

Annulment of Indonesian Arbitration Award: Misinterpretation of Article 70, Supreme Court Correction, and Inconsistency of SEMA 7/2012

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Abstract: Article 60 of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (the Arbitration Law) makes arbitral awards final and binding, yet Article 70 still allows District Courts to annul an award on three narrow grounds. The way these courts read Article 70 therefore determines whether finality holds in practice and raises a question about the scope of judicial power under Article 24 of the 1945 Constitution. Prior studies have documented the tendency of District Courts to treat annulment applications as disguised appeals, but they have not mapped the specific errors in judicial reasoning or examined whether the Supreme Court's technical guidance has kept pace with Constitutional Court Decision Number 15/PUU-XII/2014, which declared the Elucidation of Article 70 non-binding. This normative-prescriptive legal study applies case and conceptual approaches to three Supreme Court decisions (Numbers 234 B/Pdt.Sus-Arbt/2024, 355 B/Pdt.Sus-Arbt/2025, and 918 B/Pdt.Sus-Arbt/2023), using Gustav Radbruch's three basic values of law and the doctrines of minimal curial intervention, competence-competence, and the prohibition of *révision au fond*. The analysis identifies four errors by District Court judges: an expansive reading of "fraud," a reassessment of the evidence and merits, the acceptance of an abusive application that functioned as a disguised appeal, and a failure to distinguish a formal disposition (*niet-ontvankelijk verklaard*) from a substantive rejection (*verworpen*). In all three decisions, the Supreme Court corrected these errors by enforcing the limitative character of Article 70. The study also finds that Supreme Court Circular Letter (SEMA) Number 7 of 2012 still refers to the Elucidation of Article 70, which may mislead first-instance judges. The article contributes by identifying this gap in the judiciary's technical guidance as a concrete target for revision and by proposing amended wording for Articles 70 and 72 of the Arbitration Law.

Keywords: annulment of arbitral awards; Article 70 of the Arbitration Law; judicial correction; Supreme Court; SEMA Number 7 of 2012

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INTRODUCTION

Arbitration is a method of dispute resolution outside the general courts that parties choose for its speed, its cost efficiency, and the final and binding character of its awards. Article 1(1) of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (the Arbitration Law)¹ defines arbitration as a method of resolving civil disputes outside the general courts on the basis of a written arbitration agreement, and Article 60 provides that arbitral awards are final and binding on the parties.² This finality is the *raison d'être* of arbitration as an alternative to litigation.

The problem is that the judicial power vested by Article 24 of the 1945 Constitution still leaves room for District Courts to review arbitral awards through annulment proceedings, which Article 70 of the Arbitration Law confines to three grounds: forged documents, concealed documents, and fraud.³ The tension between these two provisions frames the central problem of this article. Article 60 guarantees finality, whereas Article 70 gives District Courts a residual authority to reopen an award that should have been final. The way a District Court reads the limits of that authority therefore determines whether finality holds in practice or exists only on paper. The three grounds in Article 70 are exclusive and alternative rather than cumulative, so an applicant needs to establish only one of them. Supreme Court Circular Letter (Surat Edaran Mahkamah Agung, SEMA) Number 7 of 2012 states that Article 70 is limitative and cannot be departed from. Article 24(4) of Supreme Court Regulation (Peraturan Mahkamah Agung, PERMA) Number 3 of 2023 restates the same grounds, two of which, forgery and fraud, import criminal-law concepts into civil proceedings.

The development with the most direct bearing on this study is Constitutional Court Decision Number 15/PUU-XII/2014 of November 11, 2014.⁴ In that decision, the Constitutional Court held that the Elucidation of Article 70 of the Arbitration Law contravenes the 1945 Constitution and has no binding legal force. Before the decision, the Elucidation required an applicant to prove the ground for annulment (forgery, concealment, or fraud) through a final and binding court judgment, a requirement that an applicant could hardly satisfy within the 30-day filing period under Article 71 of the Arbitration Law. Once the Elucidation lost its binding force, District Courts became free to assess allegations of forgery, concealment, and fraud on their own, without waiting for a criminal judgment.⁵ As the Analysis and Discussion section shows, this freedom also opens room for expansive interpretation and misuse at the District Court level.

Article 3, read together with Article 11 of the Arbitration Law, removes disputes covered by an arbitration agreement from the absolute competence of the District Courts, and in annulment proceedings the authority of a court is limited to the grounds listed in Article 70.

¹ Republic of Indonesia, Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (State Gazette of the Republic of Indonesia of 1999 Number 138, Supplement to the State Gazette Number 3872), Article 1(1).

² Law Number 30 of 1999, Article 60.

³ Law Number 30 of 1999, Article 70.

⁴ Constitutional Court of the Republic of Indonesia, Decision Number 15/PUU-XII/2014, November 11, 2014, accessed August 6, 2026, https://s.mkri.id/public/content/persidangan/putusan/putusan_sidang_2090_15%20PUU%202014-UU_30_1999_Arbitrase-telahucap-11Nov2014-%20wmActionWiz.pdf.

⁵ Alifyah Candra Al Akbar and Muhammad Luthfan Arsyi Mawarid, "Akibat Hukum Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014 mengenai Pembatalan Putusan Arbitrase," *Sriwijaya Journal of Private Law* 2, no. 1 (2025): 58–72, <https://doi.org/10.28946/sjpl.v2i1.4809>.

