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The Implication of Review on Arbitral Awards in the Legal Certainty of Construction Dispute Settlement

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Abstract: Arbitration is a popular dispute resolution method in the construction industry in Indonesia because the process is fast, efficient, and the results are final and binding. However, attempts to retest or annul arbitral awards in courts often threaten the principle of finality. This study aims to analyze the legal basis for reviewing arbitral awards in Indonesia based on Articles 70-72 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as well as its impact on legal certainty and efficiency in resolving construction disputes. Through a normative juridical approach and case studies, this study found that courts often annul arbitral awards on the grounds of forged documents, new evidence, or fraud (Hansen, 2019). Examples of cases such as PT. Hutama Karya vs PT. Krakatau Bandar Samudera show that annulment by the district court prolongs dispute resolution and adds to costs, which highlights the weakness of the arbitration system in Indonesia and can reduce trust in it. The study concluded that legal reform is necessary to limit the grounds for reviewing arbitral awards. Indonesia is also advised to establish a special arbitration court or a judge of construction dispute experts to increase legal certainty. Training and certification of arbitrators is necessary to reduce the potential for award errors, so that arbitration can be optimal as an effective and efficient method of dispute resolution.

Keyword: Arbitration, Construction Dispute, Review, Legal Certainty.

INTRODUCTION

Recently, the Supreme Court issued Supreme Court Regulation Number 3 of 2023 which regulates the procedure for appointing arbitrators by the court, the right of revolt, and the process of examining applications for enforcement and annulment of arbitral awards, as a form of reform in arbitration law in Indonesia (Gunawan & Simanjuntak, 2024). Justice seekers should be given access to apply for a legal remedy for Review (PK) against court decisions that have permanent legal force and cancel arbitral awards, so that the principle of access to justice can be realized in the dispute resolution process through the courts (Satrio & Fakhriah, 2018).

In practice, the parties often still feel dissatisfied with the Supreme Court's appeal decision, so they choose to pursue legal review (PK). The Supreme Court, in its various rulings related to the application of the Judicial Court against the court decision that annulled the arbitral award, showed a varied attitude (Ibrahim, 2022; Davis, 1997).

Construction projects have a high level of complexity and involve many parties, including owners (both government and private companies), designers, contractors, suppliers, subcontractors, and banks (Al-Humaidi, 2014). Conflicts can arise between these parties and develop into construction disputes. These disputes may arise due to issues related to payment, time, or quality. This dispute resolution is important so that the project objectives can be achieved (Hansen, 2019).

Arbitration is the preferred method of dispute resolution, especially in construction contracts in Indonesia, due to its simple and fast procedures, the confidential nature of the process, and the final and binding outcome of the award. In addition, arbitration has advantages in the form of freedom that is not found in traditional judicial mechanisms. This freedom includes the choice of jurisdiction, the location and time of the arbitration proceedings, and the selection of arbitrators. (Sarwono, 2020). In addition, arbitration provides an opportunity for the parties to select arbitrators who have specialized expertise in the field of construction, which is particularly relevant given the technical complexity of construction projects (Hardjomuljadi, 2020).

Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (AAPS Law) only contains 3 out of 10 grounds for annulment regulated in Article 643 Rv. This is stated in Article 70 of the AAPS Law, which states that the parties can apply for annulment of the arbitral award if the award is suspected to contain the following elements:

1. The letter or document used in the examination turns out to be false or is declared false after the verdict is handed down;
2. Decisive documents were found after the verdict was handed down, which had previously been concealed by the opposing party; or
3. The decision was made on the basis of fraud committed by one of the parties during the examination of the dispute (Hardjomuljadi, 2020).

Although arbitration is designed to provide a final and binding solution, there is a loophole in the Indonesian legal system that allows arbitral awards to be reviewed in court. This review process not only prolongs dispute resolution, but also creates uncertainty for parties hoping that arbitration can resolve their disputes quickly and efficiently. Some arbitration awards that were supposed to be final were actually annulled by the court, resulting in the dispute continuing to a longer litigation process. This ultimately conflicts with the primary purpose of arbitration as a method of speedy and efficient dispute resolution.

This review practice also raises the question of whether courts intervene too often in arbitral awards, given that arbitration is expected to provide legal certainty for the parties involved in the dispute. For example, the case between PT Hutama Karya and PT Krakatau Bandar Samudera, where an arbitral award from BANI was annulled by the Serang District Court, highlights this issue (Hansen, 2019). This case shows that arbitration in Indonesia has not yet achieved its function as a final and binding method of dispute resolution. In the context of construction law, this issue becomes more crucial because construction disputes usually involve large project values and significant impacts on the completion of infrastructure projects. With the review, the dispute resolution process becomes longer and has the potential to cause great losses for the parties involved, both in terms of finance and time.

