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The Role of New York Convention in 1958 and UNCITRAL in Protecting its Member Countries on Tax Revenue

Dini Onasis, Ardiansah, Yetti
Accounting Department, Lancang Kuning University, Indonesia.
Email: dinionasis@unilak.ac.id

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Abstract:
The novelty of this research is that this research has never been conducted before. International business actors prefer dispute resolution using arbitration due to the lack of trust in the local court system and the closed nature of arbitration dispute resolution to keep their image and final arbitration decisions. To accommodate and protect the interests of international business actors or corporations, the New York Convention 1958 and UNCITRAL were agreed by its member states to recognize and implement international arbitration decisions. However, in its implementation, there is impartiality as the New York Convention and UNCITRAL do not regulate the interests of their members for certainty and protection in tax revenue even though the compensation received by the winning parties in a dispute in international arbitration is a tax object. Previous researches focused more on prominent issues such as the execution of an arbitral decision in the member states; the refusal of an international arbitration decision in a member state; the seat of arbitration and lex arbitration. This research aims to construct new ideas and discussion by the members of the 1958 New York Convention, UNCITRAL and supporters of international arbitration to find provisions that accommodate and protect the interests of member states in tax revenue potentials. This research is empirical legal research that aims to examine the process of law and investigate the provisions, rules, applied standards and literature. The results show that several obstacles lead to potential loss in tax revenues of member states so that it is necessary for them to revise the provisions and rules of UNCITRAL. Member states need to discuss and formulate provisions and rules as regards tax revenue that are more pro-state.

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1. INTRODUCTION

The novelty of this research is that this research has never been conducted before. Nowadays, trade and business are not only done domestically, but have come across countries without being restricted to place and time. Business actors invest no longer at the local level but to the international level. By international business, they need to protect and maintain their investment in the form of guarantees for business sustainability which then minimize the

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risk for their investments in other countries. Legal certainty of investment in the destination country is one of the solutions. This is due to differences in legal procedures and the application of the law in each country.

Business actors understand this so well that various countries made an agreement in the New York Convention in 1958 on International Arbitration. This convention is about the Recognition and Enforcement of Foreign Arbitral Awards which was formed in New York on June 10, 1958. In principle, this convention does not directly regulate international contracts but specifically regulates the recognition and implementation of foreign arbitral awards made in a state of a convention that may be implemented in other states so that this convention can provide legal certainty and guarantee for business actors. And then the UNCITRAL was established through UN General Assembly Resolution number 2205 (XXI) on 17 December 1966. The main duty of UNCITRAL is to reduce legal differences between member countries which can become obstacles to international trade. For this reason, UNCITRAL seeks to harmonize and unify the law of international trade so as to reduce various obstacles and regulatory disparities in UN member states. Through harmonized and unified international trade law, it is expected that international trade may run smoothly. International trade is often considered a barrier or non-current caused by factors of a low predictable governing law, or existing laws are no longer in line with such current development as digital transformation. Therefore, an effort is necessarily needed to make products or legal instruments can keep up with the times and progress that provides legal requirements to facilitate international trade and the development of the world economy.

Indirectly, the state is an institution that relies on business actors who pay taxes. Almost all countries in the world get the biggest income from taxes. Compensation decided by international arbitration is a tax object. However, this international arbitration award loses tax revenue potential of member countries and recognition of various compensations from business actors for compensation that is not regulated in various provisions including the International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS) which are financial accounting standards applied by almost all countries in the world.

This research aims to construct new ideas and discussion by the members of the 1958 New York Convention, UNCITRAL and supporters of international arbitration to find provisions that accommodate and protect the interests of member states in tax revenue potentials.

2. RESEARCH METHODS

This research is empirical legal research that aims to examine the process of law and investigate the provisions, rules, applied standards and literature. This study uses qualitative data analysis.

To obtain the data, the respondents in this study are as follows: Director General of Taxes, Chairperson of the Indonesian Supreme Court's Civil Chamber, Central Indonesian National Arbitration Board, Indonesian National Arbitration Board Regional Representative, Judge of the Indonesian National Arbitration Board, International Arbitration Judge, Chairman of Indonesian Chamber of Commerce and Industry, Taxation Specialists, Arbitration Law Specialists, Tax Law Specialists, and Accounting Specialists (Indonesian Institute of Accountants or IAI, Accounting Standards Formulating Agency for Indonesia which has adopted IAS and IFRS).

