# Inconsistencies & Problems of Supreme Court Decision No. 26 B/Pdt.Sus-Arbt/2014 concerning Annulment of Arbitration Award

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***Abstract***
*Arbitration awards are usually considered an efficient and effective way to resolve business disputes. However, just like an award in a court, an arbitral award may also be annulled if it meets the requirements mentioned in Article 70 of the Arbitration Law. This study aims to analyze the inconsistencies of the Supreme Court decision No. 26/Pdt.Sus-Arbt/2014 which annulled the arbitral award. This research uses normative legal research methods by applying a statutory law approach and a case approach. Based on the results of the study, there are inconsistencies in the Supreme Court decision No. 26/Pdt.Sus-Arbt/2014 which annulled the BANI arbitration award No. 442/I/ARB-BANI/2012 by considering factors outside the contents of article 70 of the Arbitration Law. Observing this phenomenon, it is important to add articles that provide guidance on the use of reasons outside the contents of article 70 of Law No. 30 of 1999 in the annulment of arbitral awards, with the aim of providing legal certainty.*

## I. Introduction

Annulment of arbitral awards is an important and quite interesting phenomenon to be researched in Indonesia, considering that arbitration practices are increasingly used as a business dispute resolution tool in Indonesia. One of the attractive advantages of using arbitration is the guarantee of confidentiality of proceedings, as there is no obligation to make public decisions as in national courts. This means that decisions in arbitration need not be announced to the public as in ordinary courts.[1]

Along with the increasingly widespread practice of arbitration, the issue of annulment of arbitral awards in Indonesia is becoming increasingly important, especially in the context of legal certainty and investor confidence in arbitration as an alternative effective and efficient dispute resolution tool. The issue of annulment of arbitral awards in Indonesia may also have an impact on investor confidence in the arbitration system in Indonesia. Investor confidence in the arbitration system is essential in strengthening investment and business development in Indonesia. If investors do not trust the existing arbitration system in Indonesia, they can choose to resolve business disputes abroad, which can hurt the Indonesian economy.[2]

Basically, the rules regarding the conditions that can annul an arbitral award have been regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The rule stipulates that an arbitral award may be annulled by a district court under several conditions specified in the Arbitration Law. In instances where the arbitral award is contrary to the Law, it may annul the arbitral award.

Although the Act has provided for the conditions that can annul an arbitral award, such problems remain frequent. The event can be found in some court decisions. For example, the decision of the South Jakarta District Court No. 529/Pdt.G.ARB/2018/PN. Jkt.Sel has been made with erroneous considerations and is not in line with the contents of Article 70 of the Arbitration Law. The judge has considered and rendered judgment on matters irrelevant to the case of the application for annulment.[3] This may lead to the assumption that PN awards that annul arbitral awards are often vague and subjective in nature. In addition, many parties feel that district courts are often not neutral and tend to render decisions that

[1] Sefriani, 'Investment Arbitration for Developing and Underdeveloped Countries' (2013) 2 Yustisia Journal of Law.
[2] Grasia Kurniati, 'A Comparative Study of Business Dispute Resolution and Its Implementation between the Indonesian National Arbitration Board and the Singapore International Arbitration Centre' (2016) 1 De'Jure Legal Scholarly Journal 201.
[3] Siti Chadijah, 'The Problem of Annulment of Arbitration Awards by the Court (Case Study: Pt Geo Dipa Energi (Persero) with Pt Bumigas Energi)' (2019) 2 Rechtsregel : Journal of Legal Sciences 479.

are more favorable to parties in their jurisdiction. Another example is the decision of South Jakarta District Court No. 564/Pdt.G/2011/PN. Jkt.Sel also annulled the arbitral award on considerations that were not in line with the contents of Article 70. However, the decision was annulled at the cassation level, namely in the Supreme Court decision No. 293 K / Pdt.Sus / 2012.

Uniquely, in one Supreme Court decision, namely decision No. 26 B / Pdt.Sus-Arbt / 2014, the judge decided to uphold the PN decision that canceled the arbitration award with considerations that were not in line with the provisions of article 70. Therefore, the author will study/analyze the inconsistencies and problems of the Supreme Court decision No. No. 26 B/Pdt.Sus-Arbt/2014 in annulling the arbitral award.

