CONCLUDING REMARKS

GARUDA WIKO

Distinguished Guest, Ladies and Gentleman, we have now arrived to the end of the seminar and it is my task to deliver a few words as the conclusion remarks.

The discussion regarding Enhancement of Regional Arbitration Cooperation becomes essential particularly in this era due to the growth of international arbitration and how it currently facing the challenging development of international trade, especially in the Asia-Pacific Region. The big theme of the seminar divided into four sub-themes which show the main concern on each of the sector being discussed.

Construction Dispute

Construction disputes is the most covered but also the most challenging since it can be costly and time consuming. To resolve this issue, the parties may refer to Pre-arbitral procedures among others: Negotiations, mediation and also dispute boards. In facing the challenge of construction, the use of technology becomes important both in the process of construction project, and in the process of arbitration hearing in order to make it more efficient in term of cost and time without leaving legal certainty behind.

Indonesian Law No. 2 Year 2017 regarding Construction mandated the parties to construction contract to solve their dispute through, among others, the involvement of Dispute Board. In other countries, such as Australia, dispute board practice is proved to be the most efficient method to resolve construction dispute. However, the Dispute Board practice is not well-known in Indonesia and needs time before Dispute Boards system can be applied as one of an alternative to resolve dispute in construction area.

One of the issue being raised was regarding “concurrent delay” in construction dispute. While the concept itself is not recognized as a discrete legal concept in Indonesian law, some court practices have shown a consistent measure using good faith principle to decide who bear the risk in the event of concurrent delay. Unfortunately, the use of good faith and fairness concepts could lead to an uncertain result. To prevent this, parties should state their agreement in the contract on how they will deal with concurrent delay.

Maritime Dispute

The second session discussed the Liability Issues in Commercial Maritime Disputes. The growth of international trade is inevitably affecting the growing number of maritime dispute. The nature of maritime dispute largely involves cross-border matters and often there are more than two parties involved with a chain of interconnected contracts which may appoint to different arbitral institutions to resolve their disputes. To overcome this, the use of inter-institutional consolidation clause might be the answer.

One of the issue being raised in the context of maritime is Prevention Principle and its application in the shipbuilding contract. It is concluded that there is an apparent tendency toward restricted application of Prevention Principle in the shipbuilding context.
In the context of Indonesia, the legal system need to improved especially regarding international shipping, maritime practice as well as arbitration to backed up a growing concern of maritime dispute. In the broader context, Indonesian needs to update the Indonesian Civil Code, especially the law on obligation.

**Code of Ethics, Conflict of Interest in Arbitration/ADR**

The third session touches on the subject of Code of Ethics in Arbitration and Alternative Dispute Resolution. The arbitration process is unique in the way on how the parties may choose freely on the arbitrator(s) who would be decided the matter of their dispute. In this regard, the question of independence and impartiality becomes important. The concept of impartiality and independence were explored with various regulation and practices. IBA and LCIA were examined in order to offer perspective on how the issue of impartiality and independence could be outlined in the form of guidelines to be used by the arbitrators as guidance.

One of the main concern is the often-controversial subject of Third-Party Funding in arbitration. Some of the ethical issue connected with its practices has often pointed out such as the possibility of impartiality of the arbitrator towards the funder. To prevent unethical practice regarding Third Party Funding, there should be control of ethics in the form of: Statutory Regulation, Professional Disciplinary Regulation and Guidance, Non-statutory codes of conduct for funders, arbitration institutional guidance and codes for arbitrators, complete self regulation, and effective sanctions.

**Setting Aside and Refusal of Enforcement of Foreign Awards**

The enforcement of foreign awards especially in Indonesia has become the ever-complicated subject to discuss. The general procedure of enforcement of foreign arbitral awards in Indonesia from Registration Stage (Pendaftaran) up to the Real Enforcement Stage (Eksekusi) have been regulated through Indonesian Law. It is concluded that Registration and Eksekuatur are necessary to make the foreign awards “enforceable”.

The concept of Public Policy still become the main challenge in the context of of setting aside and refusal of enforcement of foreign awards in Indonesia since it is still not well-defined. It leads to the situation where the court interprets it on a case by case basis which then leads to legal uncertainty. However, it is concluded that Indonesian Law is actually less restricted than most of the European countries on the enforcement of foreign awards since it needs less requirements for the party to enforce the award within the region.

Thank you for your kind attention.