The formulation of the problems that will be discussed in the study of this paper includes several important aspects, among others. First, it is necessary to analyze what are the

legal bases that allow the review of arbitral awards in Indonesia. Second, this paper will also examine how review can affect the effectiveness of arbitration as a method of dispute resolution. Third, it will be discussed how the practice of review affects legal certainty in the settlement of construction disputes. The purpose of this study is to analyze the underlying legal basis for re-examining arbitral awards, assess the impact of the review on legal certainty, and offer solutions that can improve the arbitration mechanism in the context of construction disputes in Indonesia.

Basic Concepts of Arbitration

Arbitration is an alternative dispute resolution method, in which the parties to a dispute agree to resolve their problems outside the court by appointing one or more arbitrators who act as neutral third parties. Arbitration is often chosen in construction disputes because it provides several advantages, including a faster, cheaper process, and maintaining the confidentiality of information related to the dispute (Hansen, 2019).

According to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, arbitration is defined as "a means of resolving a civil dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute" (Article 1). One of the main reasons parties in construction disputes choose arbitration is because of the freedom to choose arbitrators who have technical expertise in the field of construction, which judges in general courts usually do not have. Therefore, arbitration is often considered more appropriate and efficient in resolving disputes involving technical issues such as construction disputes.

Although arbitration is considered a final and binding method of dispute resolution, in practice, arbitral awards can be retested or annulled by courts in Indonesia. This is regulated in Articles 70-72 of Law No. 30 of 1999 (Ramdhany, 2023). Based on this provision, the court is authorized to annul the arbitral award if there are several special reasons, including:

1. The documents used in the arbitration hearing proved to be false.
2. New evidence is found that is conclusive, or
3. The verdict was given as a result of fraud committed by one of the parties.

The final and binding principle inherent in arbitration is often hampered by the existence of legal loopholes that allow courts to interfere in the arbitral proceedings. This is in contrast to the practice of arbitration in other countries, such as Singapore and the United Kingdom, where courts have very strict restrictions on intervening in arbitral awards. (Hardjomuljadi, 2020). In Indonesia, although arbitration is supposed to reduce the burden of litigation in court, the reality is that the review process often keeps disputes protracted in the judicial system.

Practice and Challenges of Review of Arbitral Awards in Construction Disputes

In the context of construction disputes, the review of arbitral awards has become one of the sources of legal uncertainty for construction industry players. A number of cases have shown that arbitral awards, which were supposed to be final and binding, were instead annulled by the courts, thereby prolonging the time for resolving disputes and increasing the costs incurred by the parties (Simanjuntak et al., 2021; Hillman, 1982).

A relevant example of a case is the dispute between PT Hutama Karya and PT Krakatau Bandar Samudera related to a construction project in Citayur Dock. In this case, the arbitral award rendered by BANI was annulled by the Serang District Court, on the grounds that there were documents that were considered false in the arbitration process (Hansen, 2019). The court's decision to annul this arbitral award resulted in the dispute having to be re-processed through litigation, which is clearly contrary to the main purpose of arbitration,

which is to provide a quick and efficient resolution (Hardjomuljadi, 2020; Grajzl & Silwal, 2020).

Another challenge is the difference in interpretation between courts and arbitral tribunals regarding the validity of documents and evidence presented during arbitral proceedings. Arbitral decisions taken by arbitrators are often based on specific technical knowledge that may not be fully understood by judges in general courts. As a result, decisions taken by arbitrators may be considered invalid by the court, triggering a review.

Arbitration Practice in Other Countries

In some countries such as Singapore and the United Kingdom, courts have strict restrictions when it comes to reviewing arbitral awards. For example, in the Singapore legal system, courts can only interfere with an arbitral award if there is a serious breach of the basic provisions of the procedure, such as the failure of the parties' right to a fair hearing during the arbitral proceedings. These strict restrictions ensure that the arbitration remains a final and binding process, providing legal certainty for the parties to the dispute.

On the other hand, in Indonesia, the review of arbitral awards is still a frequent problem. The lack of clear limitations on the grounds for review and the lack of understanding of the finality of arbitral awards make it easier for courts to interfere with arbitral awards. This casts doubt on the effectiveness of arbitration as a method of dispute resolution in Indonesia, particularly in the construction sector involving high-value and often complex projects

METHOD

The research method for writing this scientific paper uses the normative juridical method, namely by assessing the relevant legal regulations regarding arbitration and the examination of arbitral awards in Indonesia. This method is used to understand the normative dimension of legislation and its application in the practice of construction dispute resolution (Noor, 2023). This methodology includes the analysis of documents and case studies used to identify legal issues relevant to the reassessment of arbitral awards.

