

RECONSTRUCTING THE EVIDENTIARY FRAMEWORK FOR THE ANNULMENT OF ARBITRAL AWARDS TO ENSURE LEGAL CERTAINTY

Mohamad Toha Hasan¹, Chairul Lutfi², Bintan Dzumirroh Ariny³

¹Universitas Islam Syekh Yusuf

²Universitas Islam Depok

³Universitas Islam Depok

Abstract: Article 70 of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution permits the annulment of an arbitral award on three specified grounds. Following Constitutional Court Decision Number 15/PUU-XII/2014, the elucidation requiring those grounds to be proven by a prior court judgment ceased to have binding force. Nevertheless, judicial decisions continue to diverge regarding the requirement of a prior criminal judgment. This normative legal study applies statutory, case, and conceptual approaches to South Jakarta District Court Decision Number 427/Pdt. Sus-Arbt/2021/PN JKT.SEL and Number 582/Pdt. Sus-Arbt/2021/PN Jkt.Sel in conjunction with Supreme Court Decision Number 244 B/Pdt. Sus-Arbt/2022, as well as the Central Jakarta District Court Decision Number 699/Pdt. G/2019/PN Jkt.Pst in conjunction with Supreme Court Decision No. 327 B/Pdt. Sus-Arbt/2021. The study finds a divergence between the criminal-judgment prerequisite and direct proof in annulment proceedings. It proposes a five-part evidentiary model: a specific allegation supported by initial evidence; allocation of the burden of proof to the applicant; differentiated proof for each ground in Article 70; prohibition on re-examining the merits of the arbitral dispute; and express judicial reasoning linking the proven procedural defect to the award. Statutory clarification and harmonization of Supreme Court guidance are necessary to improve legal certainty while preserving arbitration's finality.

Keywords: annulment of arbitral award, arbitration, evidence, judicial reasoning, legal certainty

Abstrak: Pasal 70 Undang-Undang Nomor 30 Tahun 1999 menetapkan tiga alasan pembatalan putusan arbitrase. Setelah Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014, Penjelasan Pasal 70 yang mensyaratkan putusan pengadilan terdahulu tidak lagi mengikat. Namun, putusan pengadilan masih berbeda mengenai kebutuhan putusan pidana terlebih dahulu. Penelitian hukum normatif ini menggunakan pendekatan perundang-undangan, kasus, dan konseptual terhadap Putusan PN Jakarta Selatan Nomor 427/Pdt.Sus-Arbt/2021/PN JKT.SEL, Putusan Nomor 582/Pdt.Sus-Arbt/2021/PN Jkt.Sel jo. Putusan MA Nomor 244 B/Pdt.Sus-Arbt/2022, serta Putusan PN Jakarta Pusat Nomor 699/Pdt.G/2019/PN Jkt.Pst jo. Putusan MA Nomor 327 B/Pdt.Sus-Arbt/2021. Hasil penelitian menunjukkan perbedaan antara pandangan yang mensyaratkan putusan pidana dan yang membolehkan pembuktian langsung. Penelitian ini menawarkan lima komponen pembuktian: dalil spesifik dan bukti permulaan, beban pembuktian pada pemohon, perbedaan pembuktian tiap alasan, larangan memeriksa ulang pokok sengketa, serta kewajiban menghubungkan cacat proses dengan putusan arbitrase. Harmonisasi regulasi dan pedoman Mahkamah Agung diperlukan untuk memperkuat kepastian hukum tanpa mengurangi finalitas arbitrase.

