

The Legality of Inclusion of The Indonesian National Arbitration Board as The Responsible Responsible in The Application for Announcement of The Arbitration Award

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Article Info

Article history:

Received Jul, 2026

Revised Jul, 2026

Accepted Jul, 2026

Keywords:

Arbitration

BANI

Annulment of Arbitral Awards

Ultra Vires

Indonesia

ABSTRACT

This study is motivated by the recurring practice of naming the Indonesian National Arbitration Board (BANI) as the Respondent in applications for the annulment of arbitral awards, despite being inconsistent with Law Number 30 of 1999 and Supreme Court Regulation Number 3 of 2023. This research aims to examine the limits of the District Court's authority in reviewing applications for annulment of arbitral awards and to determine whether judgments imposing liability on BANI may be classified as ultra vires. The findings indicate that the District Court's authority is limited to examining the statutory grounds for annulment under Article 70 of the Arbitration Law. The inclusion of BANI as a respondent constitutes an error in person, while any judgment imposing liability on BANI exceeds the court's legal authority and therefore may be classified as an ultra vires decision.

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1. INTRODUCTION

No one wants to have a dispute with another person. However, in a business relationship or agreement, each party must anticipate the possibility of a dispute arising at any time in the future. Anticipated disputes can arise from differences in interpretation regarding how to implement the agreement's clauses or the content of its provisions, or from other factors [1]. Dispute resolution can be achieved through two processes. The oldest dispute resolution process is litigation in court, followed by the development of cooperative dispute resolution processes outside the courts. Litigation results in adversarial agreements that fail to embrace

shared interests, tend to create new problems, are slow to resolve, require high costs, are unresponsive, and foster hostility between the disputing parties [2].

One way to resolve disputes is arbitration, which is a way to resolve disputes outside the court, based on an arbitration agreement made by the parties, and carried out by an arbitrator who is selected and given the authority to make decisions [1]. Arbitration is a mechanism for resolving civil disputes outside the general courts which can only be used if the parties expressly agree in a written arbitration agreement, so that from the outset the parties transfer the competence to resolve their disputes from the courts to a private forum of their own choosing, as

defined in Article 1 number 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution ("Law 30/1999").

The history of the formation of the Indonesian National Arbitration Board (BANI) began with discussions about the need for "private justice" as an autonomous and independent institution for resolving commercial disputes [1]. An arbitration agreement can be in the form of an arbitration clause included in the main contract before a dispute arises or a separate arbitration agreement made after the dispute arises, so that the legal relationship of the parties explicitly subjects any disputes that arise to the arbitration mechanism as stated in Article 1 number 3 and Article 2 of Law 30/1999. Therefore, the district court loses its authority to adjudicate disputes between parties who have been bound by an arbitration agreement, because Article 3 of Law 30/1999 expressly states that the district court is not authorized to examine and decide on disputes that have been submitted for resolution through arbitration.

On the other hand, an arbitration institution is understood as a body chosen by the parties to provide a decision regarding a particular dispute and, in certain circumstances, may also be asked to provide a binding opinion regarding a legal relationship before the dispute arises, as formulated in Article 1 number 8 of Law 30/1999 and reaffirmed in Article 1 number 8 of Supreme Court Regulation Number 3 of 2023 concerning Procedures for Appointing Arbitrators, Examination of Applications for Enforcement and Cancellation of Arbitration Awards ("Perma 3/2023").

Disputes resolved by arbitration institutions are disputes originating from the commercial trade sector, including transactions for exports and imports, distribution agreements, banking, insurance, passenger transport, aircraft, ships, concessions, joint venture companies, and so on [3]. Furthermore, Article 5 paragraph (1) of Law 30/1999 limits that only disputes in the field of trade and regarding rights which according to law and statutory regulations are

fully controlled by the parties can be resolved through arbitration, while Article 5 paragraph (2) of Law 30/1999 excludes disputes which according to statutory regulations cannot be resolved through peace, so that this law does not apply to personal status cases or other disputes which are non-compromising in nature.

The main requirement for an arbitration process is the obligation for the parties to make a written agreement or arbitration agreement (arbitration clause or arbitration agreement), and then agree on the law and procedures for how they will resolve their dispute [3]. Within this framework, Article 3 of Law 30/1999 emphasizes that the District Court is not authorized to adjudicate disputes between parties who have been bound by an arbitration agreement, which shows that the scope of this law's regulations also includes the transfer of authority from the court to an arbitration institution, both in terms of the implementation of arbitration and its legal consequences.

This provision must be read with reference to Article 1 number 3 of Law 30/1999 which defines an arbitration agreement as a written agreement of the parties to submit all disputes that arise or may arise from a certain legal relationship to arbitration, as well as Article 2 of Law 30/1999 which confirms that this law regulates the resolution of disputes between parties which expressly states that all disputes will be resolved through arbitration or alternative dispute resolution. The valid requirements for an arbitration clause are regulated in Article 9 of Law 30/1999, must be written, signed by the parties, and contain the main rights, namely the disputed issue, the name and residence of the parties, the name of the arbitrator or arbitration institution, the place of arbitration, and the language used [4].

