



DOI: <https://doi.org/10.38035/jlph.v4i4>

Received: 30 May 2024, Revised: 12 June 2024, Publish: 19 June 2024

<https://creativecommons.org/licenses/by/4.0/>

Enforceability of Arbitration Awards and Jurisdictional Uncertainty: A Study of Kompetenz-Kompetenz and Party Autonomy in PCA Case No. 2015-40

Sharon Marilyn^{1*}, Gatot P. Soemartono²

¹Universitas Tarumanagara, Jakarta, Indonesia, sharonmarilyn02@gmail.com

²Universitas Tarumanagara, Jakarta, Indonesia, gatots@fh.untar.ac.id

*Corresponding Author: Gatot P. Soemartono

Abstract: Ideally, arbitration is an alternative dispute resolution that frequently applies in subjects of international commerce. In fact, it is the determination of an issue without resorting to the court. The very first issue of concern that needs to be established in adjudicating any matter of arbitration is jurisdiction. Without doing so, no question of a substantive issue of a case can be addressed. In this case, several issues regarding jurisdiction came into question in the PCA case No. 2015-40 involving IMFA and The Republic of Indonesia. Thus, while the jurisdictional objections filed by the respondent were unanswered, the tribunal advanced and addressed the merits of the case. It was after filing its reply; therefore, this paper shall research the effect of such jurisdictional ambiguities on the enforceability of an award. The method in this paper is qualitative, based on existing literature, the principles of party autonomy, and *kompetenz-kompetenz*. The contention is that although technically possible to retain jurisdiction, it is not advisable to overlook such jurisdictional objections simply because the outcome is ambiguous and one sets a bad precedent.

Keyword: Arbitration, Jurisdiction, Award Enforceability

INTRODUCTION

In the context of investment arbitration, the path turns to a large extent toward jurisdictional issues and the substantive issues of the claims. This is because bifurcation or systematic separating of the two most fundamental aspects is bound to ensure clarity and focus within the framework of the arbitration (Benedettelli, 2013). In the final analysis, both jurisdictional decisions and the analysis of substantive merits are crucial because cumulatively, they determine the path and the issue at the end of the arbitral process.

Jurisdiction in the most specific sense refers to the establishment of the ability of the arbitral tribunal to adjudicate the disputes offered by the parties (Mills, 2020). It should, in fact, be set at the very threshold of the proceedings to reassert the fact that the adjudicating power is indeed legally vested with the power to make a decision on the dispute. It is vital that the determination on the question of jurisdiction is indeed early and clear because, through this,

procedural error in the establishment of jurisdiction can pose major frictions of the enforcement of the arbitral award.

This paper reviews a case that was raised at the Permanent Court of Arbitration to discuss, among others, a dispute between Indian Metals & Ferro Alloys Limited and the Government of the Republic of Indonesia. Indeed, the bone of contention is whether the Claimant, the subsidiary, PT. Indo Rama Synthetics Tbk, is vested with a 70% equity share, entangled in a dispute involving conflicting licenses, issued mining permits as well as the transaction stood to be qualified as an 'indirect investment' under Indonesian law. In PCA Case No. 2015-40, the arbitration involves a dispute between Indian Metals & Ferro Alloys Limited (IMFA) and the Government of the Republic of Indonesia. At the heart of the conflict are mining permits that have been awarded to a subsidiary of IMFA, PT. Indo Rama Synthetics Tbk. The issue to be tried in this arbitration is the validity of these mining permits—specifically, whether these permits were granted in accordance with the national laws of Indonesia and the provisions of relevant international investment treaties. The legal scrutiny aims to ascertain that the issuance of these permits was not only in accordance with local laws but also in sync with international practices that govern foreign investments and environmental standards.

The validity of the conflicting mining permits is significant because the validity of these permits lies at the core of the subsidiary's business operations. The legitimacy of these permits directly affects the operational capability and, hence, the business realities and financials of the subsidiary. This is thus not simply a question of law in arbitration but a substantial business dispute that may have a bearing on the existence of the subsidiary in Indonesia.

One critical procedural issue arose, though, when faced with their questions about the validity of the mining permits: the structure of the arbitration process itself. While the substantive mining permit questions were in abeyance, the Government of Indonesia put several very preliminary questions to the tribunal concerning its jurisdiction over the matter. These jurisdictional objections were important for the claim they made—whether or not the tribunal was, in fact, the right place to bring the disputes under the respective legal frameworks being invoked. Although Indonesia's objections were quite numerous, they fall into four types: temporal, legality, indirect investment, and formal acceptance. Each of the points put on challenge the very basis of jurisdiction and pave the way for a critical evaluation of the hardcore issue of arbitral tribunal jurisdiction before getting into the principal dispute about the mining permits.

