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The Obligation to Decline National Jurisdiction for Arbitration: The SGHC 101 vs. HKLRD 866 Case

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ABSTRACT

This paper examines the implications of Article II of the 1958 New York Convention regarding the obligation of national courts to decline jurisdiction when a dispute is subject to a valid arbitration agreement. Using a comparative legal approach, the study analyzes two judicial decisions from different jurisdictions, namely The CYY v. CYZ Case (SGHC 101 of 2023) decided by the Singapore High Court and The Ever Judger v. Kroman Celik Case ([2015] 2 HKLRD 866) decided by the Hong Kong Court. This research highlights the interpretation and application of Article II of the New York Convention by national courts in dealing with arbitration disputes which has been brought before a domestic courts despite the existence of arbitration agreements. The results presented the national court's decision to limit its judicial intervention and refer the disputes back to arbitration, thus showing a pro-arbitration stance. Therefore, Article II (3) is a significant rule in guaranteeing the enforceability of arbitration agreements throughout national jurisdictions, although different judicial implementations will ultimately influence the practical application. The outcomes contributed to the discussion surrounding enforceability of arbitration agreements across cross-border dispute resolution in both national domestic courts and international arbitration.

Keywords: arbitration clause; article II (3) New York Convention; singapore high court; hong kong court; national jurisdiction.

I. INTRODUCTION

Introduction to Arbitration

The international interactions through business relations and cross-border transactions will ultimately attract dispute potentials between two or more parties from different countries and different legal jurisdictions. In these situations, international disputes are rarely solved by going through the traditional domestic courts due to the lack of knowledge between parties regarding each countries' legal system, the potential of bias and non-objectivity of conventional national courts, and the assumption that settlement through domestic courts will require a lengthy process.[1] Therefore, international arbitration emerged as an alternative dispute resolution mechanism to resolve cross-border dispute resolutions, especially in commercial matters.

Arbitration is a dispute resolution method which is practiced outside the conventional court system agreed by parties involved through the inclusion of an arbitration clause in directly within a contract or further separate agreements.[2] The practice in arbitration is defined as a form of a dispute resolution mechanism between two parties which are decided by a neutral third party, in this case the arbitral tribunal.[3] In international contracts, arbitration clauses are included to bind the parties when the

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[1] Joko Susilo, et al., "Keberlakuan Putusan Arbitrase Internasional di Indonesia: Kajian Hukum dan Praktik," *Jurnal Pendidikan Sejarah dan Riset Sosial Humaniora*, Vol. 5, no. 1, 2025, https://ejournal.penerbitjurnal.com/index.php/humaniora/article/view/1070.
[2] Pelia Elza, "Penyelesaian Sengketa Bisnis melalui Arbitrase Internasional Implikasi bagi Perusahaan Indonesia," *Jurnal Hukum Pustaka Bangsa*, Vol. 1, no. 1, 2025, https://ojs.pustakabangsaindonesia.com/index.php/jhpb/article/view/15.
[3] Vlahna, Kastriote, Drita Krasnıqı, Bletrona Krasnıqı, and Dafina Vlahna, "Arbitration and the Importance of the Arbitration Agreement", *European Journal of Educational and Social Sciences*, Vol. 5, no. 2, 2020, https://izlik.org/JA62TL56SY.

event of disputes occur, it will be settled through an internationally recognized arbitral institution. The arbitration procedure officially begins when the arbitration claim is accepted by the respondent.[4]

As an alternative dispute resolution mechanism, arbitration itself has its own attractiveness through its process which attracts business entities in solving its disputes, by providing the parties with the freedom to determine the arbitrators, the applicable law, the seat of arbitration, and the dispute resolution procedures in accordance with their agreement.[5] Arbitration is considered as the more efficient and effective method in dispute resolution due to its flexible, fast, and fair process especially in resolving business conflicts.[6] The advantages of the arbitration process lies in its procedural flexibility, the parties' freedom to choose arbitrators in their preferred field of expertise, a faster dispute resolution process, and its private nature which ensures ultimate confidentiality for parties involved.[7] Arbitration provides parties with the freedom for choices of law and the place of dispute resolution (seat of arbitration) whilst also guarantees the enforcement of arbitral awards through internationally recognized mechanisms.[8] International arbitral awards are also cannot be annulled or invalidated arbitrarily, particularly merely because they are enforced across different jurisdictions. Under the principle of lex arbitri in the New York Convention Article V, an international arbitral award may only be annulled or set aside by the courts of the country that constitutes the seat of arbitration.[9] Lex arbitri refers to the procedural law governing the arbitration process, which is determined based on the juridical seat chosen by the parties.[10] Consequently, courts outside the seat of arbitration do not possess the authority to invalidate or annul an international arbitral award that has already obtained final and binding effect.