Kata kunci: pembatalan putusan arbitrase, arbitrase, bukti, kepastian hukum, pertimbangan hakim

[10.21154/invest.v6i1.14698](https://doi.org/10.21154/invest.v6i1.14698)



To cite this article: Hasan, M. T., Lutfi, C., & Ariny, B. D. (2026). Reconstructing the evidentiary framework for the annulment of arbitral awards to ensure legal certainty. *Invest Journal of Sharia & Economic Law*, 6(1), 94-110. DOI: 10.21154/invest.v6i1.14698

* Corresponding author: tohahasan94@gmail.com

INTRODUCTION

Certainty and effectiveness in dispute resolution are essential for a sound business climate. Arbitration is chosen because its procedure is relatively flexible, its awards are final and binding, and court intervention is limited. In Indonesia, this framework is governed by Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (the Arbitration Law). The finality of arbitration does not eliminate judicial supervision; it confines supervision to circumstances expressly prescribed by law.¹

Article 60 of the Arbitration Law provides that an arbitral award is final, has permanent legal force, and binds the parties to it. By way of exception, Article 70 allows the parties to apply for annulment where the award is alleged to contain one of the following three circumstances:

“The parties may submit an application for the annulment of an arbitral award if the award is alleged to contain any of the following elements:

- a. a letter or document submitted during the proceedings is, after the award has been rendered, acknowledged to be false or declared forged;
- b. after the award has been rendered, a decisive document is discovered that had been concealed by the opposing party; or
- c. the award was rendered as a result of fraud committed by one of the parties in the proceedings.”

Annulment is an extraordinary remedy directed at the integrity of the process by which an arbitral award was produced, not an appellate mechanism for reassessing the merits of a dispute. Therefore, courts must protect two interests simultaneously: providing relief where the arbitral process has been tainted by forged documents, the concealment of decisive documents, or fraud, and preserving the finality of arbitral awards so that annulment does not become a rehearing of the case.²

Constitutional Court Decision Number 15/PUU-XII/2014, pronounced on November 11, 2014, declared the Elucidation of Article 70 of the Arbitration Law to be contrary to the 1945 Constitution and without binding legal force. The Court held that the Elucidation introduced a new norm because the main text of Article 70 uses the

¹ Frans Hendra Winata, *Hukum Penyelesaian Sengketa* (Jakarta: Sinar Grafika, 2013); Heru Sugiyono, Heru Suyanto, and Rosalia Dika Agustanti, “The Law of Arbitration Rules that are Final and Binding,” *Indonesia Law Review* 10, no. 3 (2020), Article 6, <https://doi.org/10.15742/ilrev.v10n3.655>.

² 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>; Anangga W. Rossdiono and Muhamad Dzadit Taqwa, “Dampak dari Putusan No. 15/PUU-XII/2014 terhadap Eksistensi Arbitrase di Indonesia: Menguji Kembali Pembatalan Putusan Arbitrase,” *BANI Arbitration and Law Journal* 1, no. 1 (2024): 1–14, <https://doi.org/10.63400/balj.v1i1.1>.

phrase “is alleged,” whereas the Elucidation required the grounds for annulment first to be established by a court judgment.³

Consequently, a final and binding criminal judgment may no longer be treated as a formal prerequisite for filing and examining an application for annulment. Yet, the removal of that prerequisite does not itself determine the evidentiary standard applicable in civil annulment proceedings. The absence of clear rules on the burden, degree, and limits of proof leaves room for divergent interpretations.⁴

This divergence appears in three lines of cases: South Jakarta District Court Decision Number 427/Pdt. Sus-Arbt/2021/PN JKT.SEL maintained that a criminal judgment was necessary to establish whether forgery or fraud had occurred. In contrast, the South Jakarta District Court Decision No. 582/Pdt. Sus-Arbt/2021/PN Jkt.Sel in conjunction with Supreme Court Decision Number 244 B/Pdt. Sus-Arbt/2022, and the Central Jakarta District Court Decision No. 699/Pdt. G/2019/PN Jkt.Pst in conjunction with Supreme Court Decision No. 327 B/Pdt. Sus-Arbt/2021 accepted direct proof in annulment proceedings. This divergence must be assessed with due regard to the differences in the facts, grounds for annulment, and quality of evidence in each case.