The strategic change, hence, is from the heart issue of the permits' validity to the crucial issue of jurisdiction. It substitutes the limited range of the arbitration to the issues at the heart of the matter that is, its operational legality and environmental compliance in the mining operations with a focus on the assessment of its own justification for holding jurisdiction. The request of Indonesia for the determination of a bifurcation, that is, to separate the issue of jurisdiction from the merits of the case, permitted the tribunal to have its focus on the question of whether the preliminary objections should be cleared up before bringing on the merits of what the impact of the mining permits might be on the underlying business interest.

This means that, by and large, the paper will deal with these jurisdictional objections rather than the substantive merits of the mining permits. Any arbitral award's validity and enforceability is largely anchored in the authority of the tribunal that is to be constituted in exact compliance with the principles of national and international jurisprudence. This apparent tolerance of the temporal challenge on the contested jurisdictional issue by the tribunal, together with its turning of a clearly blind eye to the rest of the raised concerns about jurisdiction, not only convinces the Emirate client of the enforceability of the award in the end but also sets up a dangerous precedent for addressing similar challenges in subsequent arbitrations. It is, therefore, upon its discussion of the jurisprudential controversy that this paper

may be able to pinpoint and accentuate the indispensable nature of such debates to the crystallization of the jurisprudential firmament upon which international arbitration is compelled to depend for its fairness and ethical strength.

Before moving the application for consideration of bifurcation, Indonesia raised four important questions on the question of jurisdiction:

1. Temporal objection: Argues that the alleged breach of the treaty is not covered because it occurred at a time when the claimant had not been accorded standing as an investor.
2. Illegality objection: There is an objection levied against the compliance of the investment with the laws of Indonesia and, hence, the applicability of the treaty to the facts.
3. Indirect investment objection: It is argued that the treaty does not apply to investments that are indirect in nature.
4. Formal acceptance objection: It is claimed that the investment had not obtained formal commercial acceptance as required by the treaty.

In fact, the tribunal agreed to rule only on the temporal jurisdictional objection but totally skipped the other principal jurisdictional objections. This pick-and-choose approach in the jurisdictional objections raises very serious question marks on the enforceability of the award and, in fact, is likely to affect the way in which awards in its facts will be treated in the future. Equally shocking is the tribunal's pick-and-choose approach to jurisdictional objections, and more significantly, the failure to rule comprehensively on the question of the timing of objection. Jurisdictional concerns are important because they define the legal framework within which and from which the tribunal operates. That failure to rule comprehensively on these issues can indeed undermine the legitimacy of the tribunal's findings and impact on both the fairness and the ethical bases of the award.

Added to that, the tribunal's holding that Indonesia had not violated the fair and equitable treatment requirements of the Bilateral Investment Treaty (BIT) heavily depends on the full and comprehensive ruling on all the jurisdictional objections. The difficulty of enforcing such an award in domestic courts is only magnified when the award is, in popular perception, seen to have been arrived at without a firm foundation of jurisdiction in the first place. Indeed, as a rule, in general, domestic courts mainly scrutinize the acts of tribunals for their adherence to fundamental principles of law, jurisdiction included. An award perceived to have a compromised jurisdictional basis may be considered as lacking an adequate legal pedestal and, therefore, unenforceable in legal regimes that adhere to the principles of procedural justice.

The focus of the paper is to address the impact of jurisdictional challenges accepted in international arbitration and, subsequently, the enforceability of arbitral awards. This scholarship aims at discussing elements of international arbitration law in relation to the doctrines of party autonomy and *kompetenz-kompetenz*, which allow for parties and tribunals to shape the conduct of arbitral proceedings with much flexibility. This work shall scan not only the limitations these doctrines have but also how unresolved issues of jurisdiction may affect recognition or enforcement of awards at the end.

This paper will, therefore, revisit the incomplete review of the arbitral jurisdiction and carry out an analysis of the research problems:

1. What is the role of the principle of *kompetenz-kompetenz* and party autonomy in the jurisdictional stage of this proceeding?
2. Is the awards inherently enforceable, despite the jurisdictional issues?

METHOD

This is qualitative research using the normative juridical legal research method. Qualitative research produces word descriptions. The main concern of qualitative research is the collection of words. The crucial factor of qualitative research is the extensive use of a broad range of naturalistic methods that make every day experiences visible under natural settings.

Normative juridical legal research is concerned with uncovering the internal dynamics of the existing laws for purposes of identifying and resolving potential existing issues.

Legal research can either use primary or secondary data. This article uses secondary data which comprises material that has previously been published in someone else's book, journal, magazine, or any other medium. Secondary data is popularly known as "second-hand information." All necessary information that the researcher and scholars need to obtain from such sources is useful in the course of their research, particularly in theory formulation or enhancement, or improvement of the existing knowledge base.

