based on the Divinity of the Supreme One.[29]

[28] Yordan Gunawan and Hanna Nur Afifah Yogar, 'Indonesia E-Hailing Taxi: The Competition between Law and Technology', *Handbook of Research on Innovation and Development of E-Commerce and E-Business in ASEAN*, 2 (2020), 594–606. https://doi.org/10.4018/978-1-7998-4984-1.

[29] Dimas Noor Ibrahim, 'Tanggung Jawab Hukum Arbiter dan Badan Arbitrase Atas Putusan Arbitrase yang Diajukan Pembatalan di Pengadilan', *Jurnal Ilmiah Publika*, 10.1 (2022), 134–147 https://doi.org/10.59301/jka.v1i2.20.

In reality, the recognition and implementation of international arbitration awards in Indonesia are still being determined because international arbitration awards necessitate securing an exequatur from the Chairperson of the Central Jakarta District Court and an exequatur from the Supreme Court (if the Republic of Indonesia is one of the parties to the dispute).[30] Furthermore, provisions regarding the annulment of arbitration awards contained in Article 70 of Law No. 30 of 1999 gave rise to problems, such as in 2002, the request for annulment of the international arbitration award in the *Kraha Bodas vs Pertamina* case by *Pertamina* to the Central Jakarta District Court. In its award, the Central Jakarta District Court granted the request, even though the arbitration award that was annulled was an international arbitration award made in Switzerland. The Supreme Court of the Republic of Indonesia finally cancelled the award of the Central Jakarta District Court. It stated that the Central Jakarta District Court had no authority to cancel the international arbitration award. This happens because Law No. 30 of 1999 does not explain further that the provisions regarding the annulment of arbitration awards only apply to national arbitration awards. Therefore, in practice, there are differences of opinion among judges regarding the application of annulment of arbitration awards.

As one of the countries that has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards or better known as the 1958 New York Convention, Indonesia is bound to implement international arbitration awards.[31] One thing that needs to be underlined is that the New York Convention regulates the recognition and implementation of international arbitration awards, including the rejection of these awards. However, the New York Convention does not regulate the annulment of an international arbitration award at all. Refusal to enforce an arbitration award by the competent authority (competent authority) is regulated in Articles V and VI of the New York Convention. Reasons that can be used to reject the implementation of an arbitration award include the existence of an incorrect procedure in the arbitration appointment, implementation of the arbitration award suspected to cause chaos (contrary to the principles of public order in a country), and so on.

In several countries, such as America and Sweden, provisions regarding the recognition and enforcement of international arbitration awards are also a separate part of the Arbitration Law. The arbitration laws of the two countries also do not mention the cancellation of international arbitration at all. However, the reasons for rejecting the implementation of an international arbitration award vary from arbitration law in one country to another. Succinctly, the international arbitration award can only be annulled in the country where the award was handed down.

Article 59 Paragraph (2) of Law No. 48 of 2009 on the Power of Justice provides that "an arbitral award is final and binding (possesses permanent and binding legal force on the parties)," will be fulfilled voluntarily or in good faith by the litigating parties, considering that the arbitration is selected based on the agreement of the parties to the arbitration agreement.[32] In its

[30] M Y Aiyub Kadir and Alexander Murray, 'Resource Nationalism in the Law and Policies of Indonesia: A Contest of State, Foreign Investors, and Indigenous Peoples', *Asian Journal of International Law*, 9.2 (2019), 298–333. https://doi.org/10.1017/S204425131900002X

[31] Donald Hamonangan Siregar, 'Eksistensi Arbitrase Internasional Terhadap Sengketa Investasi Asing Di Indonesia', *Cessie: Jurnal Ilmiah Hukum*, 2.1 (2023), 1–11. https://doi.org/10.55904/cessie.v2i1.734.