With the existence of an arbitration agreement as referred to in Article 1 number 3 and Article 2 of Law 30/1999, absolute competence over the subject matter of the dispute is transferred from the District Court to the arbitration institution, so that the court is no longer authorized to examine and decide on the subject matter of the dispute and is only positioned to carry out limited functions, such

as at the registration stage, implementation, or cancellation of the arbitration award based on very limited reasons in Articles 70-72 of Law 30/1999 without re-evaluating the subject matter. The arbitration award is a final decision that must be implemented either voluntarily or by force through court execution. Which in other terms is called final and binding, thus closing the appeal and cassation efforts [3].

Against BANI Decisions, there are legal remedies that are often taken by Parties who feel there has been a violation in the arbitration process, namely by filing for the annulment of the arbitration decision at the District Court where the Arbitration Decision was registered. The process of annulment of BANI decisions basically follows the provisions for the annulment of arbitration decisions in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration Law) and Supreme Court Regulation Number 3 of 2023 (Perma 3/2023), by limiting the reasons for annulment of arbitration decisions only to extraordinary circumstances as regulated in a limited manner in Article 70 of the Arbitration Law.

Article 70 of the Arbitration Law states that the parties may submit a request to annul an arbitration award, only if the award is suspected of containing:

1. letters or documents submitted in the examination, after the decision has been rendered, are acknowledged as false or declared false, as formulated in Article 70 letter a of the Arbitration Law;
2. after the decision is made, a document is found that is decisive, which was previously hidden by the opposing party, as stipulated in Article 70 letter b of the Arbitration Law; or
3. the decision was taken as a result of deception carried out by one of the parties in the dispute examination, as regulated in Article 70 letter c of the Arbitration Law.

In fact, Article 70 of the Arbitration Law only grants the right to file an annulment request to the "parties" in an arbitration award, so that only parties bound by the arbitration agreement and parties to the BANI process can be Petitioners. Article 71 of the Arbitration Law requires that an application for an annulment request for an arbitration award be submitted in writing within a maximum of 30 (thirty) days from the date of submission and registration of the arbitration award with the Clerk of the District Court. Perma 3/2023 stipulates that in the event of an application for annulment of a national arbitration award, the arbitrator and/or arbitration institution are not parties to the annulment case, so BANI cannot be positioned as the Respondent for the annulment. This provision is the basis that the only subjects who can be Petitioners and Respondents are the disputing parties in the arbitration agreement, not the arbitration administering institution.

Article 70 of the Arbitration Law states that "the parties" may file a request for cancellation of an arbitration award if the award is suspected of containing false documents, decisive documents hidden by the opposing party, or trickery by one of the parties, so that grammatically and systematically Article 70 of the Arbitration Law binds the legal relationship of cancellation only between the contractual parties. There is Decision Number 479/Pdt.Sus-Arb/2024/PN.Jkt.Tim which is a Decision on the Request for Cancellation of the Arbitration Award filed by PT. Mitsubishi Motors Krama Yudha Sales Indonesia as the Plaintiff/Applicant with PT. Nusantara Berlian Motor as Defendant I/Respondent I and the Indonesian National Arbitration Board as Defendant II/Respondent II. With the verdict "Granting and accepting the Petitioner's Request for Cancellation in part" and "Punishing Respondent I and Respondent II to pay the costs arising in this case jointly and severally, which to date is estimated at Rp. 316,000.00 (three hundred and sixteen thousand rupiah)".

The annulment request that lists BANI as the Respondent, and the decision that “punishes BANI as the Respondent”, is contrary to the Arbitration Law and Perma 3/2023, so that it is legally flawed in subject (error in persona) and exceeds authority (*ultra vires*) in the part that touches BANI. In addition, the Annulment Request that includes BANI as the Respondent also occurred in Case Number 690/Pdt.Sus-Arb/2025/PN.Jkt.Sel, Case Number 182/Pdt.Sus-Arb/2026/PN.Jkt.Sel and 291/Pdt.Sus-Arb/2025/PN.Jkt.Sel. Based on the problems as explained above, the following is the formulation of the research problem, namely: 1) What are the limits of the district court's authority in adjudicating a request for annulment of an arbitration decision? and 2) Can the decision punishing the National Arbitration Board as the Respondent in the case of annulment of an arbitration decision be qualified as *ultra vires*?

2. RESEARCH METHODS

This study employs a normative legal research method, which focuses on examining legal norms, principles, doctrines, and provisions related to the annulment of arbitral awards, as well as the role of the Indonesian National Arbitration Board (BANI) in cases involving the annulment of arbitral awards. The approaches used include a statutory approach and a case-based approach. The statutory approach involves examining Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, Supreme Court Regulation No. 3 of 2023, and other regulations pertaining to the jurisdiction of courts and the process of setting aside arbitration awards.

The case-based approach involves analyzing court decisions that name BANI as the respondent in petitions to set aside arbitration awards, particularly Decision No. 479/Pdt.Sus-Arb/2024/PN.Jkt.Tim, as well as several other relevant cases. This analysis aims to identify the appropriate legal standing of the parties, the limits of the District Court's jurisdiction, the possibility of an “error in persona,” and the *ultra vires*

nature of the judgment's disposition that imposes a burden or penalty on BANI.