William S. Dodge, in his entry on *res judicata* in the *Max Planck Encyclopedia of Public International Law*, explains that once a competent forum has finally decided a dispute, no other adjudicative body may reexamine a dispute involving the same parties, subject matter, and legal basis.⁶ Bernard Hanotiau adds that in complex multiparty arbitrations, *res judicata* must be applied strictly to prevent the splitting of issues and the abuse of process through the resubmission of identical arguments.⁷

Previous research has examined how District Court judges differ in their understanding of the grounds for annulment. A study of Decision Number 556/Pdt.Sus-Arbt/2021/PN.Jkt.Sel found that the judges focused on formal aspects without examining substantive justice.⁸ Mutawwip Ahmad similarly found that judges tend to prioritize formal requirements, such as the 30-day filing period, over a sound understanding of the limits of their authority, and he recommended continuing technical training for judges.⁹

Research on how the Supreme Court corrects errors of law committed by District Courts is also relevant. In their analysis of Supreme Court Decision Number 665 B/Pdt.Sus-Arbt/2024, Salsabila Nazhwa Anindya and her coauthors showed that a conflict of interest, although a serious procedural defect, cannot justify annulment because Article 70 does not list it as a ground.¹⁰ Pratidina likewise found that the Supreme Court has upheld the exclusive character of the grounds for annulment from the outset, and that divergent readings among District Court judges are a long-standing problem that requires a systemic solution.¹¹

Three studies are closest to this article: the study by Fitrianggraeni, Fauziah, and Purnama; the study by Pratidina; and the study of Decision 556/Pdt.Sus-Arbt/2021. Each reached different findings and left a different gap. Through an empirical study of 70 decisions, Fitrianggraeni, Fauziah, and Purnama showed that the treatment of annulment applications as disguised appeals is widespread in Indonesia. Their study, however, did not map specific interpretive errors at the level of legal reasoning, nor did it examine technical judicial instruments (SEMA and PERMA) as a source of those errors.¹² Pratidina demonstrated the historical consistency of the Supreme Court in upholding the exclusive character of Article 70, but her 2014 study predates Constitutional Court Decision Number 15/PUU-XII/2014 and therefore could not address whether technical judicial instruments have adapted to that

⁶ William S. Dodge, "Res Judicata," in *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2006), also available as SSRN Scholarly Paper No. 2778726, <https://ssrn.com/abstract=2778726>.

⁷ Bernard Hanotiau, *Complex Arbitrations: Multi-party, Multi-contract and Multi-issue; A Comparative Study*, 2nd ed., International Arbitration Law Library 14 (Alphen aan den Rijn: Kluwer Law International, 2020).

⁸ South Jakarta District Court, Decision Number 556/Pdt.Sus-Arbt/2021/PN.Jkt.Sel, Directory of Decisions of the Supreme Court of the Republic of Indonesia, accessed August 6, 2026, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec74826361676ca7d3323230363330.html>.

⁹ Mutawwip Ahmad, "Kepastian Hukum Putusan Arbitrase dalam Sengketa Bisnis di Indonesia (Studi Putusan No. 556/Pdt.Sus-Arbt/2021/PN.Jkt.Sel)" (undergraduate thesis, Universitas Mataram, 2026), <https://eprints.unram.ac.id/52958/>.

¹⁰ Salsabila Nazhwa Anindya et al., "Konflik Kepentingan sebagai Alasan Pembatalan Putusan Arbitrase: Analisis Yuridis Putusan Mahkamah Agung Nomor 665b/PDT.SUS.ARBt/2024," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 4344–52.

¹¹ Ilhami Ginang Pratidina, "Interpretasi Mahkamah Agung terhadap Alasan Pembatalan Putusan Arbitrase dalam Pasal 70 UU No. 30/1999," *Yuridika* 29, no. 3 (2014), <https://doi.org/10.20473/ydk.v29i3.374>.

¹² Setyawati Fitrianggraeni, Eva Fatimah Fauziah, and Sri Purnama, "Dealing with Unsatisfactory Arbitral Awards: Observing the Grounds of Annulment of Arbitral Awards in Indonesia," *Journal of International Arbitration* 40, no. 6 (2023): 735–64.

decision.¹³ The study of Decision 556/Pdt.Sus-Arbt/2021 documents a formalistic tendency in a single decision but does not extend to a comparative analysis across decisions.

This article addresses these gaps through an integrated approach. Its main novelty lies in connecting three dimensions that previous studies have not analyzed within a single framework: the pattern of Supreme Court corrections in recent decisions issued between 2023 and 2025; the normative defect of SEMA Number 7 of 2012, which still refers to the Elucidation of Article 70 even though Constitutional Court Decision Number 15/PUU-XII/2014 declared that Elucidation non-binding; and concrete proposals to amend Articles 70 and 72 of the Arbitration Law.

Criticism of SEMA Number 7 of 2012 after the Constitutional Court decision is not new. Bimo Prasetyo and Mohamad Toha Hasan have criticized the continued reliance on the circular, arguing that SEMA Number 7 of 2012 “should no longer be in force because it has lost its legal basis” and “must be set aside.”¹⁴ In a later commentary, the same authors stressed that the authority of a court to annul an arbitral award “is limited only to examining the validity of the procedure by which the arbitral award was made.”¹⁵ The novelty of this article therefore lies in synthesizing three elements rather than in identifying the defect of the circular in isolation. To the authors’ knowledge, no study has yet analyzed the Supreme Court’s correction patterns from 2023 to 2025, linked them to the normative defect of SEMA Number 7 of 2012 after the Constitutional Court decision, and formulated concrete proposals to amend Articles 70 and 72 of the Arbitration Law. This article thus contributes an integrated analytical framework and a set of normative proposals that can support regulatory harmonization.

Against this background, this article addresses three research questions: (1) What pattern of errors, including errors in interpreting Article 70 of the Arbitration Law, did District Courts commit in handling annulment applications in the three decisions that the Supreme Court corrected? (2) What pattern of judicial correction did the Supreme Court apply to those errors? (3) What are the implications of these interpretive disparities, including the inconsistency of technical judicial instruments after Constitutional Court Decision Number 15/PUU-XII/2014, for the principle of finality in Indonesian arbitration?

