HERMENEUTICS
VOL. 7, NO. 2, AUGUST 2023
p-ISSN 2337-6368 | e-ISSN 2615-4439
http://jurnal.ugj.ac.id/index.php/HERMENEUTIKA

FINAL LEGAL CERTAINTY AND BINDING OF ARBITRATION AWARDS IN BUSINESS DISPUTE SETTLEMENT AT THE INDONESIAN NATIONAL ARBITRATION BOARD (BANI)

Bambang Medivit Budiantoso[1)], Dudung Hidayat[2)], Teddy Asmara[3)],
Mohamad Sigit Gunawan[4)]
[1)2)3)4)] University of Swadaya Gunung Jati Cirebon West Java
[1)]medivite@gmail.com, [2)]dhidayatlawyer74@gmail.com, [3)]asmara.lyong@gmail.com, [4)]
m.sigit_gunawan@unswagati.ac.id

Received: Mey 30, 2023; **Revisions**: June 20, 2023; **Published**: August 30, 2023

Abstract:

The increasingly fierce and dynamic world of competition in business will increase the potential for disputes between business actors. Regarding these disputes, there are two options for resolution, namely litigation and non-litigation, but in general business actors choose non-litigation, especially arbitration, because they are considered in line with the business world, are more effective, efficient, guaranteed confidentiality and have decisions that are final and binding. The principle of final and binding is found in arbitration arrangements, both national and international. This paper is intended to analyze the validity of annulment of arbitral awards in district courts and the consistency of the articles relating to the nature of arbitral awards regarding final and binding legal certainty. The conclusion obtained is that the arbitral award still leaves many questions that confuse business people. This was caused by a discrepancy/uncertainty in the Arbitration Law. The law still opens opportunities for the disputing parties to pursue litigation with arguments that are difficult to prove and there are no detailed instructions. The verdict has not provided legal certainty for the litigants. They can easily apply for annulment of the arbitral award at the District Court. It is considered necessary to revise or update the law relating to the principle of being final and binding on arbitral awards. Unsynchronized or inconsistent regulations and articles related to arbitral awards must be adjusted so that legal certainty is born for the parties. This effort can be carried out by involving the government or related parties outside the litigation process, for example by revising law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, especially final and binding legal certainty when confronted with the cancellation of a decision to the District Court.

Keywords: Arbitration, Final and Binding, Legal Certainty

I. INTRODUCTION

In the business world that often uses agreements, there is often the possibility of a dispute arising. The dispute in question is about how to carry out the arguments of an agreement, what are the points of the agreement or caused by something else[1]. To resolve a dispute or

[1] Gatot Soemartono. Arbitration and Mediation in Indonesia. (Jakarta: PT Gramedia Pustaka Utama, 2006). p.3

disagreement there are several ways that can be taken, namely through negotiation, mediation, court and arbitration. At a general level, business disputes or disputes are often preceded by settlement by negotiation. If then this model of settlement method is not successful, then other alternatives can be taken such as settlement through court or arbitration. Settlement of disputes or disputes either to court or to arbitration is usually based on an agreement between the parties, if the agreement contains an arbitration clause, then the parties have actually agreed in writing that if at any time a dispute or dispute occurs regarding an agreement they have made together, they will resolved through arbitration and not in a case before a district court.

The settlement step that is usually carried out is by incorporating provisions or dispute resolution clauses into the agreement, either to the court or to the arbitration body[2]. Arbitration is an alternative system of dispute resolution that has a formal nature, in the arbitration process the parties fully surrender to a third party, namely the arbiter/referee who is neutral and has the authority to make decisions which are then binding on the parties.

Arbitration is an alternative method among many methods of dispute resolution which has become more popular when compared to other types of methods. Even its use outside the field of public law is of interest as a method of resolving business disputes or in the field of trade and contract law. However, the tendency of people to choose arbitration does not mean the method of resolving disputes through the courts. abandoned country. On the other hand, the role of the district court is still not easy to replace. This is because after a dispute has been decided by a preferred forum such as arbitration, the role of the court reappears when both parties do not voluntarily choose to carry out the arbitral award in question. In addition, arbitration institutions have a dependence on district courts, for example in terms of implementation after an arbitral award. There is an obligation to then register the arbitral award in the district court. This proves that the arbitration institution does not have coercive measures against the parties to comply with its award.[3] There are several advantages to be gained by resolving a dispute through arbitration. First, it is a relatively faster process considering that arbitral awards cannot be compared. Second, from a publicity point of view, it is guaranteed that the dispute cannot be attended by anyone or published widely (closed). Third, considering that arbitrators can be chosen by the parties and have expertise in their field, there is no need to doubt that the decision taken truly reflects fairness and expertise.[4]

Indonesian law related to arbitration agreements and arbitration clauses are two legal foundations for the birth of competence of arbitration forums. An arbitration agreement is an agreement between the parties involved in a dispute, to request a decision on the dispute from the arbitral tribunal. The agreement is stated in a deed that is separate from the main contract. Arbitration is recognized by the court as a "judicial institution by a particular judge" (particularulire rechtspraakf). Arbitration in a formal form only developed in Indonesia in the 1970s when BANI (Indonesian National Arbitration Agency) was first formed in 1977 by KADIN (Indonesian Chamber of Commerce and Industry). BANI only deals with disputes between domestic parties, unless the parties involved make a special agreement[5]. Although BANI is generally related to disputes between national private parties, in certain situations this institution can also handle international commercial disputes, because "there is no difference

[2] Gerald Cooke. Disputes Resolution in International Trading. in: Jonathan Reuvid (ed). *The Strategic Giude to International Trade*. (London: Kogan Page, 1997). page. 193.
[3] Eman Superman. The Development of Dispute Resolution Doctrine in Indonesia (paper presented at Syiah Kuala University. Banda Aceh. June 2006). p.2.
[4] Hikmahanto Juwana. Anthology of Economic Law and International Law. (Jakarta: Lantern Heart. 2002). p.18
[5] Maqdir Ismail. Introduction to Arbitration Practices in Indonesia, Malaysia and Australia. (Jakarta: Faculty of Law, University of Al-Azhar Indonesia. 2007). p. 40

and there are no different laws for national and international commercial arbitration in Indonesia".[6]

Institutions whose names are district courts are required to respect arbitration institutions as stated in Article 11 paragraph (2) of Law number 30 of 1999 which states that district courts do not have the authority to then adjudicate disputes between parties who include arbitration provisions/clauses in their agreements. Here the district court must reject and not be allowed to interfere in the settlement of disputes that have been decided through arbitration. This is the principle of limited court involvement. The objects in the arbitration agreement as stipulated in Article 5 paragraph (1) of the Law on Arbitration and Alternative Dispute Resolution (APS) are only disputes or disputes in the world of commerce, including: finance, banking, commerce, industry, investment and IPR. While in Article 5 paragraph (2) of the Arbitration Law and APS there is a negative formulation which states that disputes/disputes in cases that cannot be resolved by arbitration are cases that according to laws and regulations cannot be reconciled as stated in the Civil Code Book III chapter XVIII Article 1851 to 1854. Most business actors use agreements that include arbitration clauses in resolving disputes or disputes, because they are considered the most effective and efficient. The arbitral institution provides a binding legal opinion for the parties, because when there is an opinion that is contrary to the legal opinion given, it means that it is a breach of contract - default. So that verzet or resistance cannot be carried out in any form of legal remedy[7]. Article 3 of the Arbitration Law and the APS explicitly states that the district court does not have the authority to adjudicate disputes/cases between the parties whose agreement includes an arbitration clause. However, in the implementation area, there are still parties who feel aggrieved by the arbitration award, canceling it to the district court and oddly enough, the court accepts and examines the case according to the usual procedural law, which is a protracted process and this is very time-consuming, costly, energy and mindful for the parties. . The classic reason is how the district court may not reject cases submitted by justice seekers even though it is clear that the case is under the authority of the arbitral institution, which is basically an agreement with an arbitration clause.

