

Legal Certainty Regarding The Cancellation Of Arbitration Awards In District Courts

Santy Juniarty^{1*}, Puguh Aji Hari Setiawan², Dewi Iryani³.

^{1,2,3} Universitas Bung Karno, Jakarta, Indonesia.

Santyun216@gmail.com^{1*}, ubkpuquhaji@gmail.com,² iryani.dewi@yahoo.co.id³

ABSTRACT

Arbitration in Indonesia, based on Law Number 30 of 1999, is designed as a dispute resolution mechanism that provides legal certainty through its final and binding decisions. This principle, known as *das sollen*, is expected to support a conducive investment climate. However, in practice (*das sein*), Article 70 of the same law authorizes the District Court to annul arbitration awards. The implementation of this authority, particularly on grounds of "trickery," often leads to inconsistencies in court decisions. This study uses a normative juridical research method with a statute approach and a conceptual approach. Data collection was conducted through library research on primary, secondary, and tertiary legal materials. The collected data were then analyzed qualitatively using systematic, theological, and grammatical interpretations. To analyze legal issues in depth, this study uses the Theory of Legal Certainty and the Theory of Agreements as analytical tools for three relevant case studies of Supreme Court decisions: Decision Number 941 B/Pdt.Sus-Arbt/2024, Decision Number 244 B/Pdt.Sus-Arbt/2022, and Decision Number 477 B/Pdt.Sus-Arbt/2022. The research findings indicate that the legal basis and considerations of judges in annulling arbitral awards are in accordance with legal provisions only if they are based on violations of fundamental principles in the legal process, such as the existence of legally proven fraud that affects the legal standing of the parties or the integrity of the process. However, court intervention becomes unlawful when re-examining the substance of the dispute, because it violates the autonomy of the parties' will. It is concluded that legal certainty regarding the annulment of arbitral awards is in a vulnerable condition due to inconsistent interpretations of judges. This inconsistency directly weakens the predictability of law and the principle of finality of arbitration, which has implications for declining investor confidence in the domestic dispute resolution system.

Keywords: Legal Certainty, Cancellation of Decisions, Arbitration.

INTRODUCTION

In recent decades, dispute resolution processes in civil law, particularly in the business and investment sectors, have evolved rapidly. Due to the need for fast, efficient, and confidential

dispute resolution, many individuals, especially businesspeople, choose alternative dispute resolution methods outside of the regular courts. Arbitration has become the most popular dispute resolution method in these situations because it offers flexibility, confidentiality, and binding outcomes without the need for lengthy and formal court proceedings.

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter referred to as the Arbitration Law) establishes the legal basis for the arbitration system in Indonesia. According to Article 1 Number 1 of the Arbitration Law, it explains that: "Arbitration is a method of resolving a civil dispute outside the general courts based on an arbitration agreement made in writing by the disputing parties."

This establishes arbitration as a legitimate legal process equal to the general judicial process. In this case, the primary principle underlying the arbitration agreement is the principle of freedom of contract, namely the parties' agreement to submit their dispute to an arbitrator rather than a court.

According to Abdulkadir Muhammad, arbitration is a private judicial body outside of public courts, voluntarily chosen and determined by the disputing business owners. Dispute resolution outside of state courts is a matter of the parties' free will, which can be outlined in a written agreement they make before and after the dispute arises, in accordance with the principle of freedom of contract as stipulated in civil law. Meanwhile, R. Subekti said that arbitration is the resolution of a dispute by an arbitrator based on an agreement that the parties will submit to and obey the decision that will be given by the arbitrator who has been chosen by the disputing parties.

Arbitration has become a widely adopted out-of-court dispute resolution mechanism among business actors due to its speed, confidentiality, and flexibility, particularly in business and investment contexts. Based on party autonomy, arbitration allows the parties to determine the procedure and substance of dispute resolution through a written agreement, resulting in a final and legally binding decision. The advantages of arbitration make it a top choice in special economic zones, where trade and investment activities are intensive. However, the effectiveness of arbitration depends on the competence of the arbitrator in producing a fair decision, so dissatisfaction can arise if the decision does not reflect the expectations of the parties.