3. DISCUSSIONS

Almost all countries in the world have become member states in the 1958 New York Convention and UNCITRAL. This means that those members have supported and acknowledged the application and

implementation of the International arbitration award. The New York Convention in 1958 was the recognition and implementation of foreign arbitration awards, while the New York Convention 1958 and UNCITRAL contained substantial legal rules regarding arbitration. Regarding the procedure, UNCITRAL had made important rules, i.e. Arbitration Rules 1976 (Revised on 2010 and 2013).

1. CONSIDERING E-COMMERCE

` Referring to the digital or online sales transactions in the Industrial Revolution Era 4.0 such as Amazon, Alibaba (PRC), Sofie (Singapore), Ebay and others, these business transactions can occur internationally and may involve multi-parties such as sellers in certain countries, buyers in other countries and site owners (Amazon, Alibaba, Ebay) from other countries.

These multi-party entities can obscure a country's right to tax revenue. For example, Amazon from Seattle, Washington, USA; Alibaba from China; eBay from San Jose, California, USA. Their headquarters are located in a certain country while their products are sold in other countries. But, tax recognition of the transactions can block the right of a state from the transaction. Amazon, eBay or Alibaba will pay taxes in the country where their headquarters are.

Earlier, several developed countries launched tax reforms on E-Commerce, while in previous years the collection of taxes was only carried out by the USA (eBay and Amazon) and the PRC for Alibaba. This was unfair because either buyer or seller's countries do not receive anything for the business and transaction, but only the countries of the sites, the USA and the PRC, receive the tax. In fact, the customers come from different countries, so that the countries involved in these transactions reform E-Commerce tax provisions by the countries of Customers of Amazon, eBay and Alibaba services and others. So, the buyer and the seller's countries can get their rights and justice.

Likewise, Google, Facebook, and other media sites with billions of users in various countries in the world have their headquarters in the USA as well, which indirectly contains the tax rights of the customers' countries. Previously, the USA was the only country receiving the tax but later the customers' countries reform the policies and tax provisions so that there is no loss of tax revenue potential from the customers' countries. As a result, taxes imposed on services offered by Facebook and Google are not only received by the USA but also by the customers' countries.

In various countries, each country will have a different variety of provisions on tax law, tax collection systems, tax controls, and sanctions despite formal similarities. However, they will still be different in the implementation. In developed countries, people already have a high level of awareness and compliance in paying taxes given strict supervision and clear sanctions. However, other countries have different practices, especially those with incomplete taxation provisions and weak supervision. There will be potential losses in state revenue from the tax sector.

Considering the two cases above, the higher-ups and the member states at UNCITRAL, the New York Convention, and institutions relating to international arbitration have reformed the policy to accommodate the interests of their member states on tax revenues of the disputing parties. The member countries must have different capacities, systems and provisions, and rules in taxation. As a result, synchronization, legal integrity, and information are needed to solve the international arbitration dispute so that tax problems can be avoided.

For example, the case of Karaha Bodas Company LLC (KBC) vs Pertamina (Indonesian state-owned oil and gas mining Company) in Indonesia, in which Pertamina lost in a dispute with Karaha Bodas Company LLC (KBC) through the international arbitration award in Switzerland. Pertamina was

required by Swiss International Arbitration to pay compensation of $ 261 million to Karaha Bodas Company LLC for canceling the power plant project in 1998. The compensation calculations demanded by Karaha Bodas Company LLC are as follows:

1. Pertamina was sentenced to pay compensation of US$111,100,000 for costs incurred to KBC, including yearly interest of 4%, commencing 1 January 2001 until it is settled.
2. Pertamina was sentenced to pay compensation of US$150 million for profits that should have been obtained by KBC including yearly interest of 4%, commencing 1 January 2001 until it is settled.
3. Pertamina was sentenced to pay compensation of US$66,654.92 to KBC for the costs incurred relating to the second phase.
4. Pertamina was sentenced to pay a 4% interest of US$261 million per year for late payment, commencing 1 January 2001 until it is settled.

It is clear that KBC's compensation claim is subject to tax. Firstly, the profits that should have been received but failed to be received because of the failed contract (profits are taxable) reached US$150 million. Secondly, there is interest on late payment of the compensation money by 4% (interest income is a tax object), so that the KBC should have a tax obligation to Indonesia for compensation received by KBC.

