



The existence of arbitration verdict cancellation efforts regarding final and binding characteristics

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Abstract: The arbitration verdict must include a verdict implementation period. It is based on the arbitration verdict characteristics based on Article 60 AADR LAW (Law on Arbitration and Alternative Dispute Resolution), namely that an arbitration verdict is final, has permanent legal force, and is binding on both parties; therefore, the legal consequences do not only apply to the parties who are arbiter but also arbitration verdicts cannot be further tested for legal consequences by other institutions. However, the provisions of Article 60 AADR LAW are followed by the provisions of Article 70 AADR LAW, which allows for arbitration verdict cancellation by the District Court as in Article 71 AADR LAW. Hence, this research aims to determine the binding power of an arbitration verdict and the District Court's authority in canceling an arbitration verdict. The research methodology was normative research with statutory and conceptual approaches. The research results stated that efforts to cancel the arbitration verdict by the District Court had implications for the loss of the final and binding characteristics of the arbitration verdict. Efforts to cancel the arbitration verdict required to reconsider its existence.

Keywords: Arbitration; Cancellation of Decision; Final and Binding

1. Introduction

The rapid development of business and trade nowadays cannot be separated from globalization, which has brought Indonesia to a free market and free competition, so it is necessary to formulate multinational agreements to support business and trade development (Fans Hendra Winarta, 2012). With the development of business and trade activities, disputes between the parties may inevitably occur. Settlement of disputes arising in the business sector can be done in two ways/legal options, namely litigation institutions through general court institutions and non-litigation institutions through alternative dispute resolution (ADR) through conciliation, mediation, negotiation, and arbitration in accordance with the agreement of the parties when determining the desired dispute resolution mechanism (Astiti & Tarantang, 2019). Since litigation solutions tend to be win-lose, unresponsive, and require enormous costs, a long time (Sari, 2014), and several other complexities in the litigation process, many business people choose to resolve problems in their business non-litigationally (out-of-court) (Arifin, 2022).

In current business developments, arbitration is often used and sought after in resolving disputes between business actors in a non-litigation manner or out-of-court (wadji Farid, Lubis Ummi Salamah, 2023). Arbitration is a process of resolving civil disputes outside the general court based on an arbitration agreement made in writing by the parties to the dispute (Pasal 1 Angka 1 Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa). Thus, in implementing the arbitration agreement, the principle of *pacta sunt servanda* applies, determining the law that applies to the parties to the dispute to submit the dispute to the arbitrator's verdict. Therefore, the legal consequence is that the parties involved in the arbitration agreement must agree to the arbitration verdict, which is final and binding (Ariprabowo Tri dan Nazriyah, 2017). Arbitration institutions have several advantages compared to settlement through litigation, including cheap, fast, and simple costs, disputes are kept confidential,

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arbitration verdicts are final and binding, beneficial to the parties, and business relations between the parties are maintained (Astuti & Tarantang, 2019). With several advantages, arbitration prevents slow proceedings in resolving procedural and administrative disputes in general courts (Astuti & Tarantang, 2019). The history of the use of arbitration has been known for a long time, both globally and nationally, until now the development of the use of arbitration globally and nationally has developed very rapidly with several advantages in the use of arbitration (Frans Hendra Winarta, 2012). Of the several advantages of arbitration, in almost every case resolved by the Indonesian National Arbitration Board (BANI), several parties object to the arbitration verdict, so they request a cancellation of the arbitration verdict to the District Court. Regarding verdicts proposed to be canceled, some are accepted for cancellation by the District Court and confirmed by the Supreme Court. Besides, some verdicts are accepted for cancellation by the District Court but are rejected by the Supreme Court. Some verdicts are rejected from the beginning by the District Court (Roosdiono, 2022).

