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MISAPPLICATION OF LAW IN THE APPEAL PROCESS FOR ANNULMENT OF ARBITRATION AWARDS

Shinta Aulia Siahaan[1], Raden Mas Gatot Prasetyo Soemartono[2]
[1,2]Universitas Tarumanagara, Jakarta
Corresponding E-mail: gatots@fh.untar.ac.id

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Abstract

Arbitration is increasingly recognized as an effective forum for dispute resolution. One of the key advantages of arbitration is its principle of finality and binding nature, which limits the availability of legal remedies. However, Article 70 of the Indonesian Arbitration Act paves the way for parties to submit an application for annulment of arbitral awards to the District Court, but only on specific, limited grounds. Furthermore, a party may appeal to the Supreme Court regarding the annulment of arbitration awards issued by the District Court, positioning the Supreme Court as the final arbiter in such cases. In practice, there have been instances where the Supreme Court has misapplied the law, seemingly disregarding evidence acknowledged by the District Court. This has led to significant legal uncertainty. This study aims to identify the legal misapplications made by the Supreme Court during the appeal process for annulment of arbitral awards. Utilizing a normative research methodology, this research analyzes existing laws and regulations to address these issues. The findings conclude that one of the legal standards applied by the Supreme Court during the appeal stage contradict Indonesia's arbitration law, undermining the integrity of the arbitration process.

Keywords: ***Agreement; Annulment of Arbitration Awards; Appeal; Arbitration.***

1. INTRODUCTION

Humans and legal entities as legal subjects have their respective rights and obligations. When between legal subjects have committed to perform legal acts, then they have bound themselves as the parties concerned. Because of this agreement, an agreement arises which serves as a source of law to the parties. This matter means that the agreement must be heeded and carried out. An agreement is a situation where one or more people have committed themselves to binding themselves to one or more other people. Simply put, an agreement creates an obligation between the parties. Article 1320 of KUHPer confirms that the fulfillment of object and subjective requirements makes an agreement recognized as valid. The requirements include: agreement of those who bind themselves; the competence of the parties; a certain thing; and an admissible cause. The agreement contains rights and obligations outlined in one clause, which has been agreed to be implemented. Through the birth of an agreement, the agreement officially has the status of a law against the committed parties, therefore it is obligatory to comply with it. One of the important clauses, apart from being related to technicalities in the agreement, is dispute resolution. An agreement is not a guarantee that a dispute will not arise, so it is important to determine the dispute resolution mechanism

In Indonesia, disputes can be settled in court or out of court. The dispute resolution mechanism through the court is carried out by crippling the opponent's evidence (optegenspraak) and giving birth to a win-lose solution, known as the adversarial system (Asnawi, 2016). So that decisions are often considered ineffective and only trigger the birth of new problems because they are considered unable to embrace common interests which lead to hostility between parties (Yuniarti, 2017). Meanwhile, the dispute resolution mechanism taken outside the court includes Alternative Dispute Resolution (ADR) which is stipulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Law No. 30 of 1999) as a legal umbrella.

ADR consists of consultation, negotiation, mediation, conciliation, and expert judgment. From the preceding provisions, arbitration is distinguished from ADR, which is the initial stage in the dispute resolution mechanism before it is submitted to the arbitral institution for processing and examination. In other words, if no middle ground or agreement is reached by the parties through ADR, it is the responsibility of the arbitral institution to examine the dispute on the basis of a written agreement made by the parties. This situation is in line with the principle of ADR where the result is a win-win solution (Sudiarto et al., 2023). Article 1 point 1 of the Law of the Republic of Indonesia of 1999 on Arbitration and Alternative Dispute Resolution (Law No. 30 of 1999) defines that arbitration is a settlement of civil disputes outside the public courts, based on a written arbitration agreement made by the parties to the dispute. Arbitration continues to exist in Indonesia because of its advantages that attract attention compared to dispute resolution through the courts, including the guarantee of confidentiality, because the process takes place in private and is only possible to be attended by the parties to the dispute or those authorized by the parties, so it is unlikely that the dispute will be known by the wider community. In addition, the procedure is flexible, where the arbitration procedure, such as in terms of determining the language used, the arbitrator as the leader of the hearing, the place where the arbitration process takes place, the choice of law, the choice of forum, and the procedures carried out are based on the agreement of the parties as long as they are not contradictory to the laws and regulations.