The Supreme Court expressly stated that the principle of pacta sunt servanda means that the arbitration clause is absolute and binding on the parties, in other words that the arbitration clause automatically without considering other matters directly provides legitimacy regarding absolute authority for the arbitral institution. This was proven by the Supreme Court when examining and deciding on a cassation request for business disputes/disputes from one of the losing parties after it was decided by the arbitral institution then annulling it to the district court followed by appeal and cassation, at the cassation decision stage the Supreme Court gave a decision that upheld the arbitral institution's decision in this case is the Indonesian National Arbitration Board (BANI). Even though the Supreme Court gave a decision that upheld the arbitral award, the problem was that private disputes which were initially closed in nature became cases open to the public and should have been resolved in a short time, became long or protracted until a permanent decision was obtained because the examination used Civil procedural law as is generally the case that enters the district court.

An example is related to a business dispute between PT. Boustead Maxitherm Industries (BMI) against PT. The State Electricity Company (PLN) which in the agreement between the

[6] Sudargo Gautama. Some Legal Aspects of International Commercial Arbitration in Indonesia. Journal of International Arbitration Vol.7 No.4 (1990). p. 96.
[7] Budi Budiman. Finding the Ideal Dispute Resolution Model. Study of Civil Justice Practices and Law Number 30 of 1999. http://www.uika-bogor.ac.id/jur05.htm. Downloaded October 7, 2022.

two uses an agreement by including an arbitration clause as the institution that is the place for dispute resolution if a dispute occurs in the future. However, in practice, even though it has been terminated through BANI with case number: 42085/XII/ARB-BANI/2019 dated 28 April 2021, PT. PLN submitted an annulment of the arbitration award by suing the District Court case number: 556/Pdt.Sus-Arbt/2021/PN.Jkt.Sel dated 5 October 2021. Which point at issue is related to the configuration of the steam turbine and the negligence of PT.PLN related to delay in completion of the Talaud PLTU construction work. The District Court's decision annulled the arbitration decision and then the District Court's decision was appealed to the Supreme Court with case number: 477 B/Pdt.Sus-Arbt/2022 dated 14 April 2022 whose decision upheld the arbitration award at BANI.

Furthermore, a business dispute between PT. Chevron Pacific Indonesia (CPI) against PT. Wijaya Karya (WIKA), the two parties made an agreement by including an arbitration clause as the selection of dispute resolution where if in the future a dispute occurs (one of the defaults) then BANI is the mechanism chosen in dispute resolution. But again, in the implementation area, when a dispute occurs, one who feels dissatisfied makes a lawsuit to the District Court. Even though BANI had decided on case number: 42037/V/ARB-BANI/2019 on 21 December 2020. Which then PT. Wijaya Karya filed a lawsuit for cancellation of BANI's decision to the Central Jakarta District Court with case number: 102/Pdt.GArbitrase/2021/PN.Jkt.Pst dated May 31, 2020, whose decision annulled BANI's decision. Then PT. CPI made an appeal to the supreme court with case number: 245 B/Pdt.Sus-Arbt/2022 dated 16 February 2022 whose decision was to uphold the District Court's decision. The matter for the consideration of the panel of judges upholding the decision of the Central Jakarta Court is that there are decisive documents which are hidden in such a way that it has the potential to make the examination process up to deliberation decision-making inadequate due to indications of lack of independence and neutrality with one of the arbitrators who has a conflict interest (conflict of interest) with the PT. CPI in previous employment relationship.

The two examples of business disputes above illustrate that the arbitration clause which is the agreement of the parties in resolving the problems that occur is ignored, even though the Arbitration Law and the APS clearly explain that the arbitral award is final and binding, meaning that arbitration is an institution that has the authority to resolve disputes. business disputes where the decision is first and final or in other words cannot be compared, but the facts on the ground are not the case, so this final and binding principle is only the text of the law which is not concrete, does not have strong legal certainty and is not binding on the parties in area of implementation/practice.

The district court has a large role in supporting the arbitral award in terms of legitimizing the arbitral award, it is proven that after the arbitral award is read, it must be registered with the district court to be registered/registered for a maximum of 30 days. Then the district court is also the giver of permission for the request for the execution of the arbitral award for the party who feels it benefits (wins) in other words as an institution that has the power of execution (executive title).[8]

The provisions of Article 60 which basically state that the arbitral award is final and binding can be annulled as stipulated in Article 70 of the Arbitration Law and the APS, this is given in order to provide an opportunity for parties who feel aggrieved to submit objections if it is felt that the arbitral award has errors mistakes that are criminal in nature include: letters/documents admitted to be fake after the verdict has been read out, letters/documents that determine the determination are deliberately hidden and there is deception during the

[8] Erman Rajagukguk. Arbitration and Court Decisions. (Jakarta: Candra Pratama. 2000). p. 14

examination process. This can be requested for annulment to the district court to then cancel the arbitral award either in part or in whole.

An annulment of a decision by a court can be made if an arbitral award is made with excessive authority so that the decision can be sidelined or if some jurisdictions are excessive. With the loophole for canceling the Arbitration award as mentioned above, it creates legal uncertainty in the settlement of disputes/business disputes for the parties because in fact the Arbitration alternative which is included in the agreement clause as a dispute resolution is the absolute authority of Arbitration and its decision is final and binding (examination of initial and final level disputes).

Regarding the background of the problems above, the researcher proposes the formulation of the problem in this study including: how is the Legal Remedies for Cancellation of Arbitral Awards in Settlement of Business Disputes in District Courts and What is the Final Legal Certainty and Binding in Settlement of Business Disputes at the Indonesian National Arbitration Board?

II. RESEARCH METHOD

The paradigm for this study uses the positivistic paradigm, namely to obtain the data that will be required is a normative research method. Normative legal studies take a critical-normative attitude starting from laws and regulations that substantially do not work as they should and criticism of legal practice and legal dogmatics. The research method used is normative juridical research method. Which approach is used by analyzing statutory rules, namely Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, especially provisions regarding decisions that are final and binding, where in the practice area there is legal uncertainty from arbitral awards, namely that it can be carried out cancellation or lawsuit in the District Court.

The type of research in this study is qualitative research by describing and analyzing descriptively analytically from the data obtained using the deductive method by analyzing general problems to then be drawn into a specific statement. In this study regarding the specifications of the research used is descriptive analysis. The data used in this legal research are primary data and secondary data. Primary legal materials, namely laws and regulations and other regulations that apply and are related to the writing of this research, including Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Secondary legal materials, namely data obtained from books , scientific papers, legal journals, legal articles, legal magazines and scientific essays related to the subject matter to be discussed. The technique of collecting legal materials is by means of: literature study, namely by reviewing laws, books, journals, papers related to the research problems studied then by interview, namely by asking questions to sources both freely and structurally.

III. DISCUSSION

A. Legal Remedies to Cancel Arbitration Award in Business Disputes in the District Court

Law number 30 of 1999 (Arbitration Law) expressly states that the decision of the Arbitration Council is final and binding. Submission of an application for annulment according to Article 70 of the Arbitration Law for parties who feel aggrieved over a BANI decision has limitations in the use of reasons/arguments, namely when the decision contains documents/letters that are admitted to be fake or declared fake, taken from the ruse of finding documents hidden determinants. An annulment of a decision by a court can be made if an arbitral award is made with excessive authority so that the decision can be sidelined or if some jurisdictions are excessive.

1) Legal Remedies for Submission of Cancellation of Arbitration Award That Has Been Decided by the Indonesian National Arbitration Board

Most business actors use agreements that include arbitration clauses in resolving disputes or disputes, because they are considered the most effective and efficient. The arbitral institution provides a binding legal opinion for the parties, because when there is an opinion that is contrary to the legal opinion given, it means that it is a breach of contract - default. So that verzet or resistance cannot be carried out in any form of legal remedy.[9]

The Arbitration Law and APS expressly state that the decision of the Arbitral Tribunal is final, and has permanent legal force and is binding on both parties (final and binding), meaning that it cannot be appealed, cassationed, or reconsidered. In accordance with what is stated in Article 60 of the Arbitration Law:

"The arbitral award is final and has permanent legal force and is binding on the parties".

However, the fact remains that there are legal remedies taken by disputing parties who feel aggrieved, by submitting an annulment of the arbitral award to the district court.

