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**THE TRIBALISM IMPEDIMENT ON THE ENFORCEMENT OF
INTERNATIONAL ARBITRAL AWARDS IN YEMEN**

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Abstract

Tribal influence on the ability of the courts to enforce international arbitral awards (IAA) in Yemen is primarily considered in this research. Especially, Yemen is categorized as one of the worst countries suffering from tribalism worldwide. The study employed a doctrinal approach and socio-legal research method by applying data collected through library while the doctrinal legal research applies legal case studies. Additionally, the study collects data through face to face semi-structured interviews with experts. The data were analysed by using critical analysis. It was found that tribalism is a big obstacle to the enforcement of IIA in Yemen because tribal leaders interfere in the judicial process to protect people from their own tribes. This study helps to legislate stricter laws to combat the tribal interference in the affairs of the judiciary and coerce the tribes to comply with court orders. Also, it contributes to the knowledge of the extent of the tribalism influence on enforcement of IAA as the researcher has not found previous studies focusing on the impact of tribalism.

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Keywords: Arbitration, arbitral award, legal impediment.



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1. Introduction

Historically, Yemen is a country with a strong tribal culture and a power structure that enables the tribes to interfere with political and economic affairs (Hamzawy, 2009). Such interference in the political and economic policy of the country cost the state a huge amount of paying for the tribes' interest. Tribes in Yemen are historically rooted, and to the present, it has a significant impact on social, economic and political life. It should be noted that the tribal structure is very strong in the northern part of Yemen, while in the south of Yemen, it is weaker. The weakness in the south is because the region was an independent country till 1990. It was called the People's Democratic Republic of Yemen. It followed a communist system which was totally against tribal intervention with state affairs (Gaston & Al-Dawsari, 2014). Hence, it could find the presence of tribal is more spread in a north of Yemen, at the same time the enforcement of the law is quite acceptable in the south even though it is still weak to some extent.

Tribalism has a strong impact on the political affairs, traditional life and the society as a whole. As a consequence of tribal existence, there have been a spread of the tribal culture in the society (Peterson, 2008). According to Agrawal (1995), tribal culture could develop through values, ideas, knowledge, and beliefs. The nature of collectivism is the existence of a huge number of families which have a strong loyalty to protect each other as one group (Hofstede & Hofstede, 1991). The tribal culture puts more emphasis on the interest of the tribes as well as the tribal members (Madabesh, 2010). The tribes do not bother about other things except their interest. As a result of this attitude, the politics and the economy of Yemen worsen. The tribes in Arab society are still in existence and impact on the public culture, behaviour, kinship and attitude (Baabbad & Abidin, 2015). Consequently, it is difficult to ignore the adverse effect of tribes on social political and economic issues.

The tribes that are considered powerful in Yemen have confederation especially, the tribes that live in the same geographical place (Peterson, 2008). They come together as one group to assist their own tribal members. For example, the tribal confederation of Hashid is considered a political tribe because of its influence on state policy. The former president, Ali Abdullah Saleh's tribe is a part of Hashid confederation and Bakil which is considered as the biggest confederation tribe (Economist Intelligence Unit, 2015). The two tribes are located in the north of Yemen, especially around the capital Sana'a. The population of these two tribes is estimated at about five thousand people (Peterson, 2008). Both tribes descended from the tribe of Hamdan and also there are several branches of these two tribes. The government knows the tribes' power so that they work together to protect the country's borders and secure other places inside the state's sovereignty (Lynch, 2011). The Hashid and Bakil are the most crucial tribes that the state often relies on to achieve its objectives. Hence, former president Ali Abdullah Saleh ensured the satisfaction of the tribal sheikhs by supporting them through numerous facilities and sharing power with the tribal leaders (al-Ahsab, 2016). This is why the politicians get prior consent from sheikhs in making decisions.