KBC implemented the Swiss arbitration award through courts in the United States, Hong Kong, Singapore, and Canada in which countries Pertamina had assets. The courts blocked all Pertamina's bank accounts in those countries. Until the compensation was paid, KBC never paid Indonesia as a member of the 1958 New York Convention and UNCITRAL the tax imposed for the compensation they received. It can be said that the New York Convention of 1958 and UNCITRAL do not protect its member states in matters of taxation. This happens because:

1. Court decisions must be respected and enforced.
2. The final and binding arbitration court decision means the decision must be enforced.
3. If the arbitrator's decision contains several orders, then all orders must be obeyed.
4. A case is done if all arbitrators' decisions have been fulfilled.

These four points mean that if compensation reduction paid by Pertamina to KBC with the reason to deduct tax for Indonesia for compensation received by KBC was applied, Pertamina was considered to have violated the Swiss international arbitration award because the international arbitration court had decided to pay compensation of US $ 261 million. Therefore, Pertamina was not sure to withhold taxes for Indonesia because they were not yet fully complied with and implemented an arbitration court decision of US$261 million. By withholding tax for compensation received by KBC, Pertamina was considered to be against the arbitration award.

This can lead to the loss of tax revenue potentials of the member states of the 1958 New York Convention and UNCITRAL because in the arbitration award there is no strict rule such as "the party receiving compensation loss shall prioritize the right of the country of the compensation payer, for the compensation tax received". And there are no provisions in the 1958 New York Convention, the UNCITRAL International Commercial Arbitration and the UNCITRAL Arbitration Rules to protect its member states in tax revenues on international arbitration awards.

2. DIFFERENT PROVISIONS, RULES, PROCEDURES, SYSTEMS AND IMPLEMENTATION OF TAXATION

Although the recognition and implementation of international arbitration decisions have been protected by the New York Convention 1958 and UNCITRAL, every member country implements

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different arbitration law. The arbitration law in the Common Law countries (Anglo Saxon) is different from the arbitration law of Civil Law countries (Continental Europe). The same case applies to every member state.

Likewise, the taxation laws of each country are different, especially in law enforcement, sanctions, rates, systems, and general taxation provisions. These differences should be considered by the New York Convention and UNCITRAL in protecting its member states for the certainty of tax revenues because there are countries that are weak in enforcing their tax laws and there are also countries that have firm and clear enforcement of their tax laws. However, instead of discussing and considering the legal certainty, provisions, and rules of the enforcement of tax revenue potentials in their member states, the New York Convention and UNCITRAL focused more on the recognition and implementation of international arbitration awards in the member states.

The closest thing to a business is business or corporate income tax. The largest income of member states comes from tax revenue from business entities or corporations rather than from individual salaries. Therefore, UNCITRAL which protects the commercial interests of business actors should realize that in commercial matters there is a right of member states to receive tax so that they can then make provisions to consider the interests of member states on tax revenue potentials.

With different provisions, rules, procedures, system, and implementation of taxation of each member state, there should have been a discussion at UNCITRAL to add potential elements of tax revenue from the member states on the arbitration award with provisions that protect and accommodate the interest of a member state for its tax revenue. It is not the case if the arbitration award has been regulated by the New York Convention in 1958 and UNCITRAL for recognition of tax revenues.

3. COST VS COMPENSATION IN ACCOUNTING RECORDS AND PROVISIONS ON THE 1958 NEW YORK CONVENTION, UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION AND UNCITRAL ARBITRATION RULES

The dispute resolution by the Arbitrator in international arbitration generally aims to resolve business and trade disputes between the parties with a decision to compensate for one of the parties. This compensation can be in the form of: (1) returns on the amount of investment that has been embedded, (2) lost profits that should have been received due to the interrupted business cooperation, starting from the engagement agreement by one of the parties until the end of the engagement year. For example, if the cooperation agreement is for 20 years yet in the 10th year the partnership is broken by one of the parties, the claim for lost profits is calculated from the 10th year until the 20th year of the cooperation agreement, (3) interest on investment and lost interest on loss of profit (4) penalty, of which amount is in accordance with the autonomous calculation of one of the disputing parties. For example, fine for late payment to the winning party in an arbitration dispute.