Arbitration authority is based on dispute resolution provisions that must be contained in a written agreement. Therefore, the legal requirements of the agreement also apply to the arbitration agreement, as a form of agreement. If these conditions are not met, then the arbitration competence in examining the case is canceled and transferred to the District Court. The appointment of arbitration as a dispute resolution forum can be determined before the dispute occurs, stated in writing in the dispute resolution clause in the agreement by selecting the arbitration forum. But if not, the parties can choose an arbitration forum based on the agreement of the parties in the form of a notarial deed. The appointed arbitration institution can be both ad-hoc (volunteer) and institutional. With the arbitration authority based on the provisions contained in the written agreement, it makes it a guideline for the arbitration institution to examine and decide the dispute submitted by the parties by issuing an arbitration award.

Arbitration is known for its final and binding principle, which means that the award is final and binding, not open to any legal remedies (final and binding) (Matheus, 2021). This provision is explicitly emphasized in Article 60 of Law No. 30 Year 1999. As a result of this nature, the parties, in good faith and voluntarily, must immediately implement the results of the arbitral award (Andriani, 2022). In other words, this principle relates to executoriality which is in line with the speedy arbitration process. However, this provision is contradicted by the provision in Article 70 which suggests that a petition for annulment of an arbitral award may be filed with the District Court based on conditions that have been categorized in a limitative manner. Prior to the enactment of Law No. 30/1999, the grounds for annulment of an arbitral award were set out in Article 643 of the Rv (Reglement op de Rechtvordering) which consisted of 10 grounds. However, of these 10 reasons, only 3 reasons were adopted into Article 70 of Law No. 30/1999.

Regarding the matter of applying for annulment of an arbitral award, it is limited to national arbitral awards only. With such an attempt, it may trigger the possibility of the nonwinning party to suspend the enforcement of the arbitral award (Andriani, 2022). If one of the parties has allegations related to the fulfillment of the elements of annulment referred to in Article 70 and can prove it in Court, the Judge at the District Court may grant the request (Prasetio & Hasan, 2021). In addition to the annulment request, the Law provides an opportunity to appeal to the Supreme Court, if you still disagree with the decision. The intervention of the judiciary in this remedy is limited to the procedural aspects of the arbitration itself, not to the substance that has been examined by the arbitral institution (Suryo Nugroho, 2020). The general elucidation provision of Article 72 paragraph (4) underlines that the intended appeal is limited to the annulment of the arbitral award only. This is reaffirmed by the Supreme Court Circular Letter (SEMA) No. 4 of 2016 concerning the Implementation of the Formulation of the Results of the 2016 Plenary Meeting of the Supreme Court Chamber as Guidelines for the Implementation of Duties for the Court, which states that if the

application for annulment of an arbitral award is rejected by the District Court, then there is no legal remedy either appeal or review. In accordance with the aforementioned provisions, PT Waagner Biro Indonesia as Claimant I and the Indonesian Arbitration and Alternative Dispute Resolution Body (BADAPSKI) as Claimant II filed an appeal against the Decision of the Batam District Court which overturned the BADAPSKI Arbitration Decision No. 809/II/P.ARB-BDS/2019 where PT Fagioli Lifting and Transportation Indonesia was the Respondent. In this case, Claimant I and Respondent agreed to be bound by construction cooperation as outlined in a billingual agreement on the Subcontract Agreement ("Sub-Contract Agreement") in which there were also Conditions of Subcontract ("Sub-Contract Terms") made side by side in Indonesian and English versions, both related to technical and dispute resolution clauses. In the English version, the chosen arbitration forum is SIAC and the arrangement will be conducted in English. While the Indonesian translation, the arbitration forum chosen is BADAPSKI. Furthermore, related to technicalities, the English version regulates the limitation of liability up to a maximum of 5%, whereas the Indonesian language eliminates this provision.

