

EXISTENCE OF ARTICLE 70 LETTER (C) OF LAW NUMBER 30 YEAR 1999 ON ARBITRATION AND ALTERNATIVES DISPUTE RESOLUTION AS A REASON FOR CANCELLATION ARBITRATION AWARD

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ABSTRACT

The existence of Article 70 letter (c) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is still being debated. In its development, the article provides legal implications that are actually negative for dispute resolution institutions outside the court, the reasons for the disputing parties in the Arbitration forum are trickery as a reason for requesting the cancellation of the Arbitration decision and so that trickery can be used as a reason to cancel an Arbitration decision as in the District Court decision Number: 54 / Pdt.G / 2015 / PN.Kdr. the method used in this study is the normative research method, *the statute approach*, the *case approach*, the conceptual approach, the philosophical *approach*. Based on the considerations used, it appears that the Kediri City District Court wants to find out when evidence of a legal event exists and is made by parties who have a legal relationship in order to create a belief as a basis for making a decision in a civil case. Legally, making a request to annul the Arbitration decision submitted by the disputing parties for the reasons as stipulated in Article 70 letter (c) of the Arbitration Law no longer requires a Court decision for the reasons in case Number: 54/Pdt.G/2015/PN.Kdr. The Kediri City District Court has suspected that there was a trick carried out by PT. Fajar Parahiyangan at the Indonesian National Arbitration Board (BANI) Surabaya case Reg. No. 13/ARB/BANI-SBY/I/2015. The Kediri City District Court in determining the existence of a trick at the Indonesian National Arbitration Board (BANI) Surabaya Reg. No. 13/ARB/BANI-SBY/I/2013. The evidence of the disputing parties in A Statement Letter is one of the pieces of evidence submitted by one of the parties to the Indonesian National Arbitration Board (BANI) Surabaya.

Keywords: Existence, Reason for Cancellation, Arbitration Decision.

I. INTRODUCTION

Since August 12, 1999, the Law was enacted Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter referred to as the Arbitration Law and APS), which in his consideration stated that based on the regulations applicable legislation in dispute resolution civil cases can also be submitted through litigation at the District Court and can also be done through Arbitration and Alternative Dispute Resolution. Arbitration according to Law 30 of 1999 concerning Arbitration and Alternatives Dispute resolution is a civil dispute outside the courts general which is based on an Arbitration agreement made in written by the disputing parties. (Huzaimah Al-Anshori, Sapto 2023. p. 1).

The Indonesian National Arbitration Board (BANI) is one of the example of institutional arbitration established in Indonesia. Based on By its statutes, BANI was founded with the aim of providing fair and expeditious resolution of civil disputes arising regarding trade, industry and financial issues, both which are national or international in nature.

As an independent judicial institution, the Judicial Body The Indonesian National Arbitration Board (BANI) has the authority to issue a decision on a dispute that held in BANI and the nature of the decision is is final and has permanent legal force and is binding on the parties parties. What is meant by final is that the decision Arbitration cannot be appealed, cassated or reviewed. back. In line with this opinion. M. Khoidin also believes that in principle the Arbitration award is final and binding so that it is not possible to submit a legal action. (M. Khoidin, 2013. p. 47).

However, even though the Arbitration decision is final and binding, apparently Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, still provides a means for the disputing parties to be able to take legal action against the Arbitration Decision, namely by providing a mechanism cancellation of the Arbitration Award as regulated in provisions of Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Should the cancellation effort still be maintained? its existence, on the one hand, is an effort to review formal aspects in This arbitration decision is needed as a protection mechanism against the party who was cheated in the arbitration process. On the other hand, the existence of these efforts has implications for the agency Arbitration body, namely the need to question the nature and the question (*final*) and binding (*binding*) of an arbitration award, the loss of The advantages of arbitration are the confidentiality aspect and speed, and the need to question the status of Arbitration as dispute resolution process outside of court. (Frans H. Winanta, 2011. p. 56).

