



The implementation of arbitral award annulment in judicial practice

Hetty Maria Pasaribu¹, Dhaniswara K Harjono², Bernard Nainggolan³

^{1,2,3}Program Studi Magister Ilmu Hukum, Universitas Kristen Indonesia, Indonesia

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ABSTRACT

This research examines the mechanism for the annulment of arbitral awards in Indonesia under Law No. 30 of 1999. Although arbitral awards are inherently final and binding, positive law provides an avenue for annulment through the District Court based on the limited grounds specified in Article 70. The primary legal issue arises from the dualism in judicial views regarding the availability of Civil Review (PK) against such annulment decisions. Utilizing a normative legal research method, this study analyzes the *ratio legis* of annulment regulations and the implications of Supreme Court Circular (SEMA) No. 4 of 2016. The findings indicate that the Circular strictly prohibits Civil Review to ensure swifter legal certainty and business efficiency. However, the annulment mechanism still carries risks regarding the loss of confidentiality and potential time inefficiency for the parties. The author concludes that courts must adhere to the principle of minimal intervention, where annulment is granted only under extraordinary conditions without re-examining the merits of the case, to maintain the integrity of arbitration as a trusted dispute resolution institution for the international business community.

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Corresponding Author:

Hetty Maria Pasaribu,
Program Studi Magister Ilmu Hukum,
Universitas Kristen Indonesia,
Jl. Mayjen Sutoyo No.2, Cawang, Kramat Jati, Kota Jakarta Timur, DKI Jakarta, 13630, Indonesia
Email: hettymariapasaribu@gmail.com

1. INTRODUCTION

The dynamics of global economic development have triggered an increase in the intensity of business interactions in various strategic sectors, ranging from trade, banking, mining projects, oil and gas, to the energy and infrastructure sectors (Suryahani et al., 2024). In the midst of the complexity of these transactions, the potential for a conflict of interest or conflict between parties is inevitable (Ritonga et al., 2024). Traditionally, dispute resolution has been done through litigation in court, where the parties put themselves in diametrically opposed (*adversarial*) positions. However, in modern business practice, litigation is often seen as the ultimate *remedium* due to its rigid and time-consuming nature, making it less effective in supporting the fast-paced rhythm of the business world (Natalita & Widianingsih, 2024).

Along with the opening of the international market, the business world urgently needs a more efficient, effective, and reliable conflict resolution method that is able to provide legal certainty in a short time. A dispute resolution institution is needed that is not only recognized globally, but also has a competent system to decide cases at an affordable cost. This need is what places Arbitration as the most preferred *Alternative Dispute Resolution* (ADR) instrument compared to litigation (Ananda et al., 2025).

However, the effectiveness of arbitration in Indonesia often clashes with the dynamics of legal interpretation at the judicial level, especially regarding post-arbitration legal remedies. Prior to 2017, the Supreme Court of the Republic of Indonesia showed inconsistency in attitudes or dualism of views regarding the permissibility of judicial review (PK) against an appeal award on the cancellation of arbitration.

The first view had allowed the filing of a Review of the arbitration annulment award (Satrio & Fakhriah, 2018). This practice is recorded in jurisprudence such as the Supreme Court Decision Number 1 PK/Pdt.Sus/2010 (Christian Mapailey vs. Gunawan Sukardi and PT. Mining Resources) and continues until Decision Number 33 PK/Pdt.Sus-Arbt/2016 in the dispute between BANI and PT. Hutama Karya. On the other hand, a second view emerges that expressly rejects the possibility of PK in the realm of arbitration, as stated in Decision Number 56 PK/Pdt.Sus/2011 (PT. Pertamina EP, et al. Vs. PT. Lirik Petroleum). In its consideration, the Supreme Court is of the opinion that the final and binding nature of arbitration should close the door to extraordinary legal remedies such as PK.

The turning point of the Supreme Court's change in legal stance began to crystallize at the end of 2016. Through Decision Number 105 PK/Pdt.Sus-Arbt/2015 (PT. Menara Perdana Vs. PT. Tunas Jaya Sanur and BANI) dated September 1, 2016, the Supreme Court shifted its policy direction by emphasizing that the arbitration appeal decision could no longer be submitted for legal review. This step was then strengthened administratively and substantially through the Supreme Court Circular Letter (SEMA) Number 4 of 2016.