RESULTS AND DISCUSSION

Judicially, jurisdiction is a word of many meanings and signifies a complex idea. In general, it refers to the power of a court or tribunal to hear and determine issues. In the field of arbitration, it refers concretely to the competence of an arbitral tribunal in settling the dispute under consideration between the parties to a dispute (Schultz et al., 2020). The competence is not natural and is derived from an agreement between the parties in dispute (Khan, 2022). It has been noted that the determination of jurisdiction is a fundamental prerequisite at every level of a dispute settlement mechanism (Nweke-Eze, 2023), although the determination of its existence in an arbitration hearing should absolutely be made. Once an objection over the issue of jurisdiction is registered, jurisdiction issues are usually dealt with at the preliminary stages of a proceeding (Kamanga, 2021). Furthermore, jurisdiction is something that should be repeated in the final award of the tribunal given especially when there were any objections as to issues relating to jurisdiction during a proceeding (Blackaby et al., 2023). Such a repetition of jurisdiction shows the importance of jurisdiction in ensuring that the decisions of the tribunal are lawful and enforceable. The PCA Case No. 2015-40 had a different approach in deciding the jurisdiction. Earlier in the proceeding, The Republic of Indonesia as the respondent in this case raised four objections in the jurisdiction stage. Those objections are comprised of the temporal objection, legality objection, the indirect investment objection, and the no acceptance objection. Ideally, every one of the objections would be discussed and be given definitive answers (Chan, 2010). It was distinctive that the tribunal only addressed the first objection raised and did not discuss the three other problems. If an award is produced by a tribunal with no jurisdiction or with unresolved jurisdictional dispute, it can be challenged or dismissed, leading it to be not enforceable, so that the winning party would not be able to gain the benefits of winning the dispute (Bermann, 2017).

Paragraph 115 of the final award expressly affirms that the Arbitral Tribunal went ahead to deal with the substantive issues of the case without an express ruling on the jurisdictional objections raised. This gives rise to a divergence from general practice in arbitration. Under the UNCITRAL Model Law on International Commercial Arbitration (1985), it is the ordinary—and, in many situations, legally the most secure—procedural course to issue a distinct and separate award that addresses the jurisdictional objection when it is made so that the separate award thereof conclusively disposes of the grounds for the jurisdictional objection. It is a fundamental step in procedure, given that it has the effect of extinguishing potential future controversies regarding the jurisdiction of the tribunal, thus safeguarding the solidity and enforceability of the award. The manner in which the arbitral tribunal approached the issue in this case would be a divergence from conventional practices, and this necessitates a careful analysis of the implications of such a selective consideration of jurisdictional issues. The following is an attempt to make a deep analysis of whether, through this approach, the tribunal was following the established principles of party autonomy and *kompetenz-kompetenz*.

One of the fundamental principles of arbitration is party autonomy, which allows parties to agree on the terms and scope of arbitration, including whether the tribunal has the power to rule on its jurisdiction. *Kompetenz-kompetenz* is the principle that upholds a tribunal's right to

decide on its jurisdiction to rule over a particular case, free from interference from external courts. What the tribunal did in this particular case, however, gives rise to questions of great importance not only in interpreting but also in applying both principles on a flexible basis.

Given the fact that the decision on the jurisdiction of an arbitral tribunal is not severable from the overall resolution of a case, the tribunal has left room for future attacks on the legality of its jurisdiction and, consequently, on the enforceability of the award. This paper evaluates the potential risks and legal consequences of such an approach and, in particular, how it will affect the confidence of the parties and the international arbitration community in the reliability and authority of the arbitral tribunals. It will also go on to evaluate its wider implications in relation to the enforceability of arbitration awards under such circumstances.

The effect could be a factual change in arbitration practice, affecting the main traits of the so-called arbitration proceedings where tribunals show contempt against jurisdictional rulings in a separate way. The study should put this case into discussion on the desirability and legality of tribunal autonomy, seen against the background of the proper observance of procedural safeguards and their impact on future arbitration proceedings and the proper and due performance of arbitral awards around the world.

Party Autonomy

A legal theory known as the rule of party autonomy is predicated on the idea that the parties to a dispute are intelligent, aware, and able to make well-informed judgments. The origin of party autonomy dates back to the nineteenth century with the foundation that the parties are free to choose their own law (Liang, 2018). According to this theory, the parties should be allowed to choose the terms and conditions of their agreement, and the court should uphold it as long as its provisions are lawful and do not conflict with public policy (Chatterjee, 2003). The extended interpretation means that the choice of legislation and the manner in which the arbitration is conducted are both at the discretion of the parties to the arbitration agreement. This means that if the parties chose to shift their focus from the procedures on jurisdiction and instead highlight only the substantive issues, they would be allowed to do so.