The legal materials used consist of primary legal sources, such as laws and regulations and court decisions, as well as secondary legal sources, such as books, journal articles, and expert opinions in the fields of arbitration law and civil procedure law. All legal materials were collected through a literature review and then analyzed qualitatively using grammatical and systematic interpretation methods. The results of the analysis were organized prescriptively to determine the appropriate legal framework regarding the parties in a petition to set aside an arbitral award and the limits of the court's jurisdiction in examining and deciding such cases.

3. RESULTS AND DISCUSSION

3.1 Limits of the District Court's Authority in Adjudicating Requests to Annul Arbitration Decisions

1. Authority of the District Court

The existence of an agreement to resolve disputes through arbitration which is stated in an arbitration clause or agreement, has legal consequences in the form of absolute competence for arbitration to resolve disputes arising from the main agreement [5]. The arbitration decision is final and binding, meaning that the decision cannot be subject to legal action such as appeal or cassation, and the decision is binding on the parties to comply with it voluntarily in good faith because before the decision was made they had also agreed to resolve it through arbitration with all its consequences [6].

The cancellation of an arbitration award is regulated separately by Law Number 30 of 1999, namely in Chapter VII, Articles 70, 71, and 72 of Law 30/1999. Decisions that are submitted for cancellation in writing to the district court, calculated no later than 30 (thirty) days from the date of submission and registration of the arbitration award to the District Court Clerk [7]. The role of the courts in arbitration proceedings is currently increasingly important. They are not

only involved in the execution of an arbitration award but also in other matters, such as the appointment of arbitrators, as regulated in Articles 13 and 14 of Law 30/1999, and the annulment of an arbitration award, as regulated in Law 30/1999 [6]. The reasons for annulling an arbitration award in Indonesian law are very limited because Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution expressly only opens up room for annulment in certain extraordinary circumstances, thus limiting the authority of the District Court from changing to an "appeal level" for an arbitration award.

Arbitration decisions cannot be challenged, cassated, or reviewed, but may be appealed to the Supreme Court. The appeal must be submitted in writing to the Chief Justice of the Supreme Court within one month of the decision being notified to the interested parties, accompanied by copies of the decision and other necessary documents [2]. An application for annulment of an arbitration award may only be submitted on the basis that the award is based on: (a) a letter or document submitted during the examination, after the award has been rendered, is acknowledged to be false or is later declared false; (b) after the award has been rendered, a document of a decisive nature is discovered which was hidden by the opposing party at the time of the examination; or (c) the award was obtained as a result of deception carried out by one of the parties during the dispute examination, as formulated in a limited manner in Article 70 of Law 30/1999 and explicitly reiterated in Article 24 paragraph (4) of Supreme Court Regulation Number 3 of 2023.

The authority of the District Court in cases of annulment of arbitration awards is limited only to test whether or not the three specific reasons are met, so that the court is prohibited from expanding the grounds for annulment, for example by re-evaluating the application of material law or the assessment of evidence by the arbitrator, because this would be contrary to the final and binding nature of the arbitration award which is the basis of the arbitration regime in Article 1 number 1, Article 2, and Article 3 of Law

30/1999, and blur the line between the extraordinary annulment mechanism and the re-examination of the main dispute as in the ordinary court process.

The authority of the District Court regarding arbitration decisions is limited to examining very limited formal and material requirements so that the court may not enter into the main points of the dispute that have been examined by the arbitrator. Formally, the District Court only examines whether the dispute for which execution or cancellation is requested is indeed within the scope of arbitration, namely civil disputes in the field of trade and regarding rights that are fully controlled by the parties as limited by Article 5 paragraph (1) of Law 30/1999, and whether there is truly a valid written arbitration agreement between the parties as defined in Article 1 number 3 and affirmed by Article 4 paragraph (2) of Law 30/1999 because dispute resolution by an arbitrator has very different procedures and stages than in the District Court. The initiation of an arbitration settlement decision must begin at the request of the disputing parties. The Arbitration Law Rules emphasize that an agreement must be reached first at the beginning of the arbitration dispute resolution process. This agreement can result from a cooperation agreement initially made by the parties, with the provision that future disputes will be resolved by an arbitration body [8].

In addition, the court also ensured that the parties were indeed "bound by an arbitration agreement" so that the District Court was not authorized to adjudicate the main points of the dispute in accordance with the explicit prohibition of Article 3 and Article 11 paragraph (1) of Law 30/1999, which eliminates the right of the parties to submit a dispute to the District Court if there is already an arbitration agreement. On the material side, the District Court's testing space is limited to reasons that are limited by law, namely only assessing whether there are special circumstances as referred to in Article 70 of Law 30/1999. Where the phrase "as follows" in Article 70 of Law No. 30/1999 shows the limited nature of the reasons for canceling an arbitration decision, because this

phrase means that the reasons that can be used as a basis for canceling an arbitration decision are limited to the reasons stated in Article 70 of Law No. 30/1999 [9]. The test is without re-evaluating the interpretation of material law or the assessment of evidence by the arbitrator, so that the role of the court is purely as a tester of formal compliance with the arbitration requirements and a guard so that the arbitration award is not obtained through means that are contrary to law and public order, in line with the principle that the arbitration award is final and binding as contained in the general construction of Article 1 number 1, Article 2, Article 3, and Article 11 of Law 30/1999.