The uncertainty and shift in legal orientation show the urgency to conduct an in-depth study on the implementation of the cancellation of arbitration in Indonesia (Winata, 2023). This is important to provide legal *clarity* for justice seekers and maintain the confidence of the business world in the judicial system in Indonesia (Siddiq & Salam, 2025). The author views the need for a concrete legal solution so that the mechanism for annulment of arbitration does not become a loophole for protracted uncertainty in judicial practice. This is very important, considering that until now there has been no research that directly discusses this problem in terms of norms as well as concrete cases as the object of this research.

Based on this background description, the formulation of the problem in this writing is: How is the regulation (*ratio legis*) of the annulment of arbitral awards according to positive law in Indonesia?

2. RESEARCH METHOD

This research uses a normative approach, where the main focus is to examine existing legal norms, legal principles, and doctrines recognized in society. This approach is based on a certain framework and thinking, with the aim of examining certain legal phenomena in depth (Wiraguna, 2024). In addition, a comprehensive analysis of related legal factors was carried out to find solutions to problems that arise in this phenomenon. Thus, this study aims to assess the conformity of regulations with legal principles and interpret the application of these regulations in appropriate practice.

3. RESULTS AND DISCUSSIONS

Cancellation of the Arbitration Award

In the Indonesian judicial system, judges hold the principle of non-liquet, which is the prohibition of rejecting cases on grounds that do not exist or are unclear (Indah & Triadi, 2025). This is confirmed in Article 22 of the Algemene Bepalingen van wetgeving voor Indonesie (AB) which states that judges can be convicted if they refuse to try a case on the grounds that the law is incomplete or does not regulate it.

In line with this principle, Article 16 paragraph (1) of Law No. 4 of 2004 concerning Judicial Power requires judges to explore and understand the legal values and sense of justice that lives in society. In the context of arbitration, legal values regarding the annulment of judgments have developed long before Law No. 30 of 1999 was passed, one of which refers to the Reglement op de Rechtvordering (Rv).

In principle, an arbitral award is final and binding, meaning that the award is the first and last level that cannot be appealed or appealed (Sinambela & Sunarsi, 2026). However, legal experts such as Yahya Harahap and Bambang Sutyoso argue that there are exceptions in the form of an annulment application if extraordinary conditions are found (Siregar, 2018). If the cancellation is granted, then the decision is considered null and void.

Prior to the enactment of the modern Arbitration Law, Article 643 Rv regulated 10 comprehensive grounds for annulling an arbitral award, ranging from a judgment that exceeded the time limit, an unauthorized arbitrator, to the discovery of documents that were previously hidden.

After the enactment of Law No. 30 of 1999, the reasons for cancellation were narrowed and devoted to three limiting elements in Article 70, namely: a) Use of forged documents in the examination; b) The discovery of the document determines which the opposing party is hiding; c) The verdict results from the trickery or fraud of one of the parties.

Ratio Legis Cancellation Regulation Based on Article 72 Paragraph (4) of Law No. 30 of 1999

Cancellation is a legal remedy through the District Court to negate the legal force of the arbitral award (Jalaludin, 2025a). It is important to note that in this process, the court does not have the authority to examine the material of the case, but only reviews the procedural validity and application of the law agreed upon by the parties.

Court supervision is necessary to maintain the integrity of arbitration itself. This is in line with international standards such as the 1958 New York Convention (Park, 2009) (ratified through Presidential Decree No. 34/1981), and the UNCITRAL Model Law, which is a reference for global arbitration law (Binder, 2019). Both instruments emphasize that cancellation can be made if there is a problem with the legal capacity of the parties, a violation of the right *to be heard*, or if the decision is contrary to Public Policy.