For long, the truth is arbitration has always been the product of party autonomy (Mistelis, 2020). The principle of party autonomy has been implemented in numerous cases in international arbitration. The concept of arbitration, from what one can discern from the thoughts of Mistelis in 2020, has been based on the principle of party autonomy. At its most basic, the principle stands for the proposition that parties in dispute have the right, as an inherent aspect of making an arbitration agreement, to agree on such matters as the selection of arbitrators and procedural rules for the resolution of disputes. It is not a mere procedural formalism; it is indeed a commitment to the deeper notion that structures must place ultimate control over the way in which parties' disputes are dealt with in the parties themselves, a commitment to the arbitral method. Autonomy points towards the nature of arbitration as being pure arbitration.

The concept of arbitration, from what one can discern from the thoughts of Mistelis in 2020, has been based on the principle of party autonomy. At its most basic, the principle stands for the proposition that parties in dispute have the right, as an inherent aspect of making an arbitration agreement, to agree on such matters as the selection of arbitrators and procedural rules for the resolution of disputes. It is not a mere procedural formalism; it is indeed a commitment to the deeper notion that structures must place ultimate control over the way in which parties' disputes are dealt with in the parties themselves, a commitment to the arbitral method. Autonomy points towards the nature of arbitration as being pure arbitration.

Party autonomy through the effective application of international arbitration has been evidenced well through case law, playing a critical role in determining the face of the arbitration landscape (Mistellis, 2020). The principle does not work in enclaves, as it is enmeshed with

the legal frameworks and cultural context of the jurisdictions involved, therefore ensuring that arbitration will not be rendered a static institution that resists change. As party autonomy affords the parties the ability to outline the framework of their own dispute, it served the proposition that the outcomes of arbitration should be relevant and effective, therefore rendering it a method preferred in solving disputes in international contexts across the board.

One notable instance is the case of Bayer CropScience AG v. Dow AgroSciences LLC (2012) held in the International Chamber of Commerce. In the case of Bayer CropScience AG v. Dow AgroSciences LLC (2012), the decision revolves around the main issues of patent infringement and license agreements. It was held that the clauses within the terms of the licensing agreements were an expression of party autonomy. The courts will normally respect the positions and decisions arrived at by the parties in such a contract, so long as they are in accordance with public policy and the requirements set out in statute.

The case in point is that Bayer CropScience AG took Dow AgroSciences LLC to court and claimed that Dow had infringed on its patent with regard to genetically engineered plants resistant to some herbicides. The very gist of the dispute was whether Dow's activities were within the scope of the license agreements or whether they went beyond the intentions of the parties. What the court thereby essentially determined was a much wider principle for disputes—commercial and statutory—of the jurisdiction to decide matters: the right of parties to create tailor-made contracts, for example, according to licensing agreements, according to their special needs and objectives. This very right forms the cornerstone of autonomy in modern arbitration and contractual law and more so in areas as complex as intellectual property.

When parties are drafting a licensing agreement, they have considerable freedom to specify what rights and obligations pertain to the use of the patent and to the procedures to be followed for settling any disputes. This scope covers many features, such as the choice between arbitration and litigation, the choice of applicable law, the choice of forum for disputes, and even, if necessary, certain specific procedural rules that the parties may wish to follow. Such provisions would enable enterprises to exercise party autonomy directly in the management of risk, control of legal exposure, and even narrow or widen the resolution process according to their operational strategies and commercial realities. In this case, Bayer and Dow, being contracting parties, had the principle of being best placed to establish the scope of their licensing agreement—let alone whatever was included and what was not included in that agreement and thus breached it. The court was mainly there to reproduce the intentions of the parties as close as possible, based on the legal idea that parties are the best determiners of their intent in a contract and, while contracts are to be enforced, there must be some legal constraints such as those dictated by public policy and statute. This was in a manner to respect the autonomy and freedom that the parties have accorded to each other in defining their engagements. This is, therefore, a way of bringing predictability and safety to commercial activities, since judicial respect is placed on such decisions. This is later helpful in the business world, where freedom of contract is guaranteed, and assurance is given of judicial protection against breach of any agreed contract.

In the context of the specific case before us, the decision to waive any concerns as to jurisdiction demonstrates an exercise of profound party autonomy. The point was vividly illustrated by the respondent's compliance with the arbitral tribunal's indication that it would proceed without further dealing with that matter, and of course without protest. This acquiescence might be strategic—for example, the respondent may have underlined a general strategy of compliance, or a strategy oriented toward a speedy resolution of the dispute, in which a plea of want of jurisdiction is not strategically useful—or it may indeed illustrate the respondent's freedom of tailoring the arbitral process according to its strategic interests.