In the 1958 New York Convention, the UNCITRAL Model Law on the International Commercial Arbitration and the UNCITRAL Arbitration Rules, compensations are not defined and discussed. They only discussed the decision of the International arbitrators on the case of the economic value of the parties. In fact, almost all settlements of international arbitration cases resulted in a decision of compensation made by the arbitrator.

The provisions and rules in the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules are broadly within the scope of regulating the implementation and recognition of international arbitration award. There

are no rules regarding compensation. To obtain the compensation, the closest thing is the international arbitration award. However, there are no provisions and rules of the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules regarding arbitration award on compensation. Compensation will only be found on the implementation of the arbitration court where the parties are suing for compensation for the contract case they made. Of course, the arbitrator's decision is about compensation.

Compensation is money awarded to someone who has experienced loss or suffering claims from the responsible person, organization, or state. Indemnification; payment of damages; making amends; that which is necessary to restore an injured party to his former position. An act which court order to be done, or money which a court order to lie paid, by a person whose acts or omissions have caused loss or injury to another so that the person may have received equal value for his loss, or be made whole in respect of his Injury.

But in some other countries, compensation is known as cost or even profit. As in Indonesia, there is a law inherited from Dutch law where there is a broad meaning for compensation in its private law and contract law. Indonesia and the Netherlands view compensation as cost and gain (*costen*, s*chade*n, and *interessen. Costen* means costs that have actually been incurred; *schaden* means losses that really afflict assets; *interessen* means losing expected profits or *winstderving*). The French Civil Code categorizes compensation in two elements, namely *dommages* and interests. *Dommages* include costs and losses, while interests are interests in the sense of losing profits. But, some countries do not regulate and sort out compensation as a gain and cost, but see the compensation of an object which is an obligation that must be fulfilled.

Even the IAS and IFRS as financial accounting standards applied by almost all governments in the world do not regulate and define compensation for arbitration awards as a gain or a cost. IAS/IFRS only regulates compensation as work benefits in IAS 19 and IFRS 4 as compensation for insurance contract claims.

Thus, the application of IAS / IFRS as a financial accounting standard will vary in its application in each country although the financial accounting standards are the same. However, the recognition of the compensation will be interpreted differently by each company or by the parties to the dispute in international arbitration. Of course, this will cause harm to the member states of the New York Convention and UNCITRAL if the compensation is recognized as a cost by the party receiving the compensation based on the International arbitration award.

This approach can be seen in IAS 18 which specifies when to recognize and how to measure revenue. Revenue is the gross inflow of economic benefits during the period arising from the course of the activities of an entity when those inflows result in increases in equity, except increases relating to contributions from equity participants. IAS 18 is applied to accounting for revenue from the following transactions and events: the sale of goods, the rendering of services, and other entity assets earning interest, royalties and dividends.

Revenue is recognized when it is probable that future economic benefits will flow to the entity and those benefits can be measured reliably. IAS 18 identifies the circumstances in which those criteria will be met and, therefore, revenue will be recognized. It also provides practical guidance on the application of the criteria. Revenue is measured at the fair value of the consideration received or receivable.

It is seen that the definition of revenue is an additional economic capability. However, the increase in economic capability is not necessarily a tax object

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if the recognition of the compensation is valued as cost for—instead of compensation gained by—the company.

In IAS / IFRS, there is no explanation and assertiveness in regulating whether compensation for contract failure or contract disputes is a compensation or revenue which then leads to recognition of compensation by the company as a loss not as a gain. Therefore, there is no tax obligation for the revenue of the members of the New York Convention 1958 and UNCITRAL. This is what can cause a gap and opportunities in avoiding paying taxes by business actors or corporations.

4. THE 1958 NEW YORK CONVENTION, UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION AND UNCITRAL ARBITRATION RULES DO NOT PROTECT THE INTERESTS OF THE MEMBERS OF THE STATE OF THE MEMBER ABOUT THE IMPLEMENTATION OF INTERNATIONAL ARBITRATION AWARDS THROUGH THE COURT OF EACH STATE