Due to different interpretations of the contract, the respondent was deemed to have failed to fulfill its obligations, resulting in losses, which prompted Applicant I to submit the dispute for review by BADAPSKI. Initially, in a letter issued on March 5, 2019, BADAPSKI stated that it had jurisdiction to examine the request. However, this statement was contradicted by a statement from BADAPSKI's Board of Trustees and Daily Management in a letter dated April 1, 2019, announcing that the request could not be forwarded for hearing due to the parties' disagreement regarding dispute resolution through BADAPSKI. Although there were differences of view within BADAPSKI, in the end the arbitration institution still accepted and decided the dispute through award No. 809/II/P.ARB-BDS/2019. Subsequently, the respondent, who disagreed with the award, filed a petition for annulment of the arbitration award to the Batam District Court and it was granted, thus annulling the BADAPSKI arbitration award. As the petition was granted, PT Waagner Biro Indonesia as Applicant I and BADAPSKI as Applicant II filed an appeal to the Supreme Court and considered that the Batam District Court had made an error in applying the law. The appellants objected and requested that the Supreme Court annul the decision of the Batam District Court regarding the annulment of the arbitration award and uphold the BADAPSKI arbitration award No. 809/II/P.ARB-BDS/2019. In deciding the appeal, the Supreme Court has erred in applying the law, because it did not heed and did not base its consideration on the evidence revealed at trial.

Based on the description of the problems and various previous studies that have been presented, it is interesting for the author to examine research that can fulfill and overshadow the weaknesses in previous writings with the title "Misapplication of Law in the Appeal Process for Annulment of Arbitration Awards". The problems are formulated as follows:

1. How is the reason for the annulment of the award based on Article 70 of Law No. 30 Year 1999?
2. How is the misapplication of the law that occurs at the appeal level on the annulment of an arbitration award?

The novelty in this research is in the case study of court decisions as well as in-depth analysis, as well as law enforcement, especially arbitration.

2. IMPLEMENTATION METHOD

This paper is a normative research, conducted by analyzing related legislation, which is descriptive in nature. Descriptive means research that assesses the truth of a fact derived from a particular factor, which aims to obtain new arguments, theories and conceptions as dogmatic in overcoming problems. The desired conclusion in legal research is right, appropriate, inappropriate, or wrong. Meanwhile, descriptive research expects conclusions to be right or wrong (Purwanto, 2023). In this study, the data used is secondary data, collected from primary legal materials (consisting of laws and regulations and previous court decisions (jurisprudence)), secondary legal materials (including books, journals, and related legal documents) and tertiary legal materials (Muhaimin, 2020). Data directly related to this research was collected from literature studies of related materials and documents. This research was conducted using a case approach, namely

Supreme Court Decision No. 126B/Pdt.Sus-Arbt/2021, which already has permanent legal force. The problems in this paper are studied through qualitative methods expressed in the form of words.

3. RESULTS AND DISCUSSION

3.1 The Suitability of the Reasons For Annulment an Arbitration Award Based on Article 70 of Law No. 30 of 1999

The interpretation of justice as the goal of the law is that it is fair to the winners and unfair to the losers. To achieve these legal ideals, the law provides options through the remedies provided. As in the case of arbitration, the losing party is given the opportunity by Law No. 30 of 1999 to submit a request to annul the arbitration award to the District Court. The application can actually only be made if it is suspected of fulfilling the reasons that are regulated in a limitative manner, namely:

a. letters or documents submitted in the hearings which are admitted to be forged or are declared to be forgeries after the award has been rendered;
b. documents are found after the award has been rendered which are decisive in nature and were deliberately concealed by the opposing party; or
c. an award is made based on fraud committed by one of the parties to the dispute.

Quoting from Carin Felina, et al, Ramlan Ginting argues that the provisions of Article 70 are alternative, where each reason can be used as the basis for filing an annulment of an arbitration award (Felina et al., 2023). This matter also agrees with the opinion of Basuki Rekso Wibowo quoted from Siti Chadijah, where the elements in Article 70 are alternative, not cumulative, which means that if there are allegations referred to in Article 70 in the arbitration award, it is possible to submit a petition for annulment of the arbitration award (Chadijah, 2019). Therefore, it can be concluded that the annulment of an arbitral award can be requested if the reason is in accordance with one of the three reasons limited in Article 70.

In the realm of arbitration, the intervention of the judiciary is limited to examining the validity of the procedures in the arbitration itself, such as the appointment of arbitrators to the implementation of the choice of law by the parties. The concept of annulment of an arbitration award is not considered as nebis in idem. The provisions of Article 1917 of the Civil Code state that nebis in idem contains similarities in substance, reasons for prosecution, similar parties. It can be categorized as nebis in idem, if the court re-examines the substance of the dispute that has been examined and decided by the arbitration institution. The submission of a request for annulment of the arbitral award must be submitted to the Registrar of the District Court starting from the day of the submission and registration of the arbitral award to the Court, no later than 30 (thirty) days and made in writing. Furthermore, the petition for annulment shall be addressed to the President of the District Court, as the decider of the consequences of partial or complete annulment of the arbitral award. Article 72 has implicitly indicated the great authority of judicial institutions in examining requests for annulment of arbitral awards.