2. Problem Statement

The Yemeni society is considered as a tribal society compared to other Arab countries because of the large existence of tribes in the rural areas. According to Tribalism Index Scores, 2009, Republic of Yemen is ranked as number 7 out of 160 countries in the world (Jacobson & Deckard, 2012). The tribes

assist the state in maintaining internal security in the tribal regions as well as to protect the state borders from outside interference (Hamzawy, 2009). Such interrelationship exists between the state and the tribes since the ruling of Imam (Leader) in 1904 (Gaston & al-Dawsari, 2014). This interrelationship between the state and the tribes is currently continuing as some tribes fight the Huthi movement that is rebelling against the state (al-Zwaini, 2006). Till now the tribes are important to the state's stability (Egel, 2011). The studies have shown that sons of tribal leaders who are educated hold 13% of government positions (Mashhur, et. al., 2005). Tribes possess deadly weapons and use them to protect their own members, cooperate with the state to secure some places, provide some social services, and negotiate with the government to limit the government's control in the tribal region (Hamzawy, 2009). Indeed, there is an agreement between the government and the allied tribes which stipulates the tribes' contribution to maintaining security in some regions (Miller, 2003).

The tribes do not have the ability to contribute in building the institutions as they usually break the law (al-Ahsab, 2016). This is admitted by the Deputy Minister of Communication when he announced that the northern areas are less developed as they are under the control of the tribes. The tribes have more influence over the society than government institutions even though the influence is unofficial. Therefore, the government has no sovereignty over all land in order to extend its authority and ensuring the application of the law (Manea, 1996). Furthermore, the government has faced difficulties in implementing its policies because it faced tribal resistance where such policies are against the tribes' interest (Peterson, 2008). Especially, the tribes that are located in the north of Yemen. According to Alatas (1968), the tradition is one of the factors that lead to corruption and nepotism. It requires the tribe or the family to protect each other so that the traditional responsibility to the family members is an impediment towards fighting corruption. Also, based on Hofstede' theory, under tribalism, there is the cultural dimension of collectivism. The cultural dimension exists where there is a huge number of families with strong loyalty to protect each other as one group (Hofstede & Hofstede, 1991).

Also, kidnapping foreigners are increasingly widespread since 2000 (Hamzawy, 2009). For example, the German who was a diplomatic man and his family kidnapped for several days in December 2005 as well as tourists who hold Italian nationality were kidnapped in Mareb governorate by a tribe in order to force the government to implement tribal interest. They usually look for their interest even to break the law so they often abuse the rights of others (Lynch, 2011). The reason behind such abuse is that the tribes have a more deadly weapon than the state (Veen, 2014). Hence, the sheikhs fight the government soldiers with their own bodyguards to prevent the implementation of some government orders that conflict with tribal interest (al-Zwaini, 2006). Similarly, the judges could not perform their functions because of the threat of sheikhs against the judges (Gaston & Al-Dawsari, 2014). They pressure them to abstain to give a judgement in some case or transfer it to tribal law or give a judgement in favour of the sheikhs. Thus, if the tribes have the capacity to fight with government soldiers and break the law that means the court could not enforce IAA against tribal debtor parties and cannot even seek the help of the police to take coercive actions.

3. Research Questions

To what extent do the Yemeni's tribes interfere in the enforcement of international arbitral awards in Yemen?

4. Purpose of the Study

This paper seeks to study the effects of the interference of the tribes on the enforcement of the international arbitral awards in Yemen.

5. Research Methods

Sources of data are primary and secondary data. This paper adopts a qualitative research method by conducting interviews with three Court of Appeal judges who have jurisdiction to deal with the enforcement of international arbitral awards, two academicians, and one arbitrator. They are six male interviewees between the ages of 40 to 70. The researcher also studied related cases of tribal influence. The interviewees are from big commercial cities which include Sana'a, Aden, and Hadhramout as these are the biggest cities in Yemen where there are many investment projects. Also, such cities chose as no Courts of Appeal in the tribal areas. The data collected is through face to face semi-structured interview. In addition, whereas the researcher also adopted a doctrinal to conduct this research as it is generally relying on a library-based study, which means that the research depended on the materials and information that are available at the library, such as books, journals, and articles. The researcher analyzed data collected from the interview questions using content analysis as the participants are limited in numbers.

6. Findings

The tribes are a major constituent of the Yemeni society. Republic of Yemen is ranked number 7 out of 160 countries in the world in terms of tribalism. The Tribalism Index Scores, 2009 classification of highly tribal countries is based on failed states, weak centre, instability, poverty, violence, and other problems. The tribes have influence over the society and dominate the position of the government institutions more than the state even though the influence is unofficial. Therefore, the government has no sovereignty over all land in order to extend its authority and ensuring the application of the law. Furthermore, the government faced difficulties in implementing its policies because it faces the tribal resistance in cases where such policies are against the tribes' interest.