## 2. Research Method

Doctrinal or normative legal research, which uses law as a fundamental norm, is used in this type of research. The norm system in question relates to principles, norms, legislation regarding the *case quo*.[4] The normative research of the first stage consists of research with the aim of achieving objective law, by conducting research on legal issues. The second stage of normative legal research is aimed at obtaining subjective law. It also deals with critical review of Supreme Court rulings.[5] This research will use a statutory approach which means using legislation as a basis for conducting research.[6]

## 3. Results and Discussion

### Mechanism for Annulment of Arbitral Awards Based on Arbitration Law

The arbitration clause states that the arbitral award shall have a binding and final nature for the parties as mentioned in Article 60. However, if errors are found in the arbitral award, parties may appeal to the arbitrator to correct/reexamine the arbitral award. Article 58 has provided for the process of rectification of arbitral awards which provides the parties with the opportunity to apply for correction of administrative errors or requests for addition of awards within a maximum of 14 days after the pronunciation of the arbitral award.[7] In anticipation of potential

[4] Ahmad Rustan, Ju-lan Hsieh and Wahyudi Umar, 'Maladministration on Mining Business Licenses : Case Study " Mining Business License Production Operation PT . Aneka' (2021) 17 Varia Justicia 246.

[5] Ming-Hsi Sung and Wahyudi Umar, 'A New Industry and Tax Base on Taxing Esports in Indonesia' (2020) 27 Jurnal Media Hukum 147.

[6] Ibrahim Johnny, 'Theory and Methodology of Normative Legal Research' [2006] Bayumedia Publishing 299 <http://staffnew.uny.ac.id/upload/131808346/pendidikan/metodologi-penelitian.pdf>.

[7] S Sujayadi, 'Pathology in Indonesian Arbitration: Provisions for Annulment of Arbitral Awards in Article 70 of Law No. 30/1999' [2015] ADHAPER: Journal of Civil Procedural Law

errors in an arbitral award, the laws governing the annulment of an arbitral award often contain a clause allowing for attempted annulment. Although final and binding, it does not preclude or restrict the parties from annulling the arbitral award.[8]

Article 70 explains the parties involved in the arbitration have the ability to apply for annulment of an award if they consider the award to contain the following elements:

1. Copies or documents that have been submitted as evidence in arbitration proceedings are then admitted or declared to be forged after the award has been rendered.
2. After the verdict is rendered, documents that significantly affect the outcome of the judgment are found, which were previously hidden by the opposing party.
3. Arbitration awards are based on manipulative actions by one of the parties to the dispute resolution process.

However, in the general explanation Article 70 raises norms governing the formal requirements to be met by the applicant.[9] First, the arbitral award must be registered with the court.[10] Secondly, the reasons for the application for cancellation must be approved by the Chief Justice. However, in practice, an application to annul an arbitral award often does not attach an arbitral award that expressly proves the condition/factor of annulment of the arbitral award.[11]

Article 71 explains that the application to annul the arbitral award must be submitted in written form, a maximum of thirty (30) days from the date the arbitral award is submitted for registration in the District Court. As a result, the court was given 60 days, ruling on the grounds in the application to annul the arbitral award. However, this is seen as difficult to implement and violates the principle of the law of *lex non cogit impossibilia*, which states that one should not force others to perform impossible tasks.[12]

In practice, an application to annul an arbitral award is often filed in the form of a lawsuit, although it should be filed in the form of an application in accordance with

<http://jhaper.org/index.php/JHAPER/article/view/19%0Ahttps://jhaper.org/index.php/JHAPER/article/download/19/25>.

[8] Mosgan Situmorang, 'Annulment of an Arbitration Award' (2020) 20 De Jure Journal of Legal Research 573.

[9] Tri Ariprabowo and R Nazriyah, 'Annulment of Arbitration Award by the Court in Constitutional Court Decision Number 15/PUU-XII/2014' (2018) 14 Constitutional Journal 701.

