International Journal of Research and Review
[Indexed, Peer Reviewed Journal]
Volume 12; Issue: 1; January 2025
Website: www.ijrrjournal.com
E-ISSN: 2349-9788; P-ISSN: 2454-2237
Review Paper

Violation of Arbitration Principles in the Cancellation of National and International Arbitration Decisions by Judicial Institutions

Eko Susanto Tejo[1], Mega Rahayu[2], Andrian Yogapranatha[3], Verawati Gunawan[4], Imas Rosidawati Wiradirja[5], Nugraha Pranadita[6]

[1,2,3,4]Master of Law Program, Langlangbuana University, Bandung, Indonesia.
[5]Professor of Law, Langlangbuana University, Bandung, Indonesia.
[6]Associate Professor of Law, Langlangbuana University, Bandung, Indonesia.

Corresponding Author: Eko Susanto Tejo

DOI: https://doi.org/10.52403/ijrr.20250147

ABSTRACT

The development of globalization has brought Indonesian into free market and free competition, so that it is impossible to avoid disputes. Disputing parties generally resolve their disputes through courts. However, the parties can also choose alternative dispute resolution outside the courts, one of which is through arbitration. The only advantage of arbitration is its confidential nature as the decision is not published and the arbitration decision is final and binding on the parties. Businessmen avoid publicity over disputes between them, because they do not want company secrets to be known by their rivals and public at large. Nowadays, foreign businessmen argue that Indonesia seen as "unfriendly country" for arbitration. The reason is that arbitration decisions, which are final and binding, can be cancelled.
This research uses a normative legal approach and used analytical descriptive specifications.
The first conclusion, the reasons for annulling a national arbitration decision are written in Article 70 AAPS Law, the reasons for annulling an international arbitration decision are written in Article V paragraph (1) and (2) New York Convention, and the reasons for rejecting an international arbitration decision are written in Article 66 letter c AAPS Law. Second, the principle of confidentiality of disputes and final and binding arbitration decisions are only contained in the AAPS Law. The process of annulment of an arbitration decision by a judicial institution is subject to the Judicial Power Law which adheres to the principle of open trials for the public and the open opportunity to file legal remedies.

Keywords: Arbitration, cancellation of decision, alternative dispute resolution

INTRODUCTION

The current development of globalization has brought the Indonesian nation into a free market and free competition. With the existence of a free market and free competition and to facilitate and make it healthy, nations in the world have drawn up a multi-national agreement with the aim of realizing an economy that is able to support free international development. With the developments in economic and business activities, it is impossible to avoid disputes or disagreements.[1] The causes of business disputes include: (1) differences in interpretation of the contents of the articles in the agreement that determine the rights and obligations of both parties; and (2)

differences of opinion regarding how to implement the rights and obligations of the parties, so that this can also lead to a breach of promise (default). There are three ways that can be taken to resolve a business dispute, namely: through peace between the parties (amicable solution), through the courts (settlement by court), and through a route outside the courts or arbitration (settlement by arbitration).[2] Therefore, from the beginning of making an agreement, the parties need to make an agreement about which pattern will be used to resolve their dispute if it occurs in the future. For that purpose, in every business agreement, the parties need to include a clause in the agreement, namely the dispute settlement clause.[3]

Disputing parties generally resolve their disputes through general courts. However, the parties can also choose alternative dispute resolution outside the courts, one of which is through arbitration. Pasal Article 1 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (AAPS Law) states that arbitration is a method of resolving a civil dispute outside of the general courts which is based on an arbitration agreement made in writing by the disputing parties. In general, arbitration institutions have advantages compared to judicial institutions. These advantages include: (a). guaranteed confidentiality of the parties disputes; (b). can avoid delays caused by procedural and administrative matters; (c). the parties can choose an arbitrator who they believe has sufficient knowledge, experience and background regarding the disputed issue, is honest and fair; (d). the parties can determine the choice of law to resolve their problems as well as the process and place of holding the arbitration; and (e). the arbitrator's decision is a decision that is binding on the parties and can be implemented through simple procedures or directly. The only advantage of arbitration over the courts is its confidentiality because its decisions are not published, as regulated in Article 27 of the AAPS Law which states that all dispute hearings by arbitrators or arbitration panels are conducted in private. Businessmen avoid publicity over disputes between them, because they do not want company secrets to be known by their rivals and the public at large.[4] In addition, the arbitration decision is final and has permanent legal force and is binding on the parties, as regulated in Article 60 of the AAPS Law.

The settlement process through arbitration does not always satisfy the disputing parties, there is no guarantee of the perfection of the legal process in arbitration. Because arbitration also has weaknesses, for example, its authority is limited, namely that it can only resolve disputes in the field of trade or commerce, namely disputes in the field of business law or commercial law which are fully under the authority of the parties. In addition, absolute dependence on the arbitrator, meaning that the arbitration decision always depends on the technical ability of the arbitrator to provide a decision that is appropriate and in accordance with the parties sense of justice. Even though the arbitrator has high technical expertise, it is not easy for the arbitration panel to satisfy and fulfill the wishes of the disputing parties. Absolute dependence on the arbitrators can be a weakness because the substance of the case in arbitration cannot be re-tested (there is no legal remedy).