The activities of international trade by business actors from different countries are always supported with an international business contract, many of which included an arbitration clause with the intention of choosing a reliable and efficient mechanism to resolve disputes. Accordingly, international arbitration are mainly chosen due to its confidentiality, neutrality, and flexibility as an independent tribunal, removing the influence of national courts and choosing to submit to an arbitral forum instead.

The New York Convention 1958 internationally recognized arbitration awards and decisions as final and binding, ultimately limiting the intervention of national domestic courts in assessing the mertis of a dispute. All national courts across jurisdictions are obliged to respect the parties' arbitration agreements and under certain conditions are required to refuse disputes back to arbitration. The principle of party autonomy also gave parties the freedom to select its own desired forums. When parties expressly came to an agreement to resolve their disputes through arbitration, such as under the rules of the Singapore International Arbitration Centre (SIAC), or the Hong Kong International Arbitration Centre (HKIAC), this agreement forms a binding commitment that must be respected by both the parties and national courts

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[4] *Ibid*.
[5] F. H. Winarta, *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional*, Sinar Grafika: Jakarta, 2011.
[6] Rini Eka Agustina, "Efektifitas Arbitrase sebagai Penyelesaian Perselisihan," *Ethics and Law Journal: Business and Notary (ELJBN)*, Vol. 2, no. 1, 2024, 263-272, https://journals.ldpb.org/index.php/eljbn/article/view/130/105.
[7] Trinarti Pasaribu, et al., "Kewenangan Arbitrase Dalam Penyelesaian Sengketa Bisnis di Indonesia," *Jurnal Cendikia ISNU-SU*, Vol. 1, no. 2, 2024, https://journal.isnu-sumut.org/index.php/jcisnu/article/view/247.
[8] Mutia Aulia Apriadi, et al., "Peranan *Alternative Dispute Resolution* (ADR) dalam Arbitrase Internasional terhadap Kepastian Hukum Penyelesaian Sengketa Bisnis," *Jurnal Kajian Hukum Dan Kebijakan Publik*, Vol. 3, no. 1, 2025, https://jurnal.kopusindo.com/index.php/jkhkp/article/view/1126/1002.
[9] S. A. Nugroho, *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumny*a, Prenadamedia Group: Jakarta, 2015, hal. 25.
[10] King William dan Moody Rizqy Syailendra, "Penyelesaian Sengketa Investasi Asing melalui Arbitrase Internasional," *Journal of Education Research*, Vol. 4, no. 4, 2023, https://www.jer.or.id/index.php/jer/article/view/652/349.

However, one of the main challenges in arbitration is when one of the parties attempted to avoid or bypass the arbitration clauses that were already made and thus legally binding. In some cases, disputes became even more complicated when one party submits the matters to a national court despites the prominent existence of a legally binding arbitration clause. This attempt are sometimes considered to gain advantages in case procedurals, such as challenging the validity of the binding arbitration clause and avoiding arbitral forums. The validity of the arbitration clauses will be challenged through claims and arguments such as breaches of contract or force majeure. This phenomenon raises legal questions regarding the extent to which national courts should uphold or decline their jurisdiction when faced with disputes subject with an arbitration agreement

National courts play a crucial role in determining whether a case should proceed before them or instead be dismissed or stayed in favor of arbitration. National domestic courts are not intended to replace the role and function of arbitrational courts, but rather to ensure the enforcement of arbitration agreements through a limited supervision mechanism. Accordingly, where an arbitration clause is deemed valid and could be applied towards the dispute in question, courts tend to decline jurisdiction or at least stay proceedings, which would allow the arbitral process to take its course. Therefore, this study will examine the judicial practices done by Singapore and Hong Kong courts in the attempt of enforcing arbitration agreements' negative effects. By analyzing recent case law where national courts in these jurisdictions have confronted and rejected breach of contract claims in favor of SIAC and HKIAC arbitration, this study highlights the thresholds and legal reasoning employed by the courts.