The Supreme Court expressly stated that the principle of pacta sunt servanda means that the arbitration clause is absolute and binding on the parties, in other words that the arbitration clause automatically without considering other matters directly provides legitimacy regarding absolute authority for the arbitral institution. This was proven by the Supreme Court when examining and deciding on a cassation request for business disputes/disputes from one of the losing parties after it was decided by the arbitral institution then annulling it to the district court followed by appeal and cassation, at the cassation decision stage the Supreme Court gave a decision that upheld the arbitral institution's decision in this case is the Indonesian National Arbitration Board ((BANI)[10].

Even though the Supreme Court gave a decision that upheld the arbitral award, the problem was that private disputes which were initially closed in nature became cases open to the public and should have been resolved in a short time, became long or protracted until a permanent decision was obtained because the examination used Civil procedural law as is generally the case that enters the district court.

Basically, disputes/cases in which there is an arbitration clause cannot then be submitted to the district court, unless there is an element of unlawful act, so that the defeated party can cancel it to the district court on the basis of an unlawful act in making the arbitral award due to lack of good faith.

An annulment of an arbitral award through a district court can be attempted as long as it refers to Article 70 of the Arbitration Law and APS which is alleged to contain the following elements:

a. Letters or documents submitted during the examination, after the decision has been rendered, are admitted to be fake or declared to be fake;
b. After the decision was made, decisive documents were discovered which were hidden by the opposing party; or
c. The decision is taken from the result of a ruse carried out by one of the parties in the examination of the dispute.

Based on the Elucidation of Article 72 paragraph (2) of the Arbitration Law and the APS, an appeal can only be made if the cancellation of the arbitral award is granted. The

[9] Budhy Budiman, "Searching for an Ideal Model of Dispute Resolution, Studies of Civil Court Practices and Law Number 30 of 1999" http://www.uika-bogor.ac.id/iur05.htm. downloaded 7 August 2009.
[10] Indonesian Jurisprudence 3 (Jakarta: PT Ichtiar Baru van Hoeve, 1990), p. 103.

explanation for the sound of Article 72 paragraph (2) of the Arbitration Law and the APS does not contain two or more meanings, so that it has provided legal certainty but for the sake of cost and time efficiency, this confirmation will make it easier for the Supreme Court to take a stand and avoid processing an appeal against a request for annulment. decision of the Arbitration Council which has been rejected by the District Court.[11]

As a comparison material, the author presents cases that have occurred and have been decided by the District Court and the Supreme Court of the Republic of Indonesia regarding the cancellation of the decisions of the Indonesian National Arbitration Board, as follows:

a. Business dispute between PT. State Electricity Company (PLN) and PT. Boustead Maxitherm Industries (BMI)

In case, PT. BMI (Petitioner) against PT. PLN (Respondent), Supreme Court Decision Number: 477 B/Pdt.Sus-Arbt/2020, the Respondent considers that the arbitral award rendered by BANI Jakarta, Number: 42085/XII/ARB-BANI/2019 dated 28 April 2021 is legally flawed because it is not based on the Arbitration Law in Article 1 point (1): "Arbitration is a way of settling a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute". Then in Article 9 paragraph (1) it is stated that:

"In the event that the parties choose dispute resolution through arbitration after the dispute has occurred, agreement regarding this matter must be made in a written agreement signed by the parties".

Decision of the National Arbitration Board Number: 42085/XII/ARB-BANI/2019 dated 28 April 2021, the Petitioner for the Cancellation has filed for Cancellation of the Arbitration Award before the South Jakarta District Court trial, which essentially cancels the Decision of the Indonesian National Arbitration Board Number: 42085/XII /ARB-BANI/2019 April 28, 2021 along with all the legal consequences. Then the case was continued at the appeal level with case number: 477 B/Pdt.Sus-Arbt/2020, which essentially annulled the South Jakarta District Court Decision Number: 556/Pdt.Sus-Arbt/2021/PN Jkt.Sel., October 5 2021 which canceled the BANI Arbitration Award Number: 42085/XII/ARB-BANI/2019 dated 28 April 2021.

b. PT. Chevron Pacific Indonesia (CPI) and PT. Wijaya Karya (WIKA) Persero, Tbk

In a dispute between the applicant and the respondent, namely as follows: PT. CPI, which is domiciled at Sentral Senayan-I Office Tower, Jalan Asia Afrika, Number 8, Gelora Village, Tanah Abang, Central Jakarta City, DKI Jakarta Province, was represented by Albert B.M Simanjuntak as President Director. As Petitioner. PT. WIKA Persero Tbk, domiciled at Jalan Di Pandjaitan, Lot 9-10, East Jakarta, was represented by Agung Budi Waskito as the Main Director. As Respondent;

The agreement between the two uses an Arbitration clause, which in essence, if there is a breach of contract or one of the parties feels disadvantaged over the implementation of the agreement, then the Indonesian National Arbitration Board (BANI) has the authority to settle it. Here the PT. WIKA (Persero), Tbk. Feeling that it is necessary to submit an application for annulment at the Central Jakarta District Court because the Arbitration award is considered unfair, because it is suspected that PT. CPI has a working relationship with the Arbitrator who becomes the arbiter in the settlement of disputes between the two.

[11] Junaedy Ganie, "Avoiding Delays in Execution Through Efforts to Cancel Decisions Without Legitimate Reasons in Insurance Cases", Bani Quarterly Newsletter No. 5 (26 December 2008), p. 23.

As for the argument of his application regarding the existence of documents that are decisive in nature which are hidden in such a way as to potentially make the examination process up to deliberations for decision making to be inadequate due to indications of independence and neutrality with one or more arbitrators who have a conflict of interest (conflict of interest) especially with PT. CPI in previous employment relationship.

As for the results of the dispute resolution at the National Arbitration Board, it has given Decision Number: 42037/V/ARB-BANI/2019 dated December 21, 2020, which in essence is granting the demands of PT. CPI and several demands from PT. WIKA (Persero), Tbk. Not accommodated. So that against the decision of the National Arbitration Board Number: 42037/V/ARB-BANI/2019 dated December 21, 2020, the Petitioner for the Cancellation has submitted a request for annulment before the Central Jakarta District Court, with number: 102/Pdt.G/2021/PN. Jkt. Pst. which essentially cancels the Indonesian National Arbitration Board Arbitration Award Number: 42037/V/ARB-BANI/2019 December 21 2020. Furthermore, at the appeal level at the Supreme Court, with number: 245 B/Pdt.Sus-Arbt/2022, which in essence strengthens the Decision of the Central Jakarta District Court Number: 102/Pdt.G.Arbitration/2021/PN.Jkt.Pst, dated 31 May 2020 which annulled the Decision of the National Arbitration Board: 42037/V/ARB-BANI/2019 dated 21 December 2020;

2) Analysis of Cases of Cancellation of Arbitral Awards That Have Been Decided by the Indonesian National Arbitration Board by the Supreme Court

Based on the description of the case above, the author provides a review as a form of effort to analyze the decision of the Indonesian National Arbitration Board which was filed for annulment to the District Court up to the Supreme Court.

As for the decision of the Panel of Judges of the Supreme Court Number: 477 B/Pdt.Sus-Arbt/2022 dated 14 April 2022, which principally cancels the Decision of the South Jakarta District Court Number:: 56/Pdt.Sus-Arbt/2021/PN Jkt.Sel., October 5, 2021 which canceled the BANI Arbitration Award Number: 42085/XII/ARB-BANI/2019 April 28, 2021;

According to the author, the Supreme Court's decision is in accordance with the decision handed down by the Supreme Court because the reason for the request for annulment contained in the Arbitration Law is limited, with the following reasons:

Based on the provisions of Article 1320 of the Civil Code: "For agreements to be valid, four conditions are needed: the agreement of those who bind themselves, the ability to make an agreement, a certain matter and a lawful cause". The completeness of the elements of the terms of the validity of the agreement as mentioned above, is an absolute thing that if one of these elements is not fulfilled, then the agreement will be threatened with cancellation either null and void or can be requested for cancellation.