Article 60 of the Arbitration Law clearly states that, "The arbitration award is final and has permanent legal force and is binding on the parties." This means that the decision rendered by the arbitration panel is final and has permanent legal force and is binding on both parties. This is an important characteristic of arbitration. It is the main basis for providing legal certainty to the parties, especially in the business world, where every business contract must be clear and predictable. In this case, arbitration is a type of autonomy of the parties' will that must be protected and respected by the state's legal system.

However, the principle of finality of arbitral awards is not always absolute. Under the Arbitration Law, the District Court (hereinafter referred to as PN) may request the annulment of an arbitral award through an application mechanism, as stipulated in Article 70, which explicitly states that:

"Regarding an arbitration decision, the parties may submit a request for annulment if the decision is suspected of containing the following elements:

- a. letters or documents submitted in the examination, after the verdict is rendered, are acknowledged as false or declared false;
- b. after the decision is taken, a document is found that is decisive and has been hidden by the opposing party; or
- c. The decision was taken as a result of a trick carried out by one of the parties in the dispute examination."

Although the grounds for annulment are limited, the application of Article 70 by the courts often leads to numerous interpretations and legal debates, particularly regarding the grounds for annulment due to "trickery." The unclear parameters for interpreting the grounds for annulment further open up the scope for court intervention in arbitral awards, potentially leading to inconsistencies in court decisions and, more concerningly, the erosion of public trust in arbitration as a final and binding dispute resolution forum.

The use of international arbitration forums, such as the Singapore International Arbitration Centre (hereinafter abbreviated as SIAC), is increasingly popular among Indonesian businesses for cross-border dispute resolution. Data from the SIAC Annual Report indicates that Indonesia ranked sixth among foreign users throughout 2022. The choice of a foreign arbitration body arises from several main considerations of business actors.

The Supreme Court of the Republic of Indonesia's decisions in cassation and judicial review (hereinafter abbreviated as PK) cases against the annulment of arbitration awards demonstrate this situation. The Supreme Court (hereinafter abbreviated as MA) has assessed the grounds for annulment differently and inconsistently. This is particularly true for the grounds under Article 70 letter c, which relates to deception. The Supreme Court has upheld the annulment of arbitration awards in several cases due to evidence of statements or actions legally deemed to have misled the arbitration process. In other decisions, the Supreme Court has rejected annulment requests because the grounds submitted did not meet the formal or material requirements of the law.

The dynamics between the principle of finality of an arbitration award and its potential annulment by the District Court are reflected in various Supreme Court decisions, demonstrating the complexity of the interpretation and application of annulment grounds by judges. The first example can be seen in Supreme Court Decision Number 941 B/Pdt.Sus-Arbt/2024, which upheld the annulment decision of the West Jakarta District Court. The chronology of this case began with a dispute between BreadTalk, Pte., Ltd. (Appellant I/Respondent) and PT. Talkindo Selaksa Anugrah and Kusdianto Soewarno (Appellants/Appellants) at the Indonesian National Arbitration Board (hereinafter abbreviated as BANI). BANI issued Decision Number 45079/IX/ARB-BANI/2022 on August 8, 2023. In the arbitration decision, BANI granted the petition of the Petitioners (PT. Talkindo Selaksa Anugrah and Kusdianto Soewarno) in part, declared the Respondents (BreadTalk, Pte., Ltd.) guilty of breach of contract, declared the letter of termination of the franchise agreement valid, and declared the termination of the Franchise Agreement between the Petitioners and Respondent I effective October 19, 2022. Furthermore, the Respondents were sentenced to pay compensation of Rp67,360,501,453.00 and were ordered to stop operating the business using the name "BreadTalk" and return the assets related to the franchise. In response to the BANI arbitration decision, PT. Talkindo Selaksa Anugrah and Kusdianto Soewarno filed an annulment request with the West Jakarta District Court. The West Jakarta District Court then granted the annulment request through Decision Number 861/Pdt.Sus-Arbt/2023/PN. Jkt. Brt. dated February 23, 2024, which annulled BANI Arbitration Decision Number 45079/IX/ARB-BANI/2022 and all its legal

consequences. The District Court stated that BANI did not have the authority to re-examine and adjudicate the case.

