LEGAL CERTAINTY IN ARBITRATION AWARDS THAT ARE FINAL AND BINDING

Hheru Sugiyono¹, Heru Suyanto², and Rosalia Dika Agustanti³

Fakultas Hukum UPN Veteran Jakarta

Article Info
Received : 5 October 2020 | Received in revised form : 15 November 2020 | Accepted : 20 December 2020
Corresponding author’s e mail : rosaliadika@upnvj.ac.id

Abstract
A request in a district court for annulment of an arbitration, or arbitral, award is a form of legal remedy that claims dissatisfaction with the award by one or more parties. It contravenes the provisions that stipulate the finality of the award and its permanently binding legal force. The attempt to invalidate the arbitral award seems to reflect the party’s (or parties’) disobedience to it. The research method here employed normative juridical review of various library materials consisting of primary legal sources from related laws and regulations, secondary materials which formed the explanations used in the analysis of the primary legal materials in the form of doctrine, academic views, judicial decisions, document searches, books, and scientific works. The legal material is identified and analyzed to achieve the objectives of the study. The results indicate that there is legal uncertainty related to the provision, specifically whether a district court can overturn a final arbitration award and that it carries the legal force to bind the parties. Therefore, it is necessary to create that certainty, and write off Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, article 70. Arbitrators are encouraged to act more professionally in examining and delivering fair arbitration awards without being tainted by false evidence or gimmicks.

Keywords: arbitration award, final, binding

Abstrak
Adanya permohonan terhadap pengajuan pembatalan terhadap putusan arbitrase di pengadilan negeri adalah berwujud upaya hukum yang tidak puas terhadap putusan arbitrase dan bertentangan dengan ketentuan yang mengatur bahwa “putusan arbitrase bersifat final dan mempunyai kekuatan hukum tetap serta mengikat para pihak.” Permohonan pembatalan tersebut seolah menggambarkan ketidakpatuhan para pihak terhadap putusan arbitrase. Metode penelitian yang digunakan pada penelitian ini adalah penelitian yuridis normatif, yakni melakukan penelitian secara dengan cara meneliti berbagai bahan hukum primer bersumber dari berbagai peraturan perundang-undangan dan bahan hukum sekunder berupa penjelasan yang digunakan untuk menganalisis bahan hukum primer berupa pandangan ahli, akademisi, praktisi ataupun hakim, penelusuran dokumen, buku-buku maupun

¹ Lecturer of Civil Procedural Law, Faculty of Law, University of Pembangunan Nasional Veteran Jakarta. Obtained Bachelor of Law (S.H.) from University of Hang Tuah Surabaya (1999), Master of Law (M.H.) from University of Gadjah Mada Yogyakarta (2011), and Student Doctoral Program University of Brawijaya Malang (2020 - Ongoing).
² Lecturer of Legal Audit, Faculty of Law, University of Pembangunan Nasional Veteran Jakarta. Obtained Bachelor of Law (S.H.) from University of Islam At Tahiryaah Jakarta (1999), and Master of Law (M.H.) from University of Muhammadiyah Jakarta (2003).
³ Lecturer of International Criminal Law, Faculty of Law, University of Pembangunan Nasional Veteran Jakarta. Obtained Bachelor of Law (S.H.) from University of Jember (2016), and Master of Law (M.H.) from University of Airlangga Surabaya (2018).

DOI : http://dx.doi.org/10.15742/ilrev.v10n3.655

Kata Kunci: putusan arbitrase, final, mengikat

I. INTRODUCTION

An agreement is a deal between parties that regulate rights and obligations to be conducted in good faith and full responsibility so that expected goals can be achieved. However, along the way, parties may fail to strictly fulfill the contents of the agreement, such that, in the end, a dispute arises which is certain to be detrimental to the contracted parties. The non-fulfillment of the agreement may be due to a breach of contract (default) or the interests of the opposite party.

To anticipate the emergence of a contractual dispute, the parties must be careful to include a forum for dispute resolution in a clause of the agreement. It is hoped that such a forum can prevent disputes from becoming divisions in community life. In fact, the laws and regulations of Indonesia have facilitated the means to resolve disputes that arise in the implementation of an agreement, whether through litigation or a path outside of that.