The general elucidation provision of Article 70 stipulates that the various reasons for the annulment application in question must first be proven, as a result of which the decision can be taken into consideration by the judge in allowing or rejecting the application. However, this was later declared invalid by the presence of Constitutional Court Decision No. 15/PUUXII/2014, which essentially ruled that the explanation of the article was contradictory to the 1945 Constitution of the Republic of Indonesia (UUD 1945) and also had no binding legal force. So it can be concluded, that it is not necessary to prove through another court decision first, in submitting a request to cancel an arbitration award.

In this case, PT Fagioli Lifting and Transportation Indonesia as the applicant for annulment of the arbitration award filed its petition with the Batam District Court on the grounds of deceit and/or forgery committed by PT Waagner Biro Indonesia against SubContract Agreement C31 0690/SC02/08/2017. It was argued that PT Waagner Biro Indonesia deliberately did not adjust the translation of the substance of the articles to that revised by the annulment applicant so that there were differences in the contents of the articles between the dispute settlement clause and the limitation of liability clause between the English and Indonesian versions. In addition, the applicant argued that letter No. B-011/P.ARB-B: B-011/P.ARB-BDS/IV/2019 issued by the Board of

Supervisors and the Daily Management of BADAPSKI, stating that the arbitration dispute could not continue to be heard because the parties did not agree on BADAPSKI as the arbitration forum, was a letter that contradicted decency and public order. The Respondent refutes these arguments through the opinion that prior to the issuance of letter No. B-011/P.ARB-BKI, the parties had not agreed to BADAPSKI as the arbitration forum: B-011/P.ARB-BDS/IV/2019, BADAPSKI had previously issued letter No. B-011/P.ARB-BDS/IV/2019: B 009/P.ARB-BDS/III/2019, dated March 05, 2019 stating that BADAPSKI is authorized to examine the request for arbitration from PT Waagner Biro Indonesia and request PT Fagioli Lifting and Transportation Indonesia to immediately appoint an arbitrator.

That in the trial, it was proven that the Agreement in Article 4 has regulated the use of language and Article 7 has regulated the arbitration forum as follows:

4.	**Language**	4.	**Bahasa**
4.1	The Subcontract as well as all correspondences and documents relating to thè Subcontract exchanged by thè Contractor and thè Subcontractor shall be in English and Bahasa Indonesia. In thè event of conflict between languages,	4.1	Subkontrak ini, semua dokumen dan semua korespondensi antara Kontraktor dan Subkontraktor yang berhubungan dengannya dilakukan dalam Bahasa Inggris dan Bahasa Indonesia. Apabila ada perbedaan maka yang di jadikan
7.3	English version shall prevail. Arbitration may commence prior to, during or after the execution of the Works or parts thereof under the Subcontract. Arbitration proceeding shall be conducted by Singapore International Arbitration Centre and shall be conducted in English language.	7.3	acuan adalah versi bahasa Inggris. Arbitrase dapat dilakukan sebelum, pada saat atau sesudah pelaksanaan pekerjaan atau bagiannya sesuai Subkontrak. Proses Arbitrase akan dilakukan melalui BADAPSKI (Badan Arbitrasi dan Alternatif Penyelesaian Sengketa Konstruksi Indonesia).

In relation to the use of language and the choice of arbitration forum, in its consideration, the Panel of Judges of the Batam District Court concluded that a. the substance of the dispute related to the arbitration forum chosen by the Applicant was SIAC, while the 2nd Respondent was BADAPSKI and the provision of a maximum limitation of liability of up to 5% which was not agreed upon based on evidence of Subcontract Agreement No. C31-0690/SC02/08/2017, b. in the Subcontract Agreement, all documents and all correspondence between the Contractor and the Subcontractor relating thereto were carried out in English and Indonesian. In the event of inequality of translation, the English version shall prevail, c. since the parties are not committed to a dispute resolution forum through arbitration, the arbitrator has no authority over matters relating to the obligations and rights of the parties if the matter is not contained in the agreement and the agreement to dispute resolution through arbitration is made in writing and signed by the parties, and d. The letter issued by the BADAPSKI Supervisory Board and Daily Management is in accordance with the evidence submitted, namely the BADAPSKI arbitration award No. 809/II/P.ARB-BDS/2019.

