

# Problems with the Annulment of Arbitral Awards in the Perspective of the Principle of Access to Justice

Sherly Ayuna Putri, Amelia Cahyadini, Yulinda Adharani, Yoan Shevila Kristiyenda

Faculty of Law, Universitas Padjadjaran, Jl. Raya Bandung Sumedang, Sumedang Regency, West Java, Indonesia

DOI: <https://dx.doi.org/10.47772/IJRISS.2025.905000498>

Received: 09 May 2025; Accepted: 20 May 2025; Published: 25 June 2025

## ABSTRACT

The annulment of arbitration awards in Indonesia has led to various issues affecting the effectiveness of the arbitration system, legal certainty, and the principle of access to justice for disputing parties. Although arbitration is intended to be a final and binding dispute resolution mechanism, inconsistent annulment practices by courts often undermine trust in the system. This study examines issues related to the annulment of arbitration awards, particularly how such annulments impact the principle of access to justice. Regulatory reforms are necessary to clarify the provisions governing grounds for annulment and to ensure that the principle of access to justice is maintained in arbitration.

**Keywords:** Access to Justice, Annulment of Arbitration Awards, Arbitration

## INTRODUCTION

In essence, arbitration is the voluntary submission of a dispute to a neutral third party. The award issued through this arbitration process is final and binding<sup>1</sup>. Arbitral awards are not published, thus maintaining the confidentiality of the dispute and protecting confidential business information from the public and competitors<sup>2</sup>. In the context of Indonesian law, Law No. 30/1999 on Arbitration and Alternative Dispute Resolution (AAPS Law) provides that arbitral awards have the same legal force as court judgements. This should provide legal certainty for the parties, but in reality, many arbitral awards are annulled by the courts, which creates legal uncertainty and undermines confidence in the arbitration system itself.

The phenomenon of annulment of arbitral awards by courts often occurs due to allegations of fraud or procedural violations in the arbitration process. For example, data from the Indonesian National Arbitration Board (BANI) indicates that a significant number of disputes resolved through BANI are followed by applications for annulment from one of the parties. The most common reasons include the existence of forged documents or deceit committed during the arbitration process.<sup>3</sup> While these annulment attempts aim to protect the rights of aggrieved parties, their impact often runs counter to the original purpose of arbitration as an efficient and effective dispute resolution method.

The annulment of arbitral awards also raises serious questions about the principle of *access to justice*. This principle emphasises the importance of accessibility to justice for all individuals without exception. When an arbitral award is annulled, parties who sought to resolve disputes amicably through arbitration often must resort

<sup>1</sup> Bernard Arief Sidharta, "Penelitian Hukum Normatif: Analisis Penelitian Filosofikal dan Dogmatikal" dalam: Sulistyowati Irianto dan Shidarta (eds.), *Metode Penelitian Hukum: Konstelasi dan Refleksi*, Jakarta: Yayasan Obor Indonesia, 2009, h. 142.

<sup>2</sup> Hombokau, T. C. M. (2024). Penyelesaian Sengketa Arbitrase Internasional Dalam Sengketa Kapal Marina Bay. *Jurnal Ilmu Hukum: ALETHEA*, 8(1), 60

<sup>3</sup> Hukum Online. (2022, June 17). *Eksistensi pembatalan putusan arbitrase nasional di Indonesia: Oksimoron*. Hukum Online. Retrieved March 26, 2025, from <https://www.hukumonline.com/berita/a/eksistensi-pembatalan-putusan-arbitrase-nasional-di-indonesia--oksimoron-lt62ac34324f1bb/>

to litigation, prolonging the resolution process and increasing costs. This is contrary to the spirit of arbitration which offers a quick and low-cost solution compared to litigation in court.

Furthermore, the legal uncertainty resulting from the annulment of arbitral awards may discourage businesses from choosing arbitration as a dispute resolution method. If they feel that an arbitral award will not always be respected or can be annulled without good cause, they may prefer to rely on the general court system despite the longer and more expensive process. This creates a cycle in which arbitration loses its credibility as an alternative to dispute resolution.