Based on the agreement between the applicant and the respondent containing a clearly stated arbitration clause, the determination of the arbitration clause can be implemented through ad hoc arbitration or through permanent arbitration. When appointing an ad hoc arbitration, the agreement must state how the selection of the referees/arbitrators will be carried out. If the resolution of the dispute is through permanent arbitration, it must be clearly stated which arbitration body has been appointed by the parties.

For this reason, the agreement made by the applicant and the respondent can be categorized as an arbitration agreement as referred to in Article 1 point 1 of the Arbitration Law, then the arbitration agreement can be enforced and also binding on the parties according to the Pacta Sunt Servcmda principle, based on Article 1338 paragraph (1) Civil Code, which states that

"All agreements made legally apply as laws for those who make them".

Then the matter of the materials for the request for annulment of the arbitral award does not at all meet the requirements for annulment of the arbitral award, as stated in Article 70 of the Arbitration Law which contains the following elements:

a. Letters or documents submitted during the examination, after the decision has been rendered, are admitted to be fake or declared to be fake;
b. After the decision was made, decisive documents were discovered which were hidden by the opposing party; or
c. The decision is taken from the result of a ruse carried out by one of the parties in the examination of the dispute.

As existing facts as well as the assessment or consideration of the Appeal Panel at the Supreme Court stated that the judgment of the Judex Facti (Council of Judges of the District Court) in this case was inappropriate for the following reasons;

- Whereas in accordance with the provisions of Article 29 paragraph (1) of the Arbitration Law, the parties have the right to submit arguments/opinions, regardless of whether the opinion or response is untrue, and on that opinion the Arbitrator Tribunal must assess whether the parties' opinion is true or not;
- Whereas in this case the argument/opinion of Appellant I regarding the configuration of the steam turbine and the negligence of the Appellant Respondent related to the late completion of the Talaud PLTU construction work has been clearly submitted by Appellant I before the Arbitrator Council/Appellant II;
- Whereas on the argument/opinion mentioned above the Arbitrator Council for Appellant II has considered it and concluded after previously evaluating and considering the opinion/response of the Appellant Respondent;
- Whereas the approval of the Appellant Respondent related to the change in the configuration of the steam turbine from two to one layer and the negligence of the Parties Appellant I and the Appellant Respondent in fulfilling their achievements are facts of legal events which were revealed in the trial before the Arbitrator Council, so that these legal events are true facts even though it was rejected by one of the parties in casu the Appellant Respondent;
- That therefore the actions of the Appellant I submitting arguments and evidence before the Arbitrator Council in this case are not acts of distorting facts or deception as referred to in the provisions of Article 70 letter c of the Arbitration Law;
- Whereas in addition to that, based on the provisions of Article 60 juncto Article 62 paragraph (4) of the Arbitration Law, without the existence of a letter/document as referred to in the provisions of Article 70 letters a and b, the Court is not authorized to assess the reasons and considerations of the Arbitrator Council on the substance of the application;

Furthermore, the decision of the Panel of Judges of the Supreme Court Number: 245 B/Pdt.Sus-Arbt/2022 dated 16 February 2022, which principally strengthens the Decision of the Central Jakarta District Court Number: 102/Pdt.G.Arbitration/2021/PN.Jkt.Pst, dated 31 May 2020 which canceled the Decision of the National Arbitration Board: 42037/V/ARB-BANI/2019 dated 21 December 2020;

According to the author, the Supreme Court decision was inappropriate because the reason for the request for annulment contained in the Arbitration Law was limited, with the following reasons:

Based on the provisions of Article 1320 of the Civil Code: "For agreements to be valid, four conditions are needed: the agreement of those who bind themselves, the ability to make an agreement, a certain matter and a lawful cause".

The completeness of the elements of the terms of the validity of the agreement as mentioned above, is an absolute thing that if one of the elements is not fulfilled, then the agreement will be threatened with cancellation either null and void or can be requested for cancellation.

So it is clear that the element of "agreed those who bind themselves" as one of the conditions for the validity of the agreement in Article 1320 of the Civil Code has been fulfilled. Therefore, the arbitration agreement becomes valid and binds the parties in accordance with the sunt servanda principle which states that "all agreements made legally apply as laws for those who make them" (Article 1338 of the Civil Code). This means that the parties to the agreement must comply with and carry out the contents of the agreement which, if not implemented by one of the parties, the party is considered in default, and the other party can demand the fulfillment of the implementation of the agreement according to law.

Then regarding the materials for the request for annulment of the arbitral award did not meet the requirements for annulment of the arbitral award at all, as stated in Article 70 of the Arbitration Law No. 30 of 1999 which contains the following elements:

a. Letters or documents submitted during the examination, after the decision has been rendered, are admitted to be fake or declared to be fake;
b. After the decision was made, decisive documents were discovered which were hidden by the opposing party; or
c. The decision is taken from the result of a ruse carried out by one of the parties in the examination of the dispute.

In the consideration of the Panel of Judges of the Supreme Court which upheld the judex factie decision (Council of Judges of the District Court) it was wrong, which considerations became the reference for the supreme court in rendering decisions, namely:

Whereas the legal considerations of the judex facti decision granting the request for annulment of the said arbitral award can be justified, because based on the facts in the a quo judex facti case, sufficient consideration has been given, namely the presence of decisive documents hidden in such a way as to potentially causing the examination process to deliberation to make decisions inadequate due to indications of independence and neutrality with one or more arbitrators who have a conflict of interest, especially with Respondent II in a previous working relationship, so that the Petitioner's request can be granted according to judex facti considerations is appropriate and correct and does not conflict with the law;

The considerations mentioned above are deemed inappropriate because the substance is more towards assumptions that have not been proven legally. What strengthens the consideration of the judge who stated that the arbitrator who decided the dispute between the applicant and the respondent had an interest only because of the employment relationship. This is not included in the 3 criteria for reasons for annulment of an arbitral award as stated in Article 70 of the Arbitration Law. The District Court and the Supreme Court in considering the reasons for Article 70 of the Arbitration Law referred to and discussed that one of the arbitrators had an interest/work relationship with the Respondent. Where proof of the existence of deception must first be proven by a court decision first, not just the interpretation of one party.

Then the reason for the request for annulment contained in the Arbitration Law is limitative, and the conditions for canceling an arbitration award contained in Article 70 of the Arbitration Law require a criminal decision beforehand. This is in accordance with the Elucidation of Article 70 of the Arbitration Law which states that: “A request for annulment can only be filed against an arbitral award that has already been registered in court. The reasons for the request for annulment referred to in this article must be proven by a court decision beforehand, not just the interpretation of one of the parties. If the court states that these reasons

are proven or not proven, then this court's decision can be used as a basis for consideration for the judge to grant or reject the request.

The Central Jakarta District Court and the Supreme Court in considering the reasons based on Article 70 of the Arbitration Law have re-examined and assessed the material examined by the BANI Arbitrator. Even though it should refer to Article 3 of the Arbitration Law, that the District Court is not authorized to adjudicate disputes between parties who are bound by an arbitration agreement. Then Article II paragraph (2) of the Arbitration Law, states that: The District Court is obliged to refuse and will not intervene in a dispute settlement that has been determined through arbitration, except in certain matters stipulated in this law. This should be the absolute authority or in other words the absolute competence of BANI based on the arbitration clause in the agreement between the applicant and the respondent.

B. Final Legal Certainty and Binding of Arbitral Awards in Business Disputes at the Indonesian National Arbitration Board

The arbitral award is final and has permanent legal force and is binding on the parties. This means that here the arbitral award cannot be appealed, cassation, or review and can be directly implemented by the parties voluntarily or if it is not implemented, execution can be requested to the district court. But on the other hand, in Law no. 30 of 1999 still contains rules which depict the dependence of arbitral awards on the authority of the district court as the author has previously described.