Nowadays, we hear the view from foreign businessmen that Indonesia is seen as "unfriendly country" for arbitration. The term "unfriendly country" here refers to their understanding that Indonesia is not friendly towards arbitration. The real reason is that the arbitration decision, which is final and binding, can be cancelled. The cancellation of an arbitration decision hurts the feelings of a party who has acted in good faith in resolving its dispute in arbitration. This is a loophole or potential dispute over an arbitration decision.[5] Article 70 of the AAPS Law states that the parties may submit a request for annulment against an arbitration decision if the decision is suspected of containing the following

elements: (a). letters or documents submitted during an examination, after the verdict has been handed down, are recognized as fake or stated to be fake; (b). after the decision was made, a document of a decisive nature was found, which was hidden by the opposing party; or (c). the decision was taken as a result of a ruse carried out by one of the parties in the dispute examination. An application for annulment of an arbitration decision must be submitted in writing within a maximum of 30 days from the date of submission and registration of the arbitration decision to the clerk of the District Court as regulated in Article 71 of the AAPS Law. Cancellation of an arbitration decision can be said to be a legal effort that can be made by the disputing parties to ask the District Court to cancel an arbitration decision, either in part or in full.[6] Arbitration decisions are generally agreed to be decisions that are final and binding. Therefore, in the process of annulling an arbitration decision, the court does not have the authority to examine the main points of the case. The court's authority is limited only to the authority to examine the validity of the arbitration decision-making procedure, namely the process of selecting an arbitrator to the application of the law chosen by the parties in resolving the dispute.[7] However, based on data summarized by the Indonesian National Arbitration Board (BANI) until the end of 2021, almost every dispute that has been resolved through BANI, there is a party that has filed an annulment attempt. In many of these attempts, the most common reason is the existence of trickery carried out by the arbitration panel with its opposing party.

Regarding the confidentiality of disputes and arbitration decisions, they are final and have permanent legal force and are binding on the parties, the author takes several case examples in the form of resistance efforts that can be made by one of the parties against a national arbitration decision and an international arbitration decision, including:

a. First case example, decision number 665 B/Pdt.Sus-Arbt/2024 June 12, 2024 *juncto* decision number 524/Pdt.Sus-Arb/2023/PN Jkt.Tim December 14, 2023 regarding the application for cancellation of BANI arbitration decision number 45055/VII/ARB-BANI/2022 July 31, 2023;
b. Second case example, decision number 88 PK/Pdt.Sus-Arbt/2014 November 28, 2014 *juncto* decision number 268 K/Pdt.Sus/2012 May 25, 2012 *juncto* decision number 271/Pdt.G/2010/PN.Jkt.Pst. May 31, 2011 regarding the Application for the Annulment of an International Arbitration Decision (The American Arbitration Association/AAA).

In practice, it is not uncommon for the losing party in an arbitration decision to be unwilling to voluntarily comply with the contents of the arbitration decision. Because litigation is often not about seeking justice, but rather seeking to win by any means necessary, both legally and non-legally.[8] As in the 2 examples of cases above, the resistance efforts that can be taken by one of the parties are to submit a request to annul the arbitration decision. When the annulment application is examined in the District Court, the element of confidentiality of the dispute is lost. In the rules of procedure within the judicial authority, all trials and decisions must be open to the public except for specific cases and not business disputes.[9] In fact, it often happens that the parties publish through the media, one of which is the national news in 2011 entitled "Suit for cancellation of Sumi Asih's arbitration continues at the Central Jakarta District Court".[10] In addition, with the existence of a request for cancellation of the arbitration decision, the arbitration decision cannot yet be implemented by the parties. Therefore, one of the parties (the applicant for cancellation of the arbitration decision) will assume that the arbitration decision is not yet binding on him. The existence of loopholes or attempts to annul an arbitration decision that can be carried out by one of the parties who objects to a national or international arbitration decision

by a judicial institution in Indonesia, encourages the author to examine the following problems: (a). What are the reasons that can be used as a basis for the annulment of a national arbitration decision and an international arbitration decision by a judicial institution in Indonesia; (b) what are the violations of the principle of confidentiality of the parties disputes and the principle of an arbitration decision being final and binding on the parties in the annulment of an arbitration decision by a judicial institution in Indonesia.

MATERIALS & METHODS

This research uses a normative legal approach, namely legal research that places law as a building of a system of norms, regarding the principles, norms, rules of legal regulations, court decisions, agreements and doctrines (teachings).[11] Normative legal research always takes issues from law as a system of norms used to provide prescriptive justification for a legal event. So this research has an object of study on legal rules or regulations. This research was conducted with the intention of providing legal arguments as a basis for determining whether an event is right or wrong and how the event should be according to law. Data collection techniques in normative legal research are carried out by means of literature studies of legal materials. The data sources for normative legal research are only secondary data, consisting of primary legal materials (AAPS Law, Judicial Power Law, Supreme Court Regulation Number 3 of 2023, and Court Decisions), secondary legal materials (books, journals and scientific works), and tertiary legal materials (encyclopedia, internet and news)[12]. The research specification used is analytical descriptive, namely a method that functions to describe or provide an overview of the object being studied through data or samples that have been collected as they are without carrying out analysis and making conclusions that apply to the general public. In other words, analytical descriptive research takes problems or focuses attention on problems as they exist when the research is carried out, the research results are then processed and analyzed to draw conclusions.[13]