In this context, it is important to re-evaluate the legal grounds for annulment of an arbitral award. According to Article 70 of the AAPS Law, grounds for annulment are limited to three categories: forged documents, withheld documents, and fraud. However, the broad interpretation of this provision often leads to confusion among legal practitioners and courts. Therefore, there is an urgent need to clarify this provision to avoid abuse of the right to apply for annulment.

Finally, to ensure that the principle of *access to justice* is maintained in the context of arbitration, there is a need for reform in the regulation on the annulment of arbitral awards. This includes the enforcement of stricter limitations on grounds for annulment as well as increased transparency in the arbitration process itself. Thus, it is hoped that the arbitration system can again become the main choice for parties in resolving disputes efficiently and fairly.

Based on the description in the background, the following problems can be formulated:

What are the problems that arise in the annulment of arbitral awards in Indonesia?

What is the role of the principle of *access to justice* in the annulment of arbitral awards?

## RESEARCH METHODS

This study employs normative legal research, which examines applicable legal norms to address the legal issues raised. This research is conducted to examine positive legal provisions relating to the annulment of arbitral awards in the perspective of the principle of *access to justice*.

## DISCUSSION

### Problems in the annulment of Arbitral Awards in Indonesia

The annulment of arbitral awards in Indonesia presents various problems that have a broad impact on the effectiveness of the arbitration system, legal certainty, and the principle of *access to justice* for justice seekers. In principle, arbitration is a final and binding dispute resolution mechanism, meaning that arbitral awards should be enforceable without interference<sup>4</sup>. However, in practice, the provision in Article 70 of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution which reads:<sup>5</sup> "Against an arbitral award the parties may file a petition for annulment if the award is alleged to contain the following elements:

a letter or document submitted in the examination, after the judgement has been rendered, is recognised as false or declared to be false;

after the judgement is made, a decisive document is found to have been concealed by the opposing party; or

the decision was made as a result of deceit by one of the parties to the dispute. "

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<sup>4</sup> Andriani, Agustini. "Akibat Hukum Pembatalan Putusan Arbitrase dalam Kaitannya dengan Prinsip Final and Binding." *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4.1 (2022): 33

<sup>5</sup> Undang-Undang Nomor 30 tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa

Unfortunately, in some cases, this provision has been used to undermine the effectiveness of arbitration as a dispute resolution route that is supposed to be faster and more efficient than litigation in court. One of the main problems in the annulment of arbitral awards is the inconsistency of court decisions in assessing the grounds for annulment. Some court decisions tend to annul arbitral awards on insufficiently justified grounds that are inconsistent with the limitations set out in the law<sup>6</sup>. This creates legal uncertainty for parties who choose arbitration as a dispute resolution mechanism. In fact, one of the main reasons for using arbitration is to avoid a long and complex litigation process. If arbitral awards can be easily annulled by the courts without good reason, then the main function of arbitration as an efficient alternative dispute resolution route is threatened.

The next problem is the potential abuse of the annulment mechanism by the losing party in arbitration. It is not uncommon for parties aggrieved by an arbitral award to apply for annulment on unfounded grounds as a strategy to delay or avoid their obligations to enforce the award. This creates inefficiencies in the dispute resolution system and harms parties who should be entitled to their rights in accordance with the arbitral award that has been issued. This abuse is further exacerbated by the tendency of some courts to take sides in assessing annulment applications, thus opening a loophole for parties who do not act in good faith to avoid their legal obligations.

In addition, the annulment of arbitral awards also raises problems in the execution of the arbitral award itself. Based on Article 59 of the Arbitration and Alternative Dispute Resolution Law, arbitration awards are final and binding and have permanent legal force, so they should be able to be directly executed without going through lengthy procedures. However, in practice, when an arbitration award is annulled by the court, the party that should have obtained its rights based on the arbitration award actually loses those rights because the award can no longer be executed. This has implications for legal uncertainty and weakens the credibility of arbitration as a dispute resolution mechanism in Indonesia.