Studies published before the Constitutional Court Decision Number 15/PUU-XII/2014 generally examined the limits of the grounds for annulment and the legal consequences of annulment. Andriansyah showed that courts had at times accepted grounds beyond the three circumstances in Article 70, while retaining the view that the elements in the Elucidation of Article 70 had to be established through a court judgment.⁵ Pratidina examined the Supreme Court’s interpretation that the grounds in Article 70 were not necessarily exhaustive and compared it with the universal principles of arbitration.⁶ Kurniawan and Harjono focused on the legal consequences of annulling a BANI award in the Sea World case, particularly the implications of article 72 of the Arbitration Law.⁷ These studies are important for explaining the

³ Constitutional Court Decision Number 15/PUU-XII/2014, pronounced 11 November 2014, pp. 74–75.

⁴ Tri Ariprowo and R. Nazriyah, “Pembatalan Putusan Arbitrase oleh Pengadilan dalam Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014,” *Jurnal Konstitusi* 14, no. 4 (2017): 701–727, <https://doi.org/10.31078/jk1441>; Ahmad Frisky Paradipta Benfa, Marjo, and Kartika Widya Utama, “Pelaksanaan Pembatalan Putusan Arbitrase Badan Arbitrase Nasional Indonesia Pasca-Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014,” *Diponegoro Law Journal* 14, no. 2 (2025), <https://doi.org/10.14710/dlj.2025.49488>.

⁵ Muhammad Andriansyah, “Pembatalan Putusan Arbitrase Nasional oleh Pengadilan Negeri,” *Jurnal Cita Hukum* 2, no. 2 (2014): 331–340, <https://doi.org/10.15408/jch.v1i2.1472>.

⁶ Pratidina, “Interpretasi Mahkamah Agung terhadap Alasan Pembatalan Putusan Arbitrase,” <https://doi.org/10.20473/ydk.v29i3.374>.

⁷ Michael Jordi Kurniawan and Harjono, “Implikasi Yuridis Pembatalan Putusan Arbitrase di Indonesia,” *Jurnal Verstek* 4, no. 3 (2016): 119–127, <https://doi.org/10.20961/jv.v4i3.38770>.

boundaries of annulment, but they do not comparatively address post-constitutional court evidentiary standards.

Post-decision scholarship has developed in two directions. Ariprowo and Nazriyah explained the constitutional reasons for invalidating the Elucidation of Article 70 and the implications for the parties' access to annulment.⁸ Sugiyono, Suyanto, and Agustanti emphasized the tension between the finality of arbitral awards and judicial authority, and even proposed deleting Article 70.⁹ Rosdiono and Taqwa reconsidered the need to retain the annulment mechanism and advocated strict limitations, while Benfa, Marjo, and Utama, through empirical legal research, found that post-decision proof no longer required a prior court judgment and called for regulatory harmonization.¹⁰

Unlike earlier studies, this article does not stop at the constitutional status of the Elucidation of Article 70, the exhaustive character of the grounds for annulment, or the legal consequences of annulment. Its novelty lies in comparing the ratio decidendi of three post-Constitutional Court lines of cases that adopt different positions on the need for a criminal judgment and in formulating a five-part evidentiary model that separates the filing threshold, burden of proof, elements of each ground, limits of judicial examination, and structure of judicial reasoning.

Against this background, this study addresses two questions. First, what evidentiary problems arise in applying the grounds for annulment after Constitutional Court Decision Number 15/PUU-XII/2014? Second, what reconstructed evidentiary model can ensure access to annulment while preserving the finality of arbitration? The study aims to map the ratio decidendi of conflicting decisions and formulate an evidentiary model capable of consistent application.

This normative legal study uses statutory, case, and conceptual approaches.¹¹ The primary legal materials comprise the Arbitration Law, Law Number 48 of 2009 on Judicial Power, the Constitutional Court Law and its amendments, Supreme Court Circular Letter Number 7 of 2012, Constitutional Court Decision Number 15/PUU-XII/2014, and the judicial decisions examined in this study. The decisions were selected purposively because they were rendered after Constitutional Court Decision Number 15/PUU-XII/2014 and represented opposing positions on the need for a prior criminal judgment. Sources were traced through the Supreme Court Decisions Directory and the relevant institutions' legal-documentation networks using the

⁸ Ariprowo and Nazriyah, "Pembatalan Putusan Arbitrase oleh Pengadilan," 701–727.