Accordingly, this article aims (1) to identify and map the errors of the District Courts, including their interpretation of Article 70 of the Arbitration Law; (2) to analyze the pattern of Supreme Court corrections in the three most recent decisions; and (3) to formulate recommendations, including proposed statutory wording, to preserve legal certainty and the finality of arbitration in Indonesia.

METHOD

This article employs prescriptive normative (doctrinal) legal research. It uses a case approach to analyze the *ratio decidendi* of three Supreme Court decisions and a conceptual

¹³ Pratidina, “Interpretasi Mahkamah Agung.”

¹⁴ Bimo Prasetyo and Mohamad Toha Hasan, “Problematika Pembatalan Putusan Arbitrase dan Pembuktiannya di Pengadilan Negeri,” KlikLegal, August 30, 2021, accessed September 16, 2026, <https://kliklegal.com/problematika-pembatalan-putusan-arbitrase-dan-pembuktiannya-di-pengadilan-negeri/> (quotations translated by the authors).

¹⁵ Bimo Prasetyo and Mohamad Toha Hasan, “Problematika Pembuktian Permohonan Pembatalan Putusan Arbitrase,” KlikLegal, October 24, 2024, accessed September 16, 2026, <https://kliklegal.com/problematika-pembuktian-permohonan-pembatalan-putusan-arbitrase/> (quotation translated by the authors).

approach to build the theoretical framework against which it assesses the consistency of District Court interpretations.¹⁶ These two approaches suit the legal issue under study: identifying misinterpretations of the limitative norm in Article 70 requires a close reading of the legal reasoning in each decision (case approach) and a conceptual benchmark for determining when an interpretation exceeds the limits of judicial authority (conceptual approach).

The legal materials fall into three categories. The primary legal materials consist of the Arbitration Law;¹⁷ PERMA Number 3 of 2023 on Procedures for the Appointment of Arbitrators by Courts, the Right to Challenge Arbitrators, and the Examination of Applications for the Enforcement and Annulment of Arbitral Awards;¹⁸ SEMA Number 7 of 2012 on the Legal Formulations of the Plenary Meetings of the Supreme Court Chambers as Guidelines for the Courts in Performing Their Duties;¹⁹ Constitutional Court Decision Number 15/PUU-XII/2014;²⁰ and the District Court and Supreme Court decisions in Case Numbers 234 B/Pdt.Sus-Arbt/2024,²¹ 355 B/Pdt.Sus-Arbt/2025,²² and 918 B/Pdt.Sus-Arbt/2023.²³ The secondary legal materials comprise books, national and international law journals, and theses and dissertations on the annulment of arbitral awards and the interpretation of Article 70. The tertiary legal materials consist of legal dictionaries.²⁴

The authors selected the three Supreme Court decisions according to three criteria: (a) they are among the most recent decisions, issued between 2023 and 2025; (b) each represents a different type of District Court error in applying Article 70; and (c) the full text of each is available in the Decision Directory of the Supreme Court of the Republic of Indonesia. The authors collected the legal materials through library research and document analysis.

The authors analyzed the legal materials qualitatively and deductively in four steps: (a) identifying the reasons that the District Court gave for its disposition of the annulment application; (b) identifying the subparagraph of Article 70 on which the District Court relied; (c) examining the Supreme Court decision and its legal reasoning; and (d) classifying the errors that the Supreme Court corrected within the theoretical framework set out in the Analysis and

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana Prenada Media Group, 2021).

¹⁷ Law Number 30 of 1999.

¹⁸ Supreme Court Regulation Number 3 of 2023 on Procedures for the Appointment of Arbitrators by Courts, the Right to Challenge Arbitrators, and the Examination of Applications for the Enforcement and Annulment of Arbitral Awards, JDIH Mahkamah Agung, accessed August 6, 2026, <https://jdih.mahkamahagung.go.id/index.php/legal-product/perma-nomor-3-tahun-2023/detail>.

¹⁹ Supreme Court Circular Letter Number 7 of 2012 on the Legal Formulations of the Plenary Meetings of the Supreme Court Chambers as Guidelines for the Courts in Performing Their Duties, JDIH Mahkamah Agung, accessed August 6, 2026, <https://jdih.mahkamahagung.go.id/index.php/legal-product/sema-nomor-7-tahun-2012/detail>.

²⁰ Constitutional Court Decision Number 15/PUU-XII/2014.

²¹ Supreme Court of the Republic of Indonesia, Decision Number 234 B/Pdt.Sus-Arbt/2024, Directory of Decisions of the Supreme Court of the Republic of Indonesia, accessed August 6, 2026, <https://putusan3.mahkamahagung.go.id/direktori/>.

²² Supreme Court of the Republic of Indonesia, Decision Number 355 B/Pdt.Sus-Arbt/2025, Directory of Decisions of the Supreme Court of the Republic of Indonesia, accessed August 6, 2026, <https://putusan3.mahkamahagung.go.id/direktori/>.

²³ Supreme Court of the Republic of Indonesia, Decision Number 918 B/Pdt.Sus-Arbt/2023, Directory of Decisions of the Supreme Court of the Republic of Indonesia, accessed August 6, 2026, <https://putusan3.mahkamahagung.go.id/direktori/>.

²⁴ Dinas Perpustakaan dan Kearsipan Provinsi DKI Jakarta, "Kamus Hukum," JAKLITERA, accessed August 6, 2026, <https://perpustakaan.jakarta.go.id/book/detail?cn=INLIS000000000841145>.