[32] Panusunan Harahap, 'Eksekutabilitas Putusan Arbitrase oleh Lembaga Peradilan', *Jurnal Hukum dan Peradilan*, 7.1 (2018), 121. https://doi.org/10.25216/jhp.7.1.2018.127-150

development, the trajectory of these awards reveals instances where the losing party does not wholeheartedly comply with these awards.[33]

Upon closer examination, the legal problems in arbitration law are regarding articles relating to the recognition, implementation, and cancellation of international arbitration awards resulting in conflicts both between articles (normative conflict) within the arbitration law and between the arbitration law and judicial power law, thus leading to legal uncertainty, e.g. Article 59 paragraph (2) of Law No. 48 of 2009 on Judiciary Power asserts that "an arbitral award holds permanent legal force, final, and binding to all parties". However, in Article 66 it is emphasized that an international arbitration award can only be implemented after obtaining an exequatur from the Central Jakarta District Court Chief and the Supreme Court (if one of the parties to the dispute is Indonesia). in Indonesia. These aspects deviate from the foundational principles inherent to arbitration,

Several requirements for an international arbitration award to receive recognition in one country are also stipulated in Law No. 30 of 1999, such as an international arbitration award should be ensured that it does not conflict with public order. Meanwhile, the limits of public order are not explained further in Law No. 30 of 1999. In fact, according to Radbruch, a law must contain a fundamental value in the form of legal certainty, which guarantees that the law must be implemented well. Legal certainty requires efforts to regulate law in legislation made by authoritative parties so that these rules have a juridical aspect that can guarantee certainty that the law functions as a rule that must be obeyed.

Against the limits of "public order," it still enforces multiple interpretations. The panel of judges in Indonesia considers an international arbitration award to violate public order if the content of the award violates state sovereignty, threatens state security, is detrimental to the state's economy, violates state legal sovereignty, is contrary to statutory regulations, is contrary to the basic principles of the Indonesian legal system, is contrary to basic principles of society in Indonesia, harm the interests and needs of society, and give rise to legal uncertainty in their implementation.

In Singapore, the boundaries regarding the meaning of public order are also clearly determined by the panel of judges. International arbitration awards in Singapore are considered to violate public order if they are detrimental to the public interest, violate widely recognized legal principles, contain elements of illegality or in the sense that they conflict with the provisions of laws and regulations, violate the basic morality of society, and contain elements of corruption, bribery, or fraud. Singapore does not associate public order with violations of state sovereignty from an external aspect. Judges in Singapore believe that public order pertains only to the fundamental principles of justice within a country and is distinct from its international political stance. In contrast, Indonesia views political attitudes as a component of sovereignty, which encompasses external aspects, including indicators of public order recognized in Indonesia.

Considering that the legal system adopted by Singapore is the common law legal system, where judges have very broad authority to interpret the law and create new legal principles to become a guide for future judges to decide on the same case, the interpretation of public

[33] Djunyanto Thriyana, 'Categorical Imperative Immanuel Kant sebagai Landasan Filosofis Pelaksanaan Putusan Arbitrase', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 3.1 (2016), 91 https://doi.org/10.22304/pjih.v3n1.a5.

order provided by the panel of judges will not bring up a problem.[34] This is different from Indonesia, which adheres to the Civil Law legal system, where the law is considered to have binding force if it is formulated in the form of a law, although the panel of judges is also given the authority to interpret the law. The formation of these regulations is subject to appropriate restrictions to maintain the essence of a country's constitution. Each country has its own legal constitution, adapted to its people's habits, aiming to maintain public order. It is important to note that constitutions vary between countries and are not interchangeable. This is a form of effort to maintain public order that has been created in a country.

Legal certainty must cover all areas of law, not only limited to certainty of legal substance but also its application in the awards of dispute resolution boards. Therefore, the scope of public order limitations that are not contained in Law No. 30 of 1999, it would be better if it was stated clearly so as not to give rise to multiple interpretations which ultimately leads to a lack of legal certainty. Subsequently, several requirements for the implementation of international arbitration awards in Indonesia, such as the absence of a time limit for exequatur requests to be processed by the court, will delay the implementation of international arbitration awards in Indonesia. This reflects the lack of legal certainty regarding the implementation of international arbitration awards in Indonesia.

Researchers assess that the arbitral institution should be legally empowered to execute its awards in alignment with the law's stipulations. Furthermore, the parties should be willing to respect and implement the award that the arbitration institution has handed down voluntarily in good faith, because the choice of settlement through an arbitration institution is based on the parties' wishes for the dispute.[35] As with the *Pacta Sunt Servanda* principle, the principle of good faith must persist before, during, and post-arbitration, encompassing the earnest commitment to execute any arbitral award, regardless of the outcome.

