# CHAPTER 1

# INTRODUCTION

## 1.1 Background

With the advancement of globalisation, commercial transactions and trades are increasing each day; numerous contractual agreements are made between parties of different States. In conducting commercial trade, it is prone to disputes arises between the contracting parties. Therefore, in resolving the dispute, international arbitration is needed to settle the issues between the contracting parties that are international in nature. Arbitration is one of the most famous alternative dispute resolutions, which covers disputes between non-state parties, disputes between corporations and states, and also investment disputes.

There has been an increasing trend of international arbitration. According to the data provided by the International Chamber of Commerce (ICC), arbitration cases continue to increase. ICC recorded that in 2020 alone, the ICC court accepted over 946 registered new filings.[1] The data from ICC includes over 1,833 total cases administered

[1] International Chamber of Commerce, "ICC Dispute Resolution Statistics: 2020". Statistics Report, Paris: International Chamber of Commerce, 2020 https://iccwbo.org/publication/icc-dispute-resolution-statistics-2020/

under the ICC Arbitration Rules, with 2,507 total parties involved.[2] Meanwhile, in 2019, there are over 2,498 parties from 147 countries worldwide, along with 586 arbitral awards approved by the ICC Court.[3] This is an increase compared to the previous data in which there were only 142 countries involved in 2017. This data is only from one institution alone; there are many more international arbitration institutions with the same increasing trend. According to the research conducted by the Queen Mary University of London and the School of International Arbitration in 2021, there has been an increasing trend of arbitration, with 90% of the respondents preferring to use arbitration to solve their dispute.[4]

Even though international arbitration is highly sought to resolve commercial disputes between parties that are international in nature, there are existing problems pertaining to the enforcement of foreign arbitral awards in the chosen enforcing State, which may cause the arbitral award rendered to be unenforceable. Even though ideally, the arbitral award should be final and binding for the parties, there are cases where the losing parties could submit the arbitral award to the local court to be challenged, thus, at times, resulting in the annulment of that award. This is clearly a loss for the winning

[2] DLA Piper "The ICC's 2020 Dispute Resolution Statistics". https://www.dlapiper.com/en/us/insights/publications/2021/09/the-iccs-2020-dispute-resolution-statistics/, accessed 20 September 2021

[3] *JD Supra*, Vinson & Elkins LLP "ICC Arbitration Case Statistics Show Positive Trends In Global Reach, Diversity And Efficiency". www.jdsupra.com/legalnews/icc-arbitration-case-statistics-show-41108/ , accessed 20 September 2021

[4] Queen Mary University of London and School of International Arbitration, "2021 International Arbitration Survey: Adapting arbitration to a changing world". International Arbitration Survey, London: Queen Mary University of London, 2021, p. 5 http://www.arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf

party, considering that the arbitral award would not have any practical value if it is not recognised or enforced by the national court of the enforcing State.[5] Moreover, the time and cost for arbitration are wasted due to the unenforceable award with no enforcing power. However, before discussing further regarding the issues, it is essential to have a fundamental understanding of arbitration and international arbitration.

According to Indonesian law, Law No. 30 of 1999 concerning Arbitration and Dispute Resolution, arbitration is a way of resolving a civil dispute outside the general court, based on an arbitration agreement, which was made in writing by the disputing parties. Article 34 of Law No. 30 of 1999 stated that arbitration disputes may use international or national arbitration institutions pursuant to what the parties have agreed on in the agreement. As stated in Article 65 of Law No. 30 of 1999, The court that has the upper hand to handle the recognition and execution of the foreign arbitral award is the Central Jakarta District Court. Indonesia is also a party to the New York Convention and has ratified the New York Convention through the Presidential Decree No. 34 of 1981. Therefore, this convention should be applied by Indonesia based on reciprocity.[6] As for now, the applied provisions that regulate the enforcement of foreign arbitral awards are Articles 65 - 69 of Law No. 30 of 1999.[7]

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[5] Tibor Várady, et.al., *"International Commercial Arbitration: A Transnational Perspective",* Fourth Edition, (Saint Paul, Minnesota: West Academic, 2009), p. 860

[6] Baker McKenzie, "Indonesia: The Risks of Enforcing Foreign Awards". https://globalarbitrationnews.com/indonesia-the-risks-of-enforcing-foreign-awards-20150129/, accessed 20 September 2021

[7] Hukum Online, "Wewenang PN Dalam Melaksanakan Putusan Arbitrase". www.hukumonline.com/klinik/detail/ulasan/cl3082/arbitrase/, accessed 20 September 2021