Such decisions are inherent in the principle of party autonomy in arbitration, which leaves parties ample room to determine the conduct of their arbitration, including whether or

not to challenge or accept the arbitral tribunal's jurisdictional decisions. By not objecting to the tribunal's approach, the respondent effectively consented to the tribunal's power and the course of action it suggested. It made a choice, which demonstrates that arbitration is not a static legal procedure. More so, the case shows the inherent flexibility of the arbitration procedure, and very often the difference between arbitration and traditional adjudication lies in the possibilities parties enjoy in setting the arbitration process.

The alternative that the respondent actively chose to go along with the tribunal on the issue of jurisdiction amounts to strategic acquiescence that, in the strategic situation at hand, might be the best tactic to maximize the chances of a collaborative or expeditious process. This part, however, also is not without risk since it potentially gives rise to a problem for the enforcement of the arbitral award, if jurisdictional objections are later held to be insufficiently rejected or waived. It is precisely in this fine network of strategy, legal rights, and procedural flexibility that the parties' autonomy finds expression in international arbitration.

The jurisdiction might remain in this case based on the mutual agreement of the parties considering the party autonomy, however, under the light of long-term implications, excusing the jurisdictional objection is inadvisable. This might not be the case in this proceeding, but an award could later be challenged in courts for lack of jurisdiction. Parties may unintentionally raise questions regarding the jurisdiction of the tribunal and the applicability of the arbitral ruling by waiving jurisdictional objections. This might raise concerns regarding the award's enforcement, particularly if it is later questioned in domestic or international courts. In addition to having an impact on the ongoing arbitration, the uncertainty may establish a precedent that may influence similar arbitrations in the future. The arbitration community can observe and adopt precedents set in notable cases, therefore it is important that the tribunal

Kompetenz-Kompetenz

Kompetenz-kompetenz is a very important theory in international arbitration. This principle gives the arbitral tribunal the authority to determine disputes or conflicts arising over its jurisdiction. In other terms, the tribunal has the authority to determine whether an arbitration agreement exists or is valid without seeking leave from the court. That is, the tribunal can claim its jurisdiction on a determination that has been conducted.

As much as the rule grants power to the tribunal, it also acquires the awkward effect of ignoring the objection of jurisdiction according to a case. The application of the concept of the meaning of this principle to national courts is, however, not yet generally accepted, since several other basic principles of arbitration have already been created. The independence of the decision-making powers of the arbitral tribunal and the review powers of national courts can, however, lead to various interpretations and applications of the *kompetenz-kompetenz* principle; in effect, complicating the process of arbitration. However, when an arbitral tribunal decides to exercise its jurisdiction over a dispute, it does so through the principle of *kompetenz-kompetenz*, whereby it reasserts its authority to interpret and apply relevant contract provisions that enable it to take jurisdiction. This has generally been received as a positive expression of the capability of the tribunal to proceed with the arbitration autonomously and effectively. However, it is in this approach that the flip side of the principle of *kompetenz-kompetenz* is manifested, especially when the court is held at dissonance with the opinion of national courts.

A deciding point arises in the context of a review or enforcement request of an arbitration award addressed to a national court. When a national court reviews the jurisdictional basis underpinning the decision of the tribunal and it determines such a basis as insufficient, then it will have to rule that the tribunal, in effect, did not have jurisdiction over the dispute. This has a number of consequences. One of the most direct effects, but also most pressing, is that the award, under this logic, becomes unenforceable in that jurisdiction, irrespective of the

tribunal's own appeal to authority and, what is more important, irrespective of the satisfaction of what the expectations of parties concerned by the substantive decision may have been.

This is where the basic conflict arises between the arbitration framework, conceived to be robust and self-sufficient, and the system of national courts sitting in an appellate function that, in turn, acts as a check on the scope and effect of arbitration agreements and awards. It is problematic when the confidence and authority granted to arbitration tribunals by international legal norms are in conflict with the sovereign prerogative of national legal systems to protect the legal rights of parties in their jurisdiction.

The conflict between the self-assessment of the tribunal related to its jurisdiction and the interpretation subsequently given by the national court can result in significant legal uncertainty. This doubt can detract from arbitration's being an effective means of dispute resolution that is both quick and final, instead leading to prolonged and drawn-out litigation, with corresponding legal costs. This leads to the basic question of arbitration: how far to respect arbitral tribunal autonomous decision-making and when should the in general meet basic legal standards and protection?