The main challenge faced in the implementation of arbitration in Indonesia, in terms of regulations, efforts to annul an arbitration decision refer textually to Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which is hereafter abbreviated to the APS Law. On the one hand, the effort to cancel an arbitration verdict is an effort to review the formal aspects, which is intended as a protection mechanism for the parties, both for legal product makers (the arbitration panel) who are imperfect human beings so that it is possible to evaluate a verdict or wrongful law and also for the parties to the dispute regarding the possibility of fraud being committed. Meanwhile, requests to cancel arbitration verdicts are used not to seek justice in practice but to delay or avoid the obligation to implement the arbitration verdict. The clause on efforts to cancel an arbitration verdict, expressed in the AADR LAW, was crucial in research. Currently, it is starting to be recognized that Indonesia is seen as an “unfriendly country” towards arbitration because arbitration verdicts, which are final and binding, can still be canceled. Therefore, efforts to cancel an arbitration verdict give rise to several problems: 1. What are the implications of arbitration verdict cancellation efforts on the final and binding characteristics of an arbitration verdict? 2. What is the authority of the District Court in canceling an arbitration verdict?

Based on a literature search, related previous research was obtained, namely: Journal written by Mosgan Situmorang entitled ‘Annulment of Arbitration Awards (2020),’ Journal written by Melyana entitled ‘Separation of Reasons for Cancellation and Conditions for arbitration verdict implementation (2019),’ Journal written by Jeffry Latumahina entitled ‘The Legal Relationship between Arbitration Clauses and the Jurisdiction of the District Court (2020).’ The difference between this research and previous research was that the author described the final and binding characteristics of an arbitration verdict, which was analyzed by efforts to cancel the verdict by describing three reasons for cancellation as stated in several regulations.

2. Materials and Methods

The research method used is a normative legal research method with a statutory approach, namely by collecting several laws and regulations relating to efforts to annul arbitration awards and a conceptual approach by collecting doctrines and views in legal science as a basis for researchers to develop arguments in carrying out analysis in resolving legal problems (Peter Mahmud Marzuki, 2021). In this research, to ensure the accuracy of the findings to sharpen the research, descriptive analysis and literature review were used from various sources such as: Journals, books, papers and others related to research. Then, after the data collection process, the researcher used analysis using the content analysis method which was carried out by reviewing and interpreting the data based on the substance of the existing theory.

3. Results and Discussion

3.1. Principles and characteristics of arbitration verdict cancellation efforts

a. Principles and characteristics of arbitration

Dispute resolution through arbitration is based on the parties' agreement when included in an arbitration agreement (Rudy & Mayasari, 2022). An arbitration agreement can be realized in two forms: when the arbitration clause is made before the dispute (*factum de compromitendum*) or when the arbitration clause is made after the dispute arises (*deed of compromise*) (Ariprabowo Tri dan Nazriyah, 2017). The existence of an arbitration agreement has a role in regulating the consequences instructed by the parties, avoiding court intervention, empowering arbitrators to decide disputes, and determining procedures for resolving disputes (Ariprabowo Tri dan Nazriyah, 2017). There are several principles in arbitration, including (a) Agreement (arbitration clause/agreement arbitration): An arbitration agreement is created by the parties before or after a dispute arises in the form of an arbitration clause recorded in a written agreement (Article 1 Number 3 of the AADR LAW). (b) The scope of the dispute is only trade/commercial matters (Article 5 paragraph 1 of the AADR LAW) and disputes that cannot be carried out in peace (Article 5 paragraph 2 of the AADR LAW). (b) Closed/Confidential Hearing: in arbitration, ongoing disputes are confidential or not for public consumption. Hence, it is an advantage for the parties to the dispute when choosing settlement through arbitration, namely maintaining the confidentiality of business information or maintaining the business's privacy even if a dispute occurs (Rini Eka Agustina, 2024). (c) Limited trial time (180 days): examination of disputes resolved in arbitration must be completed no later than 180 days when the arbitrator panel is formed (Article 48 of the AADR LAW). (d) There are no legal and binding remedies (final and binding): The arbitration verdict is final, has permanent legal force, and is binding on both parties (Article 60 of the AADR LAW).

b. Cancellation of Verdicts is very Limitative.