The authority of the District Court in arbitration cases is also regulated through Supreme Court Regulation Number 3 of 2023 as an operational procedure at the authority level, Article 2 paragraph (1) of Perma 3/2023 reaffirms that the District Court has the authority to hear requests for cancellation of arbitration decisions and implement arbitration decisions, so that the function of the District Court is confirmed not as a forum to examine the main points of the dispute, but as a limited forum for execution and cancellation in accordance with the special regime of Law 30/1999 which prohibits the District Court from hearing disputes that have been arbitrated as regulated in Article 3 of Law 30/1999.

Perma 3/2023 then details the authority by determining that the civil registrar accepts registration of applications for the implementation and cancellation of arbitration awards at the District Court, while the panel of judges has the authority to hear applications for cancellation as stated in Article 3 paragraph (1) and paragraph (3) of Perma 3/2023, which regulates the authority of the District Court in Law 30/1999 into the administrative and trial process. Where the party whose arbitration award is declared the loser and who in their opinion has reasons to request cancellation, the claim must be submitted to the District Court, with the court domicile according to the place where the award should be stored. Applications for cancellation of arbitration awards must be

submitted no later than 30 (thirty) days from the day the arbitration award is submitted and registered with the local District Court Clerk [8]. Perma 3/2023 also confirms the limitative and procedural nature by explicitly requiring that an application may only be submitted if the arbitration award is suspected of containing one of three specific reasons (false documents, the discovery of hidden documents, or deceit by one of the parties) as reformulated in Article 24 paragraph (1) and paragraph (4) of Perma 3/2023 based on Article 70 of Law 30/1999.

3.2 Limits of the District Court's Authority in Adjudicating Requests to Annul Arbitration Decisions.

Disputes can happen to anyone, anywhere. Disputes can occur between individuals, individuals and groups, groups and groups, companies and companies, companies and countries, or countries and countries [10]. Meanwhile, a legal dispute is a dispute that has legal consequences due to a violation of positive legal rules, where the violation conflicts with a person's rights and obligations [8].

Although arbitration decisions cannot be appealed, cassated, or judicially reviewed, in reality, not all decisions issued by arbitration forums satisfy the disputing parties, and it is not uncommon for dissatisfied parties to file a petition to the court to annul the arbitration decision [11]. Within the limits of the District Court's authority to adjudicate on applications for annulment of arbitration decisions, the term "parties" in an application for annulment refers to the legal subjects who are bound by the arbitration agreement and are the disputing parties in the arbitration process itself, namely the Applicant and the Respondent, not the arbitrator or the arbitration institution.

In dispute resolution through arbitration, the decision regarding the dispute is made by an arbitrator. The arbitrator acts as a third party who mediates in carrying out their duties and resolves the dispute by issuing a decision. In this case, the arbitrator

must be neutral and not take sides with either party [7]. As defined by the definition of "Applicant" and "Respondent" as the party submitting the request for annulment of the arbitration decision to the court and the opposing party in the arbitration dispute as formulated in Article 1 number 5 and number 6 of Supreme Court Regulation Number 3 of 2023, so that the structure of the parties in the annulment case in the District Court basically regulates that the party requesting annulment is the party in the original arbitration case (claimant and respondent).

Perma 3/2023 emphasizes that in the event of a request for annulment of an arbitration award, the arbitrator and/or arbitration institution is not a party, as expressly regulated in Article 24 paragraph (6) of Perma 3/2023, so that the authority of the District Court only touches the legal relationship between the disputing parties, without placing the arbitrator or arbitration institution as a subject that can be sued or held responsible in the request for annulment. In the provisions on annulment of arbitration, it should be a control over the arbitration process against the possibility of fraud committed by the parties or errors by the arbitrator. In practice, even judges still examine and decide cases where the Arbitration Board that issued the Arbitration award that is being requested to be annulment is not withdrawn as a defendant [6].

This is in accordance with the understanding of arbitrators and arbitration institutions as neutral decision-makers, as formulated in Article 1 number 7 and number 8 of Perma 3/2023, as well as with the character of the annulment request in Article 70 of Law Number 30 of 1999 which positions annulment as an extraordinary mechanism to test whether the arbitration award is tainted by false documents, hidden decisive documents, or trickery by one of the parties, so that the focus of the District Court's test remains on the behavior and relationship of the material parties in the dispute, not on the arbitrator or his institution.

The authority of the district court as a general court is to examine, try, and decide criminal and civil cases in accordance with the

provisions of statutory regulations. The statutory regulations governing the general court environment are Law Number 2 of 1986 which has been amended by Law Number 8 of 2004 concerning General Courts as the first amendment and Law Number 49 of 2009 as the second amendment and Law Number 48 of 2009 concerning Judicial Power [10]. The prohibition on the District Court to adjudicate disputes that have been arbitrated is firmly stated in Article 3 of Law 30/1999 which states that the District Court is not authorized to adjudicate disputes between parties that have been bound by an arbitration agreement, because the existence of an arbitration clause eliminates the right of the parties to bring the main dispute to the District Court and requires the court to refuse and not interfere with the arbitration process except in certain cases that are limitedly determined by law.