On the basis of these considerations, the Panel of Judges of the Batam District Court stated that the annulment of the BADAPSKI arbitration award requested should be granted according to law because it is in accordance with the provisions of Article 70 letter c of Law No. 30 Year 1999. Therefore, the Panel of Judges of the Batam District Court declared void the BADAPSKI arbitration award in the dispute between PT Fagioli Lifting and Transportation Indonesia and PT Waagner Biro Indonesia. In relation to the Decision of the Batam District Court No. 66/Pdt.G/2020/PN Btm and its considerations as described above, the author will examine the suitability of the reason for annulment to the provisions of Article 70 of Law No. 30 Year 1999 on Deceit and Forgery.

Deception is regulated in Article 1328 of the Civil Code: "Fraud is a reason for the cancellation of an agreement, if the deception used by one of the parties is such that it is clear and obvious that the other party would not have made the agreement if the deception had not been made." The regulation on deception is also contained in Chapter XXV of the Criminal Code on Fraudulent Acts in general. But narrowly, it is regulated in Articles 378-395 which regulate fraud in general, which

reads: "Any person who, with intent to unlawfully benefit himself or another, uses a false name or false character, or by deceit or false representation, induces another person to deliver an object or to enter into a contract of indebtedness or to cancel a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of four years."

The core offense of this fraud according to Andi Hamzah is with the intention of benefiting oneself or others, unlawfully, by using a false name or false dignity, by deception or a series of false words; moving others; to hand over something to him or to give debt or write off receivables.[1] According to Yahman, between "using a false name or false situation, deceit, a series of false words" with "deceit" according to Article 1246 of the Civil Code has the same concept because it means that the other party is used to carry out a matter and if the actual situation is revealed, then surely the party will not carry it out. So that the deception referred to in fraud cannot be said to be due to negligence (culpa) (Yahman, 2016).

Susanti Adi Nugroho argued that deceit is an action that contains engineering that leads to fraud, for example the existence of an agreement, but the other party opposes it by not considering the agreement to exist. M. Hawin is of the view that deceit has a broad meaning, among others, which is an act or dishonest speech that misleads others with a certain benefit or purpose. In the realm of arbitration, deceit is perpetrated by one of the parties with lies so as to influence the arbitrator to decide something due to belief in the lie or action. According to the expert opinion of Dr. Susanti Adi Nugroho, SH, MH. in Decision No. 302/Pdt.G.ARB/2019/PN.JKT.SEL, the way to prove falsity is that the documentary evidence submitted at the time of examination at the arbitration court is not true, for example claiming there is an agreement on something, but in fact there is no such agreement. Based on the opinions of the experts above regarding the application of proof of deceit, it can be concluded that deceit is a deliberate act as an element of fraud and it is used to make the Arbitrator believe and decide the case based on the lie.

The object of forgery is a letter or document. In Indonesia, forgery of letters is regulated in Chapter XII of the Criminal Code on Forgery of Letters which states: "Any person who forges or falsifies a document which may give rise to a right, an obligation or a release from debt, or which is intended as evidence of a matter, with intent to use or to cause others to use the document as if the contents were true and unfalsified, shall, if such use may result in loss, being guilty of forgery of documents, be punished by a maximum imprisonment of 6 (six) years." In writing, it is regulated in Article 263 paragraph (1) of the Criminal Code and Article 264 paragraph (1) of the Criminal Code, both of which relate to the offense of forgery of documents. The similarity of these two Articles is the subjective element and objective element, namely making false or falsifying. The significant difference between the two is where the regulation of Article 264 paragraph (1) as a qualified offense (Rahim & Rahim, 2021), which has regulated certain types of letters as the object of the offense of forgery of letters. The crime of forgery is a crime that contains elements of untruth or falsification of an object, as if it is genuine from the outside, but in fact contradicts what it should be (Chazawi & Ferdian, 2016). The essence of this offense is to make a fake letter or falsify a letter; which can give birth to an obligation, right, or debt release, or is intended to be evidence of a right, obligation, or debt release; and with the intention of using or asking others to use the letter as if it were real and not fake (Purba, 2022).