Procedural dispute resolution through courts or litigation results in awards that lead to the terms “win” and “lose,” which are sometimes not accepted by the litigating parties and tend to lead to new problems. The settlement process is rather slow and quite expensive, and can create bar conflicts between the parties. With the shortcomings in the litigation line, some people prefer to resolve disputes on a non-litigation basis. Even though each society has its own way of resolving conflicts, the business world is increasingly universal, so that various forms of dispute resolution have come to be known to the parties as security and justice mechanisms.4

Every businessperson hopes to avoid disputes, because disputes harm reputations and potentially erode the trust element of customers. For this reason, if a company officer has a business dispute with another party, they generally prefer to keep it secret. In terms of confidentiality, dispute resolution through court proceedings is not seen as not providing comfort for businesspeople.

The desire for confidentiality by business entities involved in disputes explains the need for ways to resolve those effectively. The state is expected to provide support to achieve justice and maintain social equanimity. Conflict settlement mechanisms are the means to resolving legal conflicts.5 Various methods are used at every level of society. Each form carries certain advantages and disadvantages.6

For the reasons mentioned above, a dispute resolution system through arbitration

---

has been developed. “Arbitration is another form of adjudication. It is said to be private adjudication, on the grounds that it involves private dispute litigation which distinguishes it from litigation through the courts. The personal nature of arbitration provides advantages over adjudication through district courts.” The fundamental difference lies in arbitration avoiding the courts. Compared with public adjudication, “arbitration gives more freedom, choice, autonomy, and confidentiality to the disputing parties.”

Besides arbitration, there are also alternative dispute resolution (ADR) methods such as mediation, negotiation, and conciliation. Bryan Garner, the editor of Black’s Law Dictionary, calls mediation “a method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.” Conciliation is a process by which a neutral person meets with parties to a dispute and explores how it might be resolved. It typically follows a relatively unstructured method of dispute resolution, with a third party facilitating communication between the disputants in an attempt to help them settle their differences.

In Black’s Law Dictionary, the distinction between mediation and conciliation remains a matter of considerable debate. Some suggest that conciliation is ‘a nonbinding arbitration,’ whereas mediation is merely ‘assisted negotiation.’ Others assert that conciliation involves a third party’s attempt(s) to bring together disputing individuals or entities by helping them reconcile their differences, whereas mediation allows a third party to suggest terms on which the dispute might be resolved. Still others reject that argument and posit that mediation and conciliation are largely equivalent and interchangeable.

Negotiation is a consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed issue. Negotiation typically involves autonomy for the parties involved, without the intervention of third parties.

In the end, all of the ADRs have positive and negative aspects. Compared to arbitration, however, they share one weakness: their awards or dispute resolution results aren’t final and binding. In mediation, conciliation and negotiation, every result or award is based on the agreement of the parties. They can still be contested by one of the parties who feels aggrieved. One side or the other can cancel the agreement by litigation and re-contest it through the adjudication process. That is why arbitration is often more effective for resolving disputes.

The provisions allowing parties their choice of dispute settlement through arbitration are based on Article 7 of Law No. 30 of 1999 concerning Arbitration Law and ADR, (herewith called Arbitration and ADR Law), which states: “Each party can

---

10 Ibid, p. 873.
11 Ibid, p. 3113.
12 Ibid, pp. 3290-3291.
agree on a dispute that occurs or that will occur between them through arbitration.” The choice of options to resolve disputes through arbitration must be based on the word “agreement,” referring to the parties in a written agreement, namely the arbitration agreement. As explained in Article 1, Paragraph 3 of the Arbitration and ADR Law, what is meant by the Arbitration Agreement is: “…an agreement in the form of an arbitration clause, in written form, made by the parties before the dispute arises (Pactum Compromittendo), or made in a separate arbitration agreement after the dispute arises (Compromise Deed).”

Reglement op de BurgerlijkeRechtvordering (Rv), Article 615 Paragraph (3), explains, “The parties are welcome to bind themselves to each other so that any dispute that may arise in the future is resolved by the award of one or more arbitrators.” Then, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, article VII, paragraph 1, (New York, 1958), explains, “The parties undertake to submit to arbitration all or any differences [...] which may arise between them...” That regulation is defined as a “Pactum Compromittendo.”

Rv Article 618 defines “Compromise Deed” as:

“(1) The arbitration agreement must be carried out in written form and signed by the parties. If the parties are unable to sign, then the agreement must be made before a notary. (2) The Agreement must state the issue in dispute, the names and places of the parties, and the names and places of the arbitrator or member arbitrator, which must be an on number.”