The binding force of a decision is that what has been examined and decided by the court may not be submitted to a court of the same standing for a second time, known as the principle of *ne bis in idem*. With the issuance of a final decision, the dispute being examined is automatically ended. The disputing parties must comply with and implement the final decision. An arbitration decision must be final and binding unless the parties do not wish it to be so or if there are reasons related to "due process" [7]. Therefore, the authority of the District Court is only possible at special stages such as registration and implementation of national and international arbitration decisions, as well as testing of cancellation requests whose reasons are determined in secret (false documents, discovery of hidden documents, or trickery by one of the parties) based on Article 70 of Law 30/1999.

This limitation is then reaffirmed in Article 24 paragraph (4) of Perma 3/2023 which confirms that the District Court has the authority to hear applications for cancellation and enforce arbitration decisions as regulated in Article 2 paragraph (1), but on the other hand procedurally locks the court's room for maneuver by setting a deadline for submission (30 days from the submission and registration of the arbitration decision to the clerk) in Article 24 paragraph (1) and

confirming that in applications for cancellation the arbitrator and/or arbitration institution are not parties as in Article 24 paragraph (6), so that the court only carries out limited (limitative) testing, not a re-examination of the main case.

With the cancellation of the explanation, the court examining the application for cancellation of the arbitration decision is given the authority to assess or decide whether the reasons put forward by the applicant for cancellation are reasonable or not without having to wait for or consider the court's decision regarding document falsification in the arbitration process [6]. The authority of the District Court in annulling an arbitration decision is a limited correction and should not be positioned as an appeal level against an arbitration decision, because from the beginning the law has transferred absolute competence over the subject matter of the dispute from the court to the arbitration forum through a written arbitration agreement as defined in Article 1 number 3 and Article 2 of Law Number 30 of 1999.

The provisions in Article 21 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution state that the Arbitrator or Arbitration Panel cannot be held legally responsible for any actions taken during the trial process to carry out their functions as Arbitrator or Arbitration Panel, unless it can be proven that there was bad faith in the action [12]. The function of BANI in the context of the limits of the District Court's authority to adjudicate requests for annulment of arbitration decisions is purely as an adjudicative institution (decision maker), not as a party to the dispute or a party to the request for annulment, so that the District Court does not have the authority to treat BANI as the Applicant, Respondent, or Co-Respondent.

Further regulations emphasize that the mechanism for annulling an arbitration award is only granted to the "parties" in the award based on Article 70 of Law 30/1999, which in a limited manner grants the right to request annulment to parties bound by an arbitration agreement and involved as parties to the dispute, so that third parties or

arbitration institutions such as BANI do not have the capacity as subjects of the applicant or respondent for annulment. Supreme Court Regulation Number 3 of 2023 also defines "Applicant" and "Respondent" as the parties who submit and who are opponents in an application for the implementation or annulment of an arbitration award in court in Article 1 number 5 and number 6 of Perma 3/2023, so that it has been stated that in the event of an application for annulment of an arbitration award, the arbitrator and/or arbitration institution are not parties as directly regulated in Article 24 paragraph (6) of Perma 3/2023.

3.3 The Decision Sentencing the National Arbitration Board as Respondent in the Case of Annulment of an Arbitration Award Can Be Qualified as Ultra Vires

1. Characteristics of Ultra Vires Decisions.

An ultra vires decision must be declared invalid even if the decision is based on good faith or is in accordance with the public interest [4] The concept of ultra vires in the context of judicial power refers to actions or decisions that exceed the authority expressly granted by law to a judicial body or adjudicative forum, so that the court or institution acts outside the limits of its legal mandate.

Article 56 paragraph (1) of Law 30/1999 allows arbitrators to apply the Ex Aequo et Bono principle, namely justice and fairness, in addition to applying applicable legal provisions which are mandatory law. In this case, the arbitrator can set aside legal rules as long as the legal regulations set aside are not mandatory law. The explanation of Article 56 paragraph 1 of Law 30/1999 states that basically the parties can enter into an agreement to determine that the arbitrator in deciding the case must be based on legal provisions or in accordance with a sense of justice and fairness (Ex Aequo et Bono) [13]

Likewise, the provisions of Article 70 of Law 30/1999 and its explanation are interpreted differently by judges, resulting in

different implications. Then, with the issuance of Constitutional Court Decision No. 15/PUU/XII/2014 which annulled the Explanation of Article 70 of Law 30/1999, it has strengthened the role of the courts in interpreting Article 70. This has resulted in the absence of a clear mechanism governing the procedure for annulling arbitration awards under Law 30/1999 in Indonesia [14]. The conflict with Perma 3/2023 is one of the main characteristics of an *ultra vires* decision in the context of judicial supervision of arbitration, because the judge deviates from the limits of authority and procedures that have been explicitly detailed by the regulation. When Article 2 paragraph (1) of Perma 3/2023 states that the district court only has the authority to hear requests for annulment and enforce arbitration decisions, the judge's room for maneuver in arbitration cases is limited to those two functions only, so that any decision that expands the function, for example re-adjudicating the subject matter of the dispute, is basically contrary to the explicit formulation of this authority and has the potential to be *ultra vires*.

