

Juridical Analysis Of The Application For Cancellation Of The Arbitration Award Of The Indonesian National Arbitration Board (Decision Study Number 531 / Pdt.Sus-Arb/2023 / PN Bks)

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Abstract

This paper examines the juridical application for cancellation of the arbitration award of the Indonesian National Arbitration Board (BANI) Surabaya in the case between PT Adhi Persada Properti against Haryono Soebagio and Budi Said. This dispute stems from default in the implementation of the deed of binding agreement of sale and purchase (PPJB) No. 008/2017, which was then terminated through the BANI Surabaya Arbitration forum. The applicant filed a cancellation of the arbitration award under Articles 70 and 71 of Law Number 30 of 1999 concerning arbitration and Alternative Dispute Resolution, on the grounds of alleged fraud and violation of the principle of due process of law. This study uses normative juridical methods, with a legal and conceptual approach, and examines the relevance of this decision to the protection of legal certainty in arbitration practice in Indonesia.

Keywords: Arbitration, annulment, BANI, Default, Deception

1. INTRODUCTION

The birth of Law No. 30 of 1999 on arbitration and Alternative Dispute Resolution (AAPS law) marked a paradigm shift in dispute resolution in Indonesia, from litigation to non-litigation more efficient, fast, and confidential. Arbitration is a form of dispute resolution that is recognized and protected by National Law, with the principle of final and binding which means that the decision is binding and cannot be appealed or cassated to the General Court. However, the principle of finality is not without exceptions. UU No. 30 of 1999 opens the space for annulment of arbitral awards, especially when there are fundamental violations such as deception, falsification of documents, or the discovery of New decisive evidence as contained in Article 70 of the law.

In practice, the cancellation of an arbitration award is a legal step that is rarely taken, since it must meet strict formal and material requirements. One interesting case that reflects the dynamics of the application of Arbitration Law in Indonesia is the decision of the Bekasi District Court Number 531/Pdt.Sus-Arb / 2023 / PN Bks, between PT Adhi Persada

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Properti as the applicant against Haryono Soebagio and Budi Said as the respondent. This case shows how civil disputes arising from binding agreements to buy and sell land and buildings can lead to arbitration proceedings in BANI Surabaya, and then sued for cancellation in the district court because it is suspected to contain elements of fraud (fraudulent misrepresentation) in the arbitration process.

The application for the establishment of this monitoring by obtaining the pass 70 letters of law no. 30 of 1999, which provides that an arbitral decision may be annulled if taken as a result of deception of one of the parties. The facts of the trial stated that as the land the object of sale and purchase did not belong to the respondent, but belonged to three named Amin Sutoyo, who considered in the Surabaya District Court and finally reconciled (dading) in 2020. This forms the law in the substance of the arbitration son of BANI Surabaya number 64/ARB/BANI-SBY/II / 2023. With Demi, this story attests to a study to understand the history of which statutory laws applicable in arbitration can be enforced, as well as how state judgments assess the limitations of nullification of Arbitration breaks within the framework of due process of law.

2. RESEARCH METHOD

This paper uses normative legal research methods (Ariman Sitompul, 2022), namely research focused on literature studies of primary, secondary, and tertiary legal materials (Maswandi, Ariman Sitompul (2024): primary legal materials consist of Law No. 30 of 1999 on arbitration and Alternative Dispute Resolution, Decision No. 531/Pdt.Sus-Arb/2023 / PN Bks, and BANI arbitration award No. 64/ARB/BANI-SBY/II / 2023, secondary legal materials in the form of legal literature such as the works of Priyatna Abdurrasyid, Huala Adolf, and Munir Fuady regarding the principles of Arbitration and cancellation of arbitration awards and tertiary legal materials in the form of legal dictionaries and current scientific articles in 2023-2025 regarding business dispute resolution through arbitration. The approach used is a statutory approach (statute approach) and a case approach (case approach) to understand the application of Arbitration legal norms in the context of this decision.