Based on Law No. 30 of 1999, there are several crucial stages, namely: a) Registration: The judgment must be registered in the District Court in order to have enforceability; b) Grace Period: An application for cancellation must be submitted in writing a maximum of 30 days after the decision is registered; c) Jurisdiction: The application is submitted to the Chief Justice of the District Court in the area where the Respondent resides. If the application is granted, the Chief District Court may decide whether the dispute will be re-examined by the arbitrator (old/new) or declare that the case can no longer be resolved through arbitration.

Article 72 paragraph (4) of the Arbitration Law opens a gap for appeals to the Supreme Court (MA) (Jalaludin, 2025b). However, there is a limitation that is emphasized through SEMA No. 4 of 2016, namely if the District Court **rejects** the application for annulment (Rossdiono et al., 2025), then the decision is final (there is no appeal or PK). If the District Court grants the annulment, then the parties can appeal to the Supreme Court. Although the law uses the term "appeal," technically this is a legal remedy of the first and last instance to the Supreme Court, considering the characteristics of an arbitration case as a special civil case.

Implementation of Annulment of Arbitral Awards: National and International Perspectives

The ratification of the 1958 New York Convention through Presidential Decree No. 34 of 1981 marked Indonesia's commitment to the international trade community (Puspita, 2025). This step provides legal certainty for foreign business actors that international arbitration awards can be recognized and enforced in the territory of the Republic of Indonesia based on the principle of reciprocity. As a *contracting state*, Indonesia has an equal position with other countries in the framework of this multilateral cooperation (Sandrina & Prastyono, 2024).

Based on Law No. 30 of 1999, the decision of the Arbitration Panel is *final and binding*, which means that it has permanent legal force and is binding on the parties from the moment it is pronounced. Normatively, this closes the door to ordinary legal remedies such as appeals, cassation, and review of the substance of the decision (Abimanyu & Sinaga, 2025).

However, for the sake of justice, the law provides two corrective mechanisms: a) Request for Correction: Made if there is an administrative error or a manifest mistake that does not fundamentally change the substance; b) Request for Annulment: Based on Priyatna Abdurrasyid's view, annulment by the court can be done if the arbitrator exceeds his authority (*excess of power*) or there is a violation of jurisdiction.

The balance between the principle of finality and the annulment mechanism is crucial. For the prevailing party, annulment can erode confidence in the efficiency of the arbitration. However, for the party who feels procedurally aggrieved, annulment is a protective instrument against a legally defective award.

SEMA Analysis No. 4 of 2016 and Review Problems (PK)

In business practice, speed of dispute resolution is a priority (Zahra et al., 2025). Arbitration is *prima donna* because it offers efficiencies that are often not found in conventional litigation (Kumar, 2024). However, the effectiveness of arbitration is highly dependent on the good faith of the parties in carrying out the award voluntarily.

The Supreme Court Circular Letter (SEMA) No. 4 of 2016 is present as an administrative guideline for judges in responding to legal remedies for the cancellation of arbitration (Makhal, n.d.). Although in the hierarchy SEMA is not a law regulation (but an internal policy/appeal), in practice SEMA has significant procedural legal implications. SEMA emphasizes that there is no legal remedy for Review (PK) against the court decision that annuls the arbitral award. Arbitration is designed as an alternative dispute resolution forum to avoid protracted court proceedings. Parties who choose arbitration are deemed to have waived their right to pursue lengthy ordinary and extraordinary legal remedies. This is one of the principles of the administration of justice, namely the principle of expeditious adjudication.

This restriction of the PK raises a juridical debate regarding the principle of *access to justice*. Philosophically, judges are human beings who are not free from mistakes or biases. Review, as an extraordinary legal remedy, should serve as a means to correct the judge's mistakes or if new evidence is found (*novum*).

Based on Article 24 paragraph (1) of the Judicial Power Law, any decision with permanent legal force (*inkracht*) can basically be submitted to the Court of Appeal. If this right is amputated in a case of annulment of arbitration, there are concerns that there will be limited space for justice seekers to correct court decisions that may be wrong in applying the law.