Dissatisfied with the decision of the West Jakarta District Court, BreadTalk, Pte., Ltd. (Appellant I) and the BANI Arbitration Panel (Appellants II) filed an appeal to the Supreme Court. This appeal was filed on March 7, 2024. The Supreme Court, as the court of last instance in cases of annulment of arbitration decisions in accordance with Article 72 paragraph (4) of the Arbitration Law, which states that, "against the decision of the District Court, an appeal may be filed to the Supreme Court which decides at the first and final instance." In Supreme Court Decision Number 941 B/Pdt.Sus-Arbt/2024, the Supreme Court upheld the West Jakarta District Court's decision to annul the BANI arbitration award. The Supreme Court based its decision on Article 70 letter c of the Arbitration Law, which states that an arbitration award can be annulled if it is derived from deception by one of the parties. The Supreme Court found that the Petitioner (BreadTalk, Pte., Ltd.) previously failed to provide important information regarding the transfer of rights to its trademark to BTG Vault Pte., Ltd. before the application was submitted to BANI, which was considered deception because it affected its legal standing. However, the Supreme Court revised the District Court's decision by removing the third dictum of the ruling, which was deemed excessive. The second example of the annulment of an arbitration award is found in Supreme Court Decision Number 244 B/Pdt.Sus-Arbt/2022 which upheld the annulment of the arbitration award by the South Jakarta District Court in Decision Number 582/Pdt.G.Sus-Arbt/2021/PN Jkt.Sel., dated September 21, 2021. This case involved PT Aserra Capital, as Appellant I, and the Indonesian National Arbitration Board (BANI), as Appellant II, both of whom filed an appeal/cassation request against the South Jakarta District Court decision Number 582/Pdt.G.Sus-Arbt/2021/PN Jkt.Sel. The opposing party in this dispute is PT. Asia Pacific Mining Resources, as the Respondent on Appeal. This dispute centers on the request to annul the arbitration award issued by BANI.

In response to the BANI arbitration decision, PT. Asia Pacific Mining Resources, Tbk. filed a request to annul Arbitration Decision Number 43007/I/ARB-BANI/2020 with the South Jakarta District Court on the grounds that,

"Arbitration Decision Number 43007/1/ARB-BANI/2020 was taken from the trickery carried out by Respondent I and Respondent II, so that decision Number

43007/ARBBANI/2020 dated May 6, 2020 denies Article 1338 paragraph 1 of the Civil Code."

The South Jakarta District Court, through Decision Number 582/Pdt.G.Sus-Arbt/2021/PN Jkt.Sel. dated September 21, 2021, granted the annulment request filed by PT. Asia Pacific Mining Resources, Tbk. The District Court's decision annulled the BANI Arbitration Decision Number 43007/I/ARB-BANI/2020 and all its legal consequences, and declared that BANI no longer has the authority to examine and adjudicate the dispute.

Dissatisfied with the South Jakarta District Court's decision to annul the BANI arbitration award, PT Aserra Capital (Appellant I) and the Indonesian National Arbitration Board (BANI) (Appellant II) filed an appeal/cassation with the Supreme Court. This cassation application was filed on October 15, 2021. The Supreme Court, which in the context of the application for annulment of the arbitration award acts as the final appellate court (cassation), accepted the cassation application from PT Aserra Capital and BANI. However, after careful examination, the Supreme Court is of the opinion that the *Judex Facti* (South Jakarta District Court) decision to annul the arbitration award was correct and proper.

Based on this, the Supreme Court also believes that BANI has applied the law incorrectly, thus causing injustice to the parties, which is stated as follows:

"That Respondent II (BANI) in its decision considerations also did not comply with the matters agreed upon by the Applicant and Respondent I in the Conditional Sale and Purchase Agreement dated January 17, 2019 (exhibit P-3), therefore the BANI Decision has misapplied the law, thus giving rise to injustice, and contains a clear error or mistake by the Judge, so that the *Judex Facti* decision which annulled the decision of the Indonesian National Arbitration Board is correct and proper;"

The Supreme Court based its decision on the finding that the arbitral award contained grounds for annulment as referred to in Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Specifically, the Supreme Court emphasized that an arbitral award can be annulled if the arbitrator has exceeded the authority granted to him by the parties or by law. In this case, the Supreme Court found that there were aspects in the arbitral award that exceeded the arbitrator's authority, so that the award could not be upheld. Therefore, the Supreme Court rejected the appeals from PT Aserra Capital and BANI, and ordered the Appellants to pay court costs.