From that Regulation, it is clear that an arbitration agreement can be made before or after the dispute arises. If made before the dispute, the term “Pactum Compromittendo” applies. Otherwise, if the dispute arises after the implementation of the agreement, thus separating the arbitration agreement from the main agreement, the term “Compromise Deed” applies.

In line with the previous statement, arbitration is an alternative means of dispute resolution on a non-litigation basis which is subject to a contract or agreement by the disputing parties, namely an arbitration agreement. An arbitration agreement is an engagement and consensus of the parties to resolve disputes arising from the implementation of the agreement, through the use of an arbitration settlement mechanism to rule out a litigation settlement. In the arbitration agreement, the parties can agree to appoint “a specific arbitration body, the place where the arbitration will take place, the laws and rules to be used, the qualifications of the arbitrators, and the language used in the arbitration process.”

The enactment of the Arbitration Law and ADR is a legal forum and reference for

---

14 Indonesia, Reglement op de Burgerlijke Rechtvordering (Rv), Art. 615.
16 Indonesia, Rv, Art. 618.
the public to resolve disputes through ADR on a non-litigation basis. There are several alternatives to the resolution of disputes in a non-litigation manner that can be used as options for the parties experiencing the dispute, one of which is arbitration.

In Indonesia, arbitration is regulated by Law Number 30 of 1999 concerning Arbitration and ADR Law, Supreme Court Regulations Number 1 of 1990 concerning Procedures for Implementing Foreign Arbitration Awards. Rv. Arbitration is one of several alternative non-litigation dispute resolution options with many enthusiasts, among them businesspersons, for whom arbitration has advantages, namely:

“a. [it] guarantees the confidentiality of disputes between the parties; b. procedural and administrative delays can be avoided; c. the parties may select an arbitrator who, according to their beliefs has sufficient knowledge, experience, and background regarding the matter in dispute and is honest and fair; d. the parties can decide the choice of law to resolve the problem, as well as the place and process of arbitration; and e. an arbitrator’s award is binding on the parties and can be implemented by means of a simple or straightforward procedure.”21

However, despite the many advantages of arbitration, in practice, this form of ADR has many weaknesses, including:22

A. Bringing the disputing parties to arbitration is not easy because they must agree first, and it is sometimes difficult to reach a deal or agreement;
B. In arbitration, there is no legal precedent or attachment to previous arbitral awards, so there may be conflicting awards;
C. Arbitration does not provide definitive answers to all legal disputes;
D. The award of the arbitrator always depends on satisfying the wishes of the parties. Because of this, there is also a popular statement about arbitration, namely that “arbitration is only as good as the arbitrator.”
E. Arbitrations can be lengthy and therefore expensive, especially foreign arbitrations.

The use of arbitration to resolve disputes is believed to be more effective and advantageous, yet it still has weaknesses. Apart from those previously mentioned, another can result from the implementation and execution of an award. In the Arbitration Law and ADR, especially in Article 60, it is clearly stated that “the arbitration award is final and has permanent and binding legal force for the parties.” If the arbitration award has been finalized and has permanent and binding legal force, there is no alternative for the parties other than to follow and implement it in accordance with its provisions. The phrase “final” means that no single provision can be appealed or countered in High Court in any province in Indonesia, nor are cassation or judicial review allowed to the Supreme Court. The phrase “binding” means that every award of the arbitrator is binding on the disputed parties, and that the parties shall undertake to carry out the award without delay. The tribunal may fix a time limit for the faulted party to comply with the award and impose penalty(ies) and/or interest at commercial rates for failure to do so.23

---

21 Indonesia, Undang-Undang tentang Arbitrase dan Alternatif Penyelesaian Sengketa (Law Regarding Arbitration and Alternative Dispute Resolution), UU No. 30 Tahun 1999, LN No. 138 Tahun 1999, TLN Number 3872 (Law Number 30 Year 1999, SG No.138 Year 1999), General Explanation.
23 Indonesia, Undang-Undang tentang Arbitrase dan Alternatif Penyelesaian Sengketa (Law Regarding Arbitration and Alternative Dispute Resolution), UU No. 30 Tahun 1999, LN No. 138 Tahun 1999, TLN Number
The submission of a request for annulment of an arbitration award by one or more of the parties to the court can be considered a form of weakness in its implementation, which seems to illustrate a lack of compliance of parties with settlement results. This creates executorial problems for arbitration awards. It is clear that the executorial institution still falls under the aegis of the Judiciary. In this case, arbitration that still requires the execution of an award is decided at the District Court. Thus, it can be said that arbitration still fundamentally involves the District Court as a body that can issue an execution order to implement an arbitration award should one of the parties object to fulfilling their voluntary obligations as outlined in the award.