New York Convention 1958

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, internationally recognized as the New York Convention 1958, is a convention which governs over the recognition and enforcement of foreign arbitral awards, facilitating international commerce through establishing a simplified and consistent international regime for the cross-border enforcement of arbitral awards.[11] This specific convention was intended to circumvent the complicated methods and legal frameworks used to execute international arbitral awards across different national jurisdictions by giving an award the ability to gain judicial recognition in both the seat of arbitration and other countries where enforcement was sought and needed. The core principle of the convention was to impose upon Contracting States to recognize and enforce foreign arbitral awards equally as if they were domestic national judicial decisions.[12]

Article I (1) of the New York Convention 1958 could be applied to the recognition and enforcement of arbitral awards which arise from the differences between persons in the forms of physical differences or legal differences. Article II itself was drafted to secure the 'enforcement of the agreement to arbitrate' itself. Contracting states of the NYC are obligated to refer any dispute towards arbitration before any judicial and national courts to honor their commitment in attempting to arbitrate. An arbitration agreements must firstly fulfil the requirements under Article II(1) and (2) before any national courts could apply the Article II (3) of mandatory referral. The Convention strictly requires the arbitral clause or further arbitration agreement to be 'in writing,'. Article II (3) of the Convention mandates courts of contracting states, in respect to one of the parties who have made the arbitration agreement, to direct both parties to arbitration. The national courts under the parties' jurisdiction will not be allowed to hear the merits of the dispute, thus establishing a "negative effect" for an arbitration

[11] Jonathan Hill, "The Exercise of Judicial Discretion in Relation to Applications to Enforce Arbitral Awards under the New York Convention 1958," *Oxford Journal of Legal Studies*, Vol. 36, no. 2, 2016, https://doi.org/10.1093/ojls/gqv025,
[12] İpek Mertcan, "Interpretation of Article II (3) of the New York Convention", *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi*, Vol. 23, no. 3, 2017, https://izlik.org/JA82ZK53PK.

agreement. State parties are ultimately obligated to recognize and enforce foreign arbitral awards in accordance with national governing procedural rules in each respective state to ensure there is no discrimination in the enforcement of foreign arbitral awards.[13] While Article III obliged contracting states to acknowledge foreign arbitral awards as binding, thus mandated to enforce the awards in accordance with national legal frameworks. This article is the backbone for the establishment of international commercial arbitration.

Article II of the Convention mandated contracting states to prioritize the principle of party autonomy through recognizing written forms of arbitration agreements. Specifically, maintaining the effectiveness of the arbitration process against any efforts to avoid the arbitration itself and/or delay the proceedings by submitting the dispute before national courts. Ultimately, the implementation, enforcement, and accordance with the convention will fall within the willingness of the state parties to exercise their jurisdictional power through their national domestic courts.[14]

Article II (3) of the New York Convention becomes relevant in cases where one party has pursued legal action against the other party despite there existing a valid arbitration agreement between the parties.[15] Thus, giving domestic courts the option to either stay the proceedings, dismiss the claim due to lack of jurisdiction, or to ask the parties to arbitrate the dispute instead. This provision leaves no room for judicial discretion as the referral is mandatory, effectively obliging national courts to decline their jurisdiction and halt domestic litigation.[16]

However, the Convention still provides a list of exceptions to this mandatory referral. A national court may only maintain its jurisdiction under Article II (3), which is if they find the arbitration agreement to be 'null and void' and inoperative or incapable of being performed. The act of referring parties to arbitrate by national courts could only be carried out if there is a valid arbitration agreement that fell within the scope of the New York Convention. Consequently, unless it can be proven that the arbitration clause ultimately falls under these exceptions, the national could will be legally bound to refer the parties back to arbitration, as substantive merit claims such as breaches of contract does not rule out the agreed arbitral clause.