Discussion section. This approach follows the doctrinal legal research methodology set out by Peter Mahmud Marzuki.²⁵ One methodological limitation deserves emphasis. Because the sample consists of three decisions, the terms “pattern” and “consistent” in this article refer to qualitative and indicative similarities among the three decisions, not to a statistical generalization about all annulment decisions in Indonesia. Such a generalization would require a quantitative study with a larger sample, such as the study of 70 decisions by Fitrianggraeni, Fauziah, and Purnama.²⁶

ANALYSIS AND DISCUSSION

This article evaluates two types of claims in the three decisions, using a separate conceptual tool for each. First, to assess the normative claim concerning the trade-off between legal certainty and substantive justice in the interpretation of Article 70, it draws on the three basic values of law formulated by Gustav Radbruch: legal certainty (*Rechtssicherheit*), justice (*Gerechtigkeit*), and utility (*Zweckmäßigkeit*).²⁷ These values stand in a relationship of tension (*Spannungsverhältnis*). District Courts that expand the scope of Article 70 often invoke substantive justice for the party that lost in arbitration, but in doing so they sacrifice legal certainty, which is the value that the drafters of the Arbitration Law deliberately prioritized by limiting the grounds in Article 70. Read through the Radbruch framework, the Supreme Court’s corrections in the three decisions do more than defend the statutory text; they affirm the choice in favor of legal certainty that the drafters made. The same framework also indicates that this choice remains legitimate only insofar as it preserves the room for justice that Article 70 itself provides, since forgery, concealment, and fraud remain available as grounds for annulment.

Second, to assess the claim concerning judicial authority, namely the boundary between reviewing the validity of the arbitral process and reexamining the merits of the dispute, this article applies the doctrine of minimal curial intervention, under which national courts may intervene in arbitral awards only to address specific and serious procedural defects.²⁸ It reads this doctrine together with the principle of competence-competence, which empowers the arbitral tribunal to rule on its own jurisdiction and on the subject matter of the dispute, and with the prohibition of *révision au fond*, which bars courts from reexamining the merits of a dispute that the competent forum has finally decided.²⁹ The subsections of the Analysis and Discussion apply this framework consistently to determine whether the District Court in each decision reviewed the validity of the process, which falls within its authority, or reexamined the merits, which exceeds it.

This section answers the research questions by examining three recent Supreme Court decisions on applications to annul arbitral awards: Decision Numbers 234 B/Pdt.Sus-Arbt/2024, 355 B/Pdt.Sus-Arbt/2025, and 918 B/Pdt.Sus-Arbt/2023. The authors chose these decisions because each reflects a different pattern of misinterpretation by a District Court, and because the Supreme Court corrected all three. The discussion proceeds in three parts: (i) a

²⁵ Marzuki, *Penelitian Hukum*.

²⁶ Fitrianggraeni, Fauziah, and Purnama, “Dealing with Unsatisfactory Arbitral Awards.”

²⁷ Gustav Radbruch, “Statutory Lawlessness and Supra-Statutory Law (1946),” trans. Bonnie Litschewski Paulson and Stanley L. Paulson, *Oxford Journal of Legal Studies* 26, no. 1 (2006): 1–11.

²⁸ Gary B. Born, *International Commercial Arbitration*, 3rd ed. (Alphen aan den Rijn: Kluwer Law International, 2021).

²⁹ Hanotiau, *Complex Arbitrations*.

summary of the procedural and substantive posture of the three decisions; (ii) an identification of the recurring points of inconsistent interpretation, assessed through the theoretical framework above; and (iii) the findings on inconsistent technical judicial instruments and their implications for legal certainty.

Procedural and Substantive Posture of the Three Decisions

Supreme Court Decision Number 234 B/Pdt.Sus-Arbt/2024

This case arose from a dispute between PT Bintang Express Sarana (the claimant in the arbitration) and PT Wijaya Karya Realty (the respondent in the arbitration) under several agreements: the Initial Cooperation Agreement dated June 20, 2017; Preliminary Sale and Purchase Agreement (Perjanjian Pengikatan Jual Beli, PPJB) No. 01-PPJB-WKR/VII/2018; the Joint Agreement Statement dated December 21, 2018; and the Land Transfer Agreement dated February 11, 2019. In Award No. 45094/XI/ARB-BANI/2022 dated August 29, 2023, the arbitral tribunal of the Indonesian National Board of Arbitration (Badan Arbitrase Nasional Indonesia, BANI) found that PT Wijaya Karya Realty had breached the contract and ordered it to pay IDR 1,066,607,900.00 to the claimant. PT Wijaya Karya Realty then applied to the East Jakarta District Court to annul the award. In Decision No. 583/Pdt.Sus-Arb/2023/PN Jkt.Tim dated December 1, 2023, the District Court granted the application and declared the BANI award null and void on two grounds. First, it deemed the attorney for the Third Respondent in the annulment proceedings to have acted fraudulently because he “agreed” with the opposing party’s arguments instead of refuting them. Second, it deemed the arbitral tribunal negligent for considering only Exhibits P-4 through P-7 and disregarding Exhibit P-18.

The Supreme Court annulled the decision of the East Jakarta District Court and held that (a) a party’s failure to refute the opposing party’s arguments does not constitute fraud under Article 70(c); (b) the District Court exceeded its authority by reassessing the sufficiency of the evidence, because Article 1(7), Article 17(2), and Article 60 of the Arbitration Law affirm the final and binding character of arbitral awards; (c) the grounds for annulment are limited to those in Article 70(a), (b), and (c), none of which was proven in this case; and (d) new evidence submitted for the first time on appeal to the Supreme Court cannot be considered because the applicant should have submitted it in the proceedings before the District Court.