Dallah Real Estate and Tourism Holding Company vs The Ministry of Religious Affairs, Government of Pakistan (2010) is a prime, indicative case—one that adequately exemplifies the limits and challenges of the kompetenz-kompetenz principle. This, also known as the competence-competence principle, is the basis upon which rests any scheme of arbitration autonomy. The Dallah case, however, demonstrates the principle to be eminently fragile in circumstances in which an arbitration award moves into the jurisdictional ambits of a national court.

In the Dallah case, Dallah Real Estate had obtained an award against the Ministry of Religious Affairs of Pakistan, and it sought to enforce that award in the United Kingdom. Initially, the tribunal had found in favour of its own jurisdiction, but the UK Supreme Court conducted its own inquiry into the jurisdictional material and found to the contrary. The Supreme Court held that the tribunal had wrongly made a jurisdictional determination, mainly because the government entity had not been proved to have given explicit consent to the arbitration agreement on which the tribunal based its jurisdiction.

This negative finding regarding enforcement in the UK opens up several important features of international arbitration. The first, and most obvious, is that the findings of arbitrators on their own jurisdiction are capable of being reevaluated by national courts in the country in which enforcement is sought. A second instance that comes into play with national court reevaluation is that a different outcome can be found by that national court, as occurred in the Dallah case, so that the tribunal's jurisdictional assumption found itself overturned.

This is very far-reaching. It shows how weak the principle of kompetenz-kompetenz is in the face of national legal systems that might apply their own standards or interpretations of what is or is not consent or agreement to arbitrate. Notably, it is proved in this case how important it is to have clarity and an unambiguous agreement in arbitration clauses when governmental parties are concerned. The Dallah case goes so far as to say that by raising jurisdictional challenges, you can undermine or defeat the finality of such arbitration awards. There would be a lot of legal uncertainty and financial implications for the parties. It is a good example of why the parties in commercial arrangements should be very careful in drafting and in the negotiation of arbitration agreements to preclude ambiguous terms and disputes regarding the jurisdiction.

The Dallah case — the necessity of the careful analysis and knowledge of jurisdictions in which enforcement of arbitral awards may come to pass, and which depends not only upon the correct application of the Kompetenz-Kompetenz principle by arbitral tribunals, but also on the specific legal regimes and requirements within the jurisdictions under which enforcement is requested.

Such conclusions have a wider import than just the fate of the award in our particular case—it represents a warning of the dangers of risks of litigating before an arbitral tribunal that asserts its jurisdiction without concrete and unmistakable grounding. Between the arbitral process on one hand—the quasi-judicial process—and, on the other hand, the need for it to comply with the norms that determine its jurisdictional power, this illustrates the fine line that has to be walked. Such a balance is the key to keeping arbitration viable and attractive for a workable alternative to litigation.

Now, in the case at hand, the fact that enforceability without the intervention of the national courts was implementable is, of course, a good thing, but in a way, it dances on the edge of the sword where things could well become difficult for the future jurisprudence of arbitration. The example encourages also other tribunals, sometimes unconsciously, to take a bit slightly too light jurisdictional frameworks. In the longer term, such could be more frequent. Ultimately, this would begin undermining some of the basic legal certainties on which alternatives such as arbitration rest.

Firstly, if this trend of imperfect scrutiny of jurisdiction continues, effective enforcement of arbitration awards may increasingly be called into question. This will not only create delays for the purpose of dispute resolution but may also eventually lead to the annulment of awards, thereby defeating the very attributes of ease and speed that have made arbitration an attractive prospect for resolving international disputes. This makes it more than necessary that arbitral tribunals tread carefully, keeping a conscious balance within their jurisdictional boundaries, and try to ensure that, to the extent possible, their awards remain sound in law.

In this manner, the arbitration community is under high alert in the face of any such developments. This underscores the imperatively important insistence for a proactive method to be adopted in ensuring strict adherence to the law by the arbitrators and the arbitral tribunals in order to avoid the possible negative impact that may occur as a result of jurisdictional overreaching. This will thus be a proactive approach to maintain the credibility, reliability, and efficiency of arbitration, a method of choice for the settlement of disputes on the international platform.

Efficiency is often touted as one of the primary advantages of arbitration. When most people think of efficiency in arbitration, they are thinking of time and cost reduction. Efficiency in arbitration is more than time and cost, however; a more all-rounded view of efficiency in arbitration would consider time, cost, and the quality of the proceedings. The quality of the arbitration shall not be overlooked. There is a need for continuous steps to enhance effectiveness in arbitration. They could be taken on the initiative of the arbitral community or the different arbitral institutions. Of course, an appropriate legal framework must be observed, not only to ensure fairness during the arbitration process but also to guarantee its relative validity and enforcement in different legal jurisdictions. By observing set norms, the tribunal avoids putting itself at the risk of legal challenges when trying to enforce the award.