An arbitral award that is final and has permanent legal force and is binding on the parties (final and binding) turns out to be a raw decision that cannot yet be implemented, because to say that the arbitral award has permanent legal force, which means it can be enforced if the award or an authentic copy of the decision arbitration has been registered at the District Court.[12]

If it is related to the role of the court from the principle of final and binding in arbitral awards related to the execution, it is that the arbitral awards regulated in Law No. 30 of 1999 is determined to be final, the decision cannot be compared or cassated. Such a final nature is in line with the principle of fast and simple arbitration. Then, the purpose of a binding decision is that the decision is directly "binding" to the parties since it was handed down. The subsequent impact of the nature of binding results in the effect of executorial power. If later the decision is not implemented voluntarily by the defeated party, the decision can be carried out by force by an official body of authority through the judiciary. Because basically only the courts have the power to carry out executions in Indonesia.

However, again that the arrangements regarding the implementation of the arbitral award in Law No. 30 of 1999 creates a legal loophole for parties who do not have good faith to delay the implementation of the arbitral award. Due to the intervention of the court, as we know that the settlement of disputes through courts has its own principles, different from arbitration, which results in taking a long time to settle disputes in district courts.

Furthermore, regarding the final and binding principle related to the annulment of arbitral awards in Law no. 30 of 1999 it can be seen that the law has expressly stated that it is final and binding, but in reality the law also provides an opportunity for the parties to cancel arbitral awards in Indonesia. The cancellation of the arbitral award in Law no. 30 of 1999 gives a vague meaning to the principle of final and binding in which in fact the parties who lose or feel their interests are not accommodated in the arbitral award make the decision not final and binding because there is an effort to annul the proposed arbitral award as a loophole. to take

[12] Cicut Sutiarso, Implementation of Arbitration Award in Business Disputes (Indonesian Torch Library Foundation, 2011). p. 201

legal action against the arbitral award even for reasons outside the provisions of Article 70 Law No. 30 of 1999. If the application of the final and binding principle is not in accordance with the concept, then this also conflicts with other arbitration principles such as the principles of confidentiality, speed and low cost. Because if the losing parties submit a legal remedy for annulment to the district court, the dispute between the two parties becomes open because basically the court uses the principle of openness to the public, besides that if it is submitted to the court the dispute is protracted and in the end does not lead to certainty. law for the parties.

From the explanation above it can also be said that when the decision has been submitted to the court, the principles that apply are the principles that apply in court, not the principles that apply in arbitration. When one of the parties submits the award, the nature of the arbitration award is lost, replaced by the principle that applies in court.

Several things related to decisions that are final and binding on Arbitration, include the following:

a. Legal Force of Arbitration Award

In the legal system in Indonesia, the legal force of an arbitral award is clearer and stronger than the legal force of a mediation agreement. The arbitral award has the same legal force as a court decision, that is, it has executorial power. In fact, Article 54 of Law Number 30 of 1999 stipulates explicitly that the format of an arbitral award must contain a head of the decision which reads: "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD". So, the head of the arbitral award is the same as a court decision. Having executorial power means that one party can request the assistance of court officials to use coercive measures in carrying out the arbitral decision if the other party is unwilling to voluntarily carry out the arbitral decision. That the arbitral award has executorial power is a legal provision that is commonly found in various legal systems in the world.

The arbitral award is final and has permanent legal force and is binding on the parties. In the event that the parties do not voluntarily implement the arbitral award, the award is carried out based on an order from the Chairman of the District Court at the request of one of the parties to the dispute. The order of the Chairperson of the District Court is given no later than 30 (thirty) days after the request for execution is registered with the Registrar of the District Court. The head of the District Court, before giving an order for execution, first checks whether the arbitral award complies with the provisions of Article 4 and Article 5, and does not conflict with decency and public order. In the event that the arbitral award does not comply with these provisions, the Chairperson of the District Court rejects the request for execution and against the decision of the Chairperson of the District Court there is no legal remedy whatsoever. The Chairman of the District Court did not examine the reasons or considerations for the arbitral award. The order of the Chairman of the District Court is written on the original sheet and an authentic copy of the arbitral award issued. The arbitral award which has been annotated with an order from the Chairman of the District Court, shall be carried out in accordance with the provisions for the implementation of decisions in civil cases whose decisions have permanent legal force.

b. Reasons for Cancellation of Arbitration Award

The legal system in Indonesia stipulates that a judge may not refuse to try a case on the grounds that there is no legal basis or that there is no clear basis. In fact, Article 22 Algemene Bepalingen van wetgeving voor Indonesie (General Regulations concerning Legislation for Indonesia; AB) strictly states that a judge who refuses to make a decision on a case on the

pretext that the law does not regulate it, there is darkness or incompleteness in the law , can be prosecuted for refusing to try the case.[13]

Furthermore, Article 16 (1) Law No. 4 of 2004 concerning Judicial Power also stipulates that judges as enforcers of law and justice are obliged to explore, follow and understand the legal values that live in society. It is also not difficult to find legal values that live in society in connection with the issue of annulment of arbitral awards, because they have long lived and developed in society, both nationally and internationally, even long before the Arbitration Law was enacted. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (AAPS Law) only lists 3 (three) of the 10 (ten) cancellation requirements as stated in Article 643 RV, as stipulated 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 arbitral award to simply prolong the opportunity to fulfill obligations. This is partly due to the fact that in the General Explanation of Law no. 30 of 1999 stated that the three reasons are "among other things", thus it can be interpreted that the application for annulment of the arbitral award can still be filed based on other reasons, including the seven other reasons as stated in Article 643 RV.[14]

c. The Role and Authority of the Court in Settlement of Disputes Through Arbitration

The role of the court in the process of resolving disputes through arbitration does not only occur when the execution of the arbitral award is about to be carried out, the role of the court has existed even before the arbitration process takes place, and continues to be treated continuously during the arbitration process until the arbitral award is handed down.[15]

The arbitration process will not be able to run perfectly if it is not supported or assisted by the Judicial Body. Indeed, in Article 3 of Law no. 30 of 1999 (AAPS Law) stipulates that "The District Court is not authorized to adjudicate disputes between parties who are bound by an arbitration agreement," this provision reinforces the limitation of the Court's authority in adjudicating arbitration cases. The court does not have the right to adjudicate the dispute between the parties, however, the court supports the arbitration process. The affirmation of the role of the courts in the AAPS Law is specified in Article 11 paragraph (2) of the AAPS Law which states that "District courts are obliged to refuse and will not intervene in a dispute settlement that has been determined through arbitration, except in certain matters stipulated in the law." -law this." This is the principle of limited court involvement. The role of the court in the entire arbitration process shows that the court only supports the arbitration process, while upholding the principle of independence from the arbitration itself.[16]

Even though the judiciary is required to respect the arbitration institution as contained in Article 11 paragraph (2) of Law Number 30 of 1999 above, in practice courts are still found to be against it, even when the arbitration has handed down its decision. Annulment of an arbitral award can be interpreted as a legal remedy that can be taken by the parties concerned to request the District Court to annul an arbitral award, either in part or in whole of the contents of the decision. Arbitration awards are generally agreed upon as final and binding decisions. Therefore, in the process of canceling an arbitral award, the court is not authorized to examine the principal case. The authority of the court is limited only to the authority to check the validity

[13] http://www. Hukumonline.com/berita/read. Cancellation of arbitral awards in Indonesia. Retrieved January 2, 2023, at 01.00 WIB
[14] Ibid. p.20
[15] Ibid. p.6
[16] Ibid. p.2

of the procedure for making arbitral awards, including the process of selecting arbitrators to the application of the law chosen by the parties in dispute resolution.[17]

Against the District Court's decision an appeal can be submitted to the Supreme Court which decides in the first and final instances, what is meant by "appeal" in this provision is only against the annulment of the arbitral award as referred to in Article 70 of the AAPS Law concerning the grounds for the parties to file an annulment of the decision. arbitration.