The enforceability of an arbitral award is the main concern in resolving international disputes, as awards are meaningless unless it could be enforced in the jurisdiction where a party's assets are located. Compared to domestic national courts, the international and widespread enforceability is one of the most sought-out advantages from the regime of the New York Convention due to its large number of ratifications.[17] Article II (3) emphasizes heavily on national courts of contracting states as an action that only courts can perform in recognizing the arbitral awards.[18]

This research aims to conduct a comparative analysis of the approaches adopted by national courts in several jurisdictions, namely Singapore and Hong Kong, in determining jurisdiction over disputes subject to arbitration clauses. Specifically, the research seeks to address the following questions:

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[13] Ferawati Natalita dan Wiwin Widianingsih, "Efektivitas Arbitrase dalam Penyelesaian Sengketa Bisnis dan Implementasi Pasal 11 Ayat (2) UU No. 30 Tahun 1999," *Public Sphere: Jurnal Sosial Politik, Pemerintahan dan Hukum*, Vol. 3, no. 3, 2024, https://jurnal.penerbitwidina.com/index.php/JPS/article/view/1546/1267.

[14] Julio César Betancourt, "State Liability for Breach of Article II.3 of the 1958 New York Convention," *Arbitration International*, Vol. 33, no. 2, 2017, https://doi.org/10.1093/arbint/aix004.

[15] *Ibid*.

[16] İpek Mertcan, *Op.cit*.

[17] David Isidore Tan, "'Enforcing' National Court Judgments as Arbitration Awards under the New York Convention," *Arbitration International*, Vol. 34, no. 3, 2018, https://academic.oup.com/arbitration/article-abstract/34/3/415/5107010.

[18] Gary B. Born, "The New York Convention: A Self-Executing Treaty," *Michigan Journal of International Law*, Vol. 40, no. 1, 2018, https://repository.law.umich.edu/mjil/vol40/iss1/4/.

1. How does the New York Convention 1958 mandate national courts to decline jurisdiction when a dispute is subject to a valid arbitration agreement?
2. How do national courts in different jurisdictions, Singapore and Hongkong, approach the implications of arbitration clauses to dismiss breach of contracts claims in favor of SIAC and HKIC Arbitration?

II. RESEARCH METHOD

This research is conducted through the normative legal research method, as an approach which focuses on analyzing issues through the lens of positive laws, whether national and/or international regulations.[19] National regulations and international statutes are researched from its hierarchy vertically and its harmonious relativeness in different jurisdictions.[20] The method is applied through a normative juridical approach which refers to both national and international applicable laws and regulations as its main source of material.[21]

The normative method relies primarily on secondary data which are obtained through literature reviews, such as journals, publications, and reports.[22] Secondary data are further categorized in three sources based on their binding force and applicability. The first one is primary legal sources in the form of written rules enforced by the state and/or international obligations, such as national law, national and international court decisions, and international treaties. Secondary legal materials are obtained from academics and scholars through legislative drafts, academic publications, published journals, and scholarly research findings. The final source are tertiary legal materials which complement the main and secondary sources, such as bibliographies.[23]

The data are used to analyze the cases and its legal implications through a lens of legal literature research.[24] The ultimate purpose of using the normative legal research method is to undertake a comparative study of the cases and assess the legal implications of arbitration clauses in limiting a national court's jurisdiction within the framework of existing international law.

This comparative study examines two national court decisions that share similar legal issues regarding the judicial decisions towards cases which incorporate arbitration clauses. Specifically, the analysis will be focused on how national courts interpret and respond to submitted cases involving international arbitration agreements:

1. The High Court of the Republic of Singapore Case Number 101 of 2023: The CYY vs. CYZ Case
2. The High Court of the Hongkong Special Administrative Region Court of First Instance Construction and Arbitration Proceedings Case Number 6 of 2015, 2 HKLRD 866: The Ever Judger Holding Company Limited vs. Kroman Celik Sanayii Anonim Sirketi.