RESULT AND DISCUSSION

Reasons and Procedures for Cancelling National Arbitration Decisions and International Arbitration Decisions

A more in-depth explanation regarding the obstacles to the implementation of international arbitration decisions in Indonesia is the recognition of international arbitration decisions as intended by the Indonesian state, because the implementation of international arbitration decisions can only be implemented in Indonesia if the international decision has been recognized as enforceable in the Indonesian jurisdiction. The legal basis for an application to annul an arbitration decision made by parties who object to or are dissatisfied with the arbitration decision is contained in the provisions of Chapter VII, Articles 70 to 72 of the AAPS Law. In Chapter VI letter C of the Technical Guidelines for Administration and Technical Procedures for General Civil and Special Civil Courts Book II, it is stipulated that what can be requested for cancellation is a national arbitration decision, as long as it meets the requirements stipulated in Law No. 30 of 1999, in accordance with the provisions of Articles 70 to 72 of Law No. 30 of 1999.[14] Tin Zuraida also has the same view, that the provisions of Articles 70 to 72 of the AAPS Law cannot be used as a legal basis for canceling international arbitration decisions. This is because the international arbitration decision was made in the territory of another country, so the arbitration law of the country concerned applies (*lex loci arbitri*) and cannot be cancelled under Indonesian law (AAPS Law). Moreover, the application of Indonesian law, including the AAPS Law, cannot be applied in the territory of other countries, including assessing and annulling international arbitration decisions issued in the country concerned.[15]

The opportunity to file an annulment of a national arbitration decision has become more open following the Constitutional Court (MK) decision number 15/PUU-XII/2014, with the following main points:[16]

a. Explanation of Article 70 of the AAPS Law is contrary to the 1945 Constitution;
b. Explanation of Article 70 of the AAPS Law does not have binding legal force.

The explanatory text of Article 70 of the AAPS Law which was cancelled is that a request for cancellation can only be submitted against an arbitration decision that has been registered in court. The reasons for the request for cancellation mentioned in this article must be proven by a court decision. If the court states that the reasons are proven or not proven, then this court decision can be used as a basis for consideration for the judge to grant or reject the application. The implication of the Constitutional Court Decision number 15/PUU-XII/2014 on the existence of arbitration institutions is that it has resulted in the door being opened more and more for parties to file for the annulment of arbitration decisions in Indonesia, because the steep and winding road to the annulment of arbitration decisions in the explanation of Article 70 of the AAPS Law no longer has legal force. In addition, the implications that could arise from this Court's decision are that it will reduce one of the privileges of the arbitration institution, whose decision is final and binding, which could give rise to doubts and even skepticism among the public (domestic and international) regarding arbitration in Indonesia.[17] With the existence of the Constitutional Court decision number 15/PUU-XII/2014 which is considered burdensome and detrimental to many parties, now the implication for parties who are dissatisfied with the arbitration decision has a wide opportunity to be able to submit an application for the annulment of the arbitration decision through the court, provided that there are limited conditions that must be met, namely the existence of an element of suspicion under Article 70 of the AAPS Law without having to be proven first in court.

In fact, the regulations or norms relating to the cancellation of arbitration decisions can be found in Rv (*Reglement op de Recthvordering*), which is an important legal regulation that was in effect during the Dutch East Indies era and was enforced during the period of Indonesian independence until the issuance of the AAPS Law, can be used as a reference regarding the legal values that exist in society in relation to the problem of annulling this arbitration decision. Article 643 Rv, for example, regulates more clearly and completely the matters that can cause an arbitration decision to be annulled. There are ten reasons based on Article 643 Rv that can be used as a basis for annulling an arbitration decision, namely:

a. First, the decision exceeds the limits of the arbitration agreement;
b. Second, the decision was given based on an arbitration agreement that turned out to be invalid or void by law;
c. Third, the decision was given by an arbitrator who was not authorized to decide without the presence of other arbitrators;
d. Fourth, matters that were not demanded have been decided or the decision has granted more than what was demanded;
e. Fifth, the decision contains matters that contradict each other;
f. Sixth, the arbitrator has neglected to give a decision on one or more matters that according to the arbitration agreement were submitted to them to be decided;
g. Seventh, the arbitrator has violated the legal procedures of arbitration which must be followed by the threat of nullity;
h. Eighth, a decision has been made based on letters that after the decision was made, were recognized as false or have been declared false;
i. Ninth, after the decision was given, letters that were previously hidden by the parties were found again;

j. Tenth, the decision was based on fraud or malicious intent, committed during the course of the investigation, which was later discovered.