If an international arbitration award has been registered to the court of a member state which signs the agreement of the New York Convention and UNCITRAL by one of the winning parties, then the court of a member state must accept the decision because the International arbitration award is final. The court receiving the international arbitration award cannot even review the decision. They can only accept it as a means and facility in executing the decision. The contents of an international arbitration award cannot be amended and replaced by a court of a Member State. The Court of the Member State is obliged to admit and implement each item contained in the international arbitration award, unless if it violates the public policy of the Member State. Reviewing every single article and paragraph of the New York Convention 1958 and the UNCITRAL Model Law on International Commercial Arbitration as well as UNCITRAL Arbitration Rules, no provisions and rules regarding the international arbitration award requiring Member State courts to prioritize the Member State's tax rights of income received from compensation. There are no provisions on the execution of decisions made by a court of a Member State prioritizing the Tax Rights of a Member State. Also, there are no provisions governing the privileges or priority rights of tax revenues of a Member State for the International arbitration award. This means that when the court executes the international arbitration award for the recipient of compensation from another State, there are no provisions and rules requiring the court to prioritize the privilege or priority tax right on receiving the compensation. Instead, the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules govern that the international arbitration awards in the Member States are final. The main point is on the recognition and implementation of the International arbitration award. If the court does not recognize and implement the international arbitration award, then it becomes a non-compliance and disobedience to the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules.

This means that the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules do not protect their member states in terms of tax revenue. However, the regulation is about an obligation and an engagement in recognizing an international arbitration award by ignoring the rights of member states for tax revenue.

An example is the case of KBC and Pertamina, with Pertamina's assets blocked in the United States, Hong Kong, Singapore, and Canada by United States,

Hong Kong, Singapore, and Canada as the implementation of Swiss international arbitration awards that strengthen the decision that Pertamina must pay compensation to KBC. In this payment, there should be a loss of profit received, including interests and fines received by KBC that is a tax object as the right of Indonesia. But this was disregarded because the provisions of the New York Convention and UNCITRAL do not discuss taxation which is the right of their member states, which can cause the loss of the tax revenue potential of their members. Moreover, KBC is no longer in Indonesia so that Indonesia, which is a member of the Convention and UNCITRAL, does not have the power to demand the tax. This, of course, causes losses for Indonesia.

So, it is clear that the 1958 New York Convention and the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules only serve the interests of business and corporate actors, but do not serve the interests of member state rights in terms of tax revenue.

5. DISPUTE RESOLUTION IN CLOSED ARBITRATION

The proceedings of the case in the arbitral tribunal and decisions made by the arbitrator do not need to be published.The implementation of the arbitral tribunal is confidential or closed to the public. This is because local courts are less trusted by businesses from other countries. The confidentiality factor in the case of arbitration is very crucial.This is based on accommodation of the request by the parties to the dispute because they do not want that their disputes to be known and consumed by the public, aiming to protect and preserve their self-esteem and image as business actors. If the dispute is known by the public it may affect the movement of their business (for example this situation can be exploited by their competitors so that their confidence, trust and image down in the eyes of investors, customers, partners and others).

With this confidentiality, the compensation received by the winning party is not received by the competent tax authority, whereas the compensation received by the winning party is a tax object.

There are the separators of information on the amount of compensation received by the winning party which is a tax object, but it is not known by the tax authority.

Besides, the arbitrator's decision does not require the parties to precede tax rights on the member states of the 1958 New York Convention and UNCITRAL, and there are no provisions requiring the parties to prioritize the tax interests of the compensation received by the winning party or prioritize the privileges or priority rights of tax for the member states.

This is, of course, detrimental to the member states for losing their tax revenue, which is not supported by the provisions and rules of the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules.

6. ARBITERS JUST JUDGE THE DEMANDS OF THE PARTIES. THEY DO NOT HAVE THE AUTHORITY TO MAKE THE DECISION PRECEDING THE INTEREST OF THE MEMBER STATES ON THE INDEMNITY INCOME TAXES RECEIVED BY ONE OF THE PARTIES

As we know, the nature of the arbitration process is closed, which results in loss of tax revenue opportunities for the member states.

Besides, the arbitrator only focuses on settling the case as soon as possible and concentrates on the case and the demands of the parties. This is the authority, function and duty of an arbitrator judge that the arbitrator is not authorized to exceed his authority. The tax matters on receiving compensation are not the arbitrator's authority. The arbitrator only carries out

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his authority, duties and functions in accordance with the provisions and rules of the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules. So, in making an arbitration award, the arbitrators have never had the initiative to make an arbitration award, template or contain a decision of the "prioritizing the State's privileges and priority rights of taxes", for receiving compensation received by one of the winning parties. If the arbitrator makes a template beyond the demands and claims of the parties this is not the arbitrator's authority, because a judge is prohibited to judge and decide beyond his authority or the demands and claims of the parties.