Another issue of concern is the standard used by the courts in assessing the grounds for annulment of an arbitral award. The law has clearly stipulated that annulment can only be made based on certain grounds, but in some cases, the courts have a very broad interpretation of this provision. For example, some courts have annulled arbitral awards on the grounds that they 'violate public order' without clearly defining the meaning of public order in the context of arbitration. One example of a case that reflects this is District Court Decision No. 24/PDT.ARB/2015/PN.JKT.PST, in which the plaintiffs argued that the arbitral award violated public order and contained elements of deception. The main problem in this case was the separation between the grounds for the petition to annul the arbitral award and the conditions for enforcement of the arbitral award. In this case, the plaintiff used the argument that the arbitral award sought to be annulled violated public order, which should be a condition for non-enforcement of the arbitral award, not a condition for annulment of the arbitral award itself. However, the court still considered the proposition and eventually cancelled the arbitral award<sup>7</sup>. This shows that the standards used by the courts in interpreting the grounds for annulment of arbitral awards are still not uniform, which in turn creates uncertainty for business actors and justice seekers.

Inconsistency in the annulment of arbitral awards also has a negative impact on Indonesia's competitiveness in the realm of international arbitration. Many other countries, especially those with legal systems that support arbitration, provide stronger protection to arbitral awards from being easily overturned by courts. If Indonesia continues to have a practice of arbitral annulment that is inconsistent and inconsistent with the basic principles of arbitration, then confidence in the arbitration system in Indonesia may decline. As a result, many parties may prefer to use overseas arbitral institutions to resolve their disputes, which may ultimately be detrimental to the development of national arbitration.

With the various problems that arise in the annulment of arbitral awards in Indonesia, reforms in the legal system are needed to ensure that arbitration continues to function properly. One of the solutions that can be applied is

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<sup>6</sup> Zakaria, Z., Sudirman, S., & Umar, W. (2024). Inconsistencies & Problems of Supreme Court Decision No. 26 B/Pdt.Sus-Arbt/2014 concerning Annulment of Arbitration Award. *Pena Justisia: Media Komunikasi dan Kajian Hukum*. p1.

<sup>7</sup> Melyana, M. (2019). Pemisahan Alasan Pembatalan Dan Syarat Pelaksanaan Putusan Arbitrase. *Jurnal Hukum Samudra Keadilan*, 14(2), p. 274

to tighten the limitations and criteria in cancelling arbitral awards, as well as ensuring that judges handling arbitration-related cases have a deep understanding of the principles and mechanisms of arbitration. In addition, harmonisation between the arbitration system and the national judicial system is needed to avoid overlapping authorities that could harm justice seekers. These reforms are important to ensure that arbitration can remain an effective and reliable dispute resolution mechanism, in line with the principle of *access to justice* that provides fair legal protection for all parties.

### **The Role of the *Access to Justice* Principle in Assessing the Fairness of the annulment of Arbitral Awards**

*Access to justice* is the provision of means (facilities) in providing law enforcement direction. According to the opinion of Cappelatti and Garth as outlined in a book entitled "*Access to Justice: The Worldwide Movement to Make Rights Effective: A General Report*" (Cappelletti, M. & B. Garth 1978). "According to Cappelletti and Garth (1978), access to justice refers to a method of law enforcement that ensures balanced procedures for all parties, transparency for the public, and equitable access to justice for those seeking redress."<sup>8</sup>

The principle of *access to justice* plays a crucial role in assessing the fairness of annulment of arbitral awards, as it ensures that any individual or entity that feels aggrieved by an award has a fair right to review the decision through available legal mechanisms. In the context of arbitration, the principle of *access to justice* is not only limited to the right to access the judiciary, but also includes various other aspects such as transparency in legal proceedings, equal opportunity for both parties to present arguments and evidence, and protection of fundamental rights in dispute resolution. This principle is particularly important because arbitration, as an alternative dispute resolution mechanism, often emphasises the finality of the resulting award, so the annulment mechanism must provide a guarantee that the arbitral award is not made arbitrarily or in violation of fundamental principles of justice.

One of the main issues in the annulment of arbitral awards is the imbalance between the autonomy of the parties in choosing arbitration as a dispute resolution forum and the intervention of the courts in annulling such awards. The provision in Supreme Court Circular Letter (SEMA) No. 4/2016, which prohibits judicial review of court decisions cancelling arbitral awards, is one clear example of this challenge.<sup>9</sup> This provision is considered to limit the right of justice seekers to correct errors or mistakes that may occur in the judicial process. This is contrary to the essence of *access to justice*, which requires a legal mechanism that is open to all parties to obtain justice fairly and equitably.