On the other hand, not all requests to annul arbitration awards are granted, as exemplified by Supreme Court Decision Number 477 B/Pdt.Sus-Arbt/2022. This case originated from a contractual dispute between PT PLN (Persero) and PT Boustead Maxitherm Industries regarding the construction of the Talaud Steam Power Plant (PLTU) project. The dispute was then brought to an arbitration forum, namely the Indonesian National Arbitration Board (BANI), which issued Arbitration Decision Number 42085/XII/ARB-BANI/2019 on April 28, 2021. In the decision, BANI stated that the contract between PLN and Boustead was legally terminated and ordered PLN to pay compensation of IDR 18,866,206,178 and USD 612,919 to Boustead, for cost overruns, cost escalation, and the return of the disbursement of the performance bond.

However, PT PLN did not accept the arbitration results and filed a petition to annul the arbitration award with the South Jakarta District Court. In South Jakarta District Court Decision Number 556/Pdt.Sus-Arbt/2021/PN Jkt.Sel dated October 5, 2021, the panel of judges granted the entire annulment request. The District Court declared the arbitration award not legally binding and ordered its removal from the District Court's arbitration award registration register.

The South Jakarta District Court based its decision on allegations of fraud in PT Boustead's submission of evidence to the arbitration panel. The panel stated that PT Boustead presented false arguments regarding the steam turbine configuration and blamed PLN for project delays. This was deemed to violate the provisions of Article 70 letter c of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which provides a legal basis for the district court to annul an arbitration award if it is proven that the award was obtained through fraud or forged documents.

Following the District Court's decision, PT Boustead Maxitherm Industries and BANI filed an appeal with the Supreme Court. They argued that the entire arbitration process had been conducted in accordance with the principle of contradiction, that their arguments regarding project delays and turbine configuration had been examined and considered by the arbitration panel, and that there was no legally valid evidence of fraud. They also emphasized that based on Article 29 paragraph (1) of the Arbitration Law, each party has the right to convey its arguments and opinions, and it is the full authority of the arbitration panel to assess the material truth.

The Supreme Court, in Decision Number 477 B/Pdt.Sus-Arbt/2022 dated April 14, 2022, granted the appeal. The Supreme Court stated that the South Jakarta District Court's considerations constituted an error in applying the law (error in iudicando). The Court considered that the arguments submitted by PT Boustead Maxitherm had been examined in the arbitration hearing and did not constitute fraud as referred to in Article 70 letter c of the Arbitration Law. The Supreme Court also emphasized that the district court is not authorized to assess the substance of the arbitration panel's considerations, except for the three limiting reasons stated in Article 70, namely if the decision was obtained by fraudulent means, there were forged documents, or the decision was contrary to public order.

As a consequence of these considerations, the Supreme Court overturned the decision of the South Jakarta District Court and stated that it upheld the BANI Arbitration Decision Number 42085/XII/ARB-BANI/2019. This also emphasizes that the district court's authority to annul an arbitration decision is very limited, and that the substance of the dispute in the arbitration cannot be re-examined by the court.

The district court's authority to annul an arbitration award, particularly under Article 70(c) concerning fraud, is a supervisory mechanism intended to maintain legal integrity. However, the exercise of this authority can create tensions if not based on clear and consistent considerations. This case demonstrates that grounds for annulment, such as fraud, require strong evidence to prevent abuse by parties dissatisfied with the arbitration outcome and to maintain confidence in this mechanism.

Legal certainty is a fundamental principle that ensures clarity, predictability and stability of the rule of law, providing protection for those seeking justice. Arbitration is one of the most popular out-of-court dispute resolution methods among entrepreneurs because it is considered the most suitable alternative dispute resolution for the needs of the business and investment world.

However, district court intervention in annulling an arbitration award can create legal uncertainty if it is not based on considerations consistent with statutory norms and principles. Inconsistencies in court decisions regarding arbitration annulment not only undermine the effectiveness of arbitration forums as a final and binding alternative dispute resolution, but also have the potential to erode business confidence and create instability in the national investment climate, particularly in strategic economic regions.