R. Soesilo classifies forgery as making a false letter; making the contents not as they should be (not true); falsifying a letter; changing a letter in such a way as to make its contents different from the original. It is done in various ways, not always replacing the letter with another, it can also reduce, add or change something from the letter; forging a signature is included in the meaning of forging a letter; pasting a photo of another person from the person who has the right to it. For example, a photo of a school certificate (Soesilo, 1991). Eva Achjani Zulfa interprets Article 263 of the Criminal Code with two actions, namely forging a letter or making a false letter. Falsifying this letter is possible because it makes a copy or copy of a letter that does not match the original. But making a fake letter does not necessarily have a comparison. From the various perspectives that

[1] Andi Hamzah (2015). Special Delicts in the Criminal Code. Jakarta: Sinar Grafika, p.110

have been described, it is concluded that forgery is carried out by making or changing a letter or document which results in the content of the document not being in accordance with the actual aim of making it look like the original and giving birth to certain legal consequences. In a petition for annulment submitted to the district court, it is not necessary to prove the three reasons referred to in Article 70, so that if there is an allegation of only one reason, it can be submitted. The limitation in Article 70 means that the applicant does not submit reasons outside these provisions, but must prove the violation that occurs from among letters a, or b, or c. Therefore, in fact in proving the reasons for annulment an arbitration award is alternative not cumulative.

In this case study, the object submitted in the annulment of an arbitration award is the BADAPSKI arbitration award itself. Where the application is filed on the grounds of deception and / or falsification of letters which are the basis for the arbitrator in issuing the legal product of the BADAPSKI arbitration award. As explained above, that the Sub-Contract Agreement made on a billing basis was made by deception. In his consideration, the judge considered that based on the evidence of photocopy of Email subject about the draft agreement, that before signing the Sub-Contract Agreement, especially in the arbitration forum revised to Singapore International Arbitration Center and shall be conducted in English language as well as the limitation of liability to a maximum of 5% of the total sub-contract price and has been agreed by Respondent II cancellation, has been true according to the evidence of photocopy of Email subject about the draft agreement, but in the Sub-Contract Agreement, the Respondent did not adjust to the Indonesian translation. Therefore, the Judges of the Batam District Court considered that the parties did not agree on the arbitration forum.

In addition, the applicant also used the reason contrary to decency and order against the letter dated April 1, 2019 No. B.011/P.ARB-BDS/IV/2019 issued by BADAPSKI which essentially stated that the request for arbitration examination filed by PT Waagner Biro Indonesia could not be forwarded for trial. It needs to be reiterated that filing a request for annulment of arbitration is limited to reasons of forgery, concealment of documents, or deception. Therefore, this reason should not be used and is not justified under Law No. 30 of 1999. In its reply, however, BADAPSKI challenged the April 1 letter by arguing that it had already issued, one month earlier, a letter stating its authority to hear arbitration requests and appoint arbitrators. In this context, BADAPSKI stated that it had only issued the letter regarding the request for arbitration hearing 2 (two) times, so that the legal standing of the arbitration institution should be the most recent letter issued.

The Judex Factie in deciding this case based its considerations and proved the facts of the trial referring to the provisions of Article 70 letter c of Law No. 30 of 1999, which states that the decision was obtained as a result of the respondents' deception. Why not the reason for forgery? The actions of the 2nd Respondent in translating the agreement are not in accordance with what has been agreed upon is a form of intent, which is also corroborated by evidence at trial which shows that the translation of other articles, such as Article 4 in the Sub-Contract Agreement, between English and Indonesian is correct and appropriate. However, the Respondent II's arbitration forum clause did not conform to the parties' agreement via email. So that in this case the Judex Factie was correct in granting the request for annulment of the arbitration award on the grounds of the request for annulment in Article 70 of Law No.30 of 1999.

3.2 Misapplication of Law in the Appeal Process for Annulment of Arbitration Awards

In Indonesia, the judicial system includes general courts, special courts, and special courts under the Supreme Court as a judicial body (Panggabean, 2022). Apart from that, various laws and regulations governing dispute resolution systems, based on special jurisdictions, are referred to as extra judicial. One that is classified as extra judicial is arbitration (Rashid & Herinawati, 2015). Known as a form of dispute resolution, arbitration is often known as particuliere rechtspraak (private court) because in principle the resulting decision is win-lose. In addition, the concept of private court refers to the flexibility of arbitration itself which gives the parties the freedom to appoint their own arbitrators to preside over the proceedings and the arbitrators have experience and are familiar with the object of the dispute (Elnizar, 2022).