[10] Muhammad Andriansyah, 'Annulment of National Arbitration Awards by District Courts' (2014) 2 Journal of Legal Ideals.

[11] Mieke Komar Kantaatmadja, 'National Court and the Interactions with Tribunals, the Indonesian Experience', *Proceeding Sixth RAIF Conference on International Arbitration* (2012).

[12] Sujayadi (No. 7).

applicable provisions.[13] Within 30 days of making the award, the arbitrator shall submit it to the court. Thus, it can be concluded that the parties are responsible for registering the arbitral award with the court.[14]

In a hearing, the court is not allowed to re-examine the dispute but merely re-examine the validity of decision-making procedures such as the appointment of arbitrators and enforcement in disputes.[15] If registration of the arbitral award has not been made, the interested party has no opportunity to submit an application for execution to the Chief Justice. Once an arbitral award has been registered, the party who did not comply with the award may be executed. However, it is important to know which District Court has the competence to handle the issue of annulment of an arbitral award.

> "The District Court is the District Court that has jurisdiction over the Respondent." (Article 1(4))
>
> "The Respondent is the party against the Claimant in the resolution of the dispute by arbitration." (Article 1(6))

Based on the articles mentioned, it can be concluded that the application to annul the arbitral award must be submitted to the PN which has jurisdiction over the party who is the respondent in the arbitration. As mentioned in Article 72 paragraph (2), if the application for annulment is accepted, the Presiding Judge of the District Court will decide whether the arbitral award is annulled in whole or in part. The Court may conclude that after the annulment has been submitted, that arbitrator or a different arbitrator will look at the question in question or confirm that the dispute cannot be resolved by arbitration as described in the general explanation of Article 72. The provision indicates that the Court does not have the authority to investigate and/or adjudicate disputes. The function and authority of the examining court is only to examine the facts as to whether their reasons are indeed found by the applicant or are merely explanatory.[16]

The decision on the application for cancellation must be determined by the Chief Justice of the District Court within a maximum of 1 month from the receipt of the application. If there is an appeal against the decision, the appeal may be submitted to the Supreme Court which will decide the case as a court of final instance as mentioned in Article 72(4). Furthermore, the Supreme Court will consider and hear the application as mentioned above, within a maximum period of 1 month from the

[13] Gatot P. Soemartono, *Arbitration and Mediation in Indonesia* (2006) <https://books.google.co.id/books?id=mrZ_ekR8go0C>.
[14] BP Lawyers, 'Procedure for Registering an Arbitration Award in a District Court' (*blog.bplawyers.co.id*, 2016) <https://blog.bplawyers.co.id/prosedur-mendaftarkan-putusan-arbitrase-di-pengadilan-negeri/> accessed 27 March 2023.
[15] Mohammad Zahid Hakimi, 'Law & Dispute Resolution' 1.
[16] M Yahya Harahap, *Arbitration* (Sinar Grafika 2006).

receipt of the cassation application. In principle, decisions that have legal force actually have the opportunity to go to the High Court. Thus, the legal remedy only focuses on the PN's decision, not on its arbitrary award.[17] This Law expressly regulates the mechanism for annulment of arbitral awards, starting from the registration of arbitral awards to the possibility of appeals against PN awards to the Supreme Court.

In 2014, the Constitutional Court conducted a judicial review of this law.[18] In the judicial review hearing, the Constitutional Court granted the request for judicial review and abolished the explanatory norms of Article 70.[19]

Final and binding in principle is the nature of the Arbitral award, so it is a decision at the final level as well as binding on the parties "*Pacta Sunt Servanda*".[20] Unless, if there are "*extraordinary things*", then the arbitral award can be annulled.[21] In other words, if it were not for unusual factors, attempts to annul the arbitral award might not be accepted. The arbitration law has expressly clarified the conditions that can annul an arbitral award in Article 70, which states:

"An application to annul an arbitral award may be made if one of the following conditions is alleged to exist:

1. Letters or documents submitted at the trial are admitted to be false or forged or declared to be false after the verdict is rendered.
2. After the award is awarded, a document is drawn up that specifies the nature and what the opposing party deliberately conceals; or
3. This award was given as a result of a fraud committed by one of the insider disputes."

