

Mechanism of Cancelling International Arbitration Awards and Its Legal Consequences under Civil Law

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RESEARCH ARTICLE

Mechanism of Cancelling International Arbitration Awards and Its Legal Consequences under Civil Law

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ABSTRACT

Arbitration means appropriate conciliation proceedings or arrangements to resolve disputes with the aim of reaching a certain final and binding outcome. The arbitral award is considered permanent because it is final and binding without appeal or cassation. There are two types of arbitral awards, namely national and international arbitral awards. Arbitration is an attempt to reverse the contents of an arbitral award in whole or in part. On that basis, this study aims to explain the mechanism for the revocation of an arbitral award and its legal consequences based on civil law.

KEYWORDS

Arbitration; International; Dispute; Arbitration award; Cancellation of Decision.

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1. Introduction

Courts are usually the most commonly used procedure by disputing parties. In many cases, legal dispute resolution takes a long time and involves considerable costs and effort. Therefore, simpler and faster steps have been adopted, such as Alternative Dispute Resolution (ADR) methods like consolidation, mediation, and arbitration.

Arbitration refers to a process or mediation provision suitable for resolving disputes that arise to achieve a final and legally binding agreement (Aripriatno & Nazriyah, 2017). Essentially, arbitration is a method of settling disputes outside of the traditional court system. However, the jurisdiction of the court continues to influence arbitration decisions. This is because Sections 59, 61, and 64 of Law Number 30/1999 concerning Arbitration and ADR are applicable.

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution was enacted by the Indonesian government after a long absence of regulations on the matter. This law governs various aspects related to arbitration proceedings, from the requirements for arbitration, appointment of arbitrators, to important subjects and decisions. Arbitration awards can be categorized into two types based on nationality: international and national arbitration awards.

Arbitration procedures promise swift solutions and are designed as a mechanism where state authorities do not participate in the decision-making process. As a result, both developed and developing countries agree to resolve international trade disputes through arbitration, where decisions are made by arbitrators. This is done in the country where the decision is enforced, even if it is not the country where the decision was made. They agree to this practice on the grounds that the arbitral tribunal is not a state body and that the decision made can only be enforced through the execution of the decision in the country where it is rendered.

As a fundamental principle of international commercial law, arbitration has long been extensively and widely used. It provides an alternative legal system for resolving disputes outside of the traditional court system. Most business entities prefer to settle disputes among themselves through arbitration rather than in court. The reluctance of foreign businessmen to settle disputes in

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court stems from the perception that courts are subjective to them, as disputes based on their non-home country laws are examined and handled by judges not from their home country (Situmorang, 2020).

The procedure for resolving disputes through arbitration is known as arbitration proceedings, resulting in an arbitral award. Law Number 30/1999 states that arbitral awards are final and binding. However, a district court can set aside such decisions. Nevertheless, the annulment of arbitration awards cannot be done unilaterally. It must go through stages and processes.

Based on the above, the objective of this research is to explain the Mechanism of Cancelling Arbitration Awards and Its Legal Consequences under Civil Law.

2. Method

This research is a qualitative study using the normative legal method with a focus on legal principles and legal norms. As it is a normative legal study, the data used primarily consists of secondary data. Data is obtained from primary legal sources such as laws and others. The research applies descriptive and qualitative analysis, where the research materials are analyzed in such a way that allows the researcher to examine and interpret them in-depth until reaching the intended conclusions. The systematically arranged legal materials are then qualitatively assessed.

3. Hasil dan Pembahasan

3.1 The Position of International Arbitration Awards in Indonesia

Regarding the setting aside of an existing international arbitration award in Indonesia, it is necessary to understand the difference between setting aside and rejecting an award. There is a distinction in the understanding of these concepts. Firstly, setting aside is known as suspension or withdrawal, whereas rejection is the term used in the English language. The difference between the two can be observed in their legal consequences. The setting aside of an arbitral award leads to the rejection of the arbitration award (Af'ida, 2014).

International arbitration is a technique for resolving disputes between companies involved in cross-border trade cooperation agreements. As it involves multiple countries, the parties are free to choose which institution will settle the current or future disputes, either for domestic or international arbitration (Indri et al., 2022). To determine whether an arbitration award is international or national, the place of arbitration is generally examined. Decisions made by institutions or individual arbitrators outside Indonesia's jurisdiction become domestic arbitration awards. According to Sudargo Gautama, arbitration is considered international if several conditions are met, such as:

1. When both parties signing the arbitration agreement and arbitration clause at the contract's resolution have offices or branches in different countries.
2. If the place of arbitration mentioned in this Arbitration Agreement is outside the country where the parties are domiciled.
3. If both parties have explicitly agreed that their agreement applies to all countries or to two or more countries.
4. If the place most closely related to the subject of the dispute or the place most closely related to the subject of the dispute is outside the country where the company is located.