The three Supreme Court decisions above collectively illustrate the spectrum of challenges in upholding legal certainty regarding arbitral awards in Indonesia. On the one hand, there are cases where the annulment of an arbitral award is deemed valid due to fundamental violations affecting the integrity of the process or the substance of the award itself, such as fraud or the arbitrator exceeding their authority. On the other hand, there are also cases where the annulment request is rejected, emphasizing the limits of court intervention to uphold the principle of finality of arbitration. This context raises critical questions about the legal basis and considerations of judges in annulling arbitral awards, whether they comply with legal provisions, and the extent to which legal certainty regarding the annulment of arbitral awards in district courts is ensured.

Furthermore, this research has broader relevance in the context of legal development, particularly in understanding the relationship between legal certainty theory and contract theory. Legal certainty is a state of legal certainty due to the force of the law. Legal certainty is a form of protection for justiciables (those seeking justice), meaning a person will be able to obtain what they desire under certain circumstances. Agreement theory evaluates how the annulment of an award affects the autonomy of the parties who have agreed to it through an arbitration agreement. By integrating these two theories, this study aims to provide a comprehensive perspective on the balance between court oversight and arbitral integrity, focusing on the above case as a representative study.

RESEARCH METHODS

The normative legal research method (Normative Legal Research) is a scientific research procedure to find the truth based on the logic of legal science from its normative side. This qualitative research analyzes a problem-solving issue by collecting data as research material. The legal sources used in the research can be data obtained through literature and/or directly from the community. Data obtained directly from the community is called primary data, while data obtained through literature and documentation is called secondary data.

RESULTS AND DISCUSSION

The judge's considerations in Supreme Court Decisions Number 477 B/Pdt.Sus-Arbt/2022, Number 244 B/Pdt.Sus-Arbt/2022 and Number 477 B/Pdt.Sus-Arbt/2022 which annulled the arbitration award, whether they were in accordance with legal provisions

Arbitration reflects the free will of the parties who choose to resolve disputes outside of court. Court oversight of arbitration must be carried out carefully to avoid jeopardizing the parties' agreement and legal finality.

Although Law No. 30 of 1999 aims to support the investment climate through efficient dispute resolution, the practice of district courts annulling arbitration awards still frequently sparks debate about legal consistency. This study examines three court decisions that demonstrate variations in the application of the authority to annul arbitration awards.

An arbitration clause is a binding contract in which the parties knowingly waive their right to litigate in a public court. Based on the principle of *pacta sunt servanda* (Article 1338 of the Civil Code), an agreement serves as law for its maker.

The essence of arbitration is the autonomy of the parties or freedom of contract. The parties are free to determine the contents of the agreement, including choosing a dispute resolution forum. This choice must be respected by the state through the courts.

Case 1: Supreme Court Decision No. 477 B/Pdt.Sus-Arbt/2022 (BreadTalk)

Chronology:

- PT Talkindo Selaksa Anugrah has been running the BreadTalk franchise in Indonesia since 2003.
- Dispute regarding royalty payments that have been adjusted several times
- BANI decided the dispute on August 8, 2023
- The District Court overturned the BANI decision
- The Supreme Court overturned the District Court's decision

Analysis: The Supreme Court asserted that the District Court had exceeded its authority by reassessing the substance of the dispute. This constituted direct interference with the parties' agreement. The court may not act as an "appellate tribunal" for an arbitration award.

Restrictions on Freedom of Contract

Freedom of contract is limited by the principle of good faith in the execution of contracts (Article 1338 of the Civil Code). When a fundamental breach of good faith occurs, the arbitral award is legally invalid, and the court has the authority to intervene.

Case 2: Supreme Court Decision No. 244 B/Pdt.Sus-Arbt/2022 (PT Aserra Capital)

Chronology:

- Dispute between PT Aserra Capital and PT Asia Pacific Mining Resources
- BANI decided that the Conditional Sale and Purchase Agreement was valid and punished one of the parties
- PT Asia Pacific Mining Resources filed for cancellation on grounds of deception, including concealment of documents and falsification of evidence of land area.
- South Jakarta District Court granted the cancellation
- PT Aserra Capital files an appeal to the Supreme Court

Analysis: The annulment was based on manipulation of evidence and concealment of documents, demonstrating a lack of good faith. These violations undermine the entire arbitration process.