In this research, the researcher is limited to discussing only the existence of Article 70 letter (c) of Law Number 30 of 1999 on Arbitration as a reason for annulment of the Arbitration decision Reg Number 13/ARB/BANI-SBY/I/2015 at the Kediri City District Court. *"The decision was taken from the results of the trickery carried out by one of the parties in the dispute examination"*. Therefore, the application of the provisions of Article 70 letter (c) of the Arbitration Law have experienced fundamental changes since the Supreme Court decision Constitution

Number: 15/PUU-XII/2014 which has annulled the explanation Article 70 of the Arbitration Law.

With the change in the application of Article 70 letter (c) The Arbitration Law apparently has an influence examination of the case of the application for cancellation of the decision of the Arbitration Board Indonesian National Court (BANI) by the District Court as Decision of the Kediri District Court No. 54/Pdt.G/2015/PN.Kdr between Kediri City Government vs. Indonesian National Arbitration Board Representatives of Surabaya and PT. Fajar Parahiyangan in the case application for annulment of the decision of the Indonesian National Arbitration Board (BANI) Surabaya Reg. No. 13/ARB/BANISBY/I/2015 dated May 13 2015.

Kediri City Government in the application for cancellation of the decision The arbitration uses the reasons for the decision of the Arbitration Board National Bank of Indonesia (BANI) Surabaya Branch Reg. No. 13/ARB/BANISBY/I/2015 dated 13 May 2015 taken from tipu The trickery carried out by PT. Fajar Parahiyangan in the forum Arbitration as regulated in the provisions of Article 70 letter (c) of the Law Arbitration. The formulation of the problem raised by the researcher is how is the existence of status in Article 70 letter (c) of the Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution Disputes carried out by the disputing parties in the forum Arbitration. How to apply the reasons for cancellation request Arbitration Decision after the Constitutional Court Decision Number 15/PUUXII/2014. How to determine the reason for the deception as formulated in Article 70 letter (c) of the Arbitration Law in examining and deciding case No. 54 /Pdt.G/2015/PN.Kdr at the Kediri City District Court.

II. METHOD

Based on the case to be analyzed, this research includes in the category of normative legal research. Reviewing and analyzing document study using various secondary legal materials such as laws and regulations, court decisions, theories law, jurisprudence and can be in the form of opinions of scholars. This normative legal research uses a qualitative type of analysis. namely by explaining the existing data. (Peter Mahmud Marzuki, 2007. Legal Research. Jakarta: Kencana Prenada Group. p. 35). Statute approach, case approach (*case approach*). (Muhaimin, 2020. Legal Research Methods. Mataram: Mataram University Pres. p. 57). Conceptual approach (*conceptual approach*), Philosophical Approach (*philosophical approach*). Prasetijo Rijadi, Jonaedi Efendi, 2022.

Normative and Empirical Legal Research Methods. Jakarta: Kencana, p. 146. namely a study to obtain a deeper understanding of social implications and effects. (Ziegler P, 1988. "A General Theory of Law As Paradigm for Legal Research" in Modern Law Review 569, 1988, as quoted from Terry Hutchinson, Op. Cit. p. 10).

The research data sources that used is secondary data. Secondary data is data that obtained from primary, secondary and tertiary legal

materials. Techniques collection of legal materials. Zainuddin, 2014. Research Methods Law. Jakarta: Fifth Edition, Sinar Grafika. p. 107. Method The data collection that the author uses is a literature study. Mukti Fajar and Yulianto Achmad, 2017. Dualism of Normative Legal Research and Empirical. Yogyakarta: Fourth Edition, Student Library. p. 160.

Study documents and interviews, namely ways of collecting data through information directly from informants. East Java Province, Ministry of Ministry of Religion (Ministry of Religion) of Kediri City, Head of the Religious Court of Kediri City, legal experts and other parties who can provide information and data related to the needs of this research, especially regarding the number of factors there is a withdrawal of waqf assets by the heirs. Technique Data processing is of course adjusted to the objectives of the research. that is done. The following are the steps *for editing, classifying, verifying and concluding*.

The analysis used in this study is a descriptive-qualitative analysis, namely data obtained later arranged systematically and then analyzed qualitatively to answer the problems that will be discussed. Data analysis is done by describe, discuss, interpret research findings with the legal perspective or point of view presented in narrative form. This analysis activity aims to formulate conclusions from the research questions asked.