While as is known, Rv (*Reglement op de Rechtsvordering*) itself has not been valid since the AAPS Law was enacted. The AAPS Law only lists 3 of the 10 cancellation requirements as stated in Article 643 Rv, as regulated in Article 70 of the AAPS Law. In practice, the elements contained in the provisions of Article 643 Rv are often used by the losing party in an arbitration decision to simply delay the opportunity to fulfill obligations. This is due, among other things, to the fact that in the General Explanation of the AAPS Law it is stated that the three reasons are “among others”, thus it can be interpreted that an application to annul an arbitration decision can still be submitted based on other reasons, including the seven other reasons as stated in Article 643 Rv.

One of the legal bases in the process of requesting annulment of a national arbitration decision at the District Court is Law Number 48 of 2009 concerning Judicial Power (Judicial Power Law). Article 13 paragraph (1) of the Judicial Power Law states that all court hearings are open to the public, unless the law stipulates otherwise. Furthermore, Article 13 paragraph (2) of the Judicial Power Law states that court decisions are only valid and have legal force if they are pronounced in a hearing open to the public; and Article 13 paragraph (3) states that failure to comply with the provisions as referred to in paragraph (1) and paragraph (2) results in the decision being null and void by law. Therefore, the procedure for the trial of an application for annulment of a national arbitration decision in court is subject to the Judicial Power Law, namely open to the public. However, in fact, the trial process for an application for annulment of a national arbitration can be carried out closed to the public if there is a law that regulates it. This closed trial for the public has been adopted by several laws, including: Law Number 5 of 1986 concerning State Administrative Courts, Law Number 7 of 1989 concerning Religious Courts, Law Number 31 of 1997 concerning Military Courts, and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.[18] As a guideline or procedure for the cancellation of an arbitration decision in a judicial institution, it is regulated in Supreme Court Regulation Number 3 of 2023 concerning Procedures for Appointing Arbitrators by the Court, Right of Objection, and Examination of Applications for Enforcement and Cancellation of Arbitration Decisions (Perma 3/2023). Article 2 paragraph (1) of Perma 3/2023 states that the district court has the authority to hear applications for annulment of arbitration decisions and enforce arbitration decision. Article 25 paragraph (1) of Perma 3/2023 stipulates that annulment of an arbitration decision is submitted to the district court in the form of an application. And Article 27 paragraph (1) of Perma 3/2023 states that against a court decision that grants a request to annul an arbitration/sharia arbitration decision, an appeal can be submitted to the Supreme Court which decides at the first and final level.

Cancellation of an arbitration decision can be interpreted as a legal effort that can be made by the parties concerned to request the District Court to cancel an arbitration decision, either in part or in full. The important thing to know here is which District Court has the authority to examine the cancellation of an arbitration decision? In Article 1 paragraph (4) of the AAPS Law, the definition of a District Court is a District Court whose jurisdiction covers the place of residence of the respondent, and in Article 1 paragraph (6) of the AAPS Law, the respondent is defined as the opposing party to the applicant in dispute resolution through arbitration. Based on Article 1 paragraph (4) and Article 1 paragraph (6) of the AAPS Law, it can be concluded that an application to annul an arbitration decision is submitted to the Head of the District

Court whose jurisdiction covers the place of residence of the respondent. Therefore, if the arbitration respondent as the losing party objects to the arbitration decision, then the party can file an annulment request to the District Court with the jurisdiction or jurisdiction that includes its own residence. If the annulment request is granted, the Head of the District Court will further determine the consequences of the annulment of all or part of the arbitration decision. The Head of the District Court is authorized to examine the claim for annulment of the arbitration decision if requested by the parties, and to regulate the consequences of the annulment of all or part of the arbitration decision.

The Head of the District Court may decide that after the word cancellation is pronounced, the same arbitrator or another arbitrator will re-examine the dispute in question or determine that a dispute can no longer be resolved through arbitration. An appeal may be filed against the District Court's decision to the Supreme Court which decides at the first and final level. What is meant by "appeal" in this provision is only against the cancellation of an arbitration decision as referred to in Article 70 of the AAPS Law concerning the grounds for the parties to file an appeal against an arbitration decision. The cancellation of the arbitration decision as referred to in Article 70 of the AAPS Law can also be set aside based on mutual agreement of the parties. The basis is Article 1338 of the Civil Code which states that all agreements made legally apply as laws for those who make them (*pacta sunt servanda* principle).[19] Consequences of the *pacta sunt servanda* principle, the judge may not interfere with the contents of the agreement made by the parties. In this case, the disputing parties can arrange and determine for themselves what kind of procedures they want and the arbitration mechanism that is stated in the arbitration agreement between them.[20] Thus, the arbitration decision which is the crown of an Arbitrator is not easily "torn" by an interest. The Constitutional Court Decision Number 15/PUU-XII/2014 must be appreciated and immediately responded to by lawmakers to revise the AAPS Law, related to the mechanism for canceling an arbitration decision after the Constitutional Court decision.