Case 3: Supreme Court Decision No. 941 B/Pdt.Sus-Arbt/2024 (Franchise)

Analysis: The cancellation was not based on the substance of the dispute, but rather on the concealment of material facts regarding the transfer of trademark rights, which eliminated the applicant's legal standing. The court's intervention actually upheld the integrity of the agreement, as a valid agreement requires legitimate parties.

Case 4: PT Boustead vs PT PLN (Talaud PLTU)

Chronology:

- Dispute related to the Talaud PLTU project (2x3 MW)
- BANI decided to grant PT Boustead's request and ordered PT PLN to pay compensation.
- PT PLN filed for cancellation on the grounds of deception related to the change in turbine configuration from 'double layer' to 'single layer'
- PT PLN argued that the changes were submitted after the contract was signed, not before.

Dual Function of the Court

Based on the Contract Theory, the court's authority is dualistic:

a. Autonomy Protector

- Refuse to intervene in the substance of the dispute entrusted to the arbitrator
- Manifestation of respect for pacta sunt servanda

b. Integrity Guard

- Authorized to annul a decision if the process is tainted by a fundamental breach of good faith (fraud, deception, trickery)

The court does not replace the role of the arbitrator, but ensures that the arbitration arena runs fairly and in accordance with the basic principles of contract law.

Judicial oversight has a complex relationship with legal certainty:

- **On one side:** Any intervention has the potential to disrupt the principle of finality.
- **On the other hand:** Supervision is necessary to ensure that arbitration proceeds within legal corridors.

Passive Supervision (MA Decision No. 477/2022)

By refusing to reexamine the substance, the Supreme Court is signaling that arbitration awards should be respected as final. This strengthens predictability and builds confidence in the arbitration institution.

Active Supervision (Supreme Court Decision No. 941/2024 and No. 244/2022)

The annulment of a decision, although it may seem to disrupt finality, actually upholds the dimensions of clarity and justice:

- **Case No. 941/2024:** Emphasizing the necessity of having legal standing
- **Case No. 244/2022:** Provides assurance that the legal process does not tolerate manipulation of evidence.

Practice and Implications of Cancellation of Arbitration Decisions in District Courts in Relation to the Theory of Legal Certainty

The annulment of an arbitration award is regulated in Articles 70, 71, and 72 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article 70 sets out three limiting grounds that allow for the annulment of an arbitration award: if the letter or document submitted during the hearing is proven to be false after the award is rendered, a decisive document is discovered that was concealed by the opposing party, or the award resulted from deception committed during the dispute hearing.

This provision reflects a balance between respect for the principle of finality of arbitral awards and judicial oversight to maintain the integrity of the process. By strictly limiting the scope of annulment, the law seeks to protect the essence of arbitration as a final and binding dispute resolution mechanism.

Article 71 stipulates that a request for annulment must be submitted in writing within a maximum of 30 days of the submission and registration of the arbitration award with the District Court Clerk. Article 72 then details the filing, determination, and legal action mechanisms. The request is submitted to the Chief Justice of the District Court, who must issue a ruling within 30 days. Appeals to the Supreme Court, which rules at both first and final instance, are available within 30 days.

An analysis of three Supreme Court decisions reveals significant inconsistencies in the interpretation of the phrase "trickery" as referred to in Article 70 letter c. Supreme Court Decision No. 941/2024 adopted a narrow interpretation, qualifying trickery as the concealment of crucial information regarding the transfer of trademark rights that fundamentally affects the plaintiff's legal standing. This concealment of crucial procedural facts is deemed to have misled the arbitration process from the outset.

In contrast to this approach, Supreme Court Decision No. 244/2022 applies an expansive interpretation, encompassing a range of actions, including concealment of due diligence documents, manipulation of land area evidence, and the presentation of unqualified witnesses. The Supreme Court also considered the substance of the decision, which it deemed highly unfair as a consequence of the arbitrator's deception and misapplication of the law. Meanwhile, Supreme Court Decision No. 477/2022 rejects the qualification of the turbine configuration change as deception, asserting that the presentation of arguments and evidence, even if refuted by the opposing party, is an inherent part of the evidentiary process, which falls within the full authority of the arbitral panel.

