

Session IV:

Setting Aside and Refusal of Enforcement of Foreign Awards - Law and Issues

Enforcement of Foreign Arbitral Awards in Indonesia (Theory and Practice)

I. Background

Indonesia has ratified the 1958 New York Convention on Recognition and Enforcement of International Arbitral Awards (“**New York Convention**”) through Presidential Decree No. 34 of 1981 regarding the Ratification on Recognition and Enforcement of International Arbitral Awards. Indonesia further enacted Law No. 30 of 1999 on Arbitration and Dispute Resolution (“**Arbitration Law**”). However there is perception that Indonesian Court is not cooperative with foreign arbitral awards. Enforcement (*Eksekutur*) of foreign arbitral awards in the jurisdiction of Indonesia is considered as extremely difficult and time consuming.

This paper will discuss the general procedure of enforcement of foreign arbitral awards in Indonesia from Registration Stage (*Pendaftaran*) up to the Real Enforcement Stage (*Eksekusi*) in theory and practice, as well as describing the status of foreign arbitral awards according to the database in Central Jakarta District Court.

II. Relevant Regulation

1. Law No. 30 of 1999 on Arbitration and Dispute Resolution (“**Arbitration Law**”);
2. Presidential Decree No. 34 of 1981 on the Ratification of Recognition and Enforcement of Foreign Arbitral Awards;
3. New York Convention 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (“**New York Convention**”);
4. Guidelines of Supreme Court in National Work Meeting 2007; and
5. Guidelines of Supreme Court in National Work Meeting 2009.

III. The General Procedure of Enforcement of Foreign Arbitral Awards in Indonesia from Registration Stage up to the Real Enforcement Stage (Theory and Practice)

The enforcement of foreign arbitral award requires court involvement and it shall meet the criteria as set out in Article 66 of the Arbitration Law:

- a. The award was rendered by an arbitrator or arbitral tribunal in a country with which Indonesia has a bilateral or multilateral agreement concerning recognition and enforcement of foreign arbitral awards (e.g. award rendered in signatory states of the New York Convention);

- b. The decision concerns commercial matters;
- c. It does not contravene Indonesia's public policy/order;
- d. A Stipulation of Enforcement (*eksekutorial*) to enforce the award has been issued by the Central Jakarta District Court;
- e. For award where Republic of Indonesia was party of the case (e.g. ICSID awards) the Stipulation of Enforcement must be issued by the Supreme Court to be further executed by the District Court.

Arbitration Law does not stipulate a very detail procedure to enforce a foreign arbitral award. In practice, the stages may be divided into 3 (three) classifications:

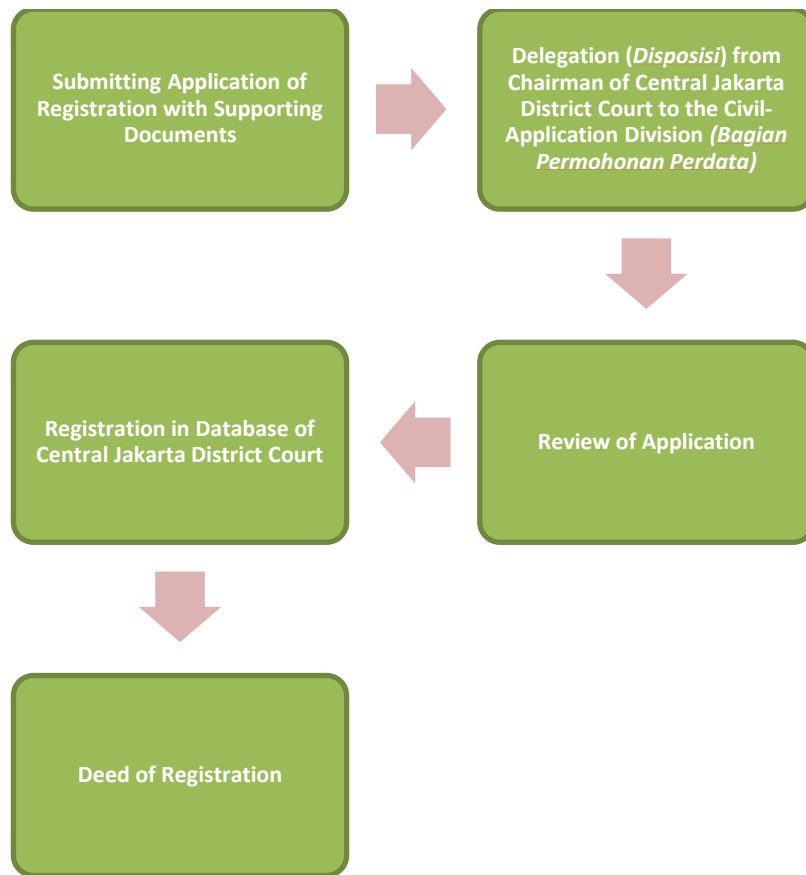
1. Registration,
2. Enforcement, and
3. Actual enforcement.