Based on the elucidation of Law Number 30 of 1999 it can be concluded that the District Court is not authorized to examine and try cases that have been canceled by themselves. The function and authority of the court in the examination is only to examine the facts whether or not there is a reason stated by the applicant. If it is proven not to exist, then the request for annulment of the arbitration award is rejected. However, if later the District Court finds that there are 3 (three) elements that can cancel the arbitral award as stated in Article 70 of Law Number 30 of 1999, then the District Court will accept the request for annulment of the arbitral award. Furthermore, related to the role and authority of the District Court, among others, as follows:

a. The Role and Authority of the Court Prior to the Arbitration Process.
   Regarding the role and authority of the court in resolving disputes through arbitration, it is limited only according to the UNCITRAL Model Law and the AAPS Law. In relation to the arbitrator and the formation of the arbitral tribunal, the role and authority of the court are in terms of:
   1) Appointment of arbitrators if the parties cannot reach an agreement (Article 11 UNCITRAL Model Law, and Article 13 paragraph (1) of the AAPS Law);
   2) The arbitrator's resignation (Article 19 paragraph (4) UUAAPS);
   3) Appointment of a single arbitrator (Article 11 paragraph (3) of the UNCITRAL Model Law and Article 14 paragraph (3) of the AAPS Law);
   4) Appointment of the third arbitrator in an arbitral tribunal (Article 15 paragraph (4) of the AAPS Law);
   5) “Right of denial” and “claims of refusal” against arbitrators (Articles 23 and 25 of the AAPS Law).
b. The Role and Authority of the District Court During the Arbitration Process
   1) Collection of evidence and procurement of witnesses required during the arbitration process (Article 27 UNCITRAL Model Law);
   2) Determining in what cases the arbitral tribunal cannot be objected to by the parties to the dispute and regarding discretion (Article 16 paragraph (3) UNCITRAL Model Law).
c. The Roles and Authorities of the District Court After the Arbitration Award Has Been Delivered
   1) Setting aside arbitral awards (Articles 34 and 36 of the UNCITRAL Model Law, and Articles 62 and 72 of the AAPS Law);
   2) Cancellation of the arbitral award (Article 36 of the UNCITRAL Model Law and Articles 70, 71 of the AAPS Law);
   3) Registration, recognition and enforcement of arbitral awards (Article 35 UNCITRAL Model Law and Articles 59, 61, 64, 65, 66, 67, 69 of the AAPS Law);

[17] Mohammad Ardiansyah, "Annulment of the National Arbitration Award by the District Court". Journal of Cita Hukum. Vol. I No. 2 December 2014. page 335. http://uinjkt.academia.edu/Jurnal Cita Hukum. Retrieved January 4, 2023. page 6

4) Appeals against the court's refusal to acknowledge and enforce the arbitral award (Article 68 of the AAPS Law).

The final and binding provisions contained in Article 53 (1) of the International Center for the Settlement of Investment Disputes (ICSID) as well as in Article 60 of the Arbitration Law and APS are used as one of the problem identifications in this study resulting from discrepancies or inconsistencies in practice after an arbitration award occurs.

At the level of national arbitration law, the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States also issued a cancellation arrangement with the condition that if corruption occurs, the arbitration process does not proceed as it should or the arbitrator exceeds his authority.

In addition, the 1958 New York Convention also states a similar arrangement with the condition that the parties do not have legal capacity, the parties are not notified of the decision so that they lose the opportunity to defend, the award and the composition of the arbitration are not included in the previous agreement and the arbitral award is still not binding on the parties.

The arrangements in the documents issued by ICSID above can at least be said to represent international arbitration rules. Meanwhile, as is well known, the RV (Reglement op de Rechtsvordering) itself is no longer valid since the existence of the Arbitration Law and APS.

In line with the above rules, the affirmation of the final and binding principle of arbitral awards is also contained in Article 32 paragraph (2) of the UNCITRAL, which reads as follows: "The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay".[18]

Annulment of arbitral awards in the perspective of the Arbitration Law can be interpreted as a legal remedy that can be taken by the litigants by requesting the cancellation of the decision to the district court for part of the decision or as a whole.[19]

The provisions regarding article 70 of the Arbitration Act and the APS do not consider loopholes or possible mistakes made by the Arbitrator such as bribery and exceeding authority. Thus in practice, the judge does not examine the plaintiff's argument or does not withdraw it as the defendant.

The essence of this discussion lies in the prerequisites stipulated in Article 70 of the Arbitration Law and the APS relating to sentence decisions made as a result of deception arranged in such a way by one of the parties in the examination process. Here it will then be very easy for the losing party to postulate the sound of the paragraph to propose a case for canceling the Arbitration award. The question is how to prove it if the arbitration party is not included in the lawsuit.

Furthermore, what is referred to as a 'deception' is not supported by a detailed and detailed explanation so that it later gives birth to many subjective interpretations, it is enough with the allegation that the losing parties can continue their case.

In addition to these articles there is also article 62 namely the Chairperson of the District Court, where before giving an execution order, he is first given the right to examine whether the arbitral award has been taken according to the procedural law according to the rules of the game or not, namely the arbiter or arbitral tribunal who examines and decide the case, whether it is in accordance with the wishes of the parties, then whether the case examined by the

[18] The Arbitration Rules of The UN Commision for International Trade Law (UNCITRAL), 12 Juni 1985, article 32 (2)

[19] Mosgan Situmorang, "Annulment of Arbitration Award," Journal of Legal Research De Jure 20, no. 4 (2020): 573–586.

arbitrator is an authority that can be fulfilled, especially if the arbitration clause exists or not, and whether the decision to be taken does not conflict with the principles of public order.[20]

These articles actually do not support the existence of the principles and nature of being final and binding as article 60 of the Arbitration Law and APS. The same thing happened to international arbitral awards where the execution was carried out in Indonesia. When examined in the decision directory of the Central Jakarta District Court, we find many such cases and even appeals. So this arrangement is very confusing so that it makes this non-litigation model appear to have no legal certainty.

As explained above, the nature of the decision which is final and binding means that there is an obligation for the parties to carry out the decision immediately. However, the facts all return to the characteristics as well as the nature and attitude of each party to the litigation. The Arbitration Law and the APS provide alternatives that can be used if the implementation of the arbitral award is not voluntarily carried out. Then the decision is carried out based on the order of the Head of the District Court from the request of one of the parties to the dispute/dispute.

The problem is that the authority of the Head of the District Court is only limited to examining the findings of Article 4 and Article 5 of Law No. 30 of 1999 as follows:

Article 4

(1) In the event that the parties have agreed that the dispute between them will be resolved through arbitration and the parties have given authority, the arbitrator has the authority to determine in his decision the rights and obligations of the parties if this is not regulated in their agreement.
(2) The agreement to resolve disputes through arbitration as referred to in paragraph (1) is contained in a document signed by the parties.
(3) In the event that it is agreed that the settlement of disputes through arbitration occurs in the form of an exchange of letters, the sending of telex, telegram, facsimile, e-mail or in other forms of communication means must be accompanied by a note of acceptance by the parties.

Article 5

(1) Disputes that can be resolved through arbitration are only disputes in the field of trade and regarding rights which, according to laws and regulations, are fully controlled by the disputing parties;
(2) Disputes that cannot be resolved through arbitration are disputes that according to laws and regulations cannot be reconciled.

In addition to examining the fulfillment of this article, there is also an examination to ensure that the decision does not conflict with the values of decency and public order. This means that the Head of the District Court does not have the authority to then examine the arguments/reasons or considerations for the decision.

Such an arrangement cannot be avoided as an indicator that places arbitral awards as subordinate to the competence of the District Court. Therefore, without these specific reasons, the principle is that it is impossible to fulfill the cancellation of the arbitral award. With various existing reasons, the decision is still final and binding and is not seen in this arrangement.

Based on the analysis above, an understanding can be drawn that in fact decisions that are final and binding in nature still do not provide legal certainty, especially the settlement of business disputes in Indonesia. These settings can also change their use when there are new cases. Jurisprudence issued by a Constitutional Court Judge is evidence that a final and binding

[20] Gunawan Wijaya, "Series of Legal Aspects in VS Arbitration Business," Court of Competency Issues (Absolute) That Never Was Completed 1 (2008).

decision has not been able to provide legal certainty for the disputing parties over the agreement made.