The family relationship could adversely affect the auditor's independence through the threat (Baabbad & Abidin, 2015). Hence, the tribes could threaten the judges if taken any coercive actions towards the enforcement of IAA against the tribal debtor party. For instance, in one case the sheikh came to the public prosecutor's office and has threatened him if he released the detainee (Gaston & Al-Dawsari, 2014). Otherwise, such releasing will lead to a murder. The public prosecutor considered the interference as a threat against his life and the detainee's life. In another type of interference, the punishment of transfer of judges because he issued a judgement against a prominent sheikh. The same happened to a lawyer when they represented their clients before the court in regions that are controlled by tribes which such sheikhs considered that as conflict with local tribal authority. The government itself does not will to

enforce the court's orders against tribal leaders which means the judiciary suffers from a lack of independence (Katulis, 2004). The judicial body is not effective because of the existence of the tribal influence (Department of Commerce, 2008) Therefore, there is a high probability of failure of the enforcement of IAA in Yemen if the government does not prevent the tribe's interventions in the affairs of the judiciary.

Thus, the enforcement of IAA is more likely to face difficulties to implement in cases where the debtor party is tribal. The tribal business will refer to his/her tribe to protect him/her against the court actions. The best example can be seen in the case of Desert Line Projects L.L.C v. Republic of Yemen (ICSID case No. ARB/05/17). In this case the host country of the arbitration was Yemen. The claimant Desert Line Projects L.L.C could not enforce the arbitral award in Yemeni court because of political and tribal interference. Thus, the creditor party applied to the International Centre for Settlement of Investment Dispute (ICSID) to settle the dispute after long time of procrastination without enforcement of the IAA. This case clarifies that the Yemeni judiciary is not independent as far as the tribal influence exist. So, the enforcement of international arbitral award is more likely to fail in cases where the debtor party is tribal. In another case, the facts of the case are that the defendant is a tribal leader (Yaser Al-Awadhi) and the plaintiffs are the parents of two dead persons at the age of nineteen. In this case during wedding for Al-Awadhi family on 14/5/2013 and that hold place in Sana'a. The guardians of Sheikh Yaser Al-Awadhi intercepted the two dead persons' car and shoot them without apparent reason. The parents started to file an action in the court, but the police did not take any investigated action of the crime incident. Till this moment, the case has not been trialed yet (Lazreq, 2015)

Based on the interview with three of the Court of Appeal Judges, it was found that the tribal influence is adversely affecting the enforcement of the international arbitral award in Yemen. These were confirmed by those respondents as R1 stated that, "Sometimes there are interventions by tribesmen when a tribal person is a party to the case. Sometimes there is a refusal to attend before the court". While R2 stated that, "Tribal intervention occurs." The same responded by R3 as he said that, "the most interference in judicial process is tribal interference." Thus, the court will hesitate to take any coercive actions to enforce the arbitral award against the tribal debtor party as his/her own tribe will protect him/her. The tribes will use their power to protect their members as far as they care more about their own interest.

Furthermore, through the interview with the two academicians R4 answered that "tribes are strong in the composition of the society and have the power to challenge any coercive actions taken by the court to enforce the International Arbitral Award against their tribal members". This same idea has been shared by R5 as he stated that, "the tribalism interference occurs to fail the enforcement of the arbitral award in some cases". In addition, the arbitrator confirmed that "the tribalism interference occurs to prevent the enforcement of the arbitral award in some cases". (Academicians, 2016) Hence, creditor party will face difficulties to enforce the international arbitral award if the debtor party is tribal. Also, the independence of the judiciary and impartiality are very important to achieve justice, so the lack of such fundamental elements in the Yemeni judiciary will lead to negative effects on justice. The court will hesitate to take any coercive actions to enforce the arbitral award against the tribal debtor party at his/her own tribe will protect him/her. The tribes will use their power to protect their members as far as they care more about their own interest.

7. Conclusion

Based on this study, it can be concluded that, the tribal institution in Yemen has influence over the executive through sharing a political decision and have a power such as deadly weapons and financial, support from the government. This is highly expected to have an adverse effect on the enforcement of international arbitral awards. As a result, the enforcement of international arbitral awards is hard since the tendency of the tribal members is more to protect their own business rather than to obey awards given by the courts. The creditor will face difficulties in enforcing the international arbitral awards in cases where the debtor is a tribal member as his/her own tribe will come as one group to protect him/her from any implementations. In a nutshell, in Yemen, the tribes do impede the functions of courts in the enforcement of international arbitral award.