Based on the above background, the main problems for this study concern the establishment of legal certainty for arbitration awards that is final, permanent, and legally binding. What, then, are the legal implications of article 70 of the Arbitration and ADR Law for final arbitration awards that carry permanent legal force and are binding on the parties?

II. LEGAL CERTAINTY OVER AN ARBITRATION AWARD THAT IS FINAL, HAS PERMANENT LEGAL FORCE, AND BINDS THE PARTIES

The dispute resolution process through an arbitration forum leads to an arbitration award. Before discussing its finality, permanent legal force, and the binding of parties, it is necessary to understand the meaning of an arbitration award. Broches provides the definition of an arbitral award, with a free translation as follows: “Award refers to a final ruling that leaves all matters to the arbitral tribunal, which ultimately determines questions of substance or competence or other issues regarding procedure, but, in the latter case, only if the arbitral tribunal determines its award as an award.” The arbitration award is only binding on the two parties who entered into the agreement. Therefore, the legal considerations of the arbitrator must be based on applicable legal regulation, especially in a disputed field or one based on justice and propriety.

Dispute resolution awards through arbitration can be distinguished from national and international arbitration awards. The Arbitration Law and ADR do not define a national arbitration award but they do define an international award. Article 1, point 9, which reads:

“International Arbitration Awards are handed down by an arbitration institution or individual arbitrators outside the jurisdiction of the Republic of Indonesia. Awards by arbitration institutions or individual arbitrators are considered international arbitration awards according to the laws of the Republic of Indonesia.”

Article 1 of Supreme Court Regulation Number 1 of 1990 concerning Regulations on Procedures for Implementing Foreign Arbitration Awards also states that, “The Central Jakarta District Court is given the authority to handle matters related to the Recognition and Implementation of Foreign Arbitration Awards.”

In international arbitration matters, the District Court does not clearly regulate the meaning of arbitration, including national or international arbitration. Rather, the UNCITRAL (United Nations Commission on International Trade Law) provides the
scope of the arbitration in UNCITRAL Arbitration Rules:

“Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.”

Through argumentum a contrario, the regulations are interpreted based on an inverse explanation of the actual events and those described in the regulation. In this way, the authors are able to shift the meaning of the International Arbitration Award to the National Arbitration Award based on Arbitration Law and ADR. The Supreme Court Regulation concerning Regulations on Procedures for Implementing Foreign Arbitration Awards, and UNCITRAL Arbitration Rules have been previously been described.

A national arbitration award is presented by an arbitration institution in the jurisdiction of the Republic of Indonesia using national law. As long as the award is made and awarded within the territory of Indonesia, it is considered a national arbitration award. Also, the national arbitration award is implemented by the district court competent with the jurisdiction, namely, where the respondent is located.

From this formulation, it is clear that by claiming the award as a national versus an international arbitration award, the principle of the territorial factor is used. According to Yahya Harahap, the territorial principle determines whether the arbitration is classified as national or international; based on the territory factor, it refers to Indonesia Territory. Thus, every award handed to parties in Indonesia Territory will be considered national arbitration awards, and the opposite of this term shall apply to international arbitral awards.

In implementing the national arbitration award, the parties must comply with the stipulations of Article 59 of the Arbitration and ADR Law, which reads:

“Within a maximum period of 30 (thirty) days from the date the award is pronounced, the original or authentic copy of the arbitration award is submitted and registered by the arbitrator or his proxy to the clerk of the district court;

A. The submission and registration as intended in paragraph (1) shall be conducted by recording and signing at the end or on the edge of the verdict by the clerk of the district court and the arbitrator or their proxy who submitted it. The record is a deed of registration;

B. The arbitrator or their proxy is obliged to submit the award and the original notice of appointment as arbitrator or an authentic copy thereof to the clerk of the district court;

C. (2) Failure to fulfill the provisions as described in paragraph (1) will result in the arbitration award being rendered unenforceable;

D. All costs associated with making registration deeds are borne by the parties.”

30 Ibid., p. 390.
Implementation of an arbitral award is based on a request by one of the parties so that it can be executed by order of the Head of the District Court. Upon service of the request, the arbitration award must still be examined first, to verify that it meets the following criteria:

A. The parties agree that the dispute between them will be resolved by arbitration;
B. Agreement to resolve disputes by arbitration is contained in a document signed by the parties;
C. Disputes that can be resolved through arbitration pertain only in the field of trade, and regard rights, according to law and legislation;
D. Other disputes that can be resolved through arbitration are those that do not violate decency and public order.