Then, in the case of the Republic of Indonesia as one of the parties to the dispute, in implementing the international arbitration award, an exequatur must be requested from the Supreme Court. The Chief of the Central Jakarta District Court, within 7 (seven) days after the application is registered, must send the application documents to the Registrar of the Supreme Court to then obtain a rejection or grant of exequatur granting by the Supreme Court within 14 (fourteen) days. Within 7 (seven) days of the Supreme Court rejecting or granting exequatur, the Registrar of the Supreme Court must send the application for exequatur to the Central Jakarta District Court. Then, within 7 (seven) days of receipt of the application file, the Central Jakarta District Court Chief must implement the arbitration award in accordance with the procedures for implementing civil awards.

Furthermore, the interpretation of the public order, which previously allowed courts considerable leeway in refusing the recognition of international arbitration awards, has been better clarified following the issuance of these regulations. The Supreme Court Regulation defines public order in Article 1 Number 9 as the essential foundation necessary for the functioning of the legal, economic, and socio-cultural systems of the Indonesian people and nation. It can be interpreted that exequatur will not be granted if the international arbitration

[34] Najmi Magdariza and Zahara, 'Aspek Hukum Terhadap Perjanjian Ekstradisi Antara Indonesia-Singapura Dalam Hukum Internasional', *UNES Journal of Swara Justisia*, 6.4 (2023), 576–88. https://doi.org/10.31933/ujsj.v6i4.301.

[35] Ahmad Yani Kosali and Dimas Pratama Putra, 'Clause of Unlawful Action That May Void Arbitration Rules', *Journal of Sustainable Development Science*, 3.1 (2021), 26–34 <https://doi.org/10.46650/jsds.3.1.1063.26-34.

award conflicts with the basic principles of Indonesia's legal system and society. In this case, the Supreme Court has attempted to provide clarification amidst the emergence of different interpretations of the meaning of public order. Supreme Court Regulation No. 3 of 2023 aims to streamline the recognition and implementation procedures of international arbitration awards in Indonesia, which have historically been lengthy.[36]

By setting a time limit for courts to recognize and implement international arbitration awards by the Supreme Court, the courts will not appear to be stalling for time in granting exequatur requests for international arbitration awards. It is hoped that with these provisions, implementing international arbitration awards in Indonesia will experience more opportunities.

3.3. Expediency Aspects

Radbruch stated that one of the aspects that must be included in the law is the "expediency aspect" (*zweckmassigkeit*). The term "expediency" is more appropriate to use than the term "utility". The legal substance must be in accordance with the objectives of a legal product. As proof that the state plays a role in realizing the welfare of its people, the positive law that is created should be able to realize the expected legal objectives. It is often found in Indonesian scientific literature that one of the objectives of the law, according to Radbruch, is the utility aspect. In reality, Radbruch's own ideas oppose utilitarianism in legal practice because it tends to place benefits in the interests of the people in practice. Often, Radbruch's ideas are used as references without prior in-depth study. Tristam P. Moeliono and Tanius Sebastian stated in their article "Reductionist and Utilitarianist Tendencies in Indonesian Legal Science: Rereading Gustav Radbruch's Legal Philosophy" that there has been a misunderstanding in understanding Gustav Radbruch's legal philosophy.

To realize the implementation of international arbitration awards, the Indonesian government ratified the 1958 New York Convention. Every state that has ratified the New York Convention of 1958 governing the recognition of foreign arbitral awards must adhere to the provisions outlined within the convention.[37] With the ratification of the New York Convention of 1958 by the Government of the Republic of Indonesia through Presidential Decree No. 34 of 1981, Indonesia is bound by the provisions of the 1958 New York Convention. Article III affirms that each member country of this convention should recognize a foreign arbitration award as a binding award and then implement it by following procedural rules based on the jurisdiction of the country where the award was handed down.[38] It is not permitted to impose heavier requirements or higher costs in terms of recognition and enforcement of foreign arbitration awards compared to the imposition of requirements for recognition and enforcement of domestic arbitration awards. Succinctly, the convention emphasizes that each state shall recognize arbitration awards from other institutions and/or states and treat them equally as that state treats domestic arbitration awards. The New York Convention of 1958 is the most important source of law in matters of recognition of foreign/international arbitral awards.

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[36] Atful Munawar, 'Arbitrase Sebagai Alternatif Penyelesaian Perkara Dalam Hukum Positif Dan Hukum Islam', *Kosmik Hukum*, 22.3 (2022), 234–45. https://doi.org/10.30595/kosmikhukum.v22i3.154.
[37] Muskibah, 'Arbitrase sebagai Alternatif Penyelesaian Sengketa', *Jurnal Komunikasi Hukum*, 4.2 (2018), 166 https://doi.org/10.23887/jkh.v4i2.15450.
[38] Indah R. Runtuwene, 'Putusan Pengadilan Negeri Tentang Arbitrase Komersial Internasional Setelah Berlakunya Undang-Undang Nomor 30 Tahun 1999', *Lex Et Societatis*, 8.1 (2020), 246–54. https://doi.org/10.35796/les.v8i4.30930.