There is further a procedural gap in the Arbitration Law between the registration of the award and the Central Jakarta District Court issuing the Stipulation of Enforcement. The Arbitration Law only provides that arbitral awards are enforceable once a Stipulation of Enforcement has been issued (Article 66 (d) and (e)). However, it does not provide on the procedure to obtain such Stipulation, in particular if the losing party does not comply with the award.

Stage 1. The Registration

Under the Arbitration Law, any arbitration awards sought to be enforced in Indonesia must be registered at the District Court having jurisdiction. This is the first stage of the whole enforcement-procedure. The Arbitration Law specifically requires that the "international" or foreign arbitral award is registered by the arbitrators or their proxies at Central Jakarta District Court. Based on practice, the time period from submission of registration application until the issuance of Deed of Registration by Central Jakarta District Court takes two weeks up to one month, with condition that all required documents have completely been submitted to the Central Jakarta District Court.

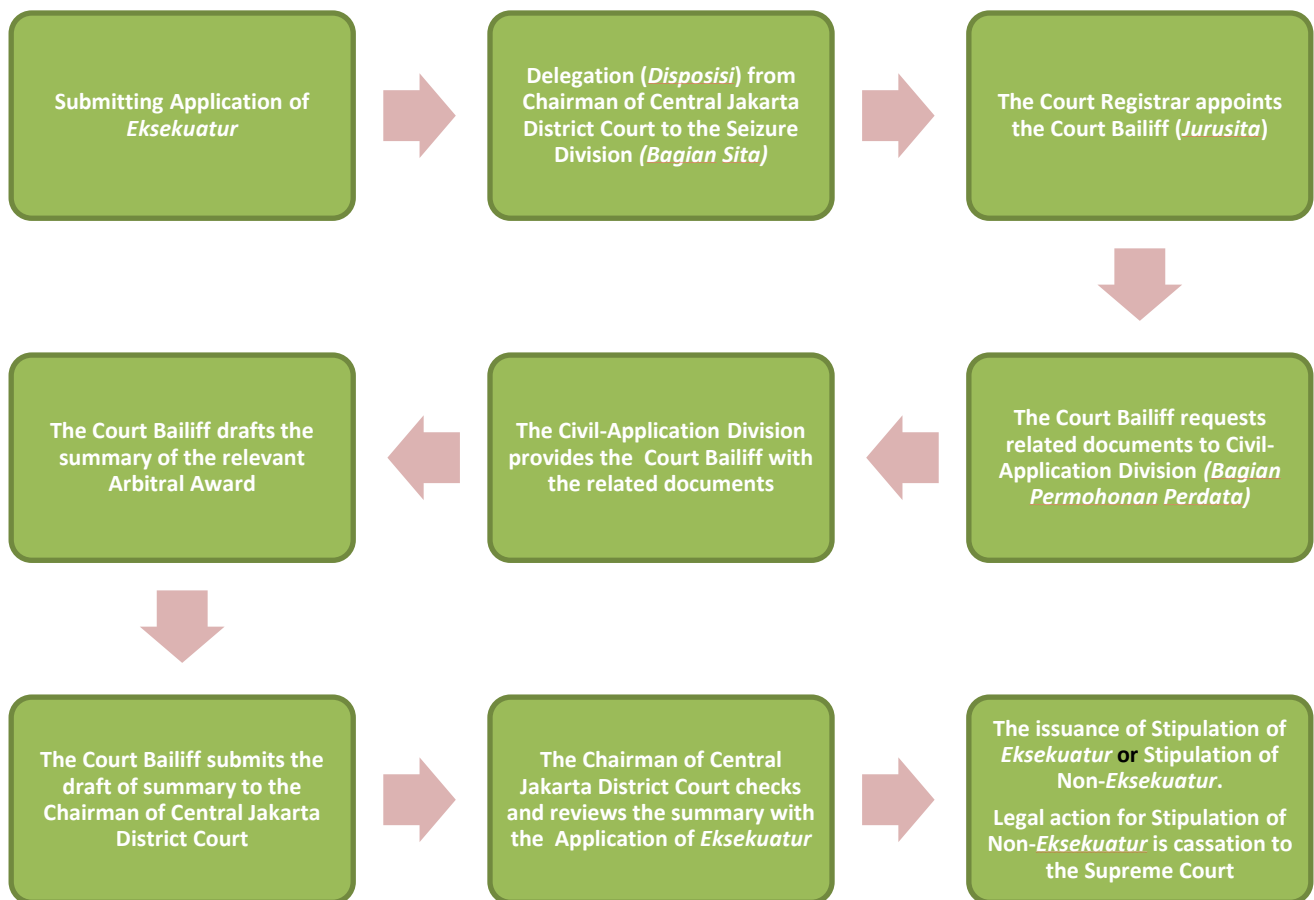
While there is a 30 (thirty) days period within which domestic arbitral awards must be registered there is no time limit to register foreign arbitral awards. Basically there have never been problems to register Foreign Arbitral Awards as long as the requirements have been complied with. Registrations have therefore never been a problem. In practice, the procedure of registration is as follows:



Stage 2. The Enforcement (*Eksekutorial*)

After obtaining Deed of Registration, a Stipulation of *Eksekutorial* from the Chairman of the Central Jakarta District Court is required for the enforcement of a foreign arbitral award. The Registration stage only means that the Award is registered in database of Central Jakarta District Court. A specific application must be filed to the Central Jakarta District Court to obtain the Stipulation.

The Arbitration Law does not provide a time limit for the Chairman to consider and decide on the application for an *Eksekutorial*. This is a problem until now. The approval of *Eksekutorial* is not subject to appeal to any higher jurisdiction court. If the court refuses to grant a Stipulation of *Eksekutorial*, the applying party can submit cassation-appeal (*kasasi*) to the Supreme Court. The Supreme Court must consider and decide all applications for appeal within 90 (ninety) days. There is no appeal against a Supreme Court decision. In practice, the procedure to obtain an *Eksekutorial* is as follows:



Stage 3. The Writ of Execution (*Fiat Eksekusi*)