When the application meets the above criteria, the Chief Justice gives an order to implement the award in accordance with the provisions of Article 62 Paragraph (2) of Arbitration and ADR Law, where the award holds permanent legal force. However, if the arbitration award does not comply with the provisions of Article 62, then the Head of the District Court may reject the request for execution. No legal remedy can be made against the rejection, which becomes the award of the Head of the District Court.

An arbitral award must be made in writing and contain the considerations on which the award is based, unless the parties agree that such considerations need not be included. Therefore, the arbitration award is either determined based on legal provisions, or on justice and fairness. In an arbitration award, the panel determines a time limit for the losing party to implement the arbitration award, whereupon the panel can determine sanctions and/or fines and/or interest rates in a reasonable amount if the losing party fails to implement the award.

As described in Article 60 of the Arbitration Law and ADR, the arbitration award is final and has permanent and binding legal force for the parties. This is in line with the BANI 2018 Arbitration Rules and Procedures, in particular article 33 which states:

“The award is final and binding on the parties. The parties guarantee that they will immediately implement the awards. In the Award, the Arbitral Tribunal or Sole Arbitrator determines a time limit for the losing party to implement the Award whereby the Arbitral Tribunal or Sole Arbitrator can determine sanctions and/or fines and/or interest rates in a reasonable amount if the losing party neglects to execute the verdict.”

However, Article 70 of the Arbitration and ADR Law regulates the annulment of the arbitration award which states that a request for annulment of the arbitration award of the parties can be submitted.

According to the author, the provisions stipulated in articles 60 and 70 of the Arbitration and ADR Law are not aligned and can lead to aspects of legal uncertainty. If the arbitration award is final and has permanent legal force and is binding on the parties (final and binding), then there should be no legal remedy against the

---

31 Vide p. 8 &9 in this journal, to get information about the district court which is has jurisdiction to give order to executed the award of the national and international arbitration.
32 Frans Hendra Winarta, Hukum Penyelesaian Sengketa; Arbitrase Nasional Indonesia dan Internasional, (Dispute Resolution Law; Indonesia National and International Arbitration), (Jakarta: Sinar Grafika, 2012), p.71.
arbitration award, whether in the form of resistance, appeal, cassation, or review.

The word “final” in the Official Indonesian Dictionary is defined as “the last in a series of examinations,” while “binding” is defined as “to tighten,” “to unite.” Based on the previous literal meanings, final and binding are interrelated like two sides of a coin. Practically speaking, they constitute “the end of a process of examination, [with] the power to tighten or unite all wills and cannot be denied.” This state is supported by Black’s Law Dictionary, which says “final means not requiring any further judicial action by the court that rendered judgment to determine the matter litigated,” then “binding means an order that requires obedience.

According to Suleman and Orinton, “final” means the Arbitration Award is the first and the last degree award, so arbitration awards cannot be overturned by appeal, cassation, or judicial review. Otherwise “binding” means that an arbitration award binds the parties from the moment it is handed to them.

Basically, an arbitration award must be made voluntarily, but if the defeated party is not willing to implement it voluntarily, then the award is carried out based on the order of the head of the district court at the request of one of the parties. This is in accordance with the provisions stipulated in article 61 of the Arbitration and ADR Law.

There is uncertainty regarding whether the provisions of an arbitration award which is final and has legal force and is binding on the parties can still be canceled by the district court so that it will make the dispute settlement of the arbitration agreement drag on and will, of course, have a greater impact on the losses for the parties, especially the justice seeker.

III. LEGAL IMPLICATIONS FOR ARTICLE 70 OF LAW NO. 30 OF 1999 CONCERNING ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION ON FINAL ARBITRATION AWARDS WITH PERMANENT LEGAL FORCE AND BINDING OF PARTIES

An arbitration award is the last level binding the parties so that no further legal remedy can be filed. However, according to Yahya Harahap, the arbitration award with its final and binding nature actually does have exceptions, which are rather appropriately filed as “resistance or pleas” in the form of requests for annulment of the award. Should such a request be granted, the result would be the cancellation, even erasure, of the arbitration award as if there had never been a process at all.