The aim of ratifying the 1958 New York Convention by several countries was to protect the rights of their citizens who would request enforcement of foreign arbitration awards. The 1958 New York Convention also provides reasons that states can use to refuse recognition and enforcement of foreign arbitral awards. The party submitting a request for rejection must also prove several things that form the background for submitting a request for rejection of an international arbitration award as stated in Article V of the 1958 New York Convention, namely:[39]

a. The parties to the agreement, as referred to in Article II, were considered incapacity, or the agreement is deemed invalid according to the law in which the parties have bound themselves, or if there is no indication regarding this matter in the law, the law in the country where the award was made can be used as a reference; or
b. The party who will later have to implement the arbitral award handed down is not given proper notification regarding the appointment of the arbitrator or the arbitration process, or the party is unable to participate in submitting the case for resolution due to lack of prior notification; or
c. The award passed regarding a dispute that is not intended in the agreement or is not included in the award requested for settlement through the arbitration process, or the award is outside the scope of the award requested. In this case, the award that was not requested can be separated from the requested. In this way, the requested award can later be submitted for recognition and implementation; or
d. The composition of the arbitral authority or arbitration procedure is not based on the parties' agreement, or the composition of the arbitral authority or arbitration procedure does not follow the legal rules of the country where the arbitration proceeding is carried out if such agreement does not exist; or
e. The award has not been binding on the parties or has been ruled out or has been suspended by the competent authority of the country where the award was taken.

Moreover, an arbitral award may also be rejected if the competent authority in the country in which the confession is requested finds that the subject matter does not align with the provisions of the country's applicable law or if the recognition and execution of a foreign arbitral award is exercised, it would be contrary to the public policy of that country.[40] Provisions regarding the party submitting a request for rejection must prove several things that form the background for submitting a request for rejection of an international arbitration award can be considered for inclusion in Indonesian arbitration law so that the parties to the dispute know the existing legal limitations.

Article 3 of the Arbitration and Alternative Dispute Resolution Law stipulates that "District Courts have no authority to adjudicate disputes between parties bound by an arbitration agreement". Moreover, an application must be submitted to obtain recognition of the international arbitration award to the Central Jakarta District Court. If the request is not accepted, the arbitration award will be deemed to have “never existed”. Subsequently, in Article 68 paragraph (2) Law No. 30 of 1999 emphasized that the verdict of the Central Jakarta District Court Chief refused to recognize and implement an international arbitration award

[39] Homayoun Mafi and Mahshid Eshaghi, ‘The Concept of Foreign Arbitration Award in the Light of New York Convention’, *Journal of Law and Society*, 5.1 (2022), https://doi.org/10.11648/j.ijls.20220501.11.

[40] Ilias Bantekas, ‘Equal Treatment of Parties in International Commercial Arbitration’, *International & Comparative Law Quarterly*, 69.4 (2020), 993 https://doi.org/10.1017/S0020589320000287

can be appealed to the Supreme Court. The involvement of judicial institutions in the arbitration process creates bureaucratic and formal procedures, thus making the arbitration process complicated and costly. Moreover, several requirements for the implementation of international arbitration awards in Indonesia, such as the absence of a time limit for exequatur requests to be processed by the court, will delay the implementation of international arbitration awards in Indonesia. In this condition, the basic principles of arbitration and the final and binding nature of an arbitration award are lost.

The pursuit of recognition of international arbitration awards leads to these arbitral awards lacking definitive legal validity. Here, it can be seen that the fate of the international arbitration award is in the hands of the District Court. Therefore, the award that the international arbitral institution has handed down cannot necessarily be recognized in Indonesia because this law provides strict rules in the matter of recognition of international arbitration awards. According to Susanti Adi Nugroho, in principle, three things hinder the implementation of an international arbitration award in Indonesia, namely, the international arbitration award is not final, the international arbitration award is contrary to laws and public order, and according to Indonesian law, the international arbitration award is not included in the scope of commercial disputes. Jelly Nasseri, in his journal "The Existence of the New York Convention in the Implementation of International Arbitration Awards in Indonesia," argues that the foreign arbitration award should be executed directly after it is registered in the Central Jakarta District Court, given that the results of the arbitration award are based on a win-win solution.[41]