Legal remedies exist as a form of protection of human rights, as each individual has the right to

justice. Every legal remedy filed is a juridical step that can be taken over objections to a judge's decision and is considered unfair to him. In formal civil law, legal remedies are categorized as ordinary legal remedies and special legal remedies. Ordinary legal remedies are open, which apply to each judge's decision, but will be canceled when the judge decides it in a session open to the public and the decision is accepted by the parties. As for what is classified as ordinary legal remedies are resistance consisting of verzet, appeal, and cassation (Asikin & Zainuddin, 2023). Meanwhile, special legal remedies are legal remedies devoted to special matters as stipulated in the law, namely request civil (judicial review) and derdenverzet (third party resistance) (Asikin & Zainuddin, 2023). The arbitration sector also recognizes appeals against the annulment of arbitral awards filed with the Supreme Court. In this case, the Supreme Court acts as the examiner of last resort, so it does not recognize judicial review efforts like ordinary courts. It is intended that dispute resolution is not protracted and this is an advantage of arbitration because of its fast process. In terms of appeal, it is limited to the annulment of arbitral awards granted through the District Court only. When rejected, there is consequently no legal remedy whatsoever.

The Supreme Court as a judicial institution is certainly obliged to accept to examine, hear and decide cases that have been submitted. In addition, the law delegates the obligation to judges and constitutional judges to be obliged to explore, follow, and scrutinize the principles of law and the value of justice that develop in society. In the realm of arbitration, the intervention of the judiciary is limited to examining the validity of the procedures in the arbitration itself, such as the appointment of arbitrators to the implementation of the choice of law by the parties. On the concept of agreement, an agreement will be binding as law for the makers. If the agreement has decided on the choice of arbitration forum, then the parties must implement it, which means that in the event of a dispute, the court is not authorized and obliged to refuse to examine. This shows that the arbitration agreement gives rise to the absolute competence of arbitration. But this can be overridden on the basis of the parties' agreement to pursue any legal remedy by including the judiciary.

Referring to these provisions, PT Waagner Biro Indonesia appealed to the Supreme Court due to the granting of the request for annulment of the BADAPSKI arbitration award No. 809/II/P.ARB-BDS/2019. In its application, PT Waagner Biro Indonesia together with BADAPSKI as Applicant I and Applicant II appealed. In its consideration, the Judex Jurist stated that the Batam District Court was not entitled to the authority to examine the case, because Article 7.3 of the Sub-Contract Agreement Number C31-0690/SC02/08/2017 explicitly states that arbitration can be carried out before, during or after the implementation of the work or part of it according to the Sub-Contract, the arbitration process will be carried out through BADAPSKI. In addition, as the basis of its consideration, the Supreme Court based on Law No. 24 of 2009 concerning Flags, Languages, and State Emblems and National Anthems, where the agreement must be prepared in Indonesian, if it is prepared in 2 (two) languages, namely Indonesian and foreign languages, if there are differences in interpretation, then the Indonesian language is used. Therefore, the panel assumes that there is no fraud in the arbitration and BADAPSKI is authorized to examine the case. Based on the above considerations, is the application of law made by the Supreme Court appropriate?

Although civil law adheres to the principle that arguing must prove, it certainly requires the role of judges who with their belief or knowledge can prove the legal relationship of the events that occur. In line with the concept of formal civil law, the judge's knowledge is considered as evidence recognized in court, so that the judge's position becomes central in seeking justice. In deciding a case, the judge's paradigm is divided into 2 groups, namely positivistic and non-positivistic paradigm adherents. As adherents of the positivistic paradigm, judges place themselves as instruments of the law that make themselves upright and based on the written rules in the law. Meanwhile, the non-positivistic paradigm places themselves as law makers who create substantive justice (Widowaty & Fitriyanti, 2014).

In deciding the appeal against the annulment of the BADAPSKI arbitration award above, the Supreme Court tended to refer to the positivistic understanding of Law No. 24 of 2009 without considering the binding agreement as a law that has been recognized as evidentiary at the District Court level, which clearly contains arrangements regarding the English language used in case of