In regulating arbitration, Singapore has a total of 3 (three) laws, which are: (i) International Arbitration Act (*hereinafter*, IAA), (ii) the Arbitration Act (*hereinafter*, AA), and (iii) the Arbitration International Investment Disputes Act. The IAA incorporates The UNCITRAL Model Law and the New York Convention. However, regarding the enforcement and recognition of foreign arbitral awards, the IAA adopted the provisions from the New York Convention and exempted Article 36 of the UNCITRAL Model Law. The AA is used for arbitration that is deemed as local and does not have international elements; thus, it applies to the supervision of the local court.[8]

In order for the international arbitral award to be enforced, it requires recognition from the enforcing country. Kenneth stated that the recognition of a foreign arbitral award refers to the effect of *res judicata* in which it will have the same power as any verdict of a local court.[9] Redfern & M. Hunter defined recognition as the process of acceptance.[10] Meanwhile, according to Schreur, the definition of enforcement is the execution to satisfy the decision that was made.[11] In practice, some arbitral awards only require recognition from the enforcing State, such as in cases where the losing party

[8] Morgan Lewis, "An Introduction to Arbitration in Singapore". https://www.morganlewis.com/-/media/files/supplemental/2018/international-arbitration-guide_singapore_180640.pdf, accessed 24 September 2021
[9] Kenneth T, *The Enforcement of Arbitral Awards under UNCITRAL's Model Law on International Commercial Arbitration*, (New York: Columbia Journal of Transnational Law, 1987)
[10] Hunter, et al., *Law and Practice of International Commercial Arbitration*, (London: Sweet & Maxwell, 2004), p. 448
[11] Sefriani, *Arbitrase Komersial dalam Hukum Internasional dan Hukum Nasional Indonesia*, (Yogyakarta: UII Press, 2018), p. 58

must not do certain things as written in the arbitral award. However, some cases require both recognition from the enforcing State along with the enforcement of the award.[12]

What makes an arbitration considered as an 'International Arbitration' still varied according to how each State would define their term of 'International'. There are 2 (two) criteria for international arbitration to be differentiated from local arbitration, which is through the differences of nationality or the domicile of the parties. This approach was adopted by the European Convention of 1961, which looked at the differences of nationality and also the English Legislation, which considered both the nationality and domicile as the consideration of differences.[13] In his book Applicable Law in International Commercial Arbitration, Julian DW Lew viewed that the characteristics of an international arbitration could be seen from the international arbitration organisation, for example, the Singapore International Arbitration Centre (SIAC), which is an international arbitration institution. The second characteristic is the Procedural Structure, for example, SIAC, in which they have their own procedural laws that govern its proceedings. The last characteristic is, by fact, it is international. For example, the disputing parties came from different States with different jurisdictions.[14] The New York Convention Article 1 paragraph (1) defined a foreign

[12] *Ibid,* p. 50
[13] *Ibid*, p. 51
[14] Julian DW Lew, *Applicable Law in International Commercial Arbitration*, (Amsterdam: Sijthoff and Noordhooff, 1978), p. 14-19

arbitral award as an arbitral award that was made in the territory of a State outside of the State where the recognition and enforcement of that award are sought.[15]

Parties to International Arbitration could be Inter-State arbitration; State and non-State actors, which is also known as "mixed arbitration"; and between two non-State actors. In general, the parties could conduct arbitration by *ad hoc* or through an arbitration institution.[16] For *ad hoc,* the disputing parties have the upper hand to decide on the law of the procedure since they are not bound to the rules and regulations of a particular international arbitration institution. The next one is through an International Arbitration institution in which the parties are bound to the procedural rules from the respective institution, and the disputing parties will be assisted during the procedure by the institution thereof, for example, if the parties agreed in their arbitration clause that they are to resolve the dispute through SIAC (Singapore International Arbitration Centre), they would be bound by the SIAC Rules.