In addition, the general explanation of Article 70 states:

> "An application for annulment can only be filed against an arbitral award already registered with the court. The reason for the application for cancellation as referred to in this article must be proven by a court decision. If the court declares that these reasons are proven or not proven, then the decision of the court can be used as a basis for the judge's consideration to grant or reject the application."

[17] Rengganis, 'Juridical Review of Annulment of National Arbitration Awards Based on Article 70 of Law No. 30 of 1999 (Case Study of Several Decisions of the Supreme Court of the Republic of Indonesia)' (University of Indonesia 2011).

[18] The Constitutional Court of the Republic of Indonesia, 'Reasons for Annulment of Arbitration Awards Cause New Norms, Constitutional Court Removes Explanatory Norms of Article 70 of the Arbitration Law' (*www.mkri.id*, 2014) <https://www.mkri.id/index.php?page=web.News&en=10366#. WdW1vtR97De> accessed 27 March 2023.

[19] Constitutional Court Decision No. 15/PUU-XII/2014 concerning Examination of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution 2014 1.

[20] Vunieta and Walida Ahsana Haque, 'Legal Protection Against the Failure To Compensate on International Investment Dispute' (2019) 8 Yustisia Jurnal Hukum 205.

[21] Sutiyoso Bambang, 'Business Dispute Resolution' [2006] Citra Media Yogyakarta 3.

The Constitutional Court held that the term "alleged" in article 70 means that the petitioner's allegations against the requirements of an application for annulment of an arbitral award are subjective, and "*a priori*".[22] *A priori* it can be interpreted as presupposing before knowing (seeing, investigating, etc.) the actual situation.[23] The Constitutional Court also held that the error "must be proved by a court decision" mentioned in the explanation to article 70 means that the Court's decision is "*posteriori*".[24] In other words, the explanation of Article 70 changed and led to new norms and standards.[25] Article 70 only requires charges that are *a priori*, while the explanation to Article 70 changes the importance of charges that are *aposteriori*. *Aposteriori* means to know (see, investigate, etc.) the real situation.[26]

The Constitutional Court is of the view that Article 70 of the Arbitration Law is clear and does not need to be interpreted, whereas the explanation of Article 70 led to many interpretations of requests for annulment of arbitral awards. That interpretation implies legal uncertainty and leads to injustice. Thus, the implication is that the process of annulment of an arbitral award may take longer, which is contrary to the principle of speedy dispute resolution as stipulated in Article 71 which limits the maximum time to 30 days.

## Inconsistencies in Supreme Court Awards in Arbitral Awards

To see any inconsistencies or differences in viewpoints in the Supreme Court's decision regarding the annulment of arbitral awards referring to Article 70, the author will divide 2 groups of Supreme Court decisions. First, the Supreme Court's decision is consistent or in line with Article 70, namely in the Supreme Court decision No.293 K / Pdt.Sus / 2012. The second group is inconsistent rulings in Article 70, where the Judge believes conditions outside or not in line with Article 70 can be used as grounds for cancellation as in decision No.26 B/Pdt.Sus-Arbt/2014.

The judge in Supreme Court decision No. 293 K / Pdt.Sus / 2012 considered the annulment of the arbitral award must be in line with Article 70, in contrast to the Supreme Court decision No. 26 B / Pdt.Sus-Arbt / 2014, considering the general explanation of the Arbitration Law and the jurisprudence of the previous Supreme Court decision, namely decision No. 03 / Arb.Btl / 2005. The jurisprudence interprets the meaning and underlines the word "inter alia" in the explanation of the Arbitration Law which provides additional opportunities for conditions other than

[22] Constitutional Court Decision No. 15/PUU-XII/2014 concerning Examination of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.
[23] KBBI, 'A priori Word Meaning - Big Indonesian Dictionary (KBBI) Online' (*kbbi.web.id*, 2023) <https://kbbi.web.id/apriori> accessed 28 March 2023.
[24] Constitutional Court Decision No. 15/PUU-XII/2014 concerning Examination of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.
[25] Ariprabowo and Nazriyah (n 9).
[26] (KBBI, 2023)

Article 70.