D. CONCLUSION

Based on the analysis and description above, in this study conclusions and suggestions can be drawn, including:

1. Whereas the attempt to annul the arbitral award in the District Court as stipulated in Article 70 of Law No. 30 of 1999, namely: Letters or documents submitted for examination, after the verdict was handed down, were admitted to be fake or declared fake, after the decision was taken a decisive document was found, which was hidden by the opposing party, or the decision was taken as a result of a ruse carried out by one of the party to the dispute examination. The District Court does not have the authority to then re-examine a case that has been decided by the arbitral institution, unless there is a clear unlawful act.
2. From several cases of cancellation of arbitration awards that have been decided by BANI by the Supreme Court, it can be seen that the court cannot automatically adjudicate a dispute, if it has been agreed that there is an arbitration clause that the parties agree to settle the dispute at BANI, unless there is a misunderstanding regarding the arbitration clause, misunderstanding and misinterpretation, the parties have withdrawn or canceled the arbitration clause. The Supreme Court is consistent with its stance, namely upholding the principle of pacta sunt servanda, this can be seen when examining and deciding on cassation requests from disputed agreements whose lawsuits are filed through the district court while the agreement in question includes an arbitration clause, where the arbitration clause directly creates absolute competence for the concerned BANI as chosen by the parties.
3. That the arbitral award is declared as a final and binding decision still leaves many confusing questions for business people. This is due to discrepancies or inconsistencies in the main regulations in Law Number 30 of 1999. This Law still opens opportunities for the disputing parties to seek annulment in the district court with arguments or reasons that are difficult to prove and No specific guidelines or instructions are provided. This also applies to international arbitral awards whose execution is in Indonesia. These articles are a form of subordination of authority or non-litigation domain by the court or litigation system.
4. The Arbitration Law in practice in Indonesia has not provided legal certainty for the parties to the dispute. The party that loses in the arbitral award is very much able to then submit an annulment of the arbitration award to the District Court. This problem causes the dispute resolution process through arbitration to be ineffective and inefficient and detrimental to the business world (protracted).
5. Finally, the author's suggestion is that it is deemed necessary to revise or update the law, especially on the principle of being final and binding on arbitral awards. Unsynchronized or inconsistent regulations and articles related to arbitral awards must be adjusted so that legal certainty is born. These efforts can be carried out by involving the government or related parties outside the litigation process, for example forming an honorary council and also the supervisor of arbitration institutions so that there is no overlap of authority and also an exchange of legal domains between litigation and non-litigation systems.

REFERENCES

Abdurrasyid, H. Priyatna. Arbitration and Alternative Dispute Resolution. Jakarta: PT. Fikahati Aneska, 2002.

Abdurrasyid, Priyatna. “Indonesian Entrepreneurs Need to Increase Their Interest in Arbitration and Alternative Dispute Resolution (ADR/Arbitration) An Overview.” Journal of Business Law vol. 21. (October-November 2002). p. 13.

Adolf, Huala. Fundamentals of International Contract Law. Bandung: Refika Aditama. 2007

Asshiddiqie Jimmy. Regarding the Law in Indonesia. First Print. Jakarta : Constitutional Press. 2006.

Atmadja, Z. Asikin Kusumah. "Restrictions on moneylenders as a manifestation of equal distribution of justice," Varia Perjudi (February 1987), p. 177.

Badrulzaman, Mariam Dams. Compilation of Engagement Laws. Bandung: Citra A ditya Bakti, 2001. Bandung: Alumni, 1992.

Black, Henry Campbell. Black's Law Dictionary 6th ed. USA, St. Paul: West Publishing, 1991.

Brotosusilo, Agus, et al. Legal Writing: Lecturer's Handbook. Jakarta: Consortium of Legal Sciences Department of PDK, 1994.

Budiman, Budhy "Searching for an Ideal Model of Dispute Resolution, Study of Civil Court Practices and Law Number 30 of 1999" http://www.uika-bogor.ac.id/iur05.htm. Downloaded 7 August 2009.

Cicut Sutiarso, Implementation of Arbitration Award in Business Disputes (Indonesian Torch Library Foundation, 2011).

Cooke, Gerald. “Disputes Resolution in International Trading” in: Jonathan (ed)., The Strategic Guide to International Trade, London: Kogan Page, 1997, Page. 193.

Dalyo, JB. Introduction to Indonesian Law Student Handbook. Jakarta: PT. Prenhallindo, 2001.

Enjoy, Sentosa. Commercial Law. Bogor: Ghalia Indonesia, 2001.

Erwin Muhammad, Legal Philosophy, Raja Grafindo, Jakarta, 2012.

Fanani Ahmad Zaenal, Thinking Philosophically in the Judge's Decision, This article was published in Varia Judiciary No. March 304, 2011.

Fuadi Munir, Business Law in Theory and Practice Book Two. PT. Image of Adity Bakti. London : 1999.

Fuady, Munir. National Arbitration: Alternative Business Dispute Resolution. Bandung : PT. Citra Aditya Bakti, 2003

Ganie, Junaedy. “Avoiding Delays in Execution Through Efforts to Cancel Decisions Without Legitimate Reasons in Cases in the Insurance Sector.” Bani Quarterly Newsletter No. 5 (26 December 2008). p. 23.

Gatot P Soemartono RM, Arbitration and Mediation in Indonesia (Gramedia Pustaka Utama, 2006).

Gautama, Sudargo. “Some Legal Aspects of International Commercial Arbitration in Indonesia,”Jowrwa/ of International Arbitration Vol. 7 No. 4 , (1990), p. 96.

Gautama, Sudargo. International Trade Arbitration. Bandung: Alumni, 1986.

Gijssels, Jan Mark Van Hoeckc. Translated by B. Arief Sidharta: What is Legal Theory? Bandung: N3 Periodic Publishing, Law Laboratory, Faculty of Law, Parahyangan Catholic University. 2000.

Goodpaster, Gary, Felix O. Soebagjo and Fatmah East Java. “An Overview of Trade Arbitration in General and Trade Arbitration in Indonesia. Felix O. Soebagjo & Erman Rajagukguk (cds), Arbitration in Indonesia . Jakarta: Ghalia Indonesia, 1995. HIm. 19-42.

Goodpaster, Gary. “Review of Dispute Resolution”. In Arbitration in Indonesia, Jakarta: Ghalia Indonesia, 1995. Pg. 11.

Hutagalung Sophar Maru, Practice of Civil Justice, Bankruptcy and Alternative Dispute Resolution Second Edition (Sinar Graphic, 2022).

Ismail, Maqdir. Introduction to Arbitration Practices in Indonesia, Malaysia and Australia. Jakarta: Faculty of Law, Al-Azhar University Indonesia, 2007.

Juwana, Hikmahanto. "Annulment of International Arbitration Award by National Court". Journal of Business Law: Arbitration and Alternative Dispute Resolution. Vol. 2 1, (October-November 2002. p. 68.

Juwana, Hikmahanto. Anthology of Economic Law and International Law. Jakarta: Heart Lantern, 2002.

Khairandy, Ridwan. "Good Faith in Freedom of Contract: A Study of Court Decisions in Indonesia." University of Indonesia Doctoral Dissertation, Jakarta, 2003.

Kussunaryatun, Th. Civil Procedure Law (Judge Decisions and Legal Actions). Surakarta: UNS Surakarta, 1998.

M. Yahya Harahap, "Arbitration Viewed From Rv, ICSID Bani Procedure Rules Etc.," Jakarta: Sinar Graphic (2004).

Mahfud, Moh. MD, Law Enforcement and Good Governance, Material at the National Seminar "Time for Conscience to Speak" organized by the HANURA Party DPP. Jakarta Constitutional Court, January 8, 2009.

Margono, Suyud. ADR and Arbitration, Institutionalization Process and Legal Aspects. Cet.2. Bogor: Ghalia Indonesia, 2004.

Mertokusumo, Sudikno. Indonesian Civil Procedure Code. Ed. 6. Cet. 1. Yogyakarta: Liberty, 2002.

Meuwissen, Sidharta Arief, Concerning Legal Development, Legal Studies, Legal Theory and Legal Philosophy, PT Refika Aditama, Bandung, 2007.

Michael A Hitt, R Duane Ireland, and Robert E Hoskisson, Strategic Management: Concepts and Cases: Competitiveness and Globalization (Cengage Learning, 2019)

Mosgan Situmorang, "Annulment of Arbitration Award," Journal of Legal Research De Jure 20, no. 4 (2020): 573–586.