The annulment request by including BANI is an Error in Persona because the Applicant has made a mistake in placing BANI as the issuer of the arbitration decision as a party in the annulment request, thus causing the request to be formally flawed. The District Court considers it based on Article 1 number 4 and Article 1 number 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. It can be concluded that the application for annulment of the arbitration decision is submitted to the Head of the District Court whose jurisdiction includes the Respondent's residence. The Respondent is the cloud party of the Applicant in the dispute resolution through arbitration. Therefore, it is clear that the law has provided limitations on who has the right to be a party in the case of the application for annulment of the BANI decision, none other than the Applicant and the Respondent in the arbitration case [12].

Similarly, Article 24 paragraph (4) of Perma 3/2023 restrictively repeats the three reasons for cancellation that have been

formulated in Article 70 of the Arbitration Law, namely the alleged use of fake letters/documents, the discovery of hidden decisive documents, or the existence of trickery by one of the parties, so that if the judge cancels the arbitration award by adding other reasons outside of these three categories, the order is clearly contrary to the explicit norms of Perma 3/2023 and contains an *ultra vires* character. Article 24 paragraph (6) of Perma 3/2023 expressly states that in a request for cancellation of an arbitration award, the arbitrator and/or arbitration institution is not a party, so that any decision or decision that accepts the withdrawal of the arbitrator or arbitration institution as the Respondent or co-Respondent has violated the construction of the party formulated in Article 1 number 5 and number 6 in conjunction with Article 24 paragraph (6) of Perma 3/2023 and therefore can be seen as an action exceeding the normative authority of the court.

Individual rights are strictly protected under civil law, to the point that even a final and binding court decision containing *ultra petita* can be overturned by the Supreme Court. A judge who commits *ultra petita* is deemed to have exceeded his authority, or is *ultra vires*. A decision is considered *ultra vires* if it exceeds jurisdiction, violates procedural requirements, or ignores regulations and justice. Such a decision must be declared invalid even if it was based on good faith or is in the public interest [3].

The main consequence of an *ultra vires* decision regarding the validity or otherwise of a request in the regime of annulment of an arbitration decision is that once the court deviates from the limits of authority and procedures expressly regulated in 30/1999 and Perma 3/2023, the legality of the decision on the request is disturbed, when the court continues to examine the main case and even grants or rejects a request that normatively should "not meet the formal requirements", then the decision on the request has an *ultra vires* character because the process ignores the explicit orders of the norm-former, so that from a procedural law

perspective the request is treated as if it were valid and examined, even though normatively it should be positioned as unacceptable (niet ontvankelijk).

Perma 3/2023 explicitly determines who may be a party, by defining the Applicant and Respondent as parties in the application for implementation or cancellation according to Article 1 number 5 and number 6 and confirming that in the application for cancellation, the arbitrator and/or arbitration institution is not a party in Article 24 paragraph (6) Perma 3/2023, so that if the court accepts and examines an application that attracts BANI or the arbitrator as the Respondent, then from a procedural law perspective, the application is flawed from the start (error in persona) and is not valid for examination; any decision that still adjudicates the main application with these prohibited parties is *ultra vires* in character, and the "valid" status of the application can only be restored by placing the application as inadmissible due to the fault of the party, not as an application that is examined and decided.

Based on the provisions of Article 21 of the Arbitration Law, the law and law grant immunity rights to BANI and the Arbitration Panel or to Arbitration Members from civil liability claims for all actions they take in the trial examination process. This is in line with the immunity rights granted by SEMA No. 9 of 1976 dated December 16, 1976 to the Court and Judges. SEMA No. 9 of 1976, among other things, emphasizes that a Judge or official acting as a Judge cannot be held responsible and sued before a civil court as long as the Judge acts in good faith [12]. The relationship between the characteristics of an *ultra vires* decision and the doctrine of "functional immunity" lies in the extent that immunity only protects the actions of a judge or arbitrator to the extent that they are carried out within the corridor of legitimate authority, so that when a decision is issued beyond the normative competence granted by law, this immunity conceptually can no longer be used as a shield against judicial correction or cancellation.

In Law 30/1999, it provides a finality "shield" for arbitration awards in Article 60 of Law 30/1999, which in practice is understood as a form of functional immunity against court intervention, however, this "immunity" is strictly limited by Article 70 of Law 30/1999 which allows for cancellation only if the award is obtained through the use of false documents, the discovery of previously hidden decisive documents, or the deception of one of the parties, so that if the arbitration panel acts outside the scope of the arbitration agreement or outside the dispute that can be arbitrated, or bases the award on fraudulent acts as constructed in Article 70 of Law 30/1999, the award is substantively outside the scope of the protected function and can be treated as *ultra vires* without conflicting with the principle of functional immunity.

Perma 3/2023 also provides "functional immunity" for the District Court in the sense that the court may not be positioned as an appeals agency for arbitration decisions, because Article 2 paragraph (1) of Perma 3/2023 limits the function of the District Court only to cancellation and implementation, and Article 24 paragraph (4) of Perma 3/2023 locks the reasons for cancellation to the three reasons of Article 70 of Law 30/1999, so that when the judge complies with this provision, any objections from the parties to the content and reasoning of the arbitration decision cannot be directed as the "personal responsibility" of the judge or arbitrator, but must be accepted as a consequence of functional immunity within the framework of legitimate authority.