Juwana Hikmahanto argues that the basis for the request to annul the arbitral award is not limited to that contained in Article 70. Conditions, reasons or other factors that may corroborate the annulment of the arbitral award such as delay in rendering the award beyond the due date mentioned in the Arbitration Law, which is 180 days, absence of a valid arbitration agreement, negligence in the procedure for selecting arbitrators resulting in errors, and unfairness in the application of law.[27] This is in line with the view of the former Chairman of BANI, Priyatna Abdurrasyid, in addition to the reasons in Article 70, other reasons can be the basis for the cancellation of BANI's decision, namely if there is a "procedural error". Thus, there is a chance of cancellation if the procedure followed in the arbitration proceedings is not in line with applicable provisions.[28]

**Supreme Court Decree No 26 B/Pdt.Sus-Arbt/2014**

On August 12, 2009, Hutama Karya & PT Krakatau Bandar Samudra signed an agreement as stated in Contract No. D/26/DU-KBS/ CONTRACT/VIII/2009 (Citayur dock construction work agreement). During the agreement, one of the parties commits "default". Then, PT Krakatau Bandar Samudra (PT. KBS) as the victim filed an arbitration against PT Hutama Karya (PT. HK) as a defendant in the arbitration through BANI and resulted in arbitration award No. 442/I/ARB- BANI/2012.

Then, PT. HK applied to annul the arbitral award on 16 August 2013, through Serang District Court. PT. HK felt that BANI had made an error in providing a legal opinion in the arbitration award. According to PT. HK, the facts were not considered by BANI. PT. HK disagrees and is very dissatisfied with the legal considerations and the arbitral award. According to PT. HK, during examination and trial, the defendant has violated the provisions of applicable law, the award is not based on the principles of justice and proportionality, and the legal considerations used are insufficient or incomplete.

The Serang District Court issued a decision on June 17, 2013, namely decision No. 18/Pdt.G/2013/PN.Srg. In this putsan, the exclusion of the partners of the Respondent and the Respondent was accepted and rejected the cancellation of the decision of BANI No. 442/I/ARB-BANI/2012.

Then, PT. HK appealed against the Serang District Court Decision dated June 17, 2013 to the Supreme Court on the grounds that the Serang District Court Judge in examining and hearing the case, inadequate and incomplete consideration and not careful in assessing/interpreting the facts revealed in the trial case *a quo*, so that the impression has been in favor of the Appellate Respondent and the Appellate

[27] Rengganis (n 18).

[28] Yeni, Widowaty and Fadia Fitriyanti, 'Inconsistencies in Supreme Court Decisions in Overturning Arbitration Awards' (2017) 23, Journal of Legal Media 209.

Respondent to ignore justice.

After considering the reasons pleaded by the Appellant (PT Hutama Karya), the Supreme Court found that PN Serang had made appropriate legal considerations. The Supreme Court also took note of Supreme Court decision No. 03/Arb.Btl/2005 which stated that the provisions of article 70 are not limited and imperative but can be expanded and improved on other relevant grounds. From the interpretation of the law, the Supreme Court ruled in Decision No. 26 B / Pdt.Sus-Arbt / 2014 that the application filed by PT. HK accepted and strengthened the decision of PN Serang No. 18/Pdt.G/2013/PN.Srg. annulling the decision of BANI No. 442/I/ARB-BANI/2012.

## Analysis of Inconsistencies of Supreme Court Decision No. 26 B/Pdt.Sus-Arbt/2014 in Annuling Arbitral Awards

Supreme Court Decision No. 26 B/Pdt.Sus- Arbt/2014 decided to uphold Serang District Court, overturning BANI decision No. 422/I/ARB-BANI/2012. The Supreme Court considers the provisions of Article 70 to be indefinite and essential but may be supplemented and amended on grounds derived from the contents of Article 70 insofar as they are relevant reasons. The judge's consideration was strengthened by the previous Supreme Court decision or jurisprudence No. 03/Arb.Btl/2005 concerning the annulment of the arbitral award.