In practice, the annulment of an arbitral award is often based on certain grounds set out in Article 70 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. These grounds include matters such as fraud, forged documents, or violation of basic principles of national law. However, in the absence of a judicial review mechanism, parties who feel aggrieved by a court decision have no recourse to fight for their rights.

The principle of *access to justice* does not only mean providing physical access to judicial institutions, but also includes substantive access to ensure that the legal process is fair and transparent. In the context of annulment of arbitral awards, this principle demands that aggrieved parties have the opportunity to challenge the court's decision through adequate legal mechanisms. If this right is not granted, there will be inequalities in the justice system, where certain parties are deprived of the opportunity to obtain justice.

In addition, the application of the *access to justice* principle is also important to maintain the integrity and credibility of the arbitration system itself. If the annulment of arbitral awards can be done without an adequate correction mechanism, it may undermine public confidence in arbitration as an effective dispute resolution forum. Therefore, the revision of SEMA No. 4/2016 is very important to ensure that the principle of *access to justice* can be applied optimally.

<sup>8</sup> Apriyani, M. N., Suharto, M. A., & Baharudin, A. K. (2024). Access to Justice Bagi Anak Korban Tindak Pidana Kekerasan Seksual. *Gorontalo Law Review*, 7(2), p.482.

<sup>9</sup> Dwi Bintang Satrio, Efa Laela Fakhriah, "Upaya Hukum Peninjauan Kembali terhadap Putusan Pengadilan yang Membatalkan Putusan Arbitrase Nasional Dihubungkan dengan Prinsip Access to Justice," *Jurnal Bina Mulia Hukum*, Vol. 2, No. 2 p. 195

Revisions to legal provisions that limit access to judicial review can have a positive impact on the Indonesian justice system. Firstly, it will guarantee that every individual has the right to pursue their interests through legitimate legal channels. Secondly, it would also encourage improvements in the quality of court decisions, as judges would be more cautious in making decisions knowing that their decisions can be reviewed through the PK mechanism.

Moreover, the revision is also in line with international developments where many countries have recognised the importance of giving parties full access to challenge arbitral decisions in court. For example, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) provides that recognition and enforcement of foreign arbitral awards may be refused if they violate public policy or fundamental principles of national law<sup>10</sup>. In the Indonesian context, this points to the need for harmonisation between national policies and international standards to ensure that the principle of *access to justice* is maintained.

The principle of *access to justice* plays an important role in assessing the fairness of annulment of arbitral awards. Without adequate access to legal mechanisms such as judicial review, justice seekers will lose the opportunity to correct errors or mistakes in the judicial process. Therefore, revisions to provisions such as SEMA No. 4/2016 are urgent to ensure that the principle of justice can be optimally realised in the Indonesian legal system.

## CONCLUSIONS

The annulment of arbitral awards in Indonesia presents various problems that impact the effectiveness of the arbitration system, legal certainty, and justice for justice seekers. Although arbitral awards are, in principle, final and binding, Article 70 of the Arbitration Law permits annulment under specific conditions, which is frequently misused to delay or avoid legal obligations. The inconsistency of court decisions in assessing grounds for annulment also creates legal uncertainty and undermines the credibility of arbitration. In addition, the broad standard of interpretation of the concept of "public order" further exacerbates the situation, causing Indonesia's arbitration competitiveness at the international level to decline. Therefore, stricter and more consistent legal reforms in the annulment of arbitral awards are needed, as well as improved judges' understanding of arbitration principles so that this mechanism remains an effective and reliable dispute resolution channel.

The principle of access to justice plays a crucial role in the annulment of arbitral awards, as it guarantees the right of every individual to obtain justice through fair and transparent legal mechanisms. However, restrictions on legal remedies, such as the prohibition on judicial review in SEMA No. 4/2016, have the potential to impede access to justice for aggrieved parties. Without an adequate correction mechanism, the arbitration system may lose its credibility as an effective dispute resolution forum. Therefore, revisions to regulations that limit parties' rights to challenge court decisions are essential to ensure that the principle of access to justice is optimally upheld in the Indonesian legal system.

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<sup>10</sup> New York Convention 1958



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