In Indonesia, arbitration awards are recognized as final and binding under Article 60 of Law No. 30 of 1999, meaning no appeal, cassation, or judicial review is allowed. Despite this, disputes in international business transactions resolved by arbitration, particularly by international arbitration bodies, often face prolonged implementation issues. This has created a perception of weak legal certainty in Indonesia. For legal objectives to be met, substantial legal certainty is necessary. According to Gustav Radbruch, law should benefit society as a whole, balancing justice and legal certainty with expediency. Expediency refers to meeting the diverse needs of all parties involved. However, Indonesian arbitration law has yet to fully serve those who opt for international arbitration. Some researchers argue that Indonesian arbitration law fails to meet the ideal goals of expediency for the following reasons:

a. The agreement of the business actors under the arbitration agreement that fully submits the trade dispute to the arbitral institution is not fulfilled because it must involve the District Court and even the Supreme Court;
b. Business actors' wishes to resolve trade disputes quickly cannot be implemented because the verdict must be registered and recognized by the Central Jakarta District Court;
c. Government efforts to reduce the build-up of trade disputes in the District Court become hampered, even though the establishment of arbitration institutions aims to accelerate the resolution of trade disputes;
d. Information leaks regarding disputes that whack in a business company are caused by the protracted dispute resolution process, which leads to the disruption of company privacy and interests;
e. The registration regulation and recognition of international arbitration awards will cause international distrust of the judiciary in Indonesia, especially if one of the parties is the Indonesian government, which raises allegations of greater political interest than the objectivity of the case.

[41] Huala Adolf, 'The Meaning of Public Policy under Indonesian Arbitration Law and Practice', *Transnational Business Law Journal*, 2.1 (2021), 15–34 https://doi.org/10.23920/transbuslj.v2i1.646

The efforts made by the Supreme Court of the Republic of Indonesia by issuing Supreme Court Regulation is an effort to support the realization of the expediency aspect in Indonesian arbitration law. Focusing of the Indonesian government on drafting an arbitration law, especially regarding the implementation of international arbitration awards, which can accommodate the various interests of the parties, such as the need to stipulate provisions that do not eliminate the characteristics of arbitration awards (having a final and binding nature), and do not place arbitration institutions as subordinate to the courts country, and creating a conducive environment for the implementation of international arbitration awards needs to be prioritized. The Supreme Court Regulation can serve as a guiding principle before the new Arbitration Act is formally drafted.

4. Conclusion

Provisions regarding the recognition and execution of international arbitration in Indonesia are contained in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution is considered to exhibit marked bias still and contains ambiguous norms, which are essentially not in line with the Legal Value Theory put forward by Gustav Radbruch. According to Gustav Radbruch's Legal Value Theory, a hallmark of effective legislation lies in its capacity to deliver justice, contain legal certainty, and accommodate the interests of all parties (expediency). Meanwhile, the provisions regarding implementing international arbitration awards in Indonesia do not fulfill these three aspects. Problematic clauses in Law No. 30 of 1999 can cause businesses to be reluctant to use arbitration to resolve business disputes. The disparities in treating international arbitration awards within Indonesia could potentially cultivate international distrust towards Indonesia. This may lead to the perception among foreign entities that Indonesia is not a conducive environment for arbitration, thereby branding it as an unfriendly jurisdiction for arbitration.

The Indonesian government continues to make efforts to improve the rule of law because clauses in Law No. 30 of 1999 on implementing international arbitration awards in Indonesia still need to strengthen justice, legal certainty, and expediency aspects. Recently, the Supreme Court of the Republic of Indonesia issued a Supreme Court Regulation Number 3 of 2023 on Procedures for Appointing an Arbitrator by the Court, Right to Disapprove, Examining Applications for Implementation and Cancellation of Arbitration Awards, where the regulation also contains provisions regarding the implementation of international arbitration awards. Supreme Court Regulation No. 3 of 2023 aims to streamline international arbitration awards' recognition and implementation procedures. This will help to create a law that fulfills the aspects of justice, legal certainty, and expediency so that law regarding the implementation of arbitration awards in Indonesia align with Gustav Radbruch's Theory of Legal Values. The Supreme Court Regulation can serve as a guiding principle before the new Arbitration Act is formally drafted.

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