Supreme Court Decision No. 477/2022 sets an important precedent in affirming the limits of the court's authority. The Supreme Court explicitly stated that the District Court is not authorized to act as a second *judex facti* to re-examine the substance of the dispute. The court's authority is limited to examining the limiting reasons set out in Article 70, not to re-evaluating the arbitration panel's considerations, analysis, or conclusions regarding the subject matter of the case. This affirmation is crucial to maintaining the integrity and autonomy of the arbitration process, where the court is only authorized to examine whether the decision was obtained through fraudulent means or violates public order, not to assess the material correctness or erroneousousness of the decision.

Inconsistencies in the interpretation of Article 70 negatively impact legal predictability, an essential element of legal certainty. When the parameters for annulling an arbitral award are unclear and subject to varying interpretations, parties face difficulties in predicting the finality and enforceability of the award. This uncertainty creates additional legal risks that could potentially hinder business and investment activities. Based on Hans Kelsen's theory of norm hierarchy (*Stufentheorie*), legal certainty is achieved through a structured normative framework. Therefore, court decisions that go beyond the scope of Article 70 or contradict higher legal norms risk creating precedents that undermine the national arbitration framework.

The impact of inconsistency is exacerbated by the tendency of Indonesian businesses to choose international arbitration institutions such as the Singapore International Arbitration Centre (SIAC). This preference is driven by the perception that foreign arbitration institutions offer a more reliable process with consistent decisions and avoid the risk of uncertainty (unpredictability). This phenomenon indicates an erosion of trust in the domestic arbitration system, which could impact the competitiveness of Indonesian jurisdictions in attracting investment.

Inconsistent annulment of arbitral awards simultaneously threatens three dimensions of legal certainty. From a clarity perspective, broad interpretations and unclear legal bases create ambiguity regarding the limits of annulment. From a predictability perspective, the uncertainty of the process erodes the parties' trust in arbitration as an alternative dispute resolution method because there is no guarantee of the finality of the award. Meanwhile, from a stability perspective, uncontrolled annulment undermines the principle of finality

and bindingness of arbitral awards, ultimately eroding confidence in the effectiveness and efficiency of dispute resolution mechanisms.

Strengthening the principle of finality requires a comprehensive approach involving jurisprudential consistency, restrictive interpretation, and legislative reform. The Supreme Court plays a central role in creating consistent jurisprudence. The restrictive approach in Supreme Court Decision No. 477/2022, which limits the court's authority to non-substantive assessments, should serve as a primary guideline for lower courts to create greater predictability.

The grounds for annulment in Article 70 should be interpreted narrowly (restrictive interpretation), so that fraud should only refer to obvious and intentional procedural irregularities that fundamentally affect the validity of the process, not simply differences in interpretation of the facts or dissatisfaction with the outcome of the award. In the long term, a revision of Law No. 30 of 1999 is needed to provide a clearer definition and more concrete parameters regarding the grounds for annulment. Adopting international best practices, such as those contained in the modern Arbitration Act, can reduce ambiguity and strengthen the national arbitration legal framework.

CONCLUSION

- A. The annulment of an arbitration award by a judge is lawful if it is carried out in a limited and consistent manner based on Article 70 of Law No. 30/1999, specifically the reason for "trickery" (letter c). Its application is dualistic: it is lawful when dealing with violations of fundamental principles such as concealment of facts (Supreme Court Decision No. 941/2024) or manipulation of evidence (Supreme Court Decision No. 244/2022) that violate good faith; but it is unlawful when the court exceeds its authority in assessing the substance of the dispute, as emphasized in Supreme Court Decision No. 477/2022 which states that the court may not act as an "appellate panel" because it violates the autonomy of the will and the principle of *pacta sunt servanda*.
- B. The legal certainty of annulling arbitral awards faces a paradox due to inconsistent application. On the one hand, the Supreme Court reinforces finality by rejecting

substantial intervention (Decision No. 477/2022). On the other hand, the court annulled decisions resulting from fraudulent processes (Decisions No. 941/2024 and No. 244/2022), ensuring the system does not protect fundamentally flawed outcomes

- C. The primary threat isn't the annulment authority, but the inconsistent interpretation of "tricks," which erode predictability. This ambiguity undermines business confidence in domestic arbitration and encourages them to turn to international forums. To maintain the finality of arbitration, a narrow and consistent interpretation of Article 70 of the Arbitration Law is necessary.

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