The Supreme Court judge decided that the annulment of the arbitral award refers to conditions/factors outside Article 70 referred to as "rule breaking" in Progressive legal theory.[29] Satjipto Raharjo stated in his book, Progressive Law is a concept that is part of a continuous process of seeking legal truth. This concept emerged in response to concerns and dissatisfaction with law enforcement in late 20th century Indonesia.[30]

The rigidity of law enforcement led to public disillusionment with law enforcement focusing only on texts in the law without wanting to find justice for the public. Law enforcers who embrace positivism are often argued to 'require' judges as mouthpieces of the law (*la bouche de la loi*).[31] Satjipto Raharjo believes that judges must have the courage to free themselves from using rigid patterns, and this method is called breaking the rules.[32] Progressive law has similarities to *interessenjurisprudence* which arises from doubts about the ability of perfect juridical logic to respond to social interests and needs in society. According to this

[29] Saifullah Saifullah, 'A Critical Study of Progressive Legal Theory on the Status of Children Out of Wedlock in Constitutional Court Decision No. 46/PUU-VIII/2010' (1970) 8 Al-Manahij: Journal of Islamic Legal Studies 307.
[30] Rahardjo Satjipto, 'Progressive Law: The Law That Liberates' (2005) Vol. 1 (1) Journal of Progressive Law 24.
[31] Soehartono, 'Developing Judges' Thoughts in Resolving Disputes' (2014) 3 Yustisia Journal of Law 25.
[32] Suteki, 'The Future of Progressive Law' 1.

concept, judges can no longer limit themselves to narrow interpretations of legal texts but must be able to understand and understand the social and legal needs and desires that exist in society.[33]

In addition, there is a principle "*Res judicata pro veritate habetur*" states that the judge's decision is always recognized as correct. That is, after the judge's decision is given and there is no longer any legal remedy to change it, then the decision must be accepted as an inviolable truth.[34] Even according to Sudikno Mertokusumo, even though the witnesses presented in the trial turned out to be incorrect and the case decided based on the testimony was not true, the judge's decision must still be considered correct. However, a judge's decision will only have permanent legal force if no legal remedy is made to change it or if no higher court ruling such as appeal or cassation rules otherwise. This is done to maintain public order and provide legal certainty, which is the aspiration and hope of the community.[35]

Therefore, the author agrees with the Supreme Court decision No. 26 B/Pdt.Sus-Arbt/2014 which annulled the arbitral award by considering jurisprudence No. 03/Arb.Btl/2005 because one of the sources of law is jurisprudence. The important role that jurisprudence has, not only as a source of law, is also a guide for judges in making decisions in the cases they face.[36] Jurisprudence is considered as the development or continuation of laws and regulations and contains norms that bind judges. Thus, when judges consider jurisprudence, it does not mean that judges lose their freedom in making decisions, but judges remain bound by legal norms.[37]

When compared, there are inconsistencies in the decisions of the Supreme Court (MA). Supreme Court Decision No. 293 K / Pdt.Sus / 2012 emphasizes that to annul the arbitral award must be based on the conditions contained in Article 70, thus rejecting the application to cancel the arbitral award with conditions that are not in line with Article 70. On the other hand, Supreme Court decision No. 26 B/Pdt.Sus-Arbt/2014 states that it is possible to annul an arbitral award on considerations that are not in line with the provisions of Article 70. The two Supreme Court awards differ slightly in using the legal basis, but both still refer to the Arbitration Law. Supreme Court decision No. 293 K / Pdt.Sus / 2012, the judge weighed in line with Article 70, while the Supreme Court decision No. 26 B / Pdt.Sus-Arbt / 2014 refers to the general explanation of the Arbitration Law and the jurisprudence of Supreme

[33] M Natsir Asnawi, *Hermeneutika Putusan Hakim* (UII Press 2014).
[34] Joko Widarto, 'The Application of the Principle of Judges' Decisions Must Be Considered Correct (Study of Constitutional Court Decision Number 97/Puu-Xi/2013)' (2016) 13 Lex Jurnalica 67.
[35] Soedikno Mertokusumo, *Knowing the Law of an Introduction* (Liberty 2004).
[36] Mirja F Hamdi, 'The Jurisprudential Position of Constitutional Court Decisions in Reconstructing Procedural Law' (2019) 3 Journal of Indonesian Legislation 313.
[37] Imam Sujono, 'The Urgency of Legal Discovery and the Use of Jurisprudence in the Authority of' (2021) 18 Journal of the Constitution.