At the beginning of the implementation of arbitration, the market participants had the desire to establish their own adjudication body as a dispute resolution medium, to handle issues based on their own determined procedural law by selecting their arbitrators since mediation was considered time-consuming, given the mandatory processes or stages that must be undergone.

There are two types of arbitration awards, namely national and international arbitration awards. In deciding an arbitration award, for example, in an international or national arbitration award, the regional principle must be applied. In this context, the location of the award determines whether it falls within the category of national or international awards. However, at that time, the Supreme Court did not recognize the enforcement of international arbitration awards. But, over time, the government realized that international trade would continue to grow; therefore, international arbitration awards must be recognized and enforced in Indonesia. Moreover, Indonesia should recognize international arbitration awards as it is a signatory to the 1958 New York Convention, which was enacted through Presidential Decree No. 34 of 1981 (Hikmah, 2012).

Arbitration court decisions are binding and final, meaning that they are not subject to appeal in regular courts or cassation. This is one of the reasons why many businesses choose arbitration as a dispute resolution method to prevent issues from lingering or even creating new problems after the arbitration award is given. However, in practice, the failure of parties or other parties to comply with the arbitration award can lead to increasingly complex problems. Additionally, the request for the execution of an

international arbitration award in Indonesia cannot be immediately carried out after the award is made; it must be registered and must have a binding order from the Central Jakarta District Court (Indri et al., 2022).

Article 65 of Law No. 30 of 1999 states that the authority to handle the recognition and enforcement of international arbitration awards depends on the Central Jakarta District Court, with the necessary conditions set out in this Law. The application for the enforcement of an international arbitration award is made after the arbitrator or their authorized representative submits the award and registers it in the Central Jakarta District Court's registry (Aripabowo & Nazriyah, 2017).

There is no appeal or cassation against the decision of the Chief Judge of the Central Jakarta District Court that recognizes and enforces the international arbitration award. An appeal can be filed against the decision of the President of the Central Jakarta District Court that refuses to recognize and enforce the international arbitration award. The Supreme Court will process and decide on the appeal within a maximum period of 90 (ninety) days after receiving the appeal. Contrary to the Supreme Court's decision on international arbitration awards that harm the Republic of Indonesia as a disputing party, the enforcement can only be carried out after an executor has been appointed by the Supreme Court of the Republic of Indonesia and then handed over to the Supreme Court. The Central Jakarta District Court cannot refuse to provide it (Aripabowo & Nazriyah, 2017).

In the enforcement of international arbitration awards, the Chief Judge of the Central Jakarta District Court has the authority to refuse recognition if it is deemed contrary to public order. This provision is based on the exception to the application of international law. This principle also applies to the enforcement and recognition of international arbitration awards, which are regulated not only by the New York Convention but also by national laws in some Conference member countries, including Indonesia. However, so far, there is no clear definition of what constitutes public policy and to what extent this basis will be used as an instrument to set aside international arbitration awards.

Once the Chief Judge of the Central Jakarta District Court has made the final request, its implementation is reported to the competent Chief Judge of the District Court. However, if Article VI of the 1958 New York Convention applies, which states: "If an application for the annulment of the award or for its recognition or enforcement has been made to a competent authority before the award is relied upon, the authority, if it considers that the decision may be set aside, may also, if it considers it necessary, order the party to give suitable security," the request for the enforcement of an arbitration award must be notified to the party with jurisdiction in the country where the arbitration request was made.

In the event that an arbitration award is set aside, the court may order the parties to repeat the arbitration (resolution). However, setting aside an arbitration award does not have any consequences for the court to cancel it to gain the power to investigate and resolve the dispute. If this occurs, it may violate the principle of freedom of contract, which is the right of the parties when settling disputes, and the court may be considered to have violated the principle of freedom of contract (Juana, 2002).

3.2 Cancellation of Arbitration Awards

Arbitration awards are considered permanent because they are final and binding without any possibility of appeal or cassation. The procedures for the enforcement of arbitration awards are generally based on the provisions of the Civil Procedure Law for the enforcement of judgments in civil cases. This is emphasized in Article 64 and Article 69(3) of the Arbitration and Alternative Dispute Resolution Law No. 30 (Gautama, 1989; Victor Johannes, 2018). Additionally, there are also regulations regarding Rv (Reglement op de Rechthvordering).