As for the guidelines or regulations to international arbitration, there are the New York Convention and the UNCITRAL Model Law, which States could adopt. Other than that, international arbitration institutions can help to resolve the dispute by providing the arbitrator, medium to the dispute resolution, and also the applicable law for the procedural proceedings. Therefore, the parties must bind themselves to laws from each international arbitration institution, such as the law from the International

[15] Article 1(1) of the New York Convention 1958
[16] Thomson Reuters, "Ad hoc arbitration". https://uk.practicallaw.thomsonreuters.com/5-107-6360?transitionType=Default&contextData=(sc.Default)&firstPage=true, accessed 1 December 2021

Chamber of Commerce ("ICC"), which is widely used as the default standard or rules; Singapore International Arbitration Centre ("SIAC"); the London Court of International Arbitration ("LCIA"); the International Centre for Dispute Resolution of the American Arbitration Association ("ICDR"); Hong Kong International Arbitration Centre ("HKIAC") and other related institutions. The parties could also choose under what rules they want to bind themselves with to settle their dispute.[17]

In Indonesia, a foreign arbitral award is defined as a decision rendered by an arbitration institution or an arbitrator outside of the Republic of Indonesia, or a decision of an arbitration institution or an arbitrator that per Indonesian law is acknowledged as a foreign arbitral award.[18] Therefore, it can be concluded that Indonesia upholds the territoriality principle in terms of classifying an arbitration award as 'international'. This also applies to cases where, even though both disputing parties are Indonesian, however, considering that the award was rendered outside of Indonesia, it becomes a foreign arbitral award and must adhere to the requirements provided under Article 65 - 69 of Law No. 30 of 1999 in order for that arbitral award to be recognised and enforced.[19]

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[17] Thomson Reuters, "Enforcement of Judgements and arbitral awards in Indonesia: Overview" https://uk.practicallaw.thomsonreuters.com/2-619-0724?transitionType=Default&contextData=%28sc.Default%29&firstPage=true, accessed 20 September 2021

[18] Article 1 paragraph (9) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution

[19] Hukum Online, "Kedudukan Putusan Arbitrase Nasional Dan Internasional". www.hukumonline.com/klinik/detail/ulasan/lt58172539bb270/kedudukan-putusan-arbitrase-nasional-dan-internasional, accessed 20 September 2021

In accordance with Article 66 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, in order for an international arbitral award to be acknowledged and enforced in Indonesia, it must satisfy the following conditions:

(i) The arbitral award was rendered by an arbitrator or an arbitral tribunal that Indonesia has a bilateral or multilateral agreement with;

(ii) The arbitral award falls within the scope of commercial law;

(iii) The arbitral award can only be implemented as long as it is not in conflict with the public policy of Indonesia.

(iv) The foreign arbitral award may be enforced only after obtaining the exequatur from the Chairman of the Central Jakarta District Court.

(v) The foreign arbitral award that involves the State of the Republic of Indonesia as a party to the dispute can only be implemented after obtaining exequatur power from the Supreme Court of the Republic of Indonesia.

Meanwhile, according to the Singapore International Arbitration Act, arbitration is international if:

(1) One of the parties to the arbitration has its business domiciled in a State outside of Singapore;

(2) The parties have explicitly agreed that the subject matter of the arbitration agreement concerns more than one country;

(3) Substantial part of the agreement is agreed to be performed, or the place of the subject matter to the dispute is more closely related to a country outside of the country where the parties conduct their business;

(4) In the agreement, the parties have agreed beforehand that the subject matter of the agreement is closely related to more than one country.

However, it is also possible for the IAA to be applied to a non-international arbitration only if it is explicitly stated in the arbitration agreement.[20] Therefore, from the definition stipulated under the IAA, it can be concluded that Singapore's way of assessing international arbitration is different from Indonesian law. Indonesia's definition of international arbitration is mostly based on territoriality. Meanwhile, Singapore looks deeper into its subject matter, the existence of the cross-border element of the parties, and the subject to the foreign arbitral award.

In Singapore, the party to whom the award shall be enforced will be given 14 days after the application to challenge the enforcement. Suppose the party failed to challenge the award or does not challenge the award at all, in that case, the award shall be binding and enforceable as a judgement from Singapore court, which also attached to it the full remedies for the enforcement. To challenge the award, the parties may refer to the grounds stated under Article 34 of the UNCITRAL Model Law or Section 24 of the IAA. The grounds to challenge the award could be based on procedural irregularity, the existence of fraud, public policy, breach of natural justice, along with grounds pertaining to jurisdiction.[21]

[20] Reed Smith LLP, "Challenging and Enforcing Arbitration Awards: Singapore". https://globalarbitrationreview.com/insight/know-how/challenging-and-enforcing-arbitration-awards/report/singapore, accessed 24 September 2021

[21] International Arbitration Act (Chapter 143A)