[19] Kornelius Benuf dan Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan*, Vol. 7, no. 1, 2020, 20-33, https://www.neliti.com/publications/394459/metodologi-penelitian-hukum-sebagai-instrumen-mengurai-permasalahan-hukum-kontem.
[20] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Jakarta: Kencana, 2008, p. 23.
[21] Bambang Sunggono, *Metodologi Penelitian Hukum*, Jakarta: PT Raja, 2003, p. 32.
[22] Johanes Supranto, *Metode Penelitian Hukum dan Statistik*, Rineka Cipta: Jakarta, 2003, p. 13.
[23] I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Prenada Media: Jakarta, 2016, p. 142.
[24] Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, PT Raja Grafindo Persada: Jakarta, 2001, p. 13.

III. DISCUSSION AND RESULTS

3.1 The CYY vs. CYZ Case: SGHC 101 of 2023.

Parties

In The CYY v. CYZ Case, the parties are two commercial entities with a legally binding vessel charter contract for salvage operations.[25] CYY (the charterer of the barge) acted as the charterer, while CYZ (a marine salvage company and owner of a crane barge) was the shipowner. The legal relationship between the parties was governed by a charter agreement adopting a standard maritime industry form, namely the BIMCO Supplytime 2017. The contact included a broad arbitration clause, which stipulated any future disputes in correlation with the contract must be resolved through the arbitration.

Case Summary

In the course of its contract performance, a dispute arose concerning the obligation to pay certain costs claimed by the shipowner (CYZ), particularly in relation to the application of cost-related clauses in the contract. The dispute was evidently brought in front of the arbitral forum as agreed within the arbitration clause in the contract. In the course of the proceedings, the arbitral tribunal issued a preliminary award on jurisdiction on 31 August 2022, essentially finding that it had the authority to hear the dispute. Dissatisfied with the tribunal's decision, CYY then filed a national dispute application before the Singapore High Court to in an effort to challenge the jurisdiction of the arbitral tribunal.

Legal Facts

a. The parties' legal relationship was bound by a legally valid vessel charter agreement contract with explicit arbitration clauses, even though the clause broadly covered any disputes "arising out of or in connection with" the contract.
b. The dispute concerned a claim for payment of certain costs by CYZ, based on its interpretation of specific provisions of the contract (particularly those relating to additional costs).
c. CYY argued that the claims are not related with the scope of the contract. Therefore, does not subject under the arbitration clause. Conversely, CYZ maintained that the dispute bore a sufficient connection to the contract and thus fell within the scope of the arbitration clause.

Procedural History

a. CYZ, as the claimant, brought its claim before the arbitral forum as written in the arbitration clause. As a response, CYY argued a jurisdictional objection, stating that the arbitral tribunal ultimately does not have any jurisdiction over the matter due to the claims falling outside of the merits of the disputed contract.
b. The arbitral tribunal subsequently considered the objection and issued a preliminary award rejecting CYY's challenge. The tribunal declared that case does fell within the scope of the arbitration clause as the dispute does correlates with the contract. Accordingly, the tribunal affirmed its jurisdiction to proceed with the case.
c. Dissatisfied with the tribunal's decision, CYY filed an application before the Singapore High Court pursuant to the International Arbitration Act, particularly the provisions allowing judicial review of the tribunal's jurisdiction. In its application, CYY essentially claimed that

[25] The SGHC 101 of 2023, Singapore High Court, https://www.elitigation.sg/gd/s/2023_SGHC_101.

the arbitral tribunal lacked jurisdiction, due to CYZ's claim which did not fall within the scope of the contract.

Decision by The Singapore High Court

The Singapore High Court dismissed CYY's application and upheld the arbitral tribunal's decision. The Court emphasized the important distinction between issues of jurisdiction and issues of admissibility. According to the Court, CYY's objection was not about whether the arbitral tribunal had any authority to hear the occurring dispute, but rather about whether CYZ's claims had any sufficient reasonings under the contract. Whether a claim falls within the scope of a substantive contractual clause is a matter of claim admissibility, instead of the tribunal's jurisdiction.

The Singapore High Court's decision thus reinforces the concept of jurisdiction by expressly recognizing that CYY's objection did not pertain to the tribunal's authority to hear the dispute, but instead concerned the admissibility of the claim under the contract. The Court further asserted the importance of upholding the parties' agreement in the legally binding contract as reflected in the arbitration clause.