Research Classification

This research is a normative legal study that examines relevant legal documents, including regulations, court rulings, and legal doctrines or ideas related to arbitration. The normative study was conducted to examine the legal dimension of the review of arbitral decisions in accordance with Law No. 30 of 1999 and Law No. 2 of 2017 concerning Construction Services (Hansen, 2019). The study uses two main methodologies:

1. Using the methodology of examination against the relevant laws governing arbitration, in particular Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. This examination will examine the provisions of Articles 70-72 that allow judicial review of arbitral awards. The study will also analyze Law No. 2 of 2017 concerning Construction Services, which offers a special environment for construction disputes. (Hansen, 2019).
2. Conducting a case study method, namely conducting research on court decisions that have annulled arbitral awards. The example chosen relates to construction conflicts in Indonesia, exemplified by the conflict between PT Hutama Karya and PT Krakatau Bandar Samudera. This case study will analyze the application of Law No. 30 of 1999 by the courts and the reasons that resulted in the annulment of the arbitral award. (Hansen, 2019).

Data Source

1. Data Primer

Primary data comes from relevant legislation, including Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution and Law No. 2 of 2017 on Construction Services. In addition, primary data includes court decisions related to the examination of arbitral awards, both at the district court and Supreme Court levels (Abedian, 2011).

2. Data seconds

Data sourced from legal literature, scientific journals, books, and articles relevant to arbitration and construction conflicts. This literature includes scientific works examining the philosophy and practice of arbitration in Indonesia and other countries, as well as the influence of judicial intervention on the outcome of arbitration (Hardjomuljati, 2020).

Data Collection Methods

This study uses documentary studies as the data collection technique. Data is collected through analysis of laws, judicial documents, and relevant literature. This documentary investigation is conducted to ensure that the research is based on legitimate and relevant legal sources. The following is the procedure for data collection:

1. Legislation Compilation: Analyzing Law Number 30 of 1999 and Law Number 2 of 2017, along with additional laws relevant to building dispute resolution.
2. Analysis of Court Decisions: Compilation of court decisions relating to the examination of arbitral awards, particularly in construction dispute cases. Such decisions will be examined to understand the reasons used by the court in annulling the arbitral award.
3. Secondary Literature Compilation: Researching numerous scientific journals, books, and articles examining arbitration, decision certainty, and judicial intervention in construction dispute resolution, both in Indonesia and internationally.

Analytical Methods for Data

The data obtained will be through qualitative analysis methods. The analytical procedure is carried out through the following steps:

1. Legislative Analysis: This analysis aims to assess the relevant laws regarding the review of arbitral awards. This study will explain the advantages and disadvantages of the provisions in Law No. 30 of 1999, especially regarding the criteria for annulment of arbitral awards.
2. Analysis of Court Decisions: An in-depth examination of the court ruling annulling the arbitral award will be conducted. This research will examine trends or similarities in the court's reasons for reviewing arbitral awards and their impact on the outcome.
3. An in-depth analysis of the court decision annulling the arbitral award will be conducted. This study will examine the patterns or similarities in the rationale used by courts when reviewing arbitral awards and their implications for the construction dispute resolution process (Hansen, 2019).

RESULTS AND DISCUSSION

Legal Basis for Review of Arbitral Awards

The review or annulment of arbitral awards in Indonesia is explicitly regulated in Articles 70-72 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In this provision, an arbitral award may be annulled by a court if:

1. The documents or papers submitted in the trial proved to be fake.
2. After the verdict was handed down, a decisive document was found that had previously been hidden by one of the parties.

3. The award was made due to a trick or fraud committed by one of the parties in the arbitration (Hansen, 2019).

This provision is intended to protect the integrity of the arbitral proceedings and ensure that the resulting award is not based on false evidence or fraudulent acts. However, in practice, these reasons are often used by the losing party to apply for annulment of the arbitral award, even though there is not always a serious breach. For example, there is a case where the losing party uses the excuse of discovering a new document to prolong the dispute resolution process (Hansen, 2019).

The annulment of this arbitral award could potentially interfere with the final and binding principles that are the basis of the arbitration system. In other countries, such as the United Kingdom and Singapore, the restriction on the review of arbitral awards is stricter, which ensures that only in exceptional cases can arbitral awards be annulled by the courts (Sarwono, 2010). Meanwhile, in Indonesia, the reasons for this review are sometimes ambiguous or not too strict, thus providing space for the losing party to prolong the dispute process (Hardjomuljadi, 2020).

