

# CHAPTER ONE

## INTRODUCTION

### A. Background

Since 2011 until 2016, Supreme Court has settled 72 Arbitration Cases.<sup>1</sup> Based on the data that owned by Supreme Court, it is explained that there were many requests to annul an arbitration award either with reason out of context of article 70 or the reason in line with article 70 of Law of 1999 on Arbitration and Alternative Dispute Resolution Law (ADR).

The court may not refuse any cases which purposed with any reason, then it's the obligation to the legal enforcer, but there is exception for Arbitration cases. That exception was strengthened by the existence of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. Article 11(2) stated that the court shall refuse and not interfere in settlement of any dispute which has been determined by arbitration except in particular cases determined in this Act. If the parties had agreed to settle their dispute by arbitration, so the arbitration award is final and binding and it can't be changed.

Since arbitration institutions have more advantages compared to the judiciary, so the businessman more prefer to use Arbitration to settle their dispute. The advantages are among other:<sup>2</sup>

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<sup>1</sup> Supreme court/Supreme court decision/<http://putusan.mahkamahagung.go.id/pengadilan/mahkamah-agung/direktori/perdata-khusus/arbitrase> accessed on august 6<sup>th</sup>, at 2016, 00.02 AM.

<sup>2</sup> Fadia Fitriyanti, 2017, The Inconsistency of Supreme Court Decision to Annul the Arbitral Award in Indonesia, "Proceedings International Conference on Law & Society", Yogyakarta, Faculty of Law, Universitas Muhammadiyah Yogyakarta, p. 241.

1. Guaranteed confidentiality of the parties' dispute
2. The inevitable slowness caused due to procedural and administrative matters
3. The parties can choose the Parties can choose the arbitrator who he believes to have the knowledge, experience as well as sufficient background on the issues in dispute and fair
4. The parties may determine the choice of law to resolve the problem as well as the process and the venue for the arbitration and
5. The arbitral award is binding on the parties through the simple procedure or it can be immediately implemented

Basically arbitration award is final and binding upon the parties to the dispute as stated in article 60, but it does not mean to prohibit and limit the parties to request the annulment of arbitration award. Article 70 stated:

*“An application to annul an arbitration award may be made if any of following condition are alleged to exist:*

- a. Letter or document submitted in the hearing are acknowledged to be false or forged or are declared to be forgeries after the award has been rendered;*
- b. After the award has been rendered documents are founded which are decisive in nature and which are deliberately concealed by opposing party; or*
- c. The award was rendered as a result of fraud committed by one of the parties to the dispute.”*

However, in practice, the annulment of arbitration award was based on article 70 decided inconsistently by District Court and the Supreme Court. In 2012, Supreme Court Settled a case of annulment of arbitration award of BANI No. 378/I/ARB-BANI/2011. Supreme Court decided to annul South Jakarta District Court decision No. 306/Pdt. G/BANI/2014/PN Jkt.Utr. which annul arbitration award of BANI No. 378/I/ARB-

BANI/2011. Supreme Court admits annulment of arbitration award can only be done on the basis of reasons contained in article 70 of Arbitration law.<sup>3</sup> While, In 2014 Supreme Court decided the annulment of arbitration award that shall be implemented on the basis of reasons outside of article 70 of Arbitration Law.<sup>4</sup> Surely the Supreme Court decision raises legal uncertainty and injustice to the disputant parties.

Based on above conditions, the researcher is interested in researching inconsistencies the Supreme Court Decision No. 26 B/Pdt.Sus-Arbt/2014 which decided the annulment of the arbitral award.

## **B. Research Problem**

1. How is the mechanism of arbitration award annulment based on article 70 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution?
2. What is the legal consideration of Supreme Court decision No. 26 B/Pdt.Sus-Arbt/2014 which is inconsistency based on Arbitration Law?

## **C. Objective of Research**

1. To know the mechanism of annulment of an arbitration award based on article 70 of law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.
2. To analyze the legal consideration of Supreme Court decision No. 26/Arb.G-Btl/2014 which is inconsistent based on Arbitration Law.

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<sup>3</sup> Supreme Court decision No.293 K/Pdt.Sus/2012

<sup>4</sup> Supreme Court decision No.26 B/Pdt.Sus-Arbt/2014

#### **D. Benefits of Research**

This research provided benefits as follows:

##### 1. Theoretically

This research will provide the understanding on the mechanism of annulment of an arbitration award and to increase my knowledge about the Arbitration Law especially the mechanism of annulment of arbitration award, and how the implementation of that law in the practice. The benefits of this research also to obtain the degree of Bachelor of Laws at Faculty of Law Universitas Muhammadiyah Yogyakarta.

##### 2. Practically

This research will propose some recommendations to the judges of General Court, Justice of Supreme Court, Arbitor and the society related to the issue of annulment of an arbitration award based on Arbitration Law No. 30 of 1999.