3.2 The Ever Judger vs. Kroman Celik Case: 2 HKLRD 866 of 2015

Parties

This case arose between Ever Judger Holding Company Limited as the claimant and Kroman Celik Sanayii Anonim Sirketi as the defendant.[26] The claimant is a shipping company incorporated in the British Virgin Islands and the owner of the vessel MV Ever Judger. Meanwhile, the defendant is a steel manufacturing company based in Turkey. The defendant had double legal standing as both the buyer and the consignee of the steel cargo in dispute. The claimant is the one providing maritime carriage services for the defendant, whereas the defendant's interests are the condition and quality of the transported goods.

Case Summary

The dispute originated from a transaction involving the sale and purchase of steel wire rods around September 2014, in which the defendant purchased approximately 30,500 metric tons of steel from a supplier in China. The transaction was conducted through a trading intermediary and utilized a letter of credit mechanism, which required the issuance of a clean bill of lading as proof that the goods had been loaded in good condition.

For the purpose of carriage, the goods were loaded onto the vessel MV Ever Judger at the port of Zhangjiagang, China. The shipment was operated with charterparty agreements incorporated into the bills of lading. The bill of lading expressly contained a written arbitration clause, as any dispute arising must be resolved through arbitration specifically arbitral tribunal in Hong Kong and ruled under English Law.

When the vessel arrived at the Turkey discharge port in November 2014, the defendant discovered some sustained damages in the cargo which includes rust, deformation, and physical conditions that did not meet the expected standards. The defendant alleged that the damages in the cargo were due to negligence in the loading and stowage process. In response, the defendant initiated legal proceedings in Turkey by applying for the arrest of the vessel and filing a claim for

[26] 2 HKLRD 866 of 2015, Hong Kong High Court, https://vlex.hk/vid/ever-judger-holding-co-862527114.

damages against the claimant, amounting to approximately USD 3.9 million. The vessel was subsequently released upon the provision of security by the claimant.

Legal Facts

a. The bill of lading, which forms the basis of the legal relationship between the parties, included terms and conditions of the charterparty alongside an arbitration clause. Accordingly, the parties were legally bound by the clause to resolve their dispute through arbitration in Hong Kong.
b. Two parallel legal proceedings were initiated at the same time, the first one being court litigation in Turkey brought by the defendant and the second one being an arbitral proceeding in Hong Kong commenced by the claimant. This jurisdictional conflict proceeded to become the main issue of the dispute.
c. The core issue in this case is whether the defendant's act of commencing proceedings before the Turkish courts constitutes a breach of the agreed arbitration clauses.

Procedural History

a. In Turkey, the defendant initiated proceedings by applying for the arrest of the vessel as security for its damages claim. This was followed by the commencement of a substantive lawsuit against the claimant before the Turkish courts concerning the alleged cargo damage.
b. On the other hand, the claimant took legal action in Hong Kong by commencing arbitration in accordance with the clause contained in the bill of lading. Additionally, the claimant applied an anti-suit injunction towards the Hong Kong court in an effort to restrain the defendant from proceeding with their litigation process in Turkey.
c. The application was initially made on an *ex parte* basis and was subsequently heard on an inter partes basis to determine whether the injunction should be maintained.
d. During the proceedings in Hong Kong, the defendant argued several defenses in opposition to the grant of the anti-suit injunction. These included arguments that the claimant had not acted in good faith, that there had been undue delay in seeking the injunction, and that there were related legal proceedings involving connected parties in Turkey. However, all of the arguments were ultimately rejected by the court.

Decisions by the Hong Kong High Cort

The Hong Kong High Court ultimately ruled in the favor of the claimant and accepted the anti-suit injunction request for the defendant. The court determined that the arbitration clause agreed by both parties are legally binding, thus constituted a contractual obligation that must be honored. Therefore, when the defendant went ahead and filed a litigation lawsuit in the Turkish court, the act is considered as a breach of the binding arbitration agreement.