Criticism of the Practice of Review in Court

The review of arbitral awards in court has been one of the major challenges in efforts to simplify dispute resolution through arbitration. Although arbitration is supposed to be a quick and efficient settlement process, the existence of court intervention in the form of Review actually adds to the burden of time and cost (Hansen, 2019).

For example, in the case of PT Hutama Karya vs PT Krakatau Bandar Samudera, the Serang District Court annulled the arbitral award previously issued by BANI. The reason for the annulment was the claim that the documents used in the arbitration were false. This annulment causes disputes that should have been resolved through arbitration, to be re-processed in court, to prolong the resolution of the dispute and increase the costs incurred by both parties (Hansen, 2019).

The main criticism of this Review is that the arbitral process loses its main essence, which is to provide prompt and final legal certainty. Courts often do not have the same technical competence as arbitrators who have a special background in the field of construction. As a result, the court may make a ruling that is not in line with the technical interpretation made by the arbitrator, thereby damaging the trust of the parties involved in the arbitration (Rubino-Sammartano, 2014).

Influence on Legal Certainty

One of the main principles of arbitration is to provide legal certainty for the parties to the dispute. However, the review of arbitral awards by courts has undermined this principle, especially in construction disputes that generally involve large project values and tight deadlines (Hansen, 2019).

When a supposedly final arbitral award is annulled by a court, the parties not only lose the main benefits of arbitration (i.e. fast and inexpensive dispute resolution), but are also caught up in a lengthy litigation process. This not only adds uncertainty in dispute resolution, but also increases financial risk for the parties. This negative influence is especially felt by contractors and employers in complex construction projects, where delays in dispute resolution can have a major impact on project continuity (Carmichael, 2002; Smith et al., 2023).

Compare this to the practice in Singapore and the United Kingdom, where courts can only intervene in arbitral awards in the event of a serious violation of the human rights of the parties, for example if the arbitrator fails to grant equal rights to both parties to be heard (Ugarte & Bevilacqua, 2010). These strict intervention limitations provide assurance that

arbitration can actually function as a final and binding dispute resolution, in contrast to the conditions in Indonesia where court intervention is often more extensive.

Proposal to Improve the Arbitration Mechanism

To strengthen the arbitration system in Indonesia and ensure that arbitration remains an efficient and final method of dispute resolution, several solutions can be implemented:

1. Reform of Law No. 30 of 1999: There needs to be a clearer reform in Law No. 30 of 1999, especially by tightening the grounds for review of arbitral awards. Reasons such as "fake documents" or "new evidence" should be more clearly defined so that they are not misused by the losing party to prolong the process (Jayasinghe et al., 2022).
2. Special Court of Arbitration: The establishment of a special court or judge who has knowledge and competence in the field of arbitration and construction disputes can help reduce the risk of unnecessary annulment of arbitral awards. Thus, arbitral awards are more appreciated and respected as a final method of dispute resolution (Akhmadieva, 2024).
3. Education and Training for Arbitrators for Prosecutors and Judges in the technical field of construction: Improving the quality of training for arbitrators in the technical field, especially in construction disputes, will help minimize errors in the arbitration process. With more trained arbitrators, there will be less room for courts to interfere with the arbitral outcome (Hardjomuljadi, 2020).

CONCLUSION

Based on the results of the discussion in this study, it can be concluded that a review of an arbitral award that should be final and binding is indeed legally possible, even with the possibility of annulment of the arbitral award. This is regulated in Articles 70-72 of Law No. 30 of 1999, which gives the district court the authority to annul an arbitral award for certain reasons, such as the existence of false documents, new evidence, or fraud. As a result, the principle of "final and binding" in arbitration practice becomes weak and can prolong the dispute resolution process.

Court review is often used as a strategy by the losing party to delay or avoid the execution of an arbitral award, which in turn undermines the essence of arbitration as a quick and efficient method of dispute resolution. In some cases, such as the dispute between PT Hutama Karya and PT Krakatau Bandar Samudera, the court annulled the arbitral award on the grounds that it actually prolongs the resolution of the dispute, adding to the cost and time burden for both parties.

Court intervention in arbitral awards in the construction sector also has a negative impact on legal certainty. Construction disputes generally involve large projects of significant value, so delays in dispute resolution can result in a large financial impact for the parties involved. The legal uncertainty caused by this review also lowers the level of confidence of construction industry players in arbitration as a method of dispute resolution.

The practice in Indonesia differs from other countries that are stricter in restricting court intervention in arbitral awards, such as in Singapore and the United Kingdom, where the annulment of arbitral awards can only be made in very limited circumstances. Therefore, clearer restrictions on the review of arbitral awards are needed to protect the finality of arbitration in Indonesia.

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