The legal remedies to annul an arbitration award based on article 70 of the Arbitration and ADR Law read as follows:

38 Ibid., p. 332.
A. letters or documents submitted during examination are, after the verdict has been passed, admitted or declared to be false;

B. after the award is made, a decisive document is found to have been hidden by the opposing party; and/or

C. the award was based on the results of a deception performed by one of the parties in the dispute examination."

If we look at the annulment reasons mentioned above, the reversal can be categorized as an extraordinary legal remedy, unlike an appeal in the ordinary court system. Although listing the reasons for the annulment is not expressly stated in the law, the act of annulment is a compelling legal process that must be obeyed by both parties.

It is hoped that with the safety net applied to Article 70 of the Arbitration and ADR Law, the arbitration award will have final and binding force, with the annulment request as an extra legal remedy should one of the parties be found to have fraudulently presented their case during the arbitration process. As it stands, as Andriyansyah explained, apart from Article 70, there are no other provisions in the Arbitration and ADR Law that can invalidate the arbitration award.

As the Supreme Court noted in its ruling in the case PT. Manunggal Engineering against the Indonesian National Arbitration Board (BANI), the award of District Court Case No.2/P/Annulment of Arbitration/2009/PN.Jkt.Pst. “does not contain any of the elements of Article 70 of the Arbitration and ADR Law, so the request for review is rejected which states that.”

In addition, there is a modern arbitration doctrine which answers the question about the limitative concept to an arbitration award, that the annulment of an arbitration award “can hurt the feelings of the party in good faith, and hurt the feelings of the arbitrator who decided the dispute, as well as give rise to doubts for the public, both inside and abroad, against arbitration in Indonesia.” So that in a limited manner, the safety net is sufficient, which has been regulated by the Arbitration and ADR Law.

According to the author, the provisions of article 70 of the Arbitration and ADR Law are intended to protect the parties bound by the arbitration agreement from an award that is deemed to be detrimental because it is based on false evidence, hidden decisive documentary evidence, or other deception. On the other hand, the provisions of the article are often used by parties with dishonest intentions to implement arbitration awards. The author found several District Court awards related to the request to cancel the arbitration award. From those awards that the author analyzed, most of the requests were rejected and the arbitration awards actually strengthened. That is, the provisions of article 70 of the Arbitration and ADR Law were more likely to be used by parties with bad intentions to forestall the implementation of arbitration awards.

However, the Elucidation of Article 70 of the Arbitration and ADR Law regarding
the elements of annulment of an arbitration award reads:

“An application for cancellation can only be submitted against an arbitration award that has been registered in court. The reasons for the cancellation request mentioned in this article must be proven by a court award. If the court states that these reasons are proven or not proven, then this court award can be used as a basis for consideration for the judge to grant or reject the petition.”

Both the article and the explanation have ambivalences that create confusion.

However, based on the Award of the Constitutional Court (PMK) No.15/PUU-XII/2014, the explanation of Article 70 of the Arbitration and the ADR Law is declared to be contrary to the 1945 Constitution and has no binding legal force.43

It is because the panel of judges in PMK No. 15/PUU-XII/2014 gave consideration to the word “alleged,” that the phrase “must be proven by a court award” was used in the explanation.44 The word “presumed,” according to the Court, provides a legal sense regarding the rule, that among the requirements for filing an application canceling an arbitration award, one is the allegation of the applicant stating the reasons referred to in the article, e.g. “The Petitioners’ allegations are hypothetical, subjective, one-sided, and a priori.” The phrase “must be proven by a court award,” contained in the explanation of the article, provides a legal requirement that a request for annulment of an arbitration award be submitted.