The court also affirmed that in such situations, an anti-suit injunction will generally be granted unless there are legal reasons to deny it. The burden of proving the legal reasons rests with the party in breach of the arbitration clause, namely the defendant. The Hong Kong High Court concluded that the defendant failed to give strong reasons to justify their actions of deviating and not carrying out the agreed arbitration clause. Thus, there was no basis for the court to allow the litigation proceedings in Turkey to continue. The court explicitly decided that the dispute between must be resolved through arbitration in Hong Kong in accordance with their legally binding contract. Consequently, the defendant was ordered to halt the ongoing legal proceedings in Turkey.

This case displayed Hong Kong court's pro-arbitration stance through the use of anti-suit injunction to maintain the effectiveness of arbitration clauses, actively encouraging arbitration

process through following the rules of the New York Convention. Although this instrument could theoretically create tension between jurisdictions, in the context of this case, its use reflects an effort to prevent duplicative proceedings and inconsistent rulings.

3.3 Discussions

The New York Convention's Mandate on National Courts to Refuse Jurisdiction

The New York Convention ultimately has the highest authority over its state parties' national courts, prohibiting them from adjudicating disputes despite the existence of a valid arbitration clause. Article II was integrated to establish a uniform global obligation to recognize written arbitration agreements. In the case where one party initiated a litigation process through claiming a contract has been breached or otherwise invalid, national courts have the obligation to treat the arbitration clause as an independent contract. The arbitral tribunal have its own competence to rule over its jurisdiction and any objections on the validity or existence of the main contract in question. Consequently, a mere allegation of contract performance failure does not dissolve the arbitration clause, instead, it triggers the court's duty under Article II (3) to decline jurisdiction and refer the interpretation of that contract to the arbitrators.

An international arbitral tribunal will establish their jurisdiction to hear and determine a dispute through a valid arbitration agreement presented by the parties. Every international arbitral tribunal must first establish its jurisdiction over the dispute before being able to rule on its merits. However, an international tribunal has the right to refuse exercising a jurisdiction even if it is assumed that they do have jurisdiction over an international dispute.[27] The jurisdiction of an arbitral tribunal solely depends on the existing arbitration agreement between parties, whether the substance of the merits fell under the scope of the agreement, and whether the subject matter could be settled through arbitration.[28] A state parties' compliance towards the New York Convention could often be analyzed by the fulfillment of jurisdiction obligations by their national domestic courts towards arbitration awards.[29] The challenge towards national court jurisdiction which are being questioned at the pre-award stage, as reflected on both cases, were being rejected of jurisdiction due to an arbitration agreement. In serving the purpose of the New York Convention, national courts are able to enforce the provisions of Article II (3) directly without elaborating on the merits for the sole purpose of abiding by the convention through referring parties to arbitration.[30]

The National Court Approaches to Dismiss Disputes in Favor of Arbitration

The implementation of the Article II (3) of the New York Convention dictates that courts shall refer the parties to arbitration, which are ultimately interpreted and enforced by the national courts of party states. The judicial practices of Hong Kong and Singapore provides cases where national courts enforce to refer the parties back to arbitration. When faced with contract dispute

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[27] Saar A Pauker, "Admissibility of claims in investment treaty arbitration," *Arbitration International*, Vol. 34, no. 1, 2018, https://doi.org/10.1093/arbint/aiy009.

[28] Tolu O Obamuroh, "Jurisdiction and admissibility: a case study," *Arbitration International*, Vol. 36, no. 3, 2020, https://doi.org/10.1093/arbint/aiaa023.

[29] Penades Manuel and Tent Alonso Pedro, "Enforcement of Arbitration Agreements by National Courts: What Level of Review?" (June 25, 2018). *In Fach Gómez K, López Rodríguez AM (eds) 60 Years of the New York Convention: Key Issues and Future Challenges, Wolters Kluwer,* 2019, 3-17, King's College London Law School Research Paper No. 2018-19, https://ssrn.com/abstract=3202520.

[30] Gary B. Born, *Op.cit*.

claims, the courts in these jurisdictions do not merely decline jurisdiction, they actively employ sophisticated legal instruments to refer to the arbitral process.