If challenged on jurisdiction grounds, it could be said that the effectiveness of arbitration was lowered by the tribunal itself. It is this possible scenario that emphasizes extreme gains in the determination of the jurisdiction to ensure that arbitration is a reliable and effective method of dispute settlement. The ability of arbitration to provide conclusive and enforceable resolution of disputes would be premised on the proper establishment of the jurisdiction. It follows, therefore, that the confirmation of the jurisdiction is essential to uphold the validity and effectiveness of the arbitration mechanism in dispute settlement. Corollary to this subtle analysis of party autonomy and kompetenz-kompetenz is legally entitled to determine the scope of its jurisdiction. Party autonomy gives the parties powers to design the arbitration to meet their needs expressly, thus offering a flexible framework that caters to the different features visible in the dispute. In fact, a self-contained character is how arbitration reinforces itself. At

the same time, kompetenz-kompetenz gives the tribunal the powers to decide over their jurisdiction.

However, the important question of jurisdiction is not something that can be taken lightly or seen as a side issue. Noteworthy an impunity of a future legal attack on arbitral awards, displayed by several precedents, shows that jurisdictional matters need to be dealt with seriously. When there is a jurisdictional objection, it should not be taken lightly but rather dealt with in a proper manner. In this way, whatever issue in the dispute is presented wholly, without any omission, such that the arbitral award can later not be successfully challenged based on such omissions. Therefore, the tribunal is under a duty that goes beyond that of dispute resolution. It has a final requirement to meet: it must provide legal certainty by paying close attention to the protection of all parties involved. This can only be dealt with through careful and well-informed utilization of the law in such manner that any decision, and especially one of jurisdiction, can be based on a solid legal foundation. By so doing, the tribunal enhances the reliability and enforceability of its final award.

For any correct and fair decision, the requirement is that the tribunal should literally abide by the procedural rules and norms at every stage of the arbitration. Such compliance not only affirms the legitimacy of the decisions that the tribunal has taken but also contributes toward maintaining procedural integrity of arbitration as a dispute resolution mechanism in itself. It is through such strict adherence to the observance of legal and procedural standards that arbitration may smoothly perform and be effective in its nature, ultimately fulfilling its purpose as a fair, expeditious, and efficient means of resolving disputes. The approach is of substance less than that of the leading doctrines of arbitration and goes a long way in consolidating international legal confidence in arbitration working and respected as a means of dispute settlement.

CONCLUSION

PCA Case No. 2015-40 demonstrates both the complexity and the importance of ensuring enforcement of arbitration awards in the face of jurisdictional insecurity. Such an exercise must, however, be balanced properly in dealing with jurisdictional objections, considering both party autonomy and the principles of kompetenz-kompetenz within the arbitration scheme. The right delimitation of jurisdiction proves to be critical not only for the validity of the arbitration proceedings but also for the enforceability of the resulting awards. The issues that arise from incomplete attention to jurisdictional objections in this case underline the risks connected with a superficial assumption of jurisdiction. Based on the research result, the answers to the research questions are:

1. Role of Kompetenz-Kompetenz and Party Autonomy Kompetenz-kompetenz, which vests arbitral tribunals with the power to determine their own jurisdictionality, assumes paramount importance in the regard of enforcing the acts of the tribunals within the contractual framework agreed upon by the parties themselves. Further, this, along with the so-called party autonomy principle that allows parties to an arbitration agreement, lays down the terms and limits by which such arbitration is to proceed. Reinforcing in itself is the principle that tribunals themselves must not be allowed to exceed the limits of jurisdictionality as accorded them by the parties. PCA Case No. 2015-40 proves that arbitral tribunals must exert its powers on questions of jurisdiction with care that all of its conclusions should be based on the arbitration agreement and the relevant legal elements.
2. Pertaining to the Enforcement of the Awards Despite Jurisdictional Issues, the above case, case PCA No. 2015-40, is an illustration of how the enforceability of arbitration awards can be massively interfered with in cases where jurisdictional objections are not well administered. For an award to be enforceable, the jurisdictional foundation of that award must be fundamentally sound. Any defect in that regard would not only threaten the

enforceability of the award in domestic courts but also jeopardize the efficiency of arbitration as a mode of resolving disputes. It is a good example of how even though the arbitral awards can be inherently enforceable, in practice this depends critically on the rigorosity in dealing with jurisdictional issues by the tribunal.

In sum, PCA Case No. 2015-40 summarizes lessons in clear perspective: the strictly observed legal procedures within the arbitral frame guarantee efficiency and reliability in the resolution of international disputes. A process of arbitration conducted with the maximally possible attention to the accuracy of jurisdiction can ensure that the arbitration awards that are issued are legitimate and thereby powerful implements in the world of international law.