7. THE COURT JUST CARRIES OUT THE DECISION

By The New York 1958 Convention and the UNCITRAL Model Law on International Commercial Arbitration, the court of the member countries is obliged to recognize and implement the international arbitration award. This becomes the commitment and promise of the member states to obey the agreement that has been made. Through the 1958 New York Convention and the UNCITRAL Model Law on International Commercial Arbitration, legal certainty can be owned by business actors so that they can feel comfortable and secured in conducting business transactions, making contracts and investing in other countries.

The differences in the law of each country lead to the 1958 New York Convention and the UNCITRAL Model Law on International Commercial Arbitration in accommodating the interests of business actors doing business transactions with business actors from other countries.

With the provisions and rules of the 1958 New York Convention and UNCITRAL, it is very helpful for business actors in carrying out the certainty of their business in other countries.

By the cases resolved by the existing arbitration, it was found that the courts of the member states are required to recognize and implement international arbitration awards, but are not regulated in the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration or the UNCITRAL Arbitration Rules. The courts should have prioritized the interests of the state and protect the certainty of the state to obtain tax revenue from compensation received by the winning party in litigation in international arbitration even though the court is one of the gateways to obtain state certainty in tax revenue on the compensation received by the winning parties.

These concern assets owned by the losing party in various countries. Then the winning party proposes an international arbitration award to the court of various countries where the losing party owns assets to guarantee the payment of the international arbitration award.Then, the asset is executed by a court in those countries. The state court that executes them has never considered and protected the rights of the country of origin where the business is located.

With the provisions and rules not regulated in the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules regarding the protection of tax revenues of member states for executions carried out by courts in various member states for the assets of losing parties, it results in the loss of potential tax revenue of member states.

This can happen because the courts of the member states must obey and carry out the mandate of the 1958 New York Convention and UNCITRAL to recognize and implement international arbitral awards without any authority to amend, add and reduce the contents of international arbitration awards.

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8. TAX RECIPROCITY PRINCIPLE

Among the disputing parties, ose receiving compensation are subject to tax or taxpayers. On the other hand, the compensation payer is the person paying for compensation. So, if the recipient of the compensation must recognize that income or revenue is a taxable object, then the compensation payer must be in accounting recognition and the accounting records are also costs. However, this has not been regulated by the IAS and IFRS that the recognition and measurement of compensation for arbitration awards is revenue.

As a result, there will be more possibilities of different recognition in each bookkeeping business or corporation so that there will be recognition taken only if it is profitable for business actors or corporations and it will then cause tax avoidance by business people.

9. INTERPRETATION OF THE 1958 NEW YORK CONVENTION, UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION AND UNCITRAL ARBITRATION RULES BY MEMBER STATES.

The member states of the 1958 New York Convention and UNCITRAL may not interpret the New York 1958 Convention, the UNCITRAL Model Law on International Commercial Arbitration or the UNCITRAL Arbitration Rules as they want to.

The 1958 New York Convention and UNCITRAL are international treaties. Therefore, the 1958 New York Convention and UNCITRAL are part of public international law. As a result, the member states' courts applying the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules must interpret them based on the interpretation rules of international law, codified in Articles 31 and 32 of the Vienna Convention on the Law of International Treaties.

Since a Member State may not interpret the 1958 New York Convention, the UNCITRAL Model Law On International Commercial Arbitration or the UNCITRAL Arbitration Rules beyond the provisions of the Vienna Conventions articles 31 and 32 concerning International Treaty Law, these provisions make the basic standard of the member states' action, so that they cannot act beyond the provisions and rules of the New York Convention 1958, the UNCITRAL Model Law On International Commercial Arbitration and the UNCITRAL Arbitration Rules. So far, the international arbitration award is accepted by the member states. However, member states do not dare to break the international arbitration award for the state's interest on the Tax Revenue Rights from the party receiving the compensation from the other countries due to the provisions and Rules of the New York 1958 Convention, UNCITRAL Model Law on International Commercial Arbitration and UNCITRAL Arbitration Rules. International arbitration award must be completely fulfilled by the parties to the dispute and the Court of State of member states as a place of recognition and implementation of the New York 1958 Convention and UNCITRAL Model Law on International Commercial Arbitration. Compensation decisions must not be reduced even if it is only US$1 because it is an international arbitration tribunal decision which must be enforced. If the compensation paid by the losing party is insufficient with the reason for withholding tax payments on the revenue from the compensation fund, then it can be interpreted that the losing party and the court disobey the international arbitration award because the international arbitration award has set the amount of compensation fund that must be paid without any tax deduction order for receiving the compensation fund (Doctrine res judicata pro veritate habetur).