⁹ Sugiyono, Suyanto, and Agustanti, "The Law of Arbitration Rules that are Final and Binding," Article 6.

¹⁰ Rosdiono and Taqwa, "Dampak dari Putusan No. 15/PUU-XII/2014," 1–14; Benfa, Marjo, and Utama, "Pelaksanaan Pembatalan Putusan Arbitrase," <https://doi.org/10.14710/dlj.2025.49488>.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2007), p. 27.

search terms “Article 70,” “annulment of arbitral award,” “criminal judgment,” “forged document,” and “fraud.” The units of analysis included material facts, grounds for annulment, evidence, ratio decidendi, operative orders, and the relationship between the first-instance and Supreme Court decisions. Interpretation was operationalized in five steps: identifying the semantic range of Article 70; testing its horizontal coherence with Articles 60, 71, and 72; testing its vertical compatibility with the Constitution and the Constitutional Court’s ruling; evaluating the purpose of protecting both arbitral finality and procedural integrity; and comparing how each court transformed those reasons into evidentiary rules.¹² This sequence distinguishes a dispute about the governing norm from a difference in factual evidence. The selected decisions do not constitute an inventory of every arbitral-annulment case; accordingly, differences in outcomes are not generalized without examining the relevant factual and evidentiary differences.

DISCUSSION

NORMATIVE FRAMEWORK FOR ANNULMENT AND EVIDENCE UNDER ARTICLE 70 OF THE ARBITRATION LAW

Judicial authority in arbitral annulment proceedings must be read together with the principle of *ius curia novit* and the limits on court intervention. Article 10(1) of Law Number 48 of 2009 prohibits courts from refusing to examine a case on the ground that the law is absent or unclear, while Article 5(1) requires judges to explore, follow, and understand the legal values and sense of justice in society. These provisions perform different functions and should not be conflated with each other. Law Number 4 of 2004, which had previously been cited, was repealed by Law Number 48 of 2009.

In the arbitration context, these principles do not enlarge judicial authority to reassess the merits. Articles 3 and 11(2) of the Arbitration Law restrict court intervention in disputes governed by an arbitration agreement. In annulment proceedings, the court determines only whether the integrity of the process that produced the award was tainted by one of the circumstances in Article 70. Annulment review must therefore remain distinct from correcting an arbitrator’s contractual interpretation, factual assessment, or application of law.¹³

Article 70 identifies three grounds for dissolution:

¹² Sudikno Mertokusumo and A. Pitlo, *Bab-bab tentang Penemuan Hukum* (Bandung: Citra Aditya Bakti, 1993); D. Neil MacCormick and Robert S. Summers, eds., *Interpreting Statutes: A Comparative Study* (Aldershot: Dartmouth, 1991), especially ch. 13, pp. 511–544; Syarif Mappiasse, *Logika Hukum Pertimbangan Putusan Hakim* (Jakarta: Kencana, 2017).

¹³ Winata, *Hukum Penyelesaian Sengketa*; UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006, Article 34.

- a) A letter or document used in the proceedings is subsequently acknowledged to be false or declared forged.
- b) a decisive document, concealed by the opposing party, is discovered after the award is rendered; and
- c) The award was rendered as a result of fraud committed by one of the parties during the proceedings.