3. RESULT AND ANALYSIS

A. Formal and material terms of cancellation of the Arbitral Award and analysis of deception in the arbitrase decision

According to Article 71 of Law No. 30 of 1999, the application for cancellation must be submitted no later than 30 days from the date the arbitral award is registered with the District Court. In this case, BANI's arbitration award was registered on September 25, 2023, while the application for cancellation was filed on October 23, 2023, thus fulfilling the

formal requirements set by law. In terms of material, the application for cancellation is filed on the grounds that the arbitration award is taken from the results of deception (fraud). Based on the facts at the trial, it was found that some of the objects of the agreement did not belong to the respondent II (Budi Said), but to the other party (Amin Sutoyo). Therefore, respondent II's statement regarding land ownership is considered misleading and fulfills the element of deception as referred to in Article 70 letter (c) of the AAPS law (Safnul, Dody, 2024).

The term ruse is not explicitly described in law No. 30 of 1999, but according to the Great Indonesian dictionary (KBBI), "tipu" means dishonest acts to mislead others, and "Ruse" means a rotten strategy or sense to gain personal gain. In the perspective of civil law, deception can be equated with *dwang of bedrog* as provided for in Article 1328 of the Civil Code, that is, any deception used to mislead the other party in an agreement. Thus, if in the course of the arbitration process it is proved that one of the parties committed a material lie in order to influence the arbitral tribunal, the decision may be canceled because it contains substantive legal defects.

B. The role of the District Court in the cancellation of an arbitration award

In the Indonesian legal system, the District Court has a central position in ensuring the establishment of procedural justice (procedural justice) and legal certainty (legal certainty) to the implementation of the arbitration award. Although arbitration is seen as a form of dispute resolution outside the state judiciary, the existence of the court is still needed as a "supporting judiciary" which is an institution that functions to supervise, strengthen, or even cancel the arbitration award if there is a serious violation of applicable legal principles (Yosua Martin Sinaga , 2024).

Article 72 paragraph (2) of Law No. 30 of 1999 on arbitration and Alternative Dispute Resolution (hereinafter referred to as the AAPS law) states that: "The chairman of the District Court is authorized to examine claims for cancellation if requested by the parties, and regulate the consequences of the complete or partial cancellation of the arbitral award in question(Hendra Tanu, 2024)." This provision affirms that although the arbitration is final and binding, the District Court still has the function of limited judicial control over the outcome of the arbitration. This function is not intended to open a path of Appeal, but to ensure that the arbitral award does not violate the law, morals, and Public Order (public policy) (Huala Adolf, 2023).

Thus, the relationship between arbitration and the General Court is complementary, not competitive. Arbitration serves as a quick and efficient

dispute resolution mechanism, while the District Court serves as the guardian of the legal legitimacy of the arbitration process itself (Adhitya Yulwansyah,2024).

The authority of the District Court to cancel the arbitration award is regulated limitatively in Article 70 of the AAPS law, namely if:

- a) The arbitration award is allegedly based on a false letter or document;
- b) Found a decisive document hidden by the counterparty; or
- c) The arbitral award is drawn from the results of a ruse committed by one of the parties.

However, the doctrine and jurisprudence of the Supreme Court have pointed out that the reasons for the annulment are incomplete. It is based on the phrase "among other things" in the general explanation of Chapter VII of the aaps law, which allows filing an application for cancellation on the basis of other reasons, such as *ultra petita*, exceeding the limits of the arbitral authority, or violating the principle of legal process. In practice, the district court not only has the role of checking the validity of a formal application for revocation (for example, the 30-day deadline as stipulated in Article 71 of the AAPS law), but also has the power to evaluate the materials of an arbitral award if there are signs of violation of the principles of Justice, reasonableness, or public order (*ordre public*).