If referring to the general civil procedure law (Article 67 of Law No. 3 of 2009 concerning the Supreme Court), the PK can only be filed on the basis of limiting reasons, including: a) The verdict is based on deception or false evidence; b) An important evidence letter (*novum*) was found; c) The judge granted the unsued (*ultra petita*); d) There is a conflict between the results; e) There is a mistake of the judge or a real mistake.

Although Article 72 paragraph (4) of Law No. 30/1999 only mentions "appeal" (which is interpreted as cassation) as a last resort, the impetus to open up the Judicial Court space remains strong based on the principle of material truth. Judges handling cases of annulment of arbitration must have comprehensive consideration—including juridical, philosophical, and sociological dimensions—considering that the annulment of an arbitral award is a very special act and excludes the principle of non-intervention of the court.

Legal Consequences of Annulment of an Arbitral Award

Arbitration has become the main choice for businesses in resolving business disputes because of its advantages that offer time, cost, and confidentiality efficiency (Muntazhor et al., 2025). Normatively, an arbitration award has a *final and binding* character, which provides legal certainty for the parties and gives birth to *executory power*. Considering that arbitration does not have its own enforcement apparatus, if the losing party does not carry out the award voluntarily, the execution must be carried out through the official authority of the court (Winarta, 2022).

However, the existence of a cancellation mechanism in Law No. 30 of 1999 creates its own legal dynamics. On the one hand, the cancellation clause serves as a corrective instrument to enforce substantive justice in the event of fraud or fraud in the arbitration process. On the other hand, this is often used as a legal loophole to delay the implementation of the decision (*delaying tactics*), which can ultimately hinder legal certainty.

One of the most obvious consequences of filing an application for annulment is the loss of the confidentiality of the case. When an arbitration dispute is brought to the realm of the District Court, the examination is conducted in a hearing open to the public (Khasanah et al., 2025). This

causes sensitive business information, which originally wanted to be protected through arbitration, to be exposed to the public. Thus, one of the main selling points of arbitration is reduced.

The annulment of an arbitral award, either in whole or in part, carries very complex consequences (Rigel & Soermartono, 2026): a) For the Prevailing Party: Cancellation means the loss of legal rights that have been acquired through a lengthy arbitration process. This not only disrupts the stability of the contract, but also undermines trust in the arbitration institution as an effective dispute resolution mechanism. In addition, the financial burden will increase as the dispute must be reprocessed from scratch; b) For the Losing Party: While the cancellation opens up room to raise objections or seek alternative solutions, it still prolongs *legal uncertainty* and adds to the burden of significant litigation costs.

Theoretically, as Yahya Harahap points out, *annulment* is an exception in very exceptional circumstances. However, when a court grants an annulment on the grounds of procedural violations or arbitrator non-neutrality, it reflects a major challenge for our legal system in balancing the autonomy of arbitration and the protection of justice for the parties. Overall, annulment often results in inefficiencies in resources both time, effort, and cost that should have been avoided through procedural compliance and good faith.

4. CONCLUSION

Based on the discussion above, it can be concluded that although arbitral awards are normatively final and binding under Law No. 30 of 1999, Indonesian positive law provides a mechanism for annulment through the District Court based on the limited grounds set forth in Article 70, ensuring substantive justice and preventing fraudulent practices. The *ratio legis* of this regulation serves as a form of judicial control aimed at balancing arbitral autonomy with the protection of the parties' rights; however, in practice, it often poses challenges to the principles of efficiency and confidentiality inherent in arbitration. The evolving legal landscape, particularly following the issuance of Supreme Court Circular (SEMA) No. 4 of 2016, strictly closes the door on Civil Review (*Peninjauan Kembali*) to provide swifter legal certainty, thereby positioning the annulment of an arbitral award as an extraordinary legal instrument that must not be utilized as a means to re-examine the merits of a case already decided by the arbitrator. In practical terms, this research guides judges to strictly apply the principle of minimal court intervention by limiting scrutiny only to the exhaustive grounds of Article 70 of Law No. 30/1999, without re-examining the merits of the case. Furthermore, it provides a solid juridical basis to firmly reject Civil Review (PK) petitions, effectively preventing delaying tactics by losing parties and safeguarding Indonesia's investment climate.

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