III. RESULT AND DISCUSSION

1. Existence of Status in Article 70 letter (c) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

From a legal normative perspective, the Arbitration decision is final and binding. (*final*) and has permanent and binding legal force (*binding*). Law- Arbitration Law and APS. Article 60. This means that textually, it does not only dispute resolution products decided by the Arbitrator has legal consequences for the arbitrating parties, The product also cannot be tested for its legal consequences. through other institutions. (Sudiarto, 2013. Mediation Negotiation, & Alternative Dispute Resolution Arbitration in Indonesia. Bandung: Creative Design Library. p. 23). The problem is the provisions of Article 60 The Arbitration and APS Laws are accompanied by the existence of provisions of Article 70 of the Arbitration and APS Law concerning cancellation efforts. (Hulman Panjaitan, 2018. "Implementation of Decisions Arbitration in Indonesia." To-Ra Journal. Vol. 4, No. 1. p. 12).

One major implication of Article 70 is that the characteristics no longer apply immediately (*finally*) in the decision Arbitration. (Gunawan Widjaja, 2008. Series of Legal Aspects in Business, Arbitration VS Court of Justice (Absolute) Competence Issues Never Finished, Jakarta: Kencana. p. 45). In other words, Arbitration decisions have binding legal consequences for the parties to the dispute, but not necessarily (*binding but not final*). Because, the cancellation effort allows the Arbitration decision to be re-examined by another institution, namely District Court and Supreme Court. When the Court The State decided that an Arbitration award had no effect legally binding force, at that time the decision becomes void. Moreover, the decision is immediately *in kracht van the same* if decided by the Supreme Court of the Republic of Indonesia. (Muskibah,

2018. "Arbitration as an Alternative Dispute Resolution Dispute." Journal of Legal Communication. Vol. 4, No. 2. p. 23).

This is of course not only at the normative logical level, but also occurs in reality. One example of a dispute that Researchers need to convey here some of these disputes in particular. has become open to the public is a PT matter. CETT against PT YA, where the Supreme Court upheld the decision South Jakarta District Court regarding the cancellation filed by the Arbitration Respondent, through Supreme Court Decision Numbe 03/Arb.Btl/2005. Although the data shows the number of cancellation decisions Not many of those proposed were upheld by the Supreme Court still means there is a possibility that the Arbitration decision will no longer be enforceable consistently can be immediate. (Kukuh Pramono Budi, 2022. Legal Implications of Arbitration Clause Arrangements With Bankruptcy and PKPU Process, Surabaya: Study Program Hayam Wuruk Perbanas Management. p. 67). The main implications of The existence of Article 70 means that the characteristics no longer apply immediately (*final*) in the Arbitration decision. In other words, Arbitration decisions have binding legal consequences for the parties to the dispute, but not necessarily (*binding but not final*). (Huzaimah Al-Anshori, et. all. 2024. "Reformulation of Commercial Court Authority Regulations Relation to the Arbitration Clause." Journal of Law and Legal Reform. Vol. 5, No. 1.

2. Analysis-Reasons for Request for Annulment of Arbitration Decision after Constitutional Court Decision Number 15/PUUXII/2014.

Constitutional Court Decision No. 15/PUU-XII/2014, in practice has a significant influence on the application of the reasons for the application cancellation of the Arbitration award contained in Article 70 of the Law No. 30/1999 concerning Arbitration and Alternative Dispute Resolution. By stating that the explanation of Article 70 of the Law is no longer binding Arbitration by the Constitutional Court, legally creates application for cancellation of the Arbitration decision submitted by the party dispute for reasons as regulated in Article 70 The Arbitration Act no longer requires a Court decision upon the occurrence of the reasons in the provisions of Article 70 of the Arbitration Law as the basis for an application for cancellation of the Arbitration decision. (Suyud Margono, 2004. ADR & Arbitration Institutionalization Process and Aspects Law (Bogor: Ghalia Indonesia. p. 30).

3. Deception in the formulation of Article 70 letter (c) of the Law Arbitration in examining and deciding case number 54/Pdt.G/2015/PN.Kdr.

Wirjono Prodjodikoro has stated that the trickery is a lie by not speaking but by do something for example, show something. From the understanding the deception then the form of deception is deep the form of a lie, for example, is by shows something that contains lies. If Thus, we can take the meaning of trickery in the forum arbitration is an act of deception in such a way it is carried out by one of the parties in the forum arbitration by showing something, namely in this case show evidence that contains lies.