The legal force of arbitration and court verdicts have the same legal force: executory force. Article 54 of the AADR LAW states that the format of an arbitration verdict must contain several provisions, including the head of the verdict, which means: "For the sake of justice based on the Almighty God." Based on these provisions, the arbitration verdict is the same as a court verdict (Article 4 of the AADR LAW). Article 60 of the AADR LAW states that arbitration verdicts are final, have permanent legal force, and are binding on both parties. Based on these provisions, textually, the legal product in the form of an abbreviated verdict decided by an arbitrator, apart from having legal consequences for the parties, also has legal consequences that other institutions cannot further test (Supeno et al., 2019). The finality of an arbitration verdict means that an arbitration verdict cannot be appealed, cassated, or reviewed (Tampongangoy, 2015).

c. Arbitration verdict cancellation efforts

In resolving arbitration disputes, the parties are not always satisfied with the case's resolution, and there is also no guarantee that the arbitration settlement process will be perfect. Therefore, to protect parties dissatisfied and feel aggrieved by an arbitration verdict, the AADR LAW gives the District Court the authority to cancel an arbitration verdict if there are reasons justified according to the law. In several countries in the world, the law of arbitration regulates legal action against an arbitration verdict, although the terms used in each country are different (Situmorang, 2020). Historically, the *Reglement op de Rechtvordering (RV)* was the legal basis for arbitration used during the Dutch East Indies, which was in effect before the beginning of independence and before the AADR LAW existed. The RV and the AAADR LAW also accommodate a mechanism for arbitration verdict cancellation with ten reasons for cancellation based on the provisions of Article 643 RV jo. Article 646 RV. After the enactment of the AAADR LAW as stipulated in Article 70 of the AADR LAW, efforts to cancel arbitration can be made for three reasons for cancellation if it is suspected to contain elements: a) falsification of documents or letters at the time of submission of examination or after the verdict is read;

b) the presence of decisive documents that the opposing party hid after the verdict was read; or c) there is deception.

Batal (cancel) is the basic word for pembatalan (cancellation). In the Great Indonesian Dictionary, batal (cancel) is invalid (Badan Pengembangan dan Pembinaan Bahasa Kementerian Pendidikan, Kebudayaan, 2021). Therefore, canceling is a process of what is initially valid or legal becoming invalid or illegal. The AADR LAW allows for efforts by the parties to cancel the arbitration verdict as stipulated in Article 70 of the AADR LAW. In arbitration, cancellation is an attempt to decide that the arbitration verdict does not have binding legal force. So, the object that will be invalidated is the arbitration verdict. It is because, with efforts to cancel the arbitration verdict, the arbitration verdict can be re-examined by other institutions, namely the District Court and the Supreme Court (Tampubulon, 2019). Arbitration cancellation differs from the procedure for re-examining a legal product to another institution, although there are some similarities at first glance. The difference is that the basis for an arbitration verdict cancellation is the formal aspect of a verdict. The equivalent is related to an effort made to make a legal product that was initially valid to be invalid.

The arbitration verdict cancellation by the District Court is not carried out arbitrarily. There are several reasons that the district court judge needs to consider to cancel an arbitration verdict (Devita, 2021). The reasons for requesting an annulment of an arbitration verdict in Article 70 AADR LAW in the form of falsification of letters, hidden documents, and deception raise issues, especially regarding the reasons for canceling hidden documents and deception. Regarding hidden documents, in civil proceedings in Indonesia, judges do not recognize the principle of discovery, a procedure where parties or third parties obtain information and evidence related to the case being handled, even though it is possible to hide evidence (Guan & Oktaviani, 2021). Thus, it becomes a problem if the party is defeated in the arbitration due to hidden documents, even though the arbitration panel did not actively request the documents or evidence (Roosdiono, 2022). The third reason for cancellation is a problem related to deception by one of the parties. The formulation of this norm is so vague that it is often used as a reason for applying for arbitration verdict cancellation (Roosdiono, 2022). The final and binding characteristics of arbitration verdicts in the provisions of Article 60 AADR LAW and Article 70 AADR LAW have implications for the final and binding characteristics of arbitration verdicts that are no longer valid.