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References

- Agrawal, A. (1995). Dismantling the divide between indigenous and scientific knowledge. *Development and change*, 26(3), 8.
- Al-Ahsab, A. A. (2016). What Makes Yemen's Spring Different? *The Arab Spring and Arab Thaw: Unfinished Revolutions and the Quest for Democracy*, 9.
- Alatas, S. H. (1968). *The Sociology of Corruption*. Singapore: Donald Moore Press Ltd.
- Al-Zwaini, L. (2006, December 10-14). State and Non-State Justice in Yemen. Paper for the Conference on the Relationship between the State and Non-State Justice Systems in Afghanistan. Retrieved from http://www.usip.org/sites/default/files/ROL/al_zwaini_paper.pdf.
- Baabbad, M. A. and Abidin, S. (2015). Tribalism and Perceived Auditor Independence: A Research Opportunity in the Arab World. *International Business Management* 9 (6), 1306.
- Department of Commerce. (2008). *Doing Business in Yemen- A Country Commercial Guide for U.S. Company*. USA: the U.S. Department of Commerce's Trade Information Center.
- Egel, D. (2011, February 8). Tribal Diversity, Political Patronage and the Yemeni Decentralization Experiment. Retrieved from.
- Veen, E. (2014). *From the struggle for citizenship to the fragmentation of justice: Yemen from 1990 to 2013*. Conflict Research Unit, The Clingendael Institute.
- Gaston and Al-Dawsari. (2014, April). Dispute Resolution and Justice Provision in Yemen's Transition. Retrieved from https://www.usip.org/sites/default/files/SR345_Dispute-Resolution-and-Justice-Provision-in-Yemen%E2%80%99s-Transition.pdf.
- Hamzawy, A. (2009). *Between Government and Opposition: the Case of the Yemeni Congregation for Reform*. Carnegie Endowment for International Peace. Retrieved from http://carnegieendowment.org/files/yemeni_congragation_reform.pdf
- Hofstede, G. and Hofstede, G. J. (1991). *Cultures and organizations: Software of the mind*. Vol. 2. London: McGraw-Hill. Retrieved from <http://testrain.info/download/Software%20of%20mind.pdf>
- Jacobson, D. and Deckard, N. (2012, May 7). The Tribalism Index: Unlocking the Relationship between Tribal Patriarchy and Islamists Militants. *New Global Studies* 6.1. Retrieved from <https://www.degruyter.com/view/j/ngs.2012.6.issue-1/1940-0004.1149/1940-0004.1149.xml>
- Katulis, Brian. (2004). Countries at Crossroads 2004- Yemen. Retrieved from <http://www.refworld.org/docid/473868f963.html>.
- Lazreq, F. (2015, December 27). *Aden Alghad*. Retrieved from http://adengd.net/news/50459/#.VoDH1_IYrIU.

- Mashhur, H, Al-Kamim, A. A. M, Al-Miklafi, M. A. (2005). Building Democracy in Yemen. Retrieved from <https://www.idea.int/sites/default/files/publications/building-democracy-in-yemen.pdf>.
- Lynch, M. (2011, March 23). Arab Uprisings: Yemen: the Final Days of Ali Abdullah Saleh? Retrieved from http://www.pomeps.org/wp-content/uploads/2011/03/POMEPS_BriefBooklet3_Yemen_WEB-Rev.pdf.
- Madabesh, A. (2010, November 11). The Equation of the Tribe in Yemen. *Middle East Newspaper*.
- Manea, E. M. (1996, October 10-11). Yemen, the Tribe and the State. This paper was presented to the International Colloquium on Islam and Social Change at the University of Lausanne. Retrieved from <http://al-bab.com/albab-orig/albab/yemen/soc/manea1.htm>.
- Miller, D. B. (2003). *Demand, Stockpiles, and Social Controls: Small Arms in Yemen*. Switzerland: Graduate Institute of International Studies.
- Peterson, J. E. (2008, December). Tribes and Politics in Yemen. Retrieved from http://www.jepeterson.net/sitebuildercontent/sitebuilderfiles/APBN-007_Tribes_and_Politics_in_Yemen.pdf
- Economist Intelligence Unit. (2015, July). Yemen Country Profile. Retrieved from http://reliefweb.int/sites/reliefweb.int/files/resources/acaps_country_profile_yemen_24july2015.pdf.