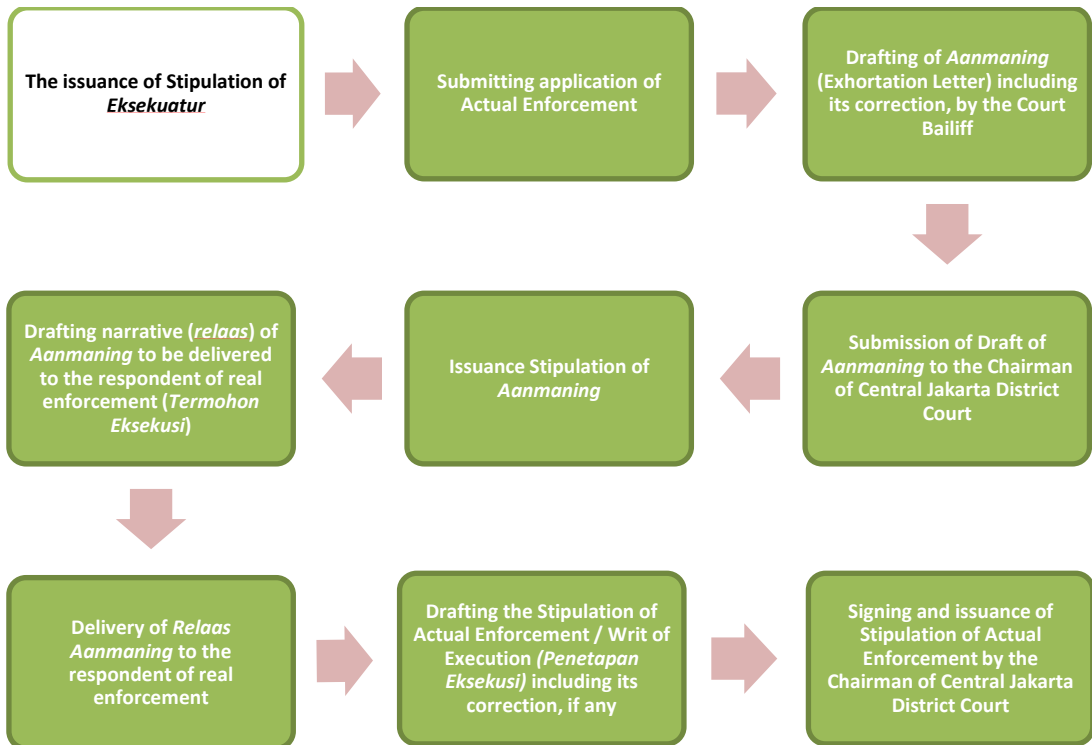
After obtaining the Stipulation of *Eksekutur*, the winning party may apply to the Central Jakarta District Court for a writ of execution under general rules of enforcement under Indonesian Civil Procedures (*Hukum Acara Perdata*). The application of writ of execution shall be considered as the application of actual enforcement.

The court may issue a writ of execution if the losing party, after being duly summoned and so requested by the court, does not voluntarily comply with the award. If the location of the asset is outside the jurisdiction of Central Jakarta District Court, then the implementation will be delegated to the competent District Court of the asset (delegation procedure).