In addition, there are two important international instruments on arbitration which are considered to be the main sources of arbitration law in the world, which should be understood and used as a basis for consideration by the court in examining an application to annul an arbitration decision. The first is the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Decisions (New York Convention), which has been ratified by Presidential Decree of the Republic of Indonesia Number 34 of 1981 and the second is the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (UNCITRAL Model Law). The legal basis for the annulment of an international arbitration decision is contained in Article V paragraph (1) of the New York Convention, which states that recognition and enforcement of the decision may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that: (a). The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the decision was made; or (b). The party against whom the decision is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or. (c) The decision deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions

on matters submitted to arbitration can be separated from those not so submitted, that part of the decision which contains decisions on matters submitted to arbitration may be recognized and enforced; or (d). The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or (e). The decision has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that decision was made. Dan pada Pasal V ayat (2) Konvensi New York yang menyatakan bahwa recognition and enforcement of an arbitral decision may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: (a). The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or (b). The recognition or enforcement of the decision would be contrary to the public policy of that country.

So, who has the authority to examine and annul international arbitration decisions? Applications to annul international arbitration decisions are regulated in Article V paragraph (1) letter e of the New York Convention, which states that “The decision has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that decision was made”. Interpretation of the phrase “competent authority” Article V paragraph (1) letter e of the New York Convention only refers to one competent authority. There is only one court that has the authority to annul an international arbitration decision, namely the court where the arbitration decision was made.[21]

In addition to being able to submit an application for cancellation, an international arbitration decision can also be rejected. According to Prof. Hikmahanto Juwana, seen from the process arrangement and the reasons, rejection is a condition of refusal, which results in a decision that cannot be enforced in the jurisdiction of the court that rejected it, in Indonesia this is the Central Jakarta Court as regulated in Article 65 of the AAPS Law. One of the conditions that are the basis for rejecting a foreign arbitration decision is if it violates the public interest. We can find this in Article V paragraph (2) or the New York Convention which states, “Recognition and enforcement of an arbitration decision may be refused if the competent authority in the country where the recognition and enforcement is decided, (b) recognition or enforcement of the decision would be contrary to the public interest”. Furthermore, Article 3 paragraph (3) of Perma Number 1/1990, and also Article 66 letter c of the AAPS Law provides a similar statement. The main problem is that all of these laws and regulations do not provide a clear, limiting definition of the term “public order”. There is no clarity regarding what kind of public order and whose public order will be violated if the decision is executed. Even though there is a definition of what public order is, it is a doctrine of experts and it also varies from one doctrine to another. For example, some experts formulate public order as the provisions and basic principles of law and the national interests of a nation, but in practice this explanation is still interpreted broadly so that its boundaries and regulations are unclear. Thus, this does not fulfill the most basic legal principle, namely the principle of legal certainty. So that social justice and benefits as the noble ideals of law enforcement are not achieved. For example, a case of refusal to execute an arbitration decision due to public order reasons is the decision between Bankers Trust and PT Mayora Indah Tbk. The Head of the Central Jakarta District Court refused to grant execution of the London Arbitration decision because it disturbed public order. What is interpreted as public order there is that for the same case there has been a decision from the South Jakarta District Court that cancels the arbitration clause. So

if the London arbitration decision is executed, while the South Jakarta District Court decides that the arbitration clause is canceled, there is a public order that has been violated. The question is, whose public order and which one has been violated?[22] In his book Arbitration in Court Decisions, Erman Rajagukguk also stated that the rejection of the execution was greatly influenced by political considerations packaged with the statement that foreign rules were not in accordance with public order. Many of the arbitration decisions ended without continuation. The rejection of arbitration decisions on the grounds of public order only made Indonesia even more deserted of investors and would have fatal consequences for the country's economic growth.[23]

In the first case example, the reasons for requesting annulment of the arbitration decision are as follows:

a. The arbitration decision taken at BANI can be categorized as a trick;
b. The Arbitration Panel has used the *ex aequo et bono* principle without the consent of the Respondent;
c. The Arbitration Panel's decision as in the third reason for the Applicant's application has given an *ultra petita* decision;
d. The Arbitration Panel has exceeded its authority in the order of proceedings by issuing Co-Respondent II in the Arbitration decision, the Arbitration Panel cannot issue a party involved in a case;
e. The Arbitration Decision was not considered sufficiently according to the facts and evidence in the Arbitration hearing.

In its considerations, the panel of judges stated that there were 6 reasons for the Applicant to file for the annulment of the arbitration decision and if only one of these reasons was denied, then the arbitration decision number 45055/VII/ARB-BANI/2022, dated 31 July 2023 could no longer be upheld.

The procedure carried out by the applicant is to submit an application for cancellation of the national arbitration decision at the East Jakarta District Court and it was decided through decision number 524/Pdt.Sus-Arb/2023/PN Jkt.Tim dated December 14, 2023 with the following decision:

IN EXCEPTION

Rejecting the Exceptions from Respondent I, Respondent II up to Respondent XII and Co-Respondent II;

IN THE MAIN CASE

1. Declare acceptance of the Applicant's Application in its entirety;
2. Cancel BANI Arbitration Decision No. 45055/VII/ARB-BANI/2022, dated July 31, 2023;
3. Order the Clerk's Office of the East Jakarta District Court to delete BANI Arbitration Decision No. 45055/VII/ARB-BANI/2022 dated July 31, 2023 from the arbitration decision registration register;
4. Sentence Respondent I, Respondent II to Respondent XII, Co-Respondent I and Co-Respondent II jointly and severally to pay the court costs which up to today have been set at Rp1,354,000 (one million three hundred and fifty four thousand rupiah).