Article 70 must be interpreted as an exception to the finality established in Article 60. Grounds (a), (b), and (c) concern the integrity of evidence and the parties' conduct during the arbitral proceedings. Proof cannot end with dissatisfaction about the award; the applicant must establish a connection between the forged document, concealed decisive document, or fraud, and both the arbitral process and the resulting award.¹⁴

The evidentiary difficulty arises because Article 70 uses the phrase "is alleged," while the now-invalidated Elucidation previously required a court judgment. The phrase "is alleged" is best understood as a filing threshold: an applicant must plead specific facts and present plausible initial evidence to support the request. This does not mean that an allegation alone is sufficient to grant annulment. At the merits stage, the elements of Article 70 must still be established through lawful evidence that is rationally assessed by the civil court.¹⁵

Constitutional Court Decision Number 15/PUU-XII/2014 removed the binding force of the Elucidation of Article 70; it did not eliminate the obligation to prove the asserted ground. The consequence is a change in the forum of proof: the alleged elements may be examined in annulment proceedings without waiting for a criminal judgment. This position also accords with the filing period in Article 71 and the statutory period for adjudication in Article 72 of the Arbitration Law, both of which would be difficult to observe if the court had to await separate criminal proceedings.¹⁶

The operative part of a Constitutional Court decision is final and binding from the moment it is pronounced. In judicial review, its effect is general; state organs, including courts, cannot revive an explanatory norm that has been declared non-binding. Nevertheless, the obligation to comply with a Constitutional Court decision must be distinguished from the formal status of an internal Supreme Court guideline.

¹⁴ Pratidina, "Interpretasi Mahkamah Agung terhadap Alasan Pembatalan Putusan Arbitrase"; Rossdiono and Taqwa, "Dampak dari Putusan No. 15/PUU-XII/2014," 1-14.

¹⁵ Aripabowo and Nazriyah, "Pembatalan Putusan Arbitrase oleh Pengadilan," 701-727; Benfa, Marjo, and Utama, "Pelaksanaan Pembatalan Putusan Arbitrase."

¹⁶ Constitutional Court Decision Number 15/PUU-XII/2014, pp. 74-75; Benfa, Marjo, and Utama, "Pelaksanaan Pembatalan Putusan Arbitrase."

This final and binding character derives from Article 24C(1) of the 1945 Constitution, Article 10(1) and its Elucidation, and Article 47 of the Constitutional Court Law. References to the Constitutional Court decision must therefore identify the correct legal norms and date, rather than rely on *erga omnes* as a slogan.

Supreme Court Circular Letter Number 7 of 2012 states that the grounds for annulment in Article 70 “together with its Elucidation” may not be disregarded. Once the Elucidation of Article 70 was invalidated, that part of the Circular Letter lost its substantive foundation. Although the Supreme Court’s legal-documentation network still records the Circular Letter as in force, its formal status cannot justify reapplying the explanatory norm that the Constitutional Court invalidated. The tension between formal status and substantive inapplicability requires express harmonization or revocation.

INTERPRETIVE FRAMEWORK: TEXT, SYSTEM, PURPOSE, AND HIERARCHY

The interpretive methods used in this study are not interchangeable labels from which a preferred result can be selected. They form a justification structure. Grammatical interpretation identifies meanings that the enacted words can reasonably bear; systematic interpretation tests those meanings against the statute as a coherent whole; hierarchical interpretation excludes meanings incompatible with superior norms and authoritative constitutional review; and purposive interpretation selects among the legally available meanings by reference to the objectives of the provision. The comparative case analysis examines whether the court disclosed this chain of justification when moving from norm to evidence and conclusion.¹⁷

At the grammatical level, article 70 separates the language governing access to the remedy from the language governing the merits. The introductory phrase “is alleged to contain” indicates that a specific and plausible allegation is sufficient to place an application before the court. It cannot be read as eliminating proof because each subparagraph describes a circumstance that must be judicially established before annulment is granted. Conversely, the expressions “acknowledged to be false or declared to be forged,” “is discovered,” and “was rendered as a result of fraud” do not textually state that only a prior criminal judgment can establish these circumstances. The invalidation of Elucidation therefore did more than clarify an ambiguous procedural detail: it narrowed the evidentiary route beyond the semantic content of the principal provision.¹⁸

Systematic interpretation places article 70 within the architecture of the Arbitration Law. Article 60 establishes finality, Articles 70–72 create a limited, time-

¹⁷ MacCormick and Summers, eds., *Interpreting Statutes*, especially chs. 12–13, pp. 461–544; Mertokusumo and Pitlo, *Bab-bab tentang Penemuan Hukum*.