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4. CONCLUSION

In 1958, the countries signing the New York Convention agreement and the UNCITRAL Model Law on International Commercial Arbitration forgot and did not discuss the protection of the legal certainty of member states on tax revenue.

This happened because:

1. International arbitration awards had to be respected and enforced.
2. The final and binding arbitration court decision meant that the decision had to be fully carried out without any appeal.
3. If the arbitrator's decision contained several orders, then all of the points had to be obeyed and fulfilled.
4. State Courts are obliged to recognize and implement international arbitration awards.
5. A case was deemed complete if all arbitrators' decisions had been fulfilled.

Member states have different provisions, rules, procedures, systems and tax practices so that it is possible for them to lose tax revenue except that it has been regulated by the New York Convention of 1958 and UNCITRAL for the member states' recognition of tax revenues.

There are no provisions and rules of the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration or the UNCITRAL Arbitration Rules that regulate and define compensation as income (gain, revenue or income) which is a tax object for member states. The IAS and IFRS do not clearly regulate and define compensation as income or cost. Therefore, business actors can interpret it as a way to avoid paying taxes to member states. Likewise, the reciprocity principle on the recognition of compensation is deemed income, where if compensation is recognized as a profit, the compensation payer can recognize it as a cost. However, this has not been regulated by IAS and IFRS.

The court receiving the international arbitration award may not review the award. The courts of the member states only accept international arbitration award as means and facilities in executing the said decision. In the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules found no provisions and rules regarding the international arbitration award requiring the court of a member state to prioritize the member state's tax rights on income received from compensation. There are no provisions on the execution of decisions made by a court of a member state prioritizing the Tax Rights of a Member State. There are no provisions governing the privileges or priority rights of tax revenues of a member state for an international arbitration award as well.

With this confidentiality, the compensation received by the winning party does not flow to the competent tax authority, whereas the compensation received by the winning party is a taxable object. Actually, there is a separator of information on the amount of compensation received by the winning party which is a tax object, but that is not known by the tax authority.

The arbitrator only focuses on settling the case as soon as possible and concentrates on the case and the demands of the parties. This is the authority, function and duty of an arbitrator judge that the arbitrator is not authorized to exceed his authority. The tax matters on receiving compensation are not arbitrator's authority. The arbitrator only carries out his authority, duties and functions in accordance with the provisions and rules of the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Arbitration Rules. So, in making an arbitration award, the arbitrators have never had the initiative to make an arbitration award, template or contain a decision of the "prioritizing the State's privileges and priority rights of taxes", for receiving

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compensation received by one of the winning parties. If the arbitrator makes a template beyond the demands and claims of the parties, this is not the arbitrator's authority since a judge is prohibited to judge and decide beyond his authority or the demands and claims of the parties.

Member states of the 1958 New York Convention and UNCITRAL may not interpret the New York 1958 Convention, the UNCITRAL Model Law on International Commercial Arbitration or the UNCITRAL Arbitration Rules as they want to. Since a member state may not interpret the 1958 New York Convention, the UNCITRAL Model Law on International Commercial Arbitration or the UNCITRAL Arbitration Rules beyond the provisions of the Vienna Conventions articles 31 and 32 concerning International Treaty Law, these provisions make the basic standard of the member states' action. Therefore, they cannot act beyond the provisions and rules of the New York Convention 1958, the UNCITRAL Model Law On International Commercial Arbitration and the UNCITRAL Arbitration Rules. So far, the international arbitration award is accepted by the member states, but member states do not dare to break the international arbitration award for the State's interest on the Tax Revenue Rights from the party receiving the compensation from the other states

To accommodate and protect the legal certainty and interests of tax revenues for member states of the 1958 New York Convention and UNCITRAL, it is necessary to strengthen rules by member states for changes to the provisions and rules of UNCITRAL. Member States need to discuss and formulate provisions and rules to be more pro-state tax revenue.

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