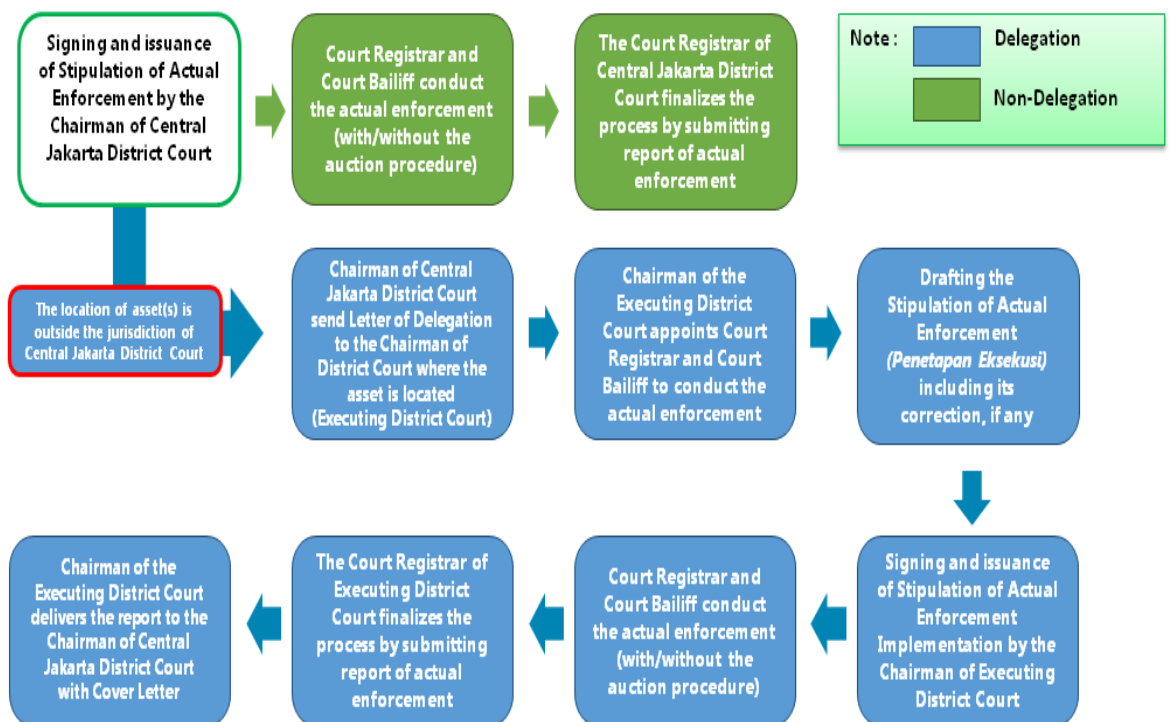
Fiat Eksekusi is actually the actual enforcement process for all arbitral awards, both domestic and foreign, and also for Indonesian Court Judgments, for example Indonesian Supreme Court Judgments under general laws on civil procedures. The latter is a distinct process under a different set of rules on civil procedure applying to enforcements generally in Indonesia, and also applies to Indonesian parties in whose favor a domestic arbitral award or final and binding court judgment (for example by the Indonesian Supreme Court)

has been rendered and who try to enforce such domestic award or Indonesian Supreme Court Judgment.

The procedure of *Fiat Eksekusi* is as follows:

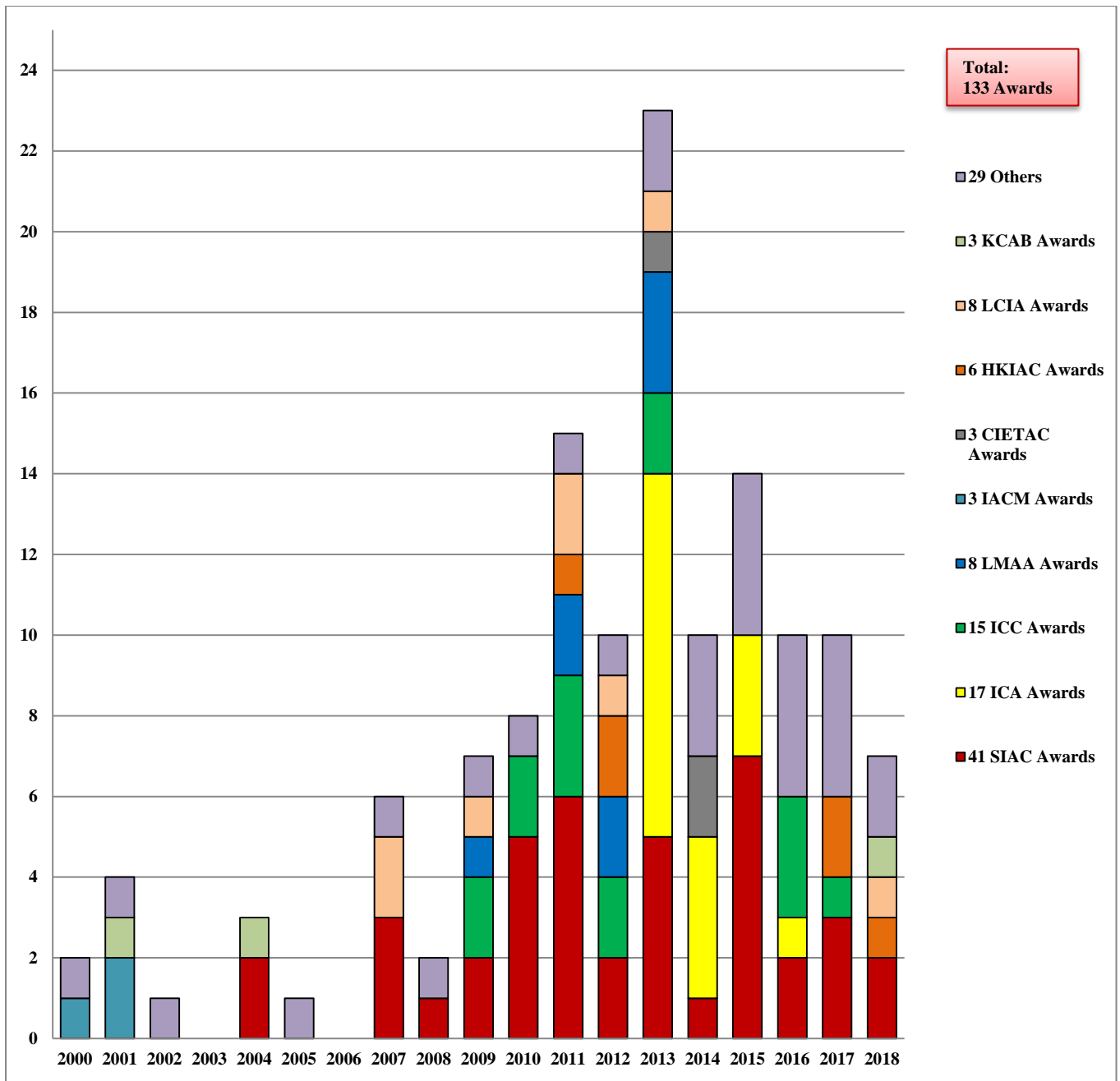


Further:



Statistic in Central Jakarta District Court 2000 – September 2018

Foreign Arbitral Awards with Deed of Registration in Central Jakarta District Court:¹



¹ Data was collected as per September 2018.