In the second case example, the reasons for the request to annul the international arbitration decision submitted by the applicant are as follows:

a. The first reason, the arbitration decision does not meet the requirements as an arbitration decision to be registered at the Central Jakarta District Court (Article 67 paragraph (1) and Article 54 of the AAPS Law);
b. The second reason, because the arbitration decision does not meet the minimum requirements that must be included in an arbitration decision according to Article 54 of the Arbitration Law;

c. The third reason, the type of dispute is not a dispute within the scope of commercial law (Article 66 letter b and Article 5 paragraph (1) of the AAPS Law);
d. The fourth reason, the arbitration decision is contrary to public order (Article 66 letter c of the AAPS Law);
e. The fifth reason, the arbitration decision was issued by an unauthorized institution because it was issued by an institution that was not designated in the arbitration clause (Article 2 and Article 4 of the AAPS Law);
f. The sixth reason, the international arbitration decision was registered at the Central Jakarta District Court not by the arbitrators (as required in Article 67 paragraph (1) of the AAPS Law), but by an unauthorized person.

The procedure carried out by PT Sumi Asih as the applicant for the annulment of the international arbitration decision issued by The American Arbitration Association (AAA) in the United States submitted an application to the Central Jakarta District Court and was decided through decision number 271/Pdt.G/2010/PN. Jkt.Pst. dated May 31, 2011, with the following decision:

IN EXCEPTION:
Rejecting Defendant I's Exception;
IN THE MAIN CASE:

- Reject the Plaintiff's lawsuit in its entirety;
- Order the Plaintiff to pay the court costs which are currently estimated at Rp. 25,161,000, - (twenty-five million one hundred sixty-one thousand rupiah);

The primary legal consideration in the case is that the AAA decision was rendered in Texas, United States, and is based on Texas law, United States. Therefore, if there is a reason to annul the arbitration decision in the AAA decision (*quod non*), The plaintiff must file the annulment petition in a court in Texas and not a court in Indonesia.[24] Even though the Central Jakarta District Court does not have the authority to annul international arbitration decisions, the Central Jakarta District Court can still accept, examine and decide on applications to annul international arbitration decisions. In response to the decision, the applicant filed a cassation appeal and in its decision, the Supreme Court rejected the cassation appeal. In 2013, PT Sumi Asih filed a judicial review appeal and the Supreme Court rejected the judicial review appeal on the grounds that there was no error by the Judge or a clear error and had been considered properly and correctly by both *Judex Juris* and *Judex Facti.*

Principles of Arbitration

The AAPS Law contains several principles of arbitration, including Article 27 of the AAPS Law which states that all dispute hearings by arbitrators or arbitration panels are conducted in private. This principle is the main attraction of arbitration in resolving business disputes, because the parties do not actually want publication of the personnel, substance, process, and object of the dispute. The occurrence of publication is feared to be detrimental to the good name and various interests of other parties. This principle is an exception to the principle of open trials for the public that applies in the judicial process. In addition, there is a final and binding principle as contained in Article 60 of the AAPS Law stating that the arbitration decision is final and has permanent legal force and is binding on the parties. In the explanation of Article 60 it is explained that the arbitration decision is a final decision and thus cannot be appealed, cassated or reviewed. However, the AAPS Law provides a loophole for parties who are dissatisfied with the arbitration decision through efforts to cancel the arbitration decision as regulated in Articles 70 to 72 of the AAPS Law. One major implication of Article 70 is that the immediate (final) characteristic of arbitration decisions no longer applies. In other words, arbitration decisions have binding legal consequences for the disputing parties, but not immediately (binding but not final). It was also mentioned earlier that

there is a loophole in the attempt to annul a national arbitration decision by filing an annulment request through the District Court in the jurisdiction of Indonesia which also occurs in the process of recognizing and implementing international arbitration decisions. Article 66 letter c of the AAPS Law stipulates that international arbitration decisions as referred to in letter a may only be enforced in Indonesia and are limited to decisions that do not conflict with public order. In line with the above regulations, confirmation of the final and binding nature of arbitration decisions is also contained in Article 32 paragraph (2) of UNCITRAL, which reads: "The decision shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the decision without delay".[25] In fact, the nature of a final and binding decision means that there is an obligation for the parties to implement the decision immediately. However, in fact, everything goes back to the characteristics, nature and attitude of each party to the case.[26]

The principle and meaning of the final and binding decision in the AAPS Law is different from the meaning of final and binding in the Constitutional Court (MK) Law. Article 24C paragraph (1) of the 1945 Constitution states that the Constitutional Court has the authority to try at the first and final level, the decision of which is final, to test laws against the Constitution. Not only the verdict, the MK's legal considerations are part of the decision that is final and binding. Thus, he advised every citizen to understand the MK's decision comprehensively as a whole. Against the MK's decision, the parties do not have any loopholes or legal remedies against its decision, either legal remedies or efforts to cancel the decision. Meanwhile, there is still a loophole for the cancellation of arbitration decisions in the AAPS Law through the Judicial Institution in Indonesia. Upon an application for annulment of an arbitration decision submitted, the court is prohibited from refusing to examine, try and decide a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it, as stated in Article 10 paragraph (1) of the Judicial Power Law. Therefore, with regard to an application for annulment of an arbitration decision, the court is obliged to examine, try and decide it. This is what causes an arbitration decision to not be categorized as a final and binding decision for the parties if the arbitration decision is in the process of being annulled in court.