Supreme Court Decision Number 355 B/Pdt.Sus-Arbt/2025

This dispute involved PT Nipindo Primatama (the claimant in the arbitration) and PT Pipit Mutiara Jaya (the respondent in the arbitration) and concerned Mining Services Contract No. 002/NIP-Owner/1215 dated July 18, 2016, as amended by two addenda. In Award No. 45097/X/ARB-BANI/2022 dated October 16, 2024, the BANI arbitral tribunal found the respondent in default and ordered it to pay compensation of USD 2,187,136.55. PT Pipit Mutiara Jaya applied to the Tarakan District Court to annul the award. In Decision No. 76/Pdt.Sus-Arb/2024/PN Tar dated January 7, 2025, the District Court granted the application on the ground that the arguments and evidence in the application were substantially identical to those submitted in the arbitration.

The Supreme Court granted the appeal of PT Nipindo Primatama and held that the Tarakan District Court had misapplied the law (*error in iudicando*). It reasoned that the legal relationship between the parties was valid and binding, that the respondent’s default had been proven, and that the resubmission of arguments and evidence already assessed in the arbitration

provided no basis for annulling the award. On the contrary, the resubmission showed that the requirements of Article 70 of the Arbitration Law, read together with Article 24(4) of PERMA Number 3 of 2023, had not been met. The Supreme Court therefore rejected the annulment application and upheld the BANI award.

Supreme Court Decision Number 918 B/Pdt.Sus-Arbt/2023

The dispute arose from a contract for works between PT Berkah Tiga Usaha (the claimant in the arbitration) and PT Berkah Kawasan Manyar Sejahtera (the respondent in the arbitration). In Award No. 59/ARB/BANI-SBY/XI/2021 dated June 30, 2022, the BANI Surabaya arbitral tribunal found PT Berkah Kawasan Manyar Sejahtera in default and ordered it to pay compensation of IDR 37,500,000,000.00 and to release the bank guarantee.

Because the award was adverse to it, PT Berkah Kawasan Manyar Sejahtera, the losing party in the arbitration, applied to the Tangerang District Court for annulment and thus became the annulment applicant, while PT Berkah Tiga Usaha became the annulment respondent. In Decision No. 1188/Pdt.P/2022/PN Tng dated February 20, 2023, the Tangerang District Court did not examine the merits of the application and instead declared it inadmissible (*niet-ontvankelijk verklaard*). The Supreme Court granted the appeal of PT Berkah Tiga Usaha and held that the District Court had erred in applying the law because the annulment application was procedurally admissible under Articles 70 and 71 of the Arbitration Law. The Supreme Court further held that (a) the obligation to deliver a copy of the application rested with BANI Surabaya under Article 30 of the Arbitration Law, and a failure to deliver it does not constitute fraud under Article 70(c); (b) the absence of a party from an arbitral hearing is not a ground for annulment as long as that party received a proper opportunity to attend; and (c) the court has no authority to review the merits already examined by the arbitral tribunal, pursuant to Article 3 and Article 11(2) of the Arbitration Law. The Supreme Court then examined the application itself, rejected it, and left the BANI award binding.

The difference between a decision declaring an application inadmissible (*niet-ontvankelijk verklaard*) and a decision rejecting it on the merits (*verworpen*) goes beyond wording, because the two carry different legal consequences. A *niet-ontvankelijk verklaard* decision does not examine the merits; in theory, it therefore has no *res judicata* effect on the substance of the dispute, and the applicant may refile after curing the formal defects. A *verworpen* decision, by contrast, examines and decides the merits, acquires *res judicata* effect, and precludes a new application on the same grounds. In Case No. 918 B/Pdt.Sus-Arbt/2023, the 30-day period under Article 71 of the Arbitration Law had already expired, so the possibility of refiling was purely theoretical and posed no actual legal risk. The Tangerang District Court's characterization of its disposition as *niet-ontvankelijk verklaard* instead of *verworpen* nevertheless warranted correction, because it affects the quality of the court's reasoning and the certainty of the final status of the dispute, even though it no longer allowed refiling in this case.

Table 1 summarizes the three decisions to show the recurring pattern of errors.

Table 1. District Court Errors in the Three Decisions

Decision	Reasons Given by the District Court	Article 70 Ground Invoked	Supreme Court Disposition	Type of Error
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234 B/Pdt.Sus- Arbt/2024	Treated a failure to refute as fraud; reassessed the evidence and deemed it incomplete	Article 70(c) (fraud)	Annulled the District Court decision and rejected the annulment application	Expansive reading of “fraud”; reassessment of the merits and evidence
355 B/Pdt.Sus- Arbt/2025	Found the arguments and evidence identical to those in the arbitration	Not stated explicitly in the District Court decision	Annulled the District Court decision and rejected the annulment application	Annulment granted without any Article 70 ground; disguised appeal
918 B/Pdt.Sus- Arbt/2023	Declared the application inadmissible without examining the merits	Article 70(c) (alleged, not proven)	Annulled the District Court decision, examined the application, and rejected it	Failure to distinguish <i>niet- ontvankelijk verklaard</i> from <i>verworpen</i>

Points of Inconsistent Interpretation by the District Courts

Expansive Interpretation of “Fraud” under Article 70(c)

In Decision 234 B/2024, the East Jakarta District Court treated a party’s silence as fraud. Viewed through the Radbruch framework, this reading sacrifices legal certainty (*Rechtssicherheit*) for a notion of substantive justice that the District Court defined unilaterally. Fraud under Article 70(c) requires active and deliberate conduct intended to mislead the arbitral tribunal, such as presenting false information or manipulating facts; a passive failure to refute the opposing party’s arguments does not meet that standard. The Supreme Court corrected this expansive interpretation and held that a failure to refute does not constitute fraud under Article 70(c). This holding accords with the doctrinal view that fraud, as a ground for annulling an arbitral award, must be proven as an active act by one of the parties to influence the arbitral tribunal; negligence or passivity during the hearing does not suffice.