(Eman Suparman, 2012. Arbitration and the Dilemma of Upholding Justice. Jakarta: PT. Fikahati Aneska. p. 26).

As in case number 54/Pdt.G/2015/PN.Kdr, Kediri City District Court in determining the existence of fraud The strategy in the cancellation request is based on statement letter dated April 16, 2015, which letter is one of the pieces of evidence submitted by one of the parties in the arbitration forum. Evidence presented by one of the parties in the arbitration forum, it is reviewed based on the evidence others whether the evidence contains lies/fraud trickery or not. (Cicut Sutiarto, 2011. Implementation of the Decision Arbitration in Business Disputes. Jakarta: Yayasan Pustaka Obor Indonesia. pp. 162 - 163).

This is appropriate because of the submission of evidence in an arbitration forum is the same as an act to show something as intended by Wirjono Prodjodikoro, in this case, is showing a legal act/event. Is an act/event the law shown in the Arbitration forum is truly contains a lie or not, that's what becomes attention in determining whether or not there is deception within arbitration forum. (Erman Rajgukguk, 2000. Arbitration in Decisions Court. Jakarta: Candra Pratama. p. 32).

In the statement letter dated April 16, 2015, it turns out that the evidence the statement letter is made by one of the disputing parties in the Arbitration forum, at the time the Arbitration forum is in session taking place. Isn't evidence to explain something? legal events that have occurred. So logically, the evidence regarding a legal event, it has existed since the event the law occurs. So if there is evidence that is produced at the time a dispute is being investigated, especially evidence the denial was made by the disputing party, it is very appropriate it is suspected that the evidence does not reflect a legal event correctly. (Ismail Rumaidan, 2016. Implementation and Obstacles Execution of Arbitration Decision by District Court. Jakarta: Center for Legal and Judicial Research and Development, Legal and Judicial Training Agency Supreme Court of the Republic of Indonesia. p. 406).

IV. CONCLUSION

Based on the description above, it can be concluded that the following conclusions:

1. Existence in Article 70 letter (c) of Law Number 30 of 2003 1999 on Arbitration and Alternative Dispute Resolution is still become a debate. In its development, the article provide legal implications that actually have negative value for out-of-court dispute resolution institutions, including Indonesian National Arbitration Board (BANI). Cancellation mechanism is a common reality in the world of arbitration as steps to correct formal errors in a decision arbitration.
2. Reasons for requesting annulment of an Arbitration Decision after the existence of Constitutional Court Decision Number 15/PUUXII/2014. in practice, has a great influence on the application of reasons application for annulment of the Arbitration decision contained in Article 70 of Law Number 30

of 1999 concerning Arbitration and Alternative Dispute Resolution. By stating that it is not re-binding Explanation of Article 70 of the Law on Arbitration by the Constitutional Court, legally making an application cancellation of an arbitration decision submitted by the disputing parties for the reasons as stipulated in Article 70 of the Law Arbitration no longer requires a Court decision. the occurrence of the reasons in the provisions of Article 70 of the Arbitration Law, as a basis for an application to annul the Arbitration decision.

3. Deception as stated in Article 70 letter (c) of the Law Invite Arbitration to examine and decide case no. 54/Pdt.G/2015/PN.Kdr at the Kediri City District Court. In case 54/Pdt.G/2015/PN.Kdr, Kediri City District Court has suspected that there was a trickery carried out by PT Fajar Parahiyangan in the arbitration forum in the case of Reg.No. 13/ARB/BANISBY/I/2015. Kediri City District Court in determine the existence of deception in the case arbitration forum Reg.No. 13/ARB/BANI-SBY/I/2015, is based on Statement Letter dated April 16, 2015, which letter is one of the pieces of evidence submitted by one of the parties in the arbitration forum. This is appropriate because submission of evidence in an arbitration forum is the same as the act of showing something as intended by Wirjono Prodjodikoro, in this case is to show a legal act/event. Is an act/event the law shown in the arbitration forum is truly contains a lie or not, that's what becomes attention in determining whether or not there is a trick in the arbitration forum.

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