In the first case example, PT HK Realtindo filed a request for annulment of BANI arbitration decision number 45055/VII/ARB-BANI/2022 to the East Jakarta District Court and the request for annulment was accepted in its entirety by the panel of judges. The decision was also upheld by the appeal decision number 665 B/Pdt.Sus-Arbt/2024. With the request to annul the arbitration decision, the confidentiality of the party's dispute becomes open and can be read by everyone. During the trial process, the BANI arbitration decision number 45055/VII/ARB-BANI/2022 has not been considered final and binding for PT HK Realtindo and does not have executory power. Given the quasi-judicial nature of the arbitration institution, the arbitration decision does not have executory power.[27]

In the second case example, PT Sumi Asih filed an application for the annulment of the International arbitration decision in Case No. Re.: 50 181 T 00101 08 issued by The American Arbitration Association (AAA) in the United States on May 4, 2009 at the Central Jakarta District Court. Although what can be requested for cancellation based on Article 70 to Article 72 of the AAPS Law is a national arbitration decision, the Central Jakarta District Court still accepts, examines, tries, and decides on the application as mandated by the Judicial Power Law. With the existence of this application for cancellation of the international arbitration decision from the first level, appeal level, and judicial review, the parties have spent more than 5 years (from May 2009 to November 2014) to

dispute in the judicial institution, even though the plaintiff's lawsuit was rejected in its entirety and strengthened by the appeal decision number 268 K/Pdt.Sus/2012 and the judicial review decision number 88 PK/Pdt.Sus-Arbt/2014. In addition, the confidentiality of the party's dispute has become open and can be read by everyone.

Reflecting on the 2 examples of cases, the principle of confidentiality of disputes between the parties and the principle of final and binding arbitration decisions in the AAPS Law have been lost and cannot provide legal certainty for the parties involved in the case. Parties who feel aggrieved or lose in an arbitration decision can easily file an objection to the District Court, even if in the end the request to annul the arbitration decision is rejected. In the litigation process in the judicial institution, the principle used is that the trial is open to the public and there are legal remedies for first-instance court decisions, both ordinary legal remedies and extraordinary legal remedies, as regulated in the Judicial Power Law.

CONCLUSION

From the results of the discussion above, the author can draw the following conclusions: first, there are several reasons that can be used as reasons for canceling a national arbitration decision as written in Article 70 of the AAPS Law. Meanwhile, the reasons for canceling an international arbitration decision are written in Article V paragraph (1) and paragraph (2) of the New York Convention and the reasons for rejecting an international arbitration decision are regulated in Article 66 letter c of the AAPS Law. Second, the principle of confidentiality of disputes between the parties and the principle of arbitration decisions being final and binding on the parties are only contained in the AAPS Law, while the process of requesting annulment of arbitration decisions by judicial institutions in Indonesia is subject to the Judicial Power Law which adheres to the principle of open trials for the public and the openness of opportunities to submit legal remedies. It is clear that the principles contained in the AAPS Law are not in line with the principles contained in the Judicial Power Law, in fact they are contradictory.

Based on the results of the discussion above, the author provides several suggestions as follows: first, those lawmakers create a legal umbrella that can implement closed trials for applications to annul arbitration decisions in judicial institution so that they can be in line with the principles contained in the AAPS Law. Second, the Supreme Court should issue a Supreme Court Circular (SEMA) as further regulation regarding cases that do not meet the requirements for submitting an annulment of an arbitration decision and/or other legal remedies. Third, so that the registrar can immediately reject the application for cancellation of the international arbitration decision submitted to the district court. All of this is to provide legal certainty to the disputing parties through the arbitration institution.

Declaration by Authors

Acknowledgement: None

Source of Funding: None

Conflict of Interest: The authors declare no conflict of interest.

REFERENCES

1. Mosgan Situmorang. Pembatalan Putusan Arbitrase. Jurnal Penelitian Hukum De Jure. December 2020; 20 (4): 574.
2. Tin Zuraida. Prinsip-Prinsip Eksekusi Putusan Arbitrase Internasional di Indonesia. Surabaya: Wastu Lanas Grafika; 2009. p. 7.
3. Indah R. Runtuwene. Putusan Pengadilan Negeri Tentang Arbitrase Komersial Internasional Setelah Berlakunya Undang-Undang Nomor 30 Tahun 1999. Lex Et Societatis. 2020; VIII (1): 575.
4. Resi Atna Sari Siregar. Analisis Terhadap Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa. Jurnal Islamic Circle. 2021; 2 (1): 42.
5. Tri Ariprabowo and R. Nazriyah. Pembatalan Putusan Arbitrase oleh Pengadilan dalam Putusan Mahkamah Konstitusi Nomor