LCIA: London Court of International Arbitration

HKIAC: Hong Kong International Arbitration Center

CIETAC: China International Economic and Trade Arbitration Commission

IACM: International Arbitration on The Cocoa Merchants' Association of America

LMAA: London Maritime Arbitrators Association

ICC: International Chamber of Commerce

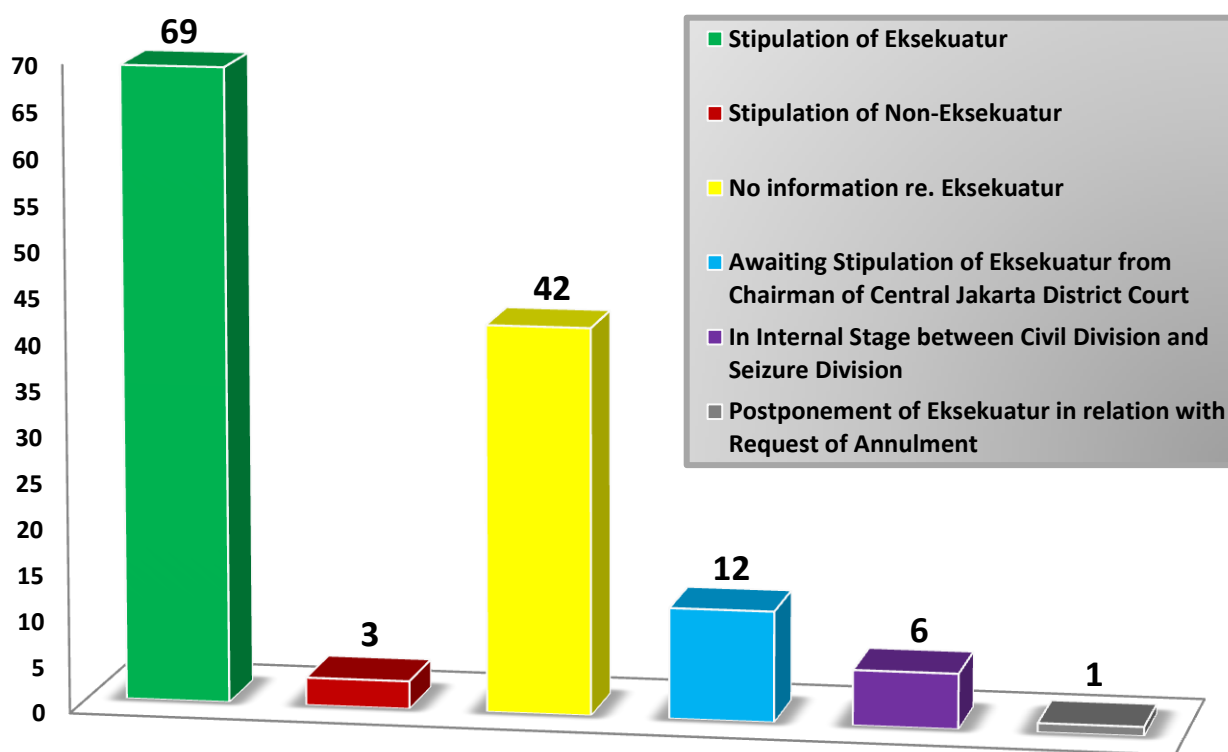
ICA: International Cotton Association

SIAC: Singapore International Arbitration Centre

29 Others:

- (1) Tokyo Maritime Arbitration Commission
- (8) Arbitration in London, UK
- (2) Arbitration in Amman, Jordan
- (1) Vilnius Court of Commercial Arbitration
- (1) Federation of Oils, Seeds and Fats Associations
- (1) Arbitration in Geneva, Swiss
- (2) Singapore Chamber of Maritime Arbitration
- (1) Judicial Arbitration and Mediation Services
- (2) American Arbitration Association
- (1) Arbitration in India
- (2) Arbitration in Singapore
- (1) Japan Commercial Arbitration Association
- (1) Permanent Court of Arbitration
- (1) CEDR-IDRS
- (4) 'No Details'

The Current Status of Foreign Arbitral Awards 2000 – September 2018:²



² The possibilities of “No information”:

- a. Amicable settlement between Parties in dispute. The award was registered without any request of *eksekuatur*.
- b. The winning parties did not intend to request for *eksekuatur* in Indonesia at the time being, thus the award was just registered in database of Central Jakarta District Court.
- c. Other possibilities.

Data was collected as per September 2018.

IV. Conclusion

1. Registration and *Eksekuatur* are necessary to make the foreign awards “enforceable”, and includes effectiveness of the Award that needs no further actions (of declaratory and constitutive nature) while *Fiat Eksekusi* relates to the actual enforcement process through court with respect to portions of the Award that require enforced actions if the (Indonesian) party does not voluntarily comply, which is basically limited to enforced sale of assets through public auction.
2. The *Fiat Eksekusi* must be applied to and/or will be executed by Central Jakarta District Court with special condition if the asset is located outside the jurisdiction of Central Jakarta District Court then there will be a delegation from Central Jakarta District Court to the competent District Court of the asset.
3. In relation to most awards, which have obtained an *Eksekuatur*, however no *Fiat Eksekusi* has been applied for, simply because the parties have settled out of court and/or the party against whom the award has been rendered voluntarily complied with the award in accordance its terms, and therefore there is no reason to apply for a writ of enforcement (*Fiat Eksekusi*).