Court decision No. 03 / Arb.Btl / 2005.

M. Natsir Asnawi argues that there are two different paradigms in the categorization of judges, namely the paradigm outside the positivistic and the positivistic paradigm. Judges who adhere to the positivistic paradigm will see themselves as legal applications that focus on legal texts. They tend to emphasize procedural fairness and legal certainty. On the other hand, judges with paradigms beyond positivism see themselves as creators of substantive justice. They prioritize fairness of substance and have the discretion to go beyond legal texts in the decision-making process.[38]

**Problems of the Supreme Court Decision No. 26 B/Pdt.Sus-Arbt/2014**

In the decision of PN Serang No.18/Pdt.G/2013/PN.Srg., an attempt to cancel the decision of BANI No.442/I/ARB-BANI/2012 was rejected because it did not find fulfillment of the provisions in Article 70. The cancellation applicant is based on violation of legal provisions and unfairness in the BANI arbitration hearing. However, in the Supreme Court decision No. 26 B / Pdt.Sus-Arbt / 2014 decided to uphold the decision of PN Serang which granted the attempt to overturn the decision of BANI No. 422 / I / ARB-BANI / 2012. The Supreme Court referred to jurisprudence No. 03/Arb.Btl/2005 which states that article 70 of the Arbitration Law is unlimited and imperative, so that the reasons for the annulment of the award can be supplemented or corrected on relevant grounds even though they are outside the contents of article 70.

Referring to the facts outlined above, it is clear that there is a discrepancy between the decision of PN Serang No. 18/Pdt.G/2013/PN.Srg. and Supreme Court decision No. 26 B/Pdt.Sus-Arbt/2014. The judge's inaccuracy was the cause of the decision of the appeal against the decision of PN Serang No. 18/Pdt.G/2013/PN.Srg. mentioned above. The judge's inaccuracy in resolving the case can be said to be inconsistent or violate the principle of speedy trial.[39] As a result, in 2016, BANI as the respondent filed a PK (Judicial Review) for the Supreme Court decision. The application to do PK was granted in decision No. 33 PK/Pdt.Sus-Arbt/2016 where the judge believes that in decision No. 26 B/Pdt.Sus-Arbt/2014 there has been a clear error or error. The judge also argued that there was a discrepancy between the *Judex Juris* ruling and the PN ruling itself. Therefore, the judge decided on November 28, 2014 to annul Supreme Court decision No. 26 B/Pdt.Sus-Arbt/2014.

[38] Asnawi (n 36).
[39] Dian Sri Lestari and Muhammad Rustamaji, 'Analysis of Judges' Errors in Deciding Fraud Cases That Deviate from the Principles of Fast, Simple and Low Cost Trials' (2020) 7 Verstek Journal 1.

## 4. Conclusion

Based on Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it can be concluded that the mechanism for annulment of an arbitral award has been regulated in articles 71 and 72, starting from the registration of a request to annul an arbitral award to the cassation process. At the hearing, the District Court and even the Supreme Court are not allowed to examine or re-examine the dispute but only review the validity of decision-making procedures such as the appointment of arbitrators and the enforceability of the law in the dispute.

The researcher also concluded that the legal considerations of Supreme Court Decision No. 26 B/Pdt.Sus-Arbt/2014 which annulled the BANI arbitration award No. 442/I/ARB-BANI/2012 were based on the general explanation of the Arbitration Law and the jurisprudence of Supreme Court decision No. 03/Arb.Btl/2015. The judge's consideration in annulling the arbitral award refers to conditions or factors outside Article 70 of the Law using Progressive legal theory. However, there is a clear error or error where there is a discrepancy between the Judex *Juris decision* (a decision that strengthens the decision of the District Court) and the decision of the District Court itself. So that the Supreme Court decision No. 26 B / Pdt.Sus-Arbt / 2014 was annulled.

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