Thus, one request would be that, according to the article, “it has been proven by a court award.” Even if the condition should be added to “those which have obtained permanent legal force,” it “must be proven by a court award that it has obtained permanent legal force.” By law, awards that do not have permanent legal force will cause problems. As for the phrase “it must be proven by a court award” claims knowledge that does not have “hypothetical, subjective, one-sided, and a priori” characteristics, because it has been verified through the process of evidence. So, according to the law, this knowledge has been proven a posteriori. Only because it is a court award verified by the court should legal remedies be available, thereby making the award final. According to the Constitutional Court, the explanation of the article actually changed the provisions of the legal norm, and gave rise to new norms. The norms contained in an article clearly only require a priori allegation(s) from the applicant. However, when turning to the explanation of the article, it changes the meaning of the allegation to something definite based on a court award and is a posteriori in nature. Therefore, the Panel in the Judicial Review gave its consideration, which approved the petitioner’s argument by stating that the explanation in the Arbitration and ADR Law added new norms and created legal uncertainty.

In addition, according to the consideration of the panel of judges in the Constitutional Court Award No.15/PUU-XII/2014, the explanation of Article 70 of the Arbitration and ADR Law contains multiple interpretations, such as: “The explanation of the article can be interpreted as (i) the reason for filing the application must be proven by the court first as a condition for filing a cancellation request; or (ii) the reasons for cancellation have been proven in a court hearing regarding the request for cancellation.” To submit an application for cancellation of an award, the applicant is required to give reasons to the court, accompanied by evidence that the given reasons have a) already been decided by a court, and b) satisfy the conditions for cancellation. As another option, the applicant must provide the conditions that he/she alleges to have been proven in

43 Constitutional Court of Republic of Indonesia, “Award Number 15/PUU-XII/2014”
44 Ibid.
the process of the evidentiary mechanism at the court where the cancellation is filed. Both interpretations clearly imply a legal uncertainty, which can lead to injustice. For the first interpretation, it is assumed that the applicant in submitting a request for cancellation, will be faced with two court processes. This will undoubtedly consume considerable time, contrary to the “principle of speedy arbitration” referred to, among others, in Article 71 of the Arbitration and ADR Law, which states, “An application for the annulment of an arbitration award must be submitted in writing at the latest 30 (thirty) days from the day of submission and registration of the arbitral award to the Clerk of the District Court.” If you have to go through the judicial mechanism twice, logically it will not fulfill the time period stipulated by law, namely 30 (thirty) days.

The authority to examine demands for annulment of an arbitration award lies with the Chairman of the District Court. The examination is carried out according to a civil court process. The party filing a claim for annulment of the arbitration award must provide the reasons and related evidence. On the basis of the reasons and evidence presented by the applicant, the Head of the District Court will take a position on whether to grant or reject the arbitration award. A ruling on a request for annulment of an arbitration award must be determined by the Head of the District Court within a period of 30 days from receipt of the request.45

**IV. CONCLUSION**

There is legal uncertainty related to the provision that the District Court can overturn an arbitration award that is final, has legal force, and is binding on the parties, such that it will thwart the resolution of arbitration agreement disputes against being protracted and detrimental to justice seekers. The provisions of Article 70 of Arbitration and ADR Law tend to be used by one of the parties to voluntarily frustrate the enforcement of the arbitration award. To create legal certainty, then, the provisions of Article 70 of Arbitration and ADR Law must be abolished, and arbitrators encouraged to act more professionally in examining and passing fair arbitration awards without being tainted by gimmicks or false evidence. The content of the article and its explanations entail obscuring the norm. The Indonesian Constitutional Court has also stated that this article creates legal uncertainty, as has the Supreme Court, which stated that annulment of the arbitration award can hurt the feelings of the parties and arbitrator who had good faith. The article creates confusion both national and international in scope.

---

BIBLIOGRAPHY

Legal Documents

Indonesia, *Reglement op de Burgerlijke Rechtvordering* (Rv).

Indonesia, * Undang-Undang tentang Arbitrase dan Alternatif Penyelesaian Sengketa (Law Regarding Arbitration and Alternative Dispute Resolution)*, UU No. 30 Tahun 1999, LN No. 138 Tahun 1999, TLN Number 3872 (Law Number 30 Year 1999, SG No.138 Year 1999).

*Indonesian National Board of Arbitration, Arbitration Rules & Procedures Year 2003.*

*Constitutional Court of Republic of Indonesia, “Award Number 15/PUU-XII/2014.”*


Books


M. Toar, Agnes., et. al., *Arbitrase di Indonesia,* (Jakarta: Ghalia Indonesia, 1995).


Winarta, Frans Hendra., *Hukum Penyelesaian Sengketa; Arbitrase Nasional Indonesia dan Internasional*, (Jakarta: Sinar Grafika, 2012).

**Articles**