Reassessment of the Evidence and the Merits of the Dispute

Also in Decision 234 B/2024, the District Court reassessed the sufficiency of Exhibits P-4 through P-18, which the arbitral tribunal had already considered. Measured against the doctrines of minimal curial intervention and competence-competence, this step exceeded the authority of the District Court. Article 60 of the Arbitration Law establishes the finality of arbitral awards, and in annulment proceedings a court may examine only whether the arbitral process suffers from a defect listed in Article 70(a), (b), or (c); it may not reexamine the tribunal’s assessment of the evidence or the merits of the dispute. The Supreme Court accordingly held that the District Court exceeded its authority by reassessing the sufficiency of the evidence, because Article 1(7), Article 17(2), and Article 60 of the Arbitration Law affirm the final and binding character of arbitral awards. Arbitration doctrine describes this limit as the prohibition of *révision au fond*: a court may not reexamine the merits of a dispute that a competent forum has finally decided.

Abuse of Process and the Prohibition of Révision au Fond

In Decision 355 B/2025, the Tarakan District Court annulled the award on the ground that the applicant's arguments and evidence were identical to those presented in the arbitration. Characterizing this issue as *ne bis in idem* under Article 1917 of the Indonesian Civil Code is inaccurate,³⁰ because the identity of subject matter required by the *exceptio rei judicatae* is not fully present: the subject of an annulment application is the validity of the arbitral process, whereas the subject of the arbitration is the merits of the dispute. The *res judicata* test relevant here has three cumulative elements, namely identity of parties, identity of subject matter, and identity of legal basis (*causa petendi*), consistent with the doctrine of *exceptio rei judicatae* discussed in the report of the International Bar Association (IBA) Task Force on *res judicata* in international arbitration.³¹ In Decision 355 B/2025, the parties were the same, but the subject matter and legal basis of the annulment application differed from those of the arbitral dispute. The *ne bis in idem* characterization is therefore technically incorrect.

The application is more accurately characterized as an abuse of process in the form of a disguised appeal, which the prohibition of *révision au fond* forbids.³² The Tarakan District Court erred in the conclusion it drew from the similarity of the arguments and evidence, not in recognizing that similarity. The similarity should have signaled that the application lacked any legal basis under Article 70, since it disclosed no forged document, no concealed document, and no newly discovered fraud, and the court should therefore have rejected the application instead of granting it. The role of new evidence (*novum*) within Article 70 also requires clarification. A *novum* is relevant only insofar as it proves the forgery of a document under Article 70(a) or the concealment of a document under Article 70(b) that came to light after the award was rendered; it cannot serve as a vehicle for resubmitting evidence or arguments that the arbitral tribunal has already considered and decided on the merits. An annulment application thus remains subject to the limits on judicial authority described in the previous subsection: the court may examine only the defects listed in Article 70(a), (b), and (c) and may not use the proceedings to reexamine the material truth of the dispute.

Failure to Distinguish Formal from Substantive Rejection

In Decision 918 B/2023, the Tangerang District Court declared the annulment application inadmissible (*niet-ontvankelijk verklaard*) even though the application met the formal requirements for examination. As explained above, the choice between *niet-ontvankelijk verklaard* and *verworpen* determines whether a decision has *res judicata* effect on the dispute and whether the applicant may refile, so the distinction is a matter of substance rather than wording.

Pattern of Judicial Correction by the Supreme Court

The three decisions show that the Supreme Court consistently upholds three principles. The first is the limitative character of Article 70, under which only three grounds, namely forged documents, concealed documents, and fraud, can justify annulment. These grounds

³⁰ Indonesian Civil Code (*Burgerlijk Wetboek voor Indonesië*), Staatsblad 1847 Number 23, Article 1917.

³¹ International Bar Association Arbitration Committee Task Force on Res Judicata, *Report on Res Judicata in International Arbitration* (London: International Bar Association, 2025), <https://www.ibanet.org/document?id=arbitration-res-judicata>.

³² Luca G. Radicati di Brozolo and Flavio Ponzano, "How to Assess the Res Judicata Effects of International Arbitral Awards: Giving Concreteness to an Autonomous Approach," *Arbitration International* 40, no. 4 (2024): 409–44, <https://doi.org/10.1093/arbint/aiae020>.

operate alternatively, so establishing any one of them suffices. The second is the prohibition on reviewing the merits: a court has no authority to reassess the evidence or the reasoning of the arbitral tribunal on the merits of the case. The third is the duty to distinguish formal from substantive rejections, so that the final status of the dispute remains certain. Because the Supreme Court applied these three principles consistently across three decisions with different facts, its corrections within the sample appear systematic rather than ad hoc.

Article 72(4) of the Arbitration Law provides for an appeal (*banding*), not a cassation, to the Supreme Court against a District Court decision in annulment proceedings, and the Supreme Court decides such an appeal at first and final instance. In annulment cases, the Supreme Court therefore acts as both *judex facti* (a court that examines the facts) and *judex juris* (a court that examines the law), unlike its role as *judex juris* alone in ordinary cassation proceedings. As a result, its corrections in these cases are comprehensive and are not confined to errors in the application of law. For this reason, this article uses the term “appeal” rather than “cassation” for this remedy.