In fact, when the court or arbitrator exceeds the established procedural and material boundaries, such as when the District Court re-examines the main points of the dispute as if it were an appeal, or the arbitration panel decides on matters that were not submitted to it, then the resulting decision has an *ultra vires* character because it is contrary to Law 30/1999 and Perma 3/2023, and at this point functional immunity no longer works as absolute protection, but is subject to correction through the mechanism of cancellation, refusal of execution, or

cancellation at the cassation level as analyzed in judicial practice.

3.4 Decision on the Imposition of Punishment on the Indonesian National Arbitration Board

1. Testing BANI's Punitive Ruling on the Limits of Authority

The Arbitration Council and BANI as an arbitration institution which in this case was drawn as a Co-Respondent did not make the Petitioner's request from the Petitioner a wrong party (Error in Persona), and besides that, it is also the Petitioner's right to determine who is drawn as a party in this case, so that the exception of the wrong party (Error in Persona) submitted by the Co-Respondent's legal counsel is legally groundless. With the reasons and considerations above, the exception submitted by the Co-Respondent's legal counsel is legally groundless, therefore it is legally declared rejected in its entirety [12].

The review of the court's decision that "punished" the Indonesian National Arbitration Board (BANI) must always be linked to the limits of authority in Law 30/1999 and Perma 3/2023, because these two regulations position the arbitration institution not as a subject that can be held civilly liable in the annulment forum, but rather as an organ that carries out adjudicative functions outside the state courts. The object of the review is the arbitration decision (award) and not the arbitration institution as a legal entity. Perma 3/2023 has defined the Applicant and Respondent as parties in the application for the implementation or annulment of the arbitration award in Article 1 number 5 and number 6, then determined that the district court only has the authority to hear the application for annulment and enforce the arbitration award according to Article 2 paragraph (1) Perma 3/2023, which means that the court's authority stops at testing: the fulfillment of the formal requirements of the application and the existence or absence of one of the three reasons in Article 70 of Law 30/1999.

If the court's decision then "punishes" BANI, for example by ordering the payment

of compensation, declaring BANI to have committed an unlawful act, or making BANI the Respondent who is found guilty, then the decision needs to be tested against the limits of authority because the scope of the annulment request is systematically directed only to the legal relationship and rights and obligations of the parties in the arbitration case, not to the arbitration institution as the organizer and because Perma 3/2023 has regulated the arbitration institution as the executor of the adjudicative function which is outside the constellation of "disputing parties", so that the withdrawal of the arbitration institution into the punishment order shifts the focus from correction of the decision to the criminalization of the institution which is actually given a legal mandate to adjudicate civil disputes outside the court according to Article 1 number 1, number 3, and number 8 of Law 30/1999. Therefore, the court's authority to utilize the annulment request to assess and punish BANI outside the scope of the specified examination can be qualified as *ultra vires* because it expands its competence from "testing the validity of the arbitration award" to "adjudicating the responsibility of the arbitration institution," something that was never provided by the legislators or Perma 3/2023.

In the Indonesian legal system, arbitration as an alternative out-of-court dispute resolution has long been recognized. Arbitration was introduced in Indonesia concurrently with the enactment of the RV (Reglement op de Burgerlijke Rechtsvordering) in 1847, as arbitration was originally regulated by Articles 615 to 651 of the Rv [2] The Rv (Reglement op de Rechthvordering) is a legal regulation that was in effect from the Dutch East Indies era until independence. This regulation was in effect before the issuance of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article 643 of the Rv regulates in more detail the circumstances that can lead to the annulment of an arbitration award. Based on Article 643 of the Rv, there are ten grounds that can be used as

a basis for annulment of an arbitration award [6].

A comparison with the Regulation on Rechtsvordering (RV) and the practice of “classical” annulment confirms that the court ruling that “punishes” the Indonesian National Arbitration Board (BANI) in an annulment request is a deviation from both tradition and current normative construction. Article 643 of the RV limits the list of 10 reasons for annulment of an arbitration award, such as an award exceeding the limits of the agreement, an award based on a void or expired agreement, an award rendered by an unauthorized arbitrator, an ultra/extra petita award, a conflict between rulings, negligence in deciding a petitum, a violation of procedural formalities with the threat of annulment, the use of forged letters, the discovery of a hidden decision letter, and fraud or bad faith; all of which are directed at the flawed decision and/or flawed process, not at the punishment of the arbitration institution as a subject with civil responsibility.

What constitutes public order remains difficult to define. There is no agreement on what constitutes public order as grounds for rejecting an arbitration award [1]. The relationship between the court decision that “punished” the Indonesian National Arbitration Board (BANI) and the concept of public order lies in the fact that public order was positioned by the legislators as a limit to court intervention in arbitration decisions, not as a basis for punishing the arbitration institution as the subject of a new dispute.