differences in interpretation. The Supreme Court seems to have misunderstood the context of positivism perpendicular to the law. Article 1338 paragraph (1) of the Civil Code states: "all agreements made legally shall apply as law to those who make them" By virtue of this provision, agreements are as binding as laws on their makers, i.e. the parties, the sound of pacta sunt servanda. As long as the subjective and objective conditions are met, the agreement will continue to be binding and have legal force. Pacta sunt servanda concerns the implications of the agreement. This principle states that third parties including judges are obliged to respect the subject matter of the agreement like a law, prohibited from interfering with the substance that has been determined by the parties (HS, 2006). So that in considering the above appeal, the Judex Jurist should not close his eyes to the agreement that has been contained in the substance of the agreement which contains language provisions, in the event that there are differences in interpretation, it is based on the English language. And this should have been clearly interpreted, especially between the English version and the translation which is in line and appropriate. Then, shouldn't the SIAC arbitration institution be the choice of forum and isn't the Judex Factie correct in applying the law? Furthermore, the consideration of the Supreme Court which considered that there was no fraud in the arbitration hearing, in this regard there was an inconsistency because the reasons for cancellation were limited to 70 Law No. 30 of 1999 and the proof in the District Court was also specific to Article 70 letter c, therefore the reason for fraud could not be used as a judge's consideration.

The existence of Law No. 24 of 2009 as the legal basis for the use of language, especially in agreements, does not necessarily state that agreements in English are not recognized (Aditya, 2019). In the Sub-Contract Agreement, the parties have agreed to regulate the language used as a reference in the event of translation differences, namely the English version. Therefore, as long as it is based on an agreement, the English reference is valid and can be used. However, it must also be remembered that this multilingual agreement must be adjusted between Indonesian and English because it is on the same position and this can minimize disputes in the future (Aditya, 2019). In addition, in the Judex Factie's consideration, supported by evidence at trial, that the issuance of BADAPSKI's internal letter stating that the application for arbitration dispute resolution submitted by PT Waagner Biro Indonesia could not be forwarded for trial, should have been strong evidence for the Judex Factie in assessing the application of the law that occurred. The authority of an arbitration institution refers to the arbitration agreement which contains the arbitration forum agreed by the parties. The initial step taken by BADAPSKI was right to refuse to continue the examination because the parties did not agree on the choice of forum. However, for some reason, BADAPSKI had the courage to continue the trial process until it rendered an arbitral award. This should have been the center of attention for the Judex Jurist.

From the whole explanation above, the application of law by the Supreme Court can be said to have been erroneous. As an appellate court, the Supreme Court is limited in assessing and deciding whether the law applied by the Batam District Court has been applied in the correct manner or not. It was clear before the trial that the Sub-Contract Agreement contained a provision containing the choice of language agreed by the parties and it did not contradict between the English and Indonesian versions and this was recognized by the Batam District Court as valid evidence. Therefore, the Supreme Court's consideration based on the provisions of Law No. 24 Year 2009 is erroneous and the matter of differences in interpretation is not a substance that must be examined again. However, it should consider the evidence of the letter issued by the BADAPSKI arbitration on April 1, 2019 which in the evidence at trial was also in accordance with the BADAPSKI arbitration award No. No.809/II/P.ARB BDS/2019 whether it was appropriate in the application of the law. The legal product decided by the panel of judges is actually considered correct in line with the principle of res judicata pro veritate habetur. In the level of appeal against the annulment of an arbitration award, this principle means that the resulting decision is intended as a final end that is not possible for any legal remedy. The aim is for legal certainty. Article 60 of Law No. 30 Year 1999 on the final and binding principle provides legal certainty to the disputing parties. However, in this case there was a mistake by the Supreme Court that ignored valid evidence, causing legal uncertainty and consequently impacting on the legal certainty of arbitration.

4. CONCLUSION

Referring to the research findings that have been presented, it is concluded that it is important to regulate the dispute resolution mechanism in the agreement. Dispute resolution through non-litigation is increasingly in demand and one of them is arbitration. The basis of arbitration authority lies in the written agreement in the agreement, so that the legal requirements of the agreement also apply to the arbitration agreement. Law No. 30 Year 1999 provides an opportunity to submit a request for annulment of an arbitration award to the District Court if there are allegations of actions that meet the elements of forgery, concealment of facts or documents or elements of deception. These grounds are alternative, so the proof is also alternative. In this case, the Batam District Court was correct in applying the reason of deceit as a basis for the annulment of the BADAPSKI arbitration award which was decided based on the evidence at trial. Since the petition for annulment was granted, an appeal can be filed to the Supreme Court as the final end of the case examination. However, the Supreme Court has erred in applying the law, which has ignored the evidence at trial. Although the use of Indonesian language is crucial and an important requirement in a billingual agreement, it does not make the language provisions that have been agreed upon by the parties null and void. This creates legal uncertainty and will create inconsistencies in arbitration awards.

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