3.2 The State Court's Authority to Cancel Arbitration Verdicts

Arbitration as an institution for resolving business disputes outside private and public courts are different entities, but both are related to the legal system. The court can force the parties to comply with the arbitration agreement and its verdict. Therefore, it is vital to cover each area so there is no chaos between the arbiter and the court (Arifin, 2022). Normatively, based on Article 1 number 1 and Article 6 of the AADR LAW, arbitration is an institution that provides dispute resolution outside of general court. Thus, structurally, the arbitration institution is not under the jurisdiction of the judiciary with the highest peak, namely the Supreme Court. Not only related to structural procedural procedures, even arbitration verdicts should not have a hierarchical relationship with the judiciary's verdicts. The selection of an arbitration institution as a forum for resolving disputes has the legal consequence that any business dispute arising from the inclusion of an arbitration clause is not the authority of the District Court as stipulated in Article 3 jo. Article 11, paragraph (1) and paragraph (2) of the AADR LAW (Latumahina, 2020). The existence of provisions for requests for annulment of arbitration verdicts in court, as in the general explanation of Article 70 AADR LAW, means a hierarchical relationship exists between the judiciary and arbitration bodies (Roosdiono, 2022). The basis of the district court's authority is stated in Article 71 of the AADR LAW when a cancellation request is submitted within 30 days from the registration of the annulment of the verdict arbitration in the State Court (Melyana, 2019). Arbitration should be an institution for resolving disputes out-of-court using alternative methods that are efficient, effective, and fair in society regarding arbitration so that the involvement of the

court's authority must be limited. With the request for cancellation in court, it can be said that the arbitration institution is not fully an institution for resolving disputes out-of-court. Consequently, the provisions related to requests for arbitration verdict cancellation have a negative impact on the BANI as an institution for resolving disputes out-of-court.

The legal protection that the parties should receive in institutions whose legal products are immediate and binding should not be in the form of cancellation because an attempt to cancel will immediately erase the characteristics of an arbitration verdict. In the AADR LAW, the forms have been accommodated in several provisions. One is the right to refuse, so the cancellation mechanism should no longer be needed. If a document is found fake or hidden by the opposing party, the party that objects can immediately raise it with the arbitration panel during the hearing. If the arbitration panel does not pay attention even though the allegations have been clear. Thus, the party that objects can submit a right of objection to the arbitration panel. So, with the right of refusal, the implications arising from an attempt to cancel do not need to occur but still protect parties who feel cheated in their arbitration.

Article 70 of the AADR LAW requires a request to cancel an arbitration verdict, which is still presumptive, whereas, in the explanatory provisions of Article 70 of the AADR LAW, the word presumption is changed to something certain which is based on the verdict of the District Court. Until the Constitutional Court, Number 15/PUU-XII/2014 verdict canceled the explanation of Article 70 of the AADR LAW. After all, it created injustice and legal uncertainty because it conflicted with Article 28 paragraph (1) of the 1945 Constitution and had no binding force (Putusan Mahkamah Konstitusi No.15/PUU-XII/2014, n.d.). Therefore, the implications of the Constitutional Court's verdict Number 15/PUU-XII/2014 regarding the mechanism for annulling arbitration verdicts, as explained in Article 70, should be accompanied by proof through a court's verdict (Penjelasan Pasal 70 Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, n.d.). With the Constitutional Court's verdict Number 15/PUU-XII/2014, there is no longer a need for proof of the court's verdict (Putusan Mahkamah Konstitusi No.15/PUU-XII/2014, n.d.). Hence, the attempt to go to the District Court is no longer an obstacle and can be immediately submitted to the District Court and decide that the arbitration verdict is canceled. However, the Constitutional Court's verdict Number 15/PUU-XII/2014 influences the principle of non-interference by the court in arbitration as well as the final and binding principles in arbitration verdicts.

4. Conclusion

An arbitration verdict that is final and has permanent and binding legal force, as stated in Article 60 with the provisions of Article 70 regarding submitting an application for annulment of an arbitration verdict by the parties, has implications for the invalidity of the final nature of an arbitration verdict. It is because, based on the provisions of Article 71, applications can cancel an arbitration verdict to be re-examined by another institution, namely the District Court. With the intervention of the District Court in canceling the arbitration verdict as a dispute resolution out-of-court, it can be said that the arbitration institution is a dispute resolution institution that is not "purely" resolving disputes out-of-court. With implications that actually bring harm to the existence of the provisions of Article 70 of the APS Law, it is hoped that this research will have theoretical implications regarding the importance of legislation on the APS Law to make changes and it is hoped that this research will also provide practical implications in providing some insight into the consequences of frequent attempts to cancel it. in practice that can give rise to legal uncertainty in arbitration. This research is only limited to whether or not it is necessary to maintain the existence of provisions related to the provisions of Article 70 of the APS Law, so it is hoped that further research will be able to provide appropriate provisions for changes to Article 70 of the APS Law for the changes made to expand research.

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