In the context of Hong Kong, the enforcement of Article II (3) often requires the court to decide beyond its own usual practices in an effort to stop a party from breaching the arbitration clause. This is exemplified in the landmark case of Ever Judger v Kroman Celik, where a party attempted to bypass a valid Hong Kong arbitration clause by initiating parallel litigation in the civil courts of Turkey, asserting that allegations of fraud nullified the arbitration agreement under the exceptions of Article II (3). The High Court of Hong Kong strictly decided to enforce the negative effect of the agreement by issuing an Anti-Suit Injunction.

The courts' implementation of referring the parties to arbitration followed the strict rule where unless there are significant "strong reasons" and/or definitive proof that the arbitration clause presented was null and void, allegations and claims made by the parties relating to the performance surrounding the merits of the main contract itself cannot be used as an excuse to bypass the arbitration agreement. By ordering the party to halt the Turkish litigation, the Hong Kong judiciary demonstrated that the mandate of Article II (3) requires national courts to act as active guardians of party autonomy, even when the breach occurs in a foreign jurisdiction. Similarly, In CYY v CYZ, the plaintiff attempted to refer the parties to their own arbitration clause, a SIAC arbitration clause by applying to the Singapore High Court for a declaration that the tribunal lacked jurisdiction, arguing that the specific breach of contract claims fell outside the narrow scope of the contractual clause. The Singapore High Court decisively rejected this attempt by applying the Jurisdiction versus Admissibility.

The court ruled that a dispute over whether a claim is covered by a specific clause is a question of admissibility (the merits and scope of the claim), not a question of jurisdiction (the validity of the arbitration agreement itself). Referring back to Article II (3), such questions must be left to the arbitrators. By refusing to entertain this disguised challenge, the Singapore court prevented the weaponization of domestic judicial reviews, ensuring that the court's doors remain firmly shut against contract claims that belong to SIAC. Singapore has established the SIAC Investment Arbitration Rules 2017 as a breakthrough in judicial, regulatory, and institutional arbitration especially in resolving commercial dispute resolution mechanisms.[31]

The section 6 of the Singapore International Arbitration Act rules over contracts which incorporate arbitration clauses as the main dispute resolution, where one party could request for a stay of national courts legal proceedings requested by the other party considered a breach of the clause. Furthermore, the respondent party could request a stay for national court proceedings that were already commenced within the respective national court.[32] The Singapore Legislative Model always upheld the grounding norms of arbitration, such as protecting the parties from risks of bias from the arbitrator, ensuring the details provided by one party will be disclosed to the other party, and everyone has the right to be heard.[33]

IV. CONCLUSION

Reflecting from both cases, national courts have consistently recognized the enforcement of arbitration agreements. As a written hard law in the form of an international convention, The New York

[31] Man Yip, "Combinations of mediation and arbitration: The Singapore Combinations of mediation and arbitration: The Singapore perspective," *Multi-Tier Approaches to the Resolution of International Disputes: A Global and Comparative Study*, 2021, 182-202, https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=5869&context=sol_research.
[32] *Ibid.*
[33] *Ibid.*

Convention ultimately relies on the judicial willingness of the member states to enforce the awards in their own respective national jurisdiction. The global practice of international arbitration always relies on the willingness to respect and enforce the negative effects of arbitration agreements itself. As established under Article II (3) of the New York Convention 1958, the judicial referral of parties to arbitration is a mandatory obligation that strips domestic judiciaries of their adjudicatory competence over the merits of a dispute. However, because the Convention does not dictate the precise procedural mechanisms for this referral, the responsibility falls upon national courts.

The comparative analysis of judicial approaches in Hong Kong and Singapore showed how national jurisdiction could show a pro-arbitration stance through their own national judicial practices. The national courts' refusal to hear and rule over a case is never a sign of judicial weakness, but rather a decision of judicial maturity and respect towards the New York Convention as a contracting state. By firmly closing their doors to breach of contract claims that belong in arbitration, the courts of Hong Kong and Singapore provide international businesses with the predictability and legal certainty required for global commerce. The legal reasoning from the cases can be seen as an international jurisprudence or blue print where national courts act as an enforce agent for valid arbitration agreements, protecting the validity of legally binding international contracts.

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