Muhammad, Abdulkadir. Indonesian Civil Procedure Code. Bandung: Citra Aditya Bakti, 1999.

Muljadi Kartini and Gunawan Widjaja. Engagement Born from Agreement. Jakarta: Raja Grafindo Persada, 2004.

Mulyadi, Lili. Civil Procedure Law According to Indonesian Judicial Theory and Practice. Jakarta: Djembatan, 1999.

Nasution, Sanwani et al. Arbitration in International Law. Medan: USU Faculty of Law, 2002.

New Arbitration Act 1999. Bandung: PT. Citra Aditya Bakti, 1999.

Pangabean, H. P. "Effectiveness of Execution of Arbitral Decisions in the Indonesian Legal System". Journal of Business Law: Arbitration and Alternative Dispute Resolution. Vol. 21, (October - November 2002), p. 76.

Please, M. Yahya. Civil Procedure Law Concerning Lawsuits, Trials, Confiscations, Evidence, and Court Decisions. Jakarta: Sinar Graphic, 2005. Arbitration. Ed. 2. Cet.4. Jakarta: Sinar Graphics, 2006.

Poerwosutjipto, H.M.N. Fundamentals of Commercial Law, Arbitration, Bankruptcy and Suspension of Payments. Cet. III. Jakarta: Djembatan, 1992.

Prints, Darwin. Strategies for Compiling and Handling Civil Lawsuits. ct . 3 Rev. Bandung: Citra Aditya Bakti, 2001.

Prodjohamidjojo, Martiman. Equality of Justice Series 12: Legal Remedies. Cet. l. Jakarta: Ghalia Indonesia, 1983.

Purwosutjipto. The Basic Understanding of Commercial Law, Bridges. Jakarta : 1988 in Soemali, Lidia Noor Yuliyanti, Dispute Resolution Through Arbitration in Trade Investment. Law Journal. Vol. XVIII, No. 18, April. 2010.

Rajagukguk, Erman. Arbitration and Court Decisions. Jakarta: Chandra Pratama, 2000.

Rato Dominikus, Searching for Legal Philosophy: Understanding and Understanding Law, Laksbang Pressindo, Yogyakarta, 2010.

Redem, Alan and Martin Hunter. Law and Practice of International Commercial Arbitration. London: Sweet and Maxwell, 1986. Him. 3 and 98. In Huala Adolf. "Written Terms and Independence of Arbitration Clauses". Indonesia-Indonesia Arbitration Quarterly Bulletin Newsletter No. 6 (2009). p. 24.

Rosyadi, A. Ahmad and Ngatino. Arbitration in Islamic Perspective and Positive Law Bandung: PT. Citra Aditya Bakti, 2002

Setiawan, R. Principles of Engagement Law. Bandung: Putra A Bardin, 2001.

Setiawan. "Decreased Supremacy of the Principle of Freedom of Contract". PPH Newsletter (December 2003), p. 1.

Shidarta Consumer Protection Law. Jakarta: Grasindo, 2004.

Sjahdeni, Sutan Remy. "Banking Dispute Settlement Through Arbitration". Quarterly Bulletin - Bani Quarterly Newsletter No. 6 (2009). p. 15-16.

Soekanto, Soerjono and Sri Mahmudji. Normative Legal Research a Brief Overview. Jakarta: Rajawali Press, 1995.

Soekanto, Soerjono. Introduction to Legal Research. Jakarta: UI Press, 1994.

Soemartono, Gatot. Arbitration and Mediation in Indonesia. Jakarta: PT. Gramedia Pustaka Utama, 2006.

Soepomo. Civil Procedure Law of the District Court. In Martiman Prodjohamidjojo. Equality of Justice Series 12: Legal Remedies. Cet. 1. Jakarta: Ghalia Indonesia, 1983.

Soerjono. "The Role of Judges in the Cancellation of Riba Agreements," Varia Judiciary Vol.8 (May 1986), p. 164.

Stein, Mr. P.A. In Ahmad Ichsan. Compendium on International Trade Arbitration (Overseas). Jakarta: Pradnya Paramita, 1993. Pg. 78-79.

Study Team, Online Arbitration Legal Issues, (Jakarta: BPHN- KEMENKUMHAM RI, 2010), p.20

Subekti, R. "Understanding the Meaning of Arbitration," Varia Judicial Year IV No. 4 (April 1989), p. 114.

Subekti, R. Trade Arbitration. Cet.l, Bandung: Angkasa Offset, 1981.

Sudiarto, H. and Zaeni Ashhadie. Getting to Know Arbitration: An Alternative to Business Dispute Resolution. ed. 1. cet. 1. Jakarta: PT. RajaGrafindo Persada, 2004.

Superman, Emman. "The Development of Dispute Resolution Doctrine in Indonesia." Paper presented at Syiah Kuala University, Banda Aceh, June 2006

Susanto Nur Agus, Axiological Dimensions of the "ST" Case Decision Study of the Judicial Review Decision Number 97 PK/Pid.Sus/2012, Judicial Journal Vol. 7 No. December 3, 2014.

Sutantio, Retnowulan and Iskandar Oeripkarlawinata. Civil Procedure Law in Theory and Practice. Bandung: Mandar Maju, 1997.

The Arbitration Rules of The UN Commission for International Trade Law (UNCITRAL), 12 June 1985, article 32 (2)

Toar, Agnes M. "Brief Description of Trade Arbitration in Indonesia." In Arbitration in Indonesia. Jakarta: Ghalia Indonesia, 1995. Him. 44-45.

Tri Ariprabowo and R Nazriyah, "Annulment of the Arbitration Award by the Court in the Constitutional Court Decision Number 15/PUU-XII/2014," Journal of the Constitution 14, no. 4 (2018) : pp 701–727.

Usman, Rahmadi. Jakarta National Arbitration Law: PT. Gramedia Widiasarana Indonesia, 2002.

Widjaja, Gunawan & Ahmad Yani. Arbitration Law. Jakarta: Raja Grafindo Persada, 2001.

Widjaja, Gunawan. "Legal Aspects in the VS Arbitration Business Series," Courts of Competency Issues (Absolute) That Never Ended 1 (2008).
Widjaja, Gunawan. SAHDB: Arbitration VS Courts of Competency Issues (Absolute) which have never been resolved, ed. 1. cet. 1. Jakarta: Kencana Prenada Media Group, 2008.
Winarta Frans Hendra, Law of Dispute Settlement: Indonesian & International National Arbitration (Sinar Graphic, 2011).
Winarta, Law of Dispute Resolution: Indonesian & International National Arbitration.
Yudowibowo, Syafrudin. "Execution of International Arbitration Awards in Indonesia: A Perspective on Law No. 30 of 1999". Yustisia Edition No. 71 (May-August 2007), p. 50.

LEGISLATION

Law Number 1 of 1950 concerning the Composition, Powers and Ways of the Courts of the Indonesian Supreme Court
Law Number 14 of 1970 concerning the Law on Main Provisions of Judicial Power
Law Number 14 of 1985 concerning amendments to the Supreme Court Act.
Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.
Law Number 4 of 2004 concerning Judicial Powers.
Law Number 5 of 2004 concerning the Supreme Court
Indonesian Jurisprudence 3. Jakarta: PT Ichtiar Baru van Hoeve, 1990.
Constitutional Court Decision Number: 15/PUU-XII/2014.

WEBSITE

Budijaya, Tony. "Annulment of Arbitration Award in Indonesia." www. Hukumonline.com/detail.asp. Downloaded 7 December 2023
http://www.bani-arb.org/bani regulations ind l.htm. www.legality.org
http://www. Hukumonline.com/berita/read. Cancellation of arbitral awards in Indonesia.
http://yancearizona.net/2008/04/13/apa-itu-kepastian- Hukum/
https://ngobrolin Hukum.wordpress.com/memahami-kepastian-dalam- Hukum/
Mohammad Ardiansyah, "Annulment of the National Arbitration Award by the District Court". Journal of Cita Hukum. Vol. I No. 2 December 2014. page 335. http://uinjkt.academia.edu/Jurnal Cita Hukum.