For example, in the decision of the Supreme Court Number 03/Arb.Btl / 2005, the judge affirmed that the word "inter alia" in the general explanation of the AAPS law provides room for the court to overturn an arbitral award that violates the principle of absolute competence and substantive justice. This fact indicates that the arbitral award was based on false statements and misleading facts, which juridically meet the element of deception referred to in Article 70 letter c of the AAPS law. Therefore, the role of the District Court in this case is corrective and restorative, that is, it restores material justice to the injured party through the cancellation of a legally flawed arbitration award.

In addition, the court also assessed the independence of the BANI arbitral tribunal in examining the dispute. In this context, the court ensures that the arbitral institution does not go beyond its authority (*ultra vires*) or act outside the scope of the arbitration clause agreed upon by the parties. If the arbitral tribunal decides on matters that are not prosecuted (*ultra petita*), then the court has the authority to cancel part or all of the verdict (Nugroho, 2017).

In recent years, the Supreme Court through various rulings has emphasized the limits and criteria for the cancellation of arbitral awards. Among others: Supreme Court Decision No. 18 B / Rev.Sus-Arbt/2022 / PN Jkt.Pst, which affirms that the cancellation of an arbitral award can only be made if it is *prima facie* proven that there is fraud or violation of the law. Supreme Court Decision No. 15 B / Rev.Sus-Arbt / 2023 / PN Sby, which

states that the arbitral tribunal has been ultra petita because it decides things outside the scope of the basic agreement. These two rulings reinforce the view that the role of the District Court is passive but principled supervision that is, it does not interfere with the substance of business contracts, but assesses whether the arbitration process has proceeded in accordance with the principles of law, honesty, and legal certainty (Direktori Putusan Mahkamah Agung R, 2025).

The role of the District Court in the annulment of Arbitration has important implications for the Indonesian legal system. Conceptually, the role contains three main dimensions, namely:

- a) Constitutional Dimension: Under Article 24 of the 1945 Constitution, judicial power is exercised by the Supreme Court and the judicial bodies under it to enforce law and Justice. Therefore, even though arbitration is a non-litigation institution, the results of its decisions can still be controlled by the judiciary as part of the implementation of the rule of law.
- b) Dimensions Of Substantive Justice: The court has a responsibility to prevent abuse of the arbitration mechanism by parties of bad faith. By opening the annulment chamber, the court provides protection against parties harmed by the practice of fraud, collusion, or breach of contractual principles such as good faith (good faith). In this context, the court acts as a moral guardian of civil law (moral guardian of justice).
- c) Dimensions of legal certainty and investment: In the context of business and investment, legal certainty of the implementation of Arbitration Awards is a major factor in attracting investors. However, if the arbitral award is made ignoring procedure and fairness, it will cause uncertainty. Therefore, the presence of the court as the final supervisor is a form of checks and balances between the independence of Arbitration and the protection of national principles of justice (S. Rahardjo, 2022).

From an academic perspective, there are still two views on the extent of the authority of the District Court in canceling the arbitration award. First, the restrictive view, which considers that the court should only have the authority to examine formal aspects so as not to interfere with the principle of finality of Arbitration. This view is widely adopted by international arbitration practitioners such as the ICC and SIAC. Second, the progressive view, which sees that courts have substantive authority to ensure fairness and propriety in the conduct of Arbitration, especially when indications of deception, forgery, or violation of Public Order are found. This

view is taken by the Bekasi District Court in decision 531/Pdt.Sus-Arb/2023/ PN Bks, which prioritizes the principle of fair trial over the formality of arbitrase (Hendra Tanu, 2024).

4. CONCLUSION

The role of the District Court in the annulment of an arbitral award is not a form of intervention against the autonomy of the arbitral institution, but rather a manifestation of the principle of the rule of law (*rechtsstaat*) which guarantees that any form of dispute resolution must be subject to substantive justice and national law. In this case, the Bekasi District Court has carried out its judicial supervision function proportionately, by upholding the principles of due process of law, good faith, and fairness. Thus, the presence of the District Court as an examination institution for the legality of arbitration awards actually strengthens public confidence in the arbitration mechanism, because it provides assurance that no arbitration award is above the law.

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