Comparison with International Norms: Article 34 of the UNCITRAL Model Law and Article V of the New York Convention

Indonesia has not enacted legislation based on the *UNCITRAL Model Law on International Commercial Arbitration*.³³ Article 34 of the Model Law sets out broader grounds for setting aside an arbitral award, including the incapacity of a party, the invalidity of the arbitration agreement, the lack of proper notice or the inability of a party to present its case, an award that exceeds the scope of the submission to arbitration, a tribunal composition or arbitral procedure that departs from the agreement of the parties, the non-arbitrability of the subject matter, and a conflict with public policy.³⁴ Article V of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) lists grounds of a broadly similar scope for refusing the recognition and enforcement of foreign arbitral awards. Gary Born emphasizes that these broader grounds must still be read together with the principle of minimal curial intervention: although the Model Law recognizes more categories of grounds, national courts still have no authority to reassess the merits of a dispute that an arbitral tribunal has decided.³⁵

Measured against these international norms, Article 70 of the Arbitration Law is far narrower, as it covers only forgery, concealment, and fraud. This narrowness bears directly on the finality argument of this article. The narrower the statutory grounds for annulment, the more serious the consequences when a District Court reads Article 70 expansively, because such a reading imports grounds for annulment that the drafters of the Arbitration Law deliberately chose not to adopt. A shorter list of grounds thus makes any interpretive expansion by a District Court proportionally more damaging to legal certainty than a comparable expansion would be in a jurisdiction that follows the broader list in the Model Law.

SEMA Number 7 of 2012: A Judicial Circular That Predates Constitutional Court Decision Number 15/PUU-XII/2014 and Has Not Been Adjusted Since

³³ United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985, with Amendments as Adopted in 2006* (Vienna: United Nations, 2008), https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration.

³⁴ *Ibid.*, Article 34.

³⁵ Born, *International Commercial Arbitration*.

The most concrete finding and main contribution of this article concern a technical instrument intended to guide District Court judges. SEMA Number 7 of 2012 is a Supreme Court circular issued before Constitutional Court Decision Number 15/PUU-XII/2014. Its full title is *Rumusan Hukum Hasil Rapat Pleno Kamar Mahkamah Agung sebagai Pedoman Pelaksanaan Tugas bagi Pengadilan* (Legal Formulations of the Plenary Meetings of the Supreme Court Chambers as Guidelines for the Courts in Performing Their Duties). SEMA Number 7 of 2012 therefore operates as a judicial policy instrument that seeks to standardize the application of law and the performance of judicial duties on the basis of the 2012 plenary meetings of the Supreme Court chambers.

One formulation in the Special Civil Chamber section of SEMA Number 7 of 2012 (Formulation Number PDT.SUS/III/SEMA 7 of 2012) addresses the annulment of arbitral awards. It poses the question whether the limitative grounds for annulling domestic arbitral awards in Article 70 (with its Elucidation) may be departed from, and it answers that the provisions of Article 70 (with its Elucidation) of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution are limitative and therefore cannot be departed from.³⁶ This formulation shows that, when it issued SEMA Number 7 of 2012, the Supreme Court understood the grounds for annulment under Article 70 and its Elucidation to be limitative. In other words, a party may seek annulment only on the grounds formulated in Article 70: a letter or document that is acknowledged or declared to be false after the award is rendered, a decisive document concealed by the opposing party and discovered after the award is rendered, or fraud committed by one of the parties during the examination of the dispute.

This formulation, however, must be read in its chronological context. The Supreme Court issued SEMA Number 7 of 2012 when judicial practice still treated the Elucidation of Article 70 as part of the applicable norm. The legal position changed on November 11, 2014, when the Constitutional Court issued Decision Number 15/PUU-XII/2014 and declared the Elucidation of Article 70 of Law Number 30 of 1999 contrary to the 1945 Constitution and without binding legal force. The Elucidation had required that the grounds for annulment first be proven by a court judgment. Once the Constitutional Court declared it non-binding, the requirement to obtain a prior judgment establishing forgery, concealment of documents, or fraud ceased to operate as a binding norm.³⁷ A court examining an annulment application may therefore determine for itself whether the grounds in Article 70 have been established in the case before it.

The legal problem arises because the formulation in SEMA Number 7 of 2012 still uses the phrase “Article 70 (with its Elucidation),” even though the Constitutional Court later declared that Elucidation to be without binding legal force. Given the hierarchy and applicability of legal norms, this reference in the circular cannot sustain the validity of the Elucidation. The legal consequences of Constitutional Court Decision Number 15/PUU-XII/2014 for the formulation in SEMA Number 7 of 2012 should therefore be divided into two aspects. The first is substantive: the principle that the grounds for annulling an arbitral award are limitative remains valid because it derives from Article 70 itself. The second is referential:

³⁶ Supreme Court Circular Letter Number 7 of 2012.

³⁷ Supreme Court of the Republic of Indonesia, *Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2012*, Special Civil Chamber section, attachment to Supreme Court Circular Letter Number 7 of 2012, https://kepaniteraan.mahkamahagung.go.id/images/peraturan/sema/sema_07_2012.pdf.

the reference to the Elucidation of Article 70 can no longer operate insofar as it seeks to apply an explanatory norm that the Constitutional Court has invalidated.

A search of the official Supreme Court documents available to the authors identified SEMA Number 7 of 2012 as the source of the formulation containing the phrase “Article 70 (with its Elucidation).” The search found no post-2014 formulation of the Civil Chamber that specifically amends or replaces this formulation with respect to the annulment of arbitral awards. The problem therefore stems from the failure to adjust the 2012 formulation expressly to Constitutional Court Decision Number 15/PUU-XII/2014, not from any later formulation that expressly revives the Elucidation of Article 70.

Implications for the Legal Certainty of Arbitration in Indonesia

The recurring inconsistencies in District Court interpretation, combined with the outdated technical guidance discussed above, pose a real threat to the finality of arbitration in Indonesia. Existing empirical data help to gauge the scale of the problem. In their study of 70 annulment decisions rendered in Indonesia between 2019 and 2022, Fitrianggraeni, Fauziah, and Purnama found that the courts granted 14 applications, declared 22 inadmissible, and rejected 34, and that 29 cases were appealed to the Supreme Court.³⁸ These figures suggest that the treatment of annulment applications as disguised appeals is a measurable pattern rather than an isolated occurrence, and that it erodes legal certainty for parties who chose arbitration as a final forum for dispute resolution.