As previously explained, considering that the award from foreign States is categorised as international arbitration, some national courts may choose not to recognise and enforce the arbitral award. Moreover, with the vagueness of Law No. 30 of 1999, the losing parties have the possibility to challenge the award, thus, at times resulting in the award to be unenforceable. The legal uncertainty could also be derived from the fact that the enforcement of foreign arbitral awards is not thoroughly regulated, given that Indonesia's Law No. 30 of 1999 was made in 1999 and globalisation, including international arbitration, has advanced immensely. Therefore, there are certain issues such as:

1. The unregulated time limitation for the execution order to be given by the court set forth problems to the winning party since it creates uncertainty as to when they can enforce the award.
2. Cases where there are different interpretations of 'commercial' under Indonesian laws from foreign laws as what happened in *Astro Nusantara v Ayunda Prima Mitra* case.[22]
3. Issues concerning the broad definition of "in conflict with public order", which resulted in different interpretations.[23]

[22] Baker McKenzie, "Indonesia: The Risks of Enforcing Foreign Awards". https://globalarbitrationnews.com/indonesia-the-risks-of-enforcing-foreign-awards-20150129/, accessed 20 September 2021

[23] Intan Setiyo and Zakki Adlhliyati, "Problematika Pelaksanaan Putusan Arbitrase Internasional Di Indonesia", Jurnal Verstek, Vol. 8 , No. 1, p. 172 https://jurnal.uns.ac.id/verstek/issue/view/2905

4. The legal uncertainty problem is not only caused by the enforcement from the court but also by the lack of regulations under Law No. 30 of 1999 that does not protect the winning party during the enforcement process.[24]

Hence, these issues resulted in legal uncertainty of arbitration enforcement in Indonesia, especially in the eyes of the international community.[25] One of the issues regarding the enforcement of foreign arbitral awards is the legal uncertainty pertaining to the use of public policy. Even though ideally, an arbitral award should be final and binding for the parties, there are certain cases where the losing parties could submit the case to the local court to be challenged and set aside, thus, opening the chances for annulment and refusal to enforce the award. This is clearly a loss for the winning party since the time and cost of arbitration is wasted due to the unenforceable award that has no power. One of the basis for refusal to enforce and set aside an award is public policy. It is stipulated under Article V(2)(b) of the New York Convention, Article 34(2)(b)(ii) and Article 36(1)(b)(ii) of the UNCITRAL Model Law. Article V(2)(b)(ii) of the New York Convention provides room for each state to make its own consideration of what constitutes as 'Public Policy'.

Under Indonesian arbitration law, the Indonesian court has the right to intervene in enforcing the foreign arbitral awards in which they may refuse recognition and

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[24] Tutojo, "Eksekusi Putusan Arbitrase Internasional Dalam Sistem Hukum Indonesia." *Jurnal Penelitian Hukum Legalitas*, vol. 9, No. 1, (2015), p. 13-26 https://media.neliti.com/media/publications/233672-eksekusi-putusan-arbitrase-internasional-460af5dc.pdf

[25] Hukum Online, "Arbitrase Sebagai Salah Satu Alternatif Penyelesaian Sengketa Diluar Pengadilan". www.hukumonline.com/talks/baca/lt54c06922d0403/arbitrase-sebagai-salah-satu-alternatif-penyelesaian-sengketa-diluar-pengadilan-angkatan-keempat/, accessed 8 October 2021

enforcement due to their own interpretation and consideration of what constitutes as public policy.[26] Public policy as the basis to refuse recognition and enforcement is laid out under Article 66 paragraph (c). However, Law No. 30 of 1999 did not further specify any definition, standards, nor what constitutes as public policy and what are the limitations of "in conflict with public order". Thus, Article 66 is open for a broad interpretation that sometimes could work in favour of the losing party since the court could refuse the enforcement of the award. From the Author's standpoint, even though the New York Convention is used as the basis of the international arbitration regulation in Indonesia as stipulated under Law No. 30 of 1999, there should be a further elaboration on what constitutes as public policy in accordance with Indonesia's moral and legal view of that aspect, which could help to further provide legal certainty. The New York Convention serves as the guideline for all parties to the convention. However, it is in the hands of the Member States to deepen and further specify their own definition of public policy.

Consequently, frequent cases where the court refused to enforce an award on the basis of public policy imposes several questions in the international community if the arbitral award is even effective to be executed or recognised in Indonesia in the first place, which might also further affect the flow of commercial cooperation or foreign direct investment in Indonesia.[27] Moreover, this raises questions of the legal certainty

[26] *Ibid.*
[27] M. Husseyn Umar, "Pokok-Pokok Masalah Pelaksanaan Putusan Arbitrase Internasional Di Indonesia Oleh". www.hukumonline.com/berita/baca/lt4bbd785494fc7/pokokpokok-masalah-

of the enforcement of arbitral awards in Indonesia, especially considering that Indonesia is a party to the New York Convention.