¹⁸ Constitutional Court Decision Number 15/PUU-XII/2014, pp. 74–75; Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, Article 70.

bound corrective mechanism, and Articles 3 and 11 restrain broader judicial intervention. Together, these provisions reject two extremes. A court may neither dismiss a properly particularized allegation solely because no criminal judgment exists nor use annulment to reconsider the tribunal's evaluation of the contract, the witnesses, or substantive law. The filing period under Article 71 and the adjudicatory period under Article 72 also make a mandatory, completed criminal process structurally difficult to reconcile with statutory design.

Purposive interpretation clarifies why direct proof is permissible but must remain controlled. Article 70 protects the integrity of arbitration against material deception, while Article 60 protects the parties' choice of final adjudication. Therefore, the purpose is dual, not one-sided: effectiveness of the remedy where fraud or evidentiary corruption is shown, and restraint where the complaint merely repackages disagreement with the award. The purpose cannot supply a fourth ground or erase the words chosen by the legislature; it operates within the semantic possibilities of the text and requires the alleged defect to be material to the arbitral process or award.¹⁹

Hierarchical interpretation determines which legal authorities may control the reading. The principal text of Article 70 remains valid, whereas Constitutional Court Decision Number 15/PUU-XII/2014 removed the binding force of its Elucidation. A Supreme Court circular letter is an internal judicial guideline and cannot restore a statutory explanation that has been invalidated through constitutional review. Accordingly, reliance on Circular Letter Number 7 of 2012 must be severed from its reference to the former Elucidation. The hierarchy issue is decisive because an interpretation that is convenient for proof may still be legally unavailable when its normative basis has been displaced by a superior and final constitutional ruling.²⁰

These four modes are cumulative but disciplined. The text sets the outer boundary; the statutory system identifies the function and limits of the remedy; the constitutional hierarchy determines the admissible sources; and the purpose assists in choosing the meaning that best reconciles integrity with finality. The court must then explain how the selected meaning applies to the particular evidence. This final requirement links interpretation to legality: predictability depends not only on the

¹⁹ Aharon Barak, *Purposive Interpretation in Law*, trans. Sari Bashi (Princeton: Princeton University Press, 2005), p. 89; Law Number 30 of 1999, Articles 60 and 70.

²⁰ Hans Kelsen, *Pure Theory of Law*, trans. Max Knight (Berkeley: University of California Press, 1967); 1945 Constitution of the Republic of Indonesia, Article 24C(1); Constitutional Court Decision Number 15/PUU-XII/2014, pp. 74–75.

announced rule but also on the congruence between that rule and official decision-making, supported by reasons that can be examined in a later case.²¹

DIVERGENT JUDICIAL REASONING AND INTERPRETIVE PATHS

1. South Jakarta District Court Decision Number 427/Pdt.Sus-Arbt/2021/PN JKT.SEL

In South Jakarta District Court Decision Number 427/Pdt. In Sus-Arbt/2021/PN JKT.SEL, the applicant alleged that forged documents and fraud tainted an award of the Indonesian National Board of Arbitration (BANI). The panel held that determining whether a document was forged fell within the authority of the criminal court and required a final binding judgment. Its reasoning returned to the Elucidation of Article 70 and the Supreme Court Circular Letter No. 7 of 2012.²²

The principal difficulty with the decision lies not merely in its outcome but in the legal rule employed. The panel treated a criminal judgment as an evidentiary prerequisite, even though Constitutional Court Decision Number 15/PUU-XII/2014 had removed the binding force of the Elucidation of Article 70. If the applicant's evidence was insufficient, the application could have been dismissed for failure of proof; conceptually, that is different from rejecting it because no criminal judgment existed.

This decision also contains an inaccurate citation. In its reasoning, the panel referred to Constitutional Court Decision Number 12/PUU-XII/2014 [sic] dated October 23, 2014, whereas the decision reviewing the