15/PUU-XII/2014. Jurnal Konstitusi. December 2017; 14 (4): 703.
6. Munir Fuady. Arbitrase Nasional: Alternatif Penyelesaian Sengketa Bisnis. Bandung: Citra Aditya; 2006. p. 10.
7. Pulungan, S. & Nuroni, A. M. Pelaksanaan Pembatalan Putusan Arbitrase Nasional Dan International. Jurnal Cahaya Mandalika. 2023; 3(2): 2181.
8. Panusunan Harahap. Eksekutabilitas Putusan Arbitrase Oleh Lembaga Peradilan. Jurnal Hukum dan Peradilan. 2018; 7 (1): 131.
9. Anangga W. Roosdiono. Eksistensi Pembatalan Putusan Arbitrase Nasional di Indonesia: Oksimoron? Jakarta: Hukumonline; 2022 June 17. Available from: https://www.hukumonline.com/berita/a/eksistensi-pembatalan-putusan-arbitrase-nasional-di-indonesia--oksimoron-lt62ac34324f1bb?page=all
10. Yudho Winarto. Gugatan pembatalan arbitrase Sumi Asih berlanjut di PN Jakarta Pusat. Jakarta: Kontan.co.id; 2011 January 5. Available from: https://nasional.kontan.co.id/news/gugatan-pembatalan-arbitrase-sumi-asih-berlanjut-di-pn-jakarta-pusat-1
11. Sigit Sapto Nugroho, Anik Tri Haryani, & Farkhani. Metodologi Riset Hukum. Sukoharjo: Oase Pustaka; 2020. p. 29.
12. Muhammad Siddiq Armia. Penentuan Metode & Pendekatan Penelitian Hukum. Banda Aceh: Lembaga Kajian Konstitusi Indonesia (LKKI); 2022. p. 12.
13. Sugiyono. Metode Penelitian Pendidikan Pendekatan Kuantitatif, Kualitatif, dan R&D. Bandung: Alfabeta; 2009. p. 29.
14. Mahkamah Agung RI. Pedoman Teknis Administrasi Dan Teknis Peradilan Perdata Umum Dan Perdata Khusus (Buku II Edisi 2007). Jakarta: Mahkamah Agung RI; 2018. p. 176.
15. Putusan Nomor 169 K/Pdt.Sus-Arbt/2017, p. 17-18.
16. https://putusan3.mahkamahagung.go.id/peraturan/detail/11eacfb74a1336a08569313031343331.html
17. Musataklima. Implikasi Putusan Mahkamah Konstitusi No. 15/PUU-XII/2014 Terhadap Putusan Badan Arbitrase Di Indonesia. Et-Tijarie. January 2017; 4 (1): 92.
18. Willa Wahyuni. Persidangan Terbuka dan Tertutup untuk Umum. Jakarta: Hukumonline; 2022 July 4. Available from: https://www.hukumonline.com/berita/a/persidangan-terbuka-dan-tertutup-untuk-umum-lt62c2ac3c9cbda/?page=1
19. Koran Sindo, 17 April 2015.
20. Romario Tandaraja Hasian. Akibat Hukum dan Penerapan Asas Nebis in Idem dalam Pembatalan Putusan Arbitrase di Pengadilan. Unes Law Review. June 2024; 6 (4): 11188.
21. Yuanita Permatasari & Pranoto. Kewenangan Pengadilan Dalam Pembatalan Putusan Arbitrase Internasional Di Indonesia. Privat Law. 2017; V (2): 32.
22. Hukumonline. Arbitrase, Pilihan Tanpa Kepastian. Jakarta: Hukumonline; 2001 February 9. Available from: https://www.hukumonline.com/berita/a/arbitrase-pilihan-tanpa-kepastian-hol1905?page=all
23. Justitia Avila Veda. Ketertiban Umum sebagai Dasar Penolakan Eksekusi Putusan Arbitrase Asing di Indonesia. Jakarta: LK2FHUI; 2012 October 27. Available from: https://lk2fhui.law.ui.ac.id/ketertiban-umum-sebagai-dasar-penolakan-eksekusi-putusan-arbitrase-asing-di-indonesia/
24. Putusan Nomor 268 K/Pdt.Sus/2012, p. 20.
25. The Arbitration Rules of The UN Commision for International Trade Law (UNCITRAL), 12 Juni 1985, article 32 (2).
26. Ina Heliany. Analisis Final and Binding Putusan Arbitrase Serta Dampaknya Terhadap Kepastian Hukum Dan Keadilan. Yure Humano. 2021; 5 (2): 86.
27. Maulidya Ilhami RY, Revaganesya Abdallah & Janine Marieta Ajesha Nugraha. Relevansi Kekuatan Eksekutorial Terhadap Sifat Kemandirian Putusan Arbitrase Ditinjau Dari Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa. Padjadjaran Law Review. 2023; 11 (2): 204-205.

How to cite this article: Eko Susanto Tejo, Mega Rahayu, Andrian Yogapranatha, Verawati Gunawan, Imas Rosidawati Wiradirja, Nugraha Pranadita. Violation of arbitration principles in the cancellation of national and international arbitration decisions by judicial institutions. *International Journal of Research and Review*. 2025; 12(1): 376-388. DOI: *https://doi.org/10.52403/ijrr.20250147*

******