The definition of public order in Article 1 number 9 of Perma 3/2023 as “the basic principles required for the functioning of the legal system, economic system and socio-cultural system of the Indonesian people and nation” shows that this parameter is directed at the substance and impact of arbitration decisions on the legal and economic systems, for example when the Supreme Court in Decision No. 42 PK/Pdt.Sus-Arbt/2017 stated that the BANI decision could not be implemented because it was contrary to public order due to touching on a case that had been finally decided by the

Supreme Court so that the aim was for correction to be placed on the validity of the decision, not on the punishment of BANI as an institution.

It is difficult to classify an arbitration decision that is contrary to public order, there are criteria, namely the arbitration decision violates the arbitration procedures regulated in the country's laws, for example the obligation to register the arbitration decision in the local court is not implemented, the arbitration decision does not contain reasons, even though the country's laws require it, or if one of the parties does not have the opportunity to have their arguments heard before the arbitration decision is issued. In the national arbitration award enforcement regime, the chief justice is only authorized to assess whether the registered arbitration award meets the requirements of Article 4 and Article 5 of Law 30/1000 and “does not conflict with morality and/or public order” before ordering execution as stipulated in Article 9 and Article 11 of Perma 3/2023, so that public order here functions as a filter for the validity and implementation of the award, not as a door to change the configuration of the parties or make BANI a party that can be punished.

The annulment of an arbitration award is crucial in the implementation of arbitration, as it can impact public confidence in arbitration as an alternative dispute resolution. On the other hand, annulment is also necessary to control the possibility of injustice, arbitrariness, or deception in the implementation of arbitration. Therefore, the rules regarding the annulment of arbitration awards must carefully consider justice and ensure that the state maintains a balance between the needs of the parties and the need to support an independent arbitration institution [1].

The existence of the annulment of the arbitration award in Law 30/1999 provides a vague meaning to the final and binding principle where in reality the losing parties or those who feel that their interests are not accommodated in the arbitration award make the award not final and binding because the efforts to annul the arbitration award submitted are a loophole to take legal action

against the arbitration award even for reasons outside the provisions of Article 70 of Law Number 30 of 1999. It is not uncommon for the annulment of this arbitration award to be a way for the losing party to delay the execution process [7]. Therefore, when the court in the annulment case uses the pretext of public order to formulate a ruling that punishes BANI by stating that BANI acted against public order and then orders the payment of compensation, then the ruling has exceeded the limits in assessing the validity of the implementation of the BANI decision, and therefore has an *ultra vires* character exceeding the limits as regulated by Law 30/1999 and by Perma 3/2023.

4. CONCLUSION

The inclusion of the Indonesian National Arbitration Board (BANI) as a respondent in the application for annulment of an arbitration award is contrary to arbitration law, so that every district court decision that examines the main case and even grants the application with BANI as a party is qualified as an *ultra vires* decision. Law Number 30 of 1999 explicitly places the object of correction on the "arbitration award" and the legal relationship of the parties, not the arbitration institution, when Article 70 of Law 30/1999 only opens the possibility of annulment if the award contains false documents, hidden decisive documents, or trickery by one of the parties, so that the examination is on the decision of the BANI and the behavior of the parties, not on an institution such as BANI. Perma 3/2023 emphasizes this by defining the applicant and respondent as the parties who submit a request for the implementation or cancellation of an arbitration decision in Article 1 number 5 and number 6 of Perma 3/2023, then also regulates that the district court is only authorized to hear requests for cancellation of an arbitration decision and enforce an arbitration decision according to Article 2 paragraph (1) of Perma 3/2023, while Article 24 paragraph (4) of Perma 3/2023 locks the reasons for cancellation to the three reasons of Article 70 of Law 30/1999 without making the

arbitration institution a party that can be held accountable. So when the cancellation request includes BANI as the respondent, from the start there is an error in persona because the correct respondents according to the normative design are the parties to the arbitration dispute, not the arbitration institution and when the district court continues to examine and grant the request, the court has exceeded the limits of authority stipulated in Law 30/1999 in conjunction with. Perma 3/2023, so that the decision that punishes or even only "decides" against BANI in the framework of an annulment application is an *ultra vires* decision that is not in accordance with the law.

SUGGESTION

The need for reaffirmation at a higher regulatory level is due to the widespread disregard for the Supreme Court Regulation and judicial practice that arbitration institutions, including BANI, are not parties that can be sued or made respondents in requests for annulment of arbitration awards, because the framework of Law 30/1999 and Supreme Court Regulation 3/2023 has limitedly made BANI decisions and the legal relationship of the parties the only objects of correction through the annulment mechanism. As with Article 2 paragraph (1) of Perma 3/2023 which limits the authority of the district court only to the implementation and cancellation of arbitration awards, as well as Article 24 paragraph (1) and paragraph (4) of Perma 3/2023 which stipulates the deadline and specific reasons for cancellation, court practice should be directed to consistently declare that cancellation requests that formally configure BANI as the respondent are unacceptable because they contain an error in persona regarding the composition of the parties required by Law 30/1999 second, rejecting the ruling that punishes BANI, including the award of compensation or declaration of unlawful acts, so that the function of the court remains the task of testing the validity of the arbitration award based on Articles 70 - 72 of Law 30/1999 and not shifting the cancellation forum to become

a means of disputing the arbitration institution itself. So that it can maintain legal certainty and the integrity of the national

arbitration system, the ruling that punishes BANI in the cancellation request is ultra vires.

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