Rv (Reglement op de Rechthvordering) is an important legal provision that was applicable during the Dutch colonial era and continued to be followed in Indonesia after independence until the enactment of the Arbitration Law. It can be used as a reference for the values contained within this arbitrary annulment in society. For example, Article 643 of the Civil Code provides a clearer and more complete definition of the points that can set aside an arbitration award (Aripabowo & Nazriyah, 2017).

According to Aripabowo and Nazriyah (2017), based on Article 643 of the Civil Code, there are ten reasons that can serve as the basis for setting aside an arbitration award. First, the award exceeds the scope of the arbitration agreement. Second, the award is based on an arbitration agreement found to be invalid or unenforceable. Third, the award is made by an arbitrator who lacks the authority to make decisions without the presence of other arbitrators. Fourth, matters are decided that were not required, or the award is given more than what was required. Fifth, the award contains contradictory elements. Sixth, the arbitrator fails to make a decision on one or more cases that were supposed to be determined based on the Arbitration Agreement. Seventh, the arbitrator has violated the arbitration procedure and is subject to setting aside. Eighth, the decision is based on a document that was found to be forged or declared false after the decision was made. Ninth, after the verdict, documents were found that were previously concealed by the parties. Tenth, the award is based on fraud or intentional misconduct during the investigation, which later comes to light.

The setting aside of arbitration awards according to Articles 70 and 71 is not exclusive to the Central Jakarta District Court but can be registered with the Clerk of the District Court. This explains that the annulment of foreign arbitration awards is not covered by Law No. 30 of 1999. In practice, Indonesian courts have set aside foreign arbitration awards, particularly in the case of Karaha Bodas Company (KBC) (Victor Johannes, 2018).

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (ADR) only mentions 3 (three) out of the 10 (ten) conditions for annulment as regulated in Article 643 of the Civil Code in Article 70 of the ADR Law, which states that the parties are entitled to file a petition for the annulment of the arbitration award if it is believed that the award contains:

- a. Documents or evidence submitted during the proceedings after the award has been declared false or found to be false;
- b. After the award, important documents are discovered that were hidden by the opposing party; or
- c. The award was rendered due to a conspiracy during the judicial examination (Aripabowo & Nazriyah, 2017).

In practice, the party that loses in an arbitration award often uses the facts found in Article 643 of the Rv as a means to prolong the possibility of fulfilling their obligations. This is because General Law No. 30 of 1999 states that these three reasons are "among others," meaning that the right to set aside an arbitration award can still be asserted based on other grounds, including the seven other reasons presented in Article 643 of the Rv (Aripabowo & Nazriyah, 2017).

Additionally, there are two significant international arbitration documents considered as the most important sources of arbitration law worldwide, which should also be understood and referred to when dealing with requests to set aside arbitration awards. The first one is the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), which was ratified through Presidential Decree No. 34, 1981; and the other is the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (UNCITRAL Model Law) (Budijaya, n.d.).

Article 34(2) of the UNCITRAL Model Law clearly and comprehensively sets out the grounds for setting aside an award. The court, as referred to in Article 6 of the Regulation, may set aside the award only if the applicant provides original evidence. The parties to the arbitration agreement referred to in Section 7 did not have the jurisdiction or had not agreed. The award was made based on a fraudulent or forged agreement submitted by the parties or otherwise contrary to the law of the country where the award was made. Second, the party making the request was not properly informed of the mediation or arbitration or was unable to present its case in the matter. Third, any dispute not intended by or not falling within the scope of the arbitration, or any matter not falling within the scope of the agreement, is subject to arbitration, provided that any decision on that matter is made in arbitration. To distinguish it from an award that has not been made, the part of the award that contains the decision on matters subject to arbitration may be recognized and enforced. Fourth, the composition of the court or arbitral tribunal was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place. Fifth, the court finds that the dispute cannot be settled through arbitration under the law of the country concerned, or the award is contrary to the public policy of that country.

Referring to the New York Convention and the UNCITRAL Model Law, these grounds are then divided into two parts (Budidjaja, n.d.) Optional grounds that can be requested by the parties and which can be used by the court (also persuasively according to arbitration experts) to set aside an award if the dispute to be resolved cannot be resolved by arbitration (non-arbitrable) or is contrary to prevailing public policy.

4. Conclusion

Arbitration annulment is a way to cancel all or part of an award. International arbitration awards related to arbitration are made by arbitrators or arbitral tribunals in countries where Indonesia is bound by bilateral and multilateral agreements to set aside international arbitration awards. Foreign arbitration awards are limited to arbitration awards falling within the scope of commercial law according to Indonesian law. International arbitration awards can only be enforced in Indonesia for award outcomes that do not contradict matters of public policy. The provisions of Law No. 30 of 1999 Articles 70, 71, and 72 serve as the basis for setting aside international arbitration awards in Indonesia.

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