The time needed to reach a final decision also deserves attention. In the three decisions examined here, the interval between the arbitral award and the Supreme Court’s final decision varies. Table 2 lists the arbitral awards and their dates.

Table 2. Time Span from Arbitral Award to Supreme Court Decision

Supreme Court Decision	Arbitral Award	Date of Arbitral Award
234 B/Pdt.Sus-Arbt/2024	BANI No. 45094/XI/ARB-BANI/2022	August 29, 2023
355 B/Pdt.Sus-Arbt/2025	BANI No. 45097/X/ARB-BANI/2022	October 16, 2024
918 B/Pdt.Sus-Arbt/2023	BANI Surabaya No. 59/ARB/BANI-SBY/XI/2021	June 30, 2022

The Supreme Court decided Case 355 B/Pdt.Sus-Arbt/2025 less than a year after the BANI award of October 16, 2024, whereas Case 918 B/Pdt.Sus-Arbt/2023 took roughly one to one and a half years. The interval therefore ranges from less than one year to approximately one and a half years, depending on the complexity of the case and the stages of review involved. Duration, however, matters less than the fact that disputes that should have ended at the arbitral stage continue to the District Court and then to the Supreme Court, which imposes additional costs and delay on parties who should have obtained legal certainty as soon as the award was rendered.

Practitioners in Indonesia have also raised concerns about court annulments of arbitral

³⁸ Fitrianggraeni, Fauziah, and Purnama, “Dealing with Unsatisfactory Arbitral Awards.”

awards, which shows that the problem extends beyond academic debate.³⁹ As the comparison with international norms shows, the narrow grounds in Article 70, relative to Article 34 of the Model Law and Article V of the New York Convention, make any expansive interpretation by an Indonesian District Court proportionally more damaging to legal certainty than a similar expansion in jurisdictions with broader grounds, because it imports grounds for annulment that the legislature deliberately excluded. Combined with the inconsistency of SEMA Number 7 of 2012, which still refers to the Elucidation of Article 70 that Constitutional Court Decision Number 15/PUU-XII/2014 declared non-binding, this finding has clear practical implications. However consistent and sound, correction by the Supreme Court on appeal cannot provide a lasting solution as long as the technical instruments that guide first-instance judges remain out of step with current law.

Case-by-case corrections may resolve the disputes at hand, but they do not prevent the same errors from recurring in later cases. As long as the regulatory source of the error remains uncorrected, District Court judges may continue to make the same mistakes. The solution therefore requires, in addition to judicial correction, regulatory reform that aligns the Supreme Court Circular Letter (SEMA), the Arbitration Law, and the decisions of the Constitutional Court.

CONCLUSION

Decisions 234 B/2024, 355 B/2025, and 918 B/2023 reveal four errors in the way District Courts handled annulment applications. Three of these errors arose because the courts departed from the principle of minimal curial intervention and reopened the dispute. The East Jakarta District Court treated a party's failure to object as fraud under Article 70(c) and reassessed evidence that the arbitral tribunal had already evaluated. The Tarakan District Court annulled the award on the basis of arguments and evidence recycled from the arbitration, an abuse of process that functioned as a disguised appeal. The fourth error was procedural: the Tangerang District Court declared an admissible application inadmissible (*niet-ontvankelijk verklaard*) instead of rejecting it (*verworpen*), which left the final status of the dispute unclear.

Acting as the court of first and final instance, the Supreme Court may review both facts and law. It overturned all three District Court decisions on the basis of the same principles: the grounds for annulment are limitative; the prohibition of *révision au fond* binds the reviewing court, not the arbitral tribunal; and formal rejections must be distinguished from substantive ones. Within this small sample, the corrections are consistent.

These errors do more damage to the finality of arbitration in Indonesia than they would in jurisdictions that follow Article 34 of the UNCITRAL Model Law. Because Article 70 lists only three grounds, a broad interpretation effectively adds grounds that the legislature deliberately excluded. SEMA Number 7 of 2012 compounds this risk. The circular still refers to Article 70 together with its Elucidation, although Constitutional Court Decision Number 15/PUU-XII/2014 declared the Elucidation non-binding. In effect, the circular has outlived part of the normative basis on which it rests. Although this study does not establish that the circular caused the errors identified, such guidance can mislead first-instance judges, and case-by-case correction on appeal cannot cure a defect that lies in the guidance itself.

³⁹ Prasetyo and Hasan, "Problematisasi Pembatalan Putusan Arbitrase."

The Supreme Court should therefore promptly remove the reference to the Elucidation from the circular and monitor more closely how the courts implement PERMA Number 3 of 2023. The legislature should amend Articles 70 and 72 of the Arbitration Law, as proposed below, so that the statute itself confines the scope of District Court review. District Court judges also need continuing technical training on the exclusive and alternative character of the grounds for annulment and on the prohibition of reviewing the merits.

Proposed Article 70

- (1) The parties may apply to the District Court for the annulment of an arbitral award that is alleged to contain any of the following elements:
 - a. a letter or document submitted in the examination is acknowledged or declared to be false after the award is rendered;
 - b. a decisive document concealed by the opposing party is discovered after the award is rendered; or
 - c. the award resulted from fraud committed by one of the parties during the examination, in the form of active and deliberate conduct intended to mislead the arbitral tribunal.
- (2) The examination of an application under paragraph (1) is limited to proving the elements listed in that paragraph and does not extend to reassessing the evidence, the facts, or the merits of the case that the arbitral tribunal has examined and decided.

Proposed Article 72(4)

A District Court decision on an annulment application may be challenged only by appeal to the Supreme Court, which decides at first and final instance within ninety days of receiving the appeal and may examine both the facts and the application of the law in full.

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