REFERENCES

- Bayer, Ag, C., Bayer, C., Nv, Hagglund, R., Koch, R., ... Washington, D. (2016). *United States Court of Appeals for the Federal Circuit*. Retrieved from <https://cafc.uscourts.gov/opinions-orders/16-1530.opinion.2-27-2017.1.pdf>
- Benedettelli, M. V. (2013). To Bifurcate or Not To Bifurcate? That is the (Ambiguous) Question. *Arbitration International*, 29(3), 493–506. <https://doi.org/10.1093/arbitration/29.3.493>
- Blackaby, N., Constantine Partasides, Redfern, A., & Hunter, M. (2009). *Redfern and Hunter on International Arbitration*. Oxford University Press, USA.
- Budi Juliardi, S.H., M.Pd, Runtunuwu, B., Hendy, M., Andi Darmawansya TL., M.H, Arini, Raju, ... S.H, S. (2023). *METODE PENELITIAN HUKUM*. CV. Gita Lentera.
- Chatterjee, C. (2003). The Reality of The Party Autonomy Rule In International Arbitration. *Journal of International Arbitration*, 20(Issue 6), 539–560. <https://doi.org/10.54648/joia2003046>
- Gaillard, E. (2015). Sociology of international arbitration. *Arbitration International*, 31(1), 1–17. <https://doi.org/10.1093/arbint/aiv021>
- Garg, R. (2022, December 5). Jurisdiction of arbitration tribunal. Retrieved May 14, 2024, from Ipleaders website: <https://blog.ipleaders.in/jurisdiction-of-arbitration-tribunal/>
- Hanotiau, B. (2018, October 30). *Making Arbitration Fit for the Future*. Hong Kong Arbitration Week 2018.
- JUDGMENT Dallah Real Estate and Tourism Holding Company (Appellant) v The Ministry of Religious Affairs, Government of Pakistan (Respondent)*. (2010). Retrieved from <https://www.supremecourt.uk/cases/docs/uksc-2009-0165-judgment.pdf>
- Kabir, S. (2016). (PDF) Methods of Data Collection. Retrieved from ResearchGate website: https://www.researchgate.net/publication/325528948_Methods_of_Data_Collection
- Kamanga, P. N. S. (2021). "The Power of an Arbitral Tribunal to Determine Its Own Jurisdiction in International Commercial Arbitration." ("Separability in International Commercial Arbitration; Confluence ...") *Beijing Law Review*, 12(02), 379–391. <https://doi.org/10.4236/blr.2021.122021>
- Kirby, J. (2015). Efficiency in International Arbitration: Whose Duty Is It? *Journal of International Arbitration*, 32(Issue 6), 689–695. <https://doi.org/10.54648/joia2015032>
- Lenny, A. (2015, September). Search the Arbitration Law Database | ArbitrationLaw.com. Retrieved May 8, 2024, from arbitrationlaw.com website: <https://arbitrationlaw.com/library/kompetenz->
- Liang, J. (2018). *Party Autonomy in Contractual Choice of Law in China*. Cambridge University Press.
- Loukas Mistelis. (2020). Efficiency—What Else? *Oxford University Press EBooks*, 349–376. <https://doi.org/10.1093/law/9780198796190.003.0014>
- Mills, A. (2020). Arbitral Jurisdiction. *Oxford University Press EBooks*, 70–102. <https://doi.org/10.1093/law/9780198796190.003.0003>

- Moleong, L. J. (2012). *Metodologi penelitian kualitatif*. Bandung: Pt Remaja Rosdakarya.
- NICArb. (2022, February 23). Understanding the Kompetenz-Kompetenz Principle. Retrieved from NICArb website: <https://blog.nicarb.org/index.php/2022/02/23/understanding-the-kompetenz-kompetenz-principle/>
- Nweke-Eze, S. U. (2023, December 21). Jurisdiction: Main Elements. Retrieved May 14, 2024, from globalarbitrationreview.com website: <https://globalarbitrationreview.com/guide/the-guide-investment-treaty-protection-and-enforcement/second-edition/article/jurisdiction-main-elements>
- Schultz, T., Ortino, F., & Mitchenson, J. (2020). *The Oxford handbook of international arbitration*. Oxford ; New York, Ny: Oxford University Press.
- Stern, T., & Robinson, J. (2004). *WHEN AND HOW TO USE SECONDARY SOURCES AND PERSUASIVE AUTHORITY TO RESEARCH AND WRITE LEGAL DOCUMENTS* *. Retrieved from <https://www.law.georgetown.edu/wp-content/uploads/2018/02/secondarysources.pdf>
- United Nations Commission on International Trade Law. (1985). *UNCITRAL model law on international commercial arbitration*. United Nations.