Meanwhile, Singapore is also a party to the New York Convention who also recognised Article V(2)(b) of the convention regarding the basis of public policy as one of the grounds to set aside and refuse enforcement of a foreign arbitral award. However, Singapore has its own definition and standard regarding public policy. Hence, it is interesting to study the comparison between both countries especially knowing that Singapore is one of the most favourable countries for arbitration both domestic and internationally. Thus, with this comparative analysis, the Author hopes that this research could establish insights that could possibly be adopted by Indonesia and give the readers a more profound understanding of the use of public policy as the basis to set aside or to refuse enforcement of foreign arbitral awards.

It is to note that 'Public Policy' has the same meaning as 'Public Order' in international arbitration. Indonesia uses the term 'Public Order', which translates to *'ketertiban umum'* in Bahasa. Meanwhile, Singapore and most common law countries use the term 'Public Policy'. However, the Author will use the word 'Public Policy' throughout this thesis for uniformity, including in the Indonesian assessment. When the Author occasionally uses the term 'public order' in this thesis, the Author is referring to the same concept of 'Public Policy'.

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pelaksanaan-putusan-arbitrase-internasional-di-indonesia-br-oleh-m-husseyn-umar-?page=2, accessed 24 September 2021

Therefore, through this thesis, the Author will only be focusing on how the local court applies public policy in setting aside or refusing enforcement of foreign arbitral awards. The Author is going to further analyse and discuss the definition and application of public policy in Indonesia in comparison with Singapore. The Author believes that this topic is interesting and worth researching as public policy has a massive role in determining the enforceability of an award.

Therefore, as Indonesia is slowly making its way to develop its reputation in international trade, it is important to further understand and analyse the application of public policy as one of the grounds to set aside or refuse enforcement of a foreign arbitral award. Hence, based on the foregoing, this thesis will further discuss public policy through cases and analysis, which will be further elaborated in Chapter 4, along with comparing the use of public policy in setting aside an award according to Singapore's jurisdiction. This thesis will then further elaborate on things that could be studied from the comparison along with what needs to be further improved by the government pertaining to the enforcement of foreign arbitral awards in Indonesia.

## 1.2 Formulation of Issues

Pursuant to what was elaborated above and the topic of this thesis, the Author will further discuss and explore the following issues:

1. How do courts in Indonesia and Singapore define public policy in setting aside and refusing enforcement of foreign arbitral awards?

2. What are the differences and comparisons in the application of public policy as the basis to set aside and refuse enforcement of foreign arbitral awards in Indonesia and Singapore?

## 1.3 Research Purposes

The purpose of this thesis is to answer the issues stated above, which would help to answer the following:

1. To know how courts in Indonesia and Singapore define public policy in setting aside and refusing enforcement of foreign arbitral awards.
2. To know what are differences and comparisons in the application of public policy as the basis to set aside and refuse enforcement of foreign arbitral awards in Indonesia and Singapore.

## 1.4 Benefits of Research

### 1.4.1 Theoretical benefits

The Author hopes that this thesis would bring insight regarding the use of public policy in setting aside and refusing enforcement of foreign arbitral awards in Indonesia and Singapore by analysing related arbitration cases and comparing the use of public policy in Indonesia with Singapore. The Author hopes that this thesis would help the readers to understand more and in-depth regarding the mechanism of international arbitration, not only looking at Law

No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, The New York Convention, the UNCITRAL Model Law, and Singapore's International Arbitration Act as the *das sollen* analysis but also the practical realisation of how public policy is applied in practice in Indonesia and also Singapore as the *das sein* analysis. The Author also hope that through this thesis, readers could gain more knowledge and insight regarding the field of arbitration along with the importance of public policy in international arbitration pertaining to the enforcement of foreign arbitral awards in Indonesia, given the increasing international trade and cross-border transactions.

### 1.4.2 Practical benefits

The Author hopes that this thesis could be beneficial for the further development of national legal reform of arbitration laws in Indonesia. Specifically, pertaining to international arbitration. Along with giving light to the issues surrounding the enforcement of foreign arbitral awards in Indonesia specifically, concerning the use of public policy to refuse enforcement of foreign arbitral awards by comparing the definition and application of public policy in Indonesia with Singapore.

## 1.5 Framework of Writing

CHAPTER 1: INTRODUCTION

In this chapter, the Author will give the basic information about the topic to give readers a basic understanding of arbitration and international arbitration in general. This part will further be elaborated in five parts which are background, formulation of issues, research purposes, the benefits of this research, and framework of writing. The Author will also further explain the key definitions of the principles or points related to the topic in order to provide a basic understanding for the readers. The Author will also elaborate on the prevailing laws and regulations related to this topic. The Author hopes that through the given introduction, the readers could gain a basic understanding of the topic in order to understand more in the elaboration of the subsequent discussion and analysis chapter of this thesis.

## CHAPTER II: LITERATURE REVIEW

This chapter will discuss the literature review of this thesis. This chapter will be divided into theoretical and conceptual frameworks, which will further help the Author analyse and answer the issues stipulated in the first chapter. The literatures elaborated in this chapter are summarised to develop the understanding of the readers in order to understand Chapters 4 and 5 of this thesis. The theoretical framework will identify all the appropriate theories for this thesis. Meanwhile, the conceptual framework will be developed by gathering materials from law publications, expert opinions, and the laws applicable to this thesis (*i.e.*, Indonesian and Singapore arbitration laws, along

with UNCITRAL Model Law and the New York Convention). In this chapter, the Author will first determine the regulations that are applied in this thesis, which are Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, New York Convention, UNCITRAL Model Law, and International Arbitration Act of Singapore. Secondly, for the theoretical framework, the Author will elaborate on: The History and Development of International Arbitration, Theory of Foreign Arbitral Award, Commercial Dispute under International Arbitration, Recognition and Enforcement of International Arbitral Award Based on the New York Convention and the UNCITRAL Model Law, Recognition and Enforcement of Foreign Arbitral Award in Indonesia based on Law No. 30 of 1999, Recognition and Enforcement of Foreign Arbitral Award in Singapore based on the International Arbitration Act, Authority and Role of the Central Jakarta District Court in regards to the Recognition and Enforcement of the Foreign Arbitral Award, Theory of Reciprocity, Theory of Legal Certainty, Refusal Grounds to Enforce Foreign Arbitral Award, Setting Aside Foreign arbitral award based on Singapore's International Arbitration Act, and Non-Exequatur and Exequatur. Thirdly, for the conceptual framework, the Author will elaborate on Arbitration, International Arbitration, Arbitral Award and Foreign Arbitral Award, Enforcement, Setting Aside Foreign Arbitral Award, Commercial Dispute, Non-State Actors, and Public Policy.

CHAPTER III: RESEARCH METHODS

In this chapter, the Author will further discuss the details regarding the type of research method used in writing and formulating this thesis. The Author will further elaborate on the type of research, type of data, data analysis method, data collection method, and research approach that are used in this thesis in order to formulate the analysis, findings and discussions in this thesis.

CHAPTER IV: DISCUSSION AND ANALYSIS

This chapter will further discuss and analyse the topic of this thesis. Firstly, it will elaborate on the definition of public policy by taking note of the different legal systems of Indonesia and Singapore, which are the common law legal system for Singapore and the civil law legal system for Indonesia. In which both legal systems have their own different definition of public policy. Secondly, the Author will discuss the use of public policy in arbitration, specifically, the use of public policy as the basis to set aside or refuse enforcement of foreign arbitral awards. Thirdly, the Author will elaborate the definition of public policy according to Indonesia and Singapore in accordance with the applicable arbitration law in Indonesia and Singapore which are, Law No. 30 of 1999, the International Arbitration Act, along with the New York Convention and related articles from the UNCITRAL Model Law. Fourthly, the Author will then analyse the application of public policy in setting aside or

refusing enforcement of foreign arbitral awards in Indonesia and Singapore by elaborating and analysing related cases from Indonesia and Singapore. Lastly, the Author will point out and analyse the comparison regarding the use of public policy in setting aside and refusing enforcement of foreign arbitral awards in both jurisdictions.

CHAPTER V: CLOSING

In this final chapter, the Author will conclude the thesis by explaining the findings and answers to the issues that have been analysed in the previous chapter along with providing recommendations for the issues of this thesis in hopes that it could serve as a piece of academic information that could help the government to acknowledge the existing issues in order to provide legal certainty regarding the interpretation of public policy in Indonesia. The Author also hopes that this thesis will give further knowledge and could serve as an academic explanation and reference of public policy in the realm of arbitration in Indonesia specifically, pertaining to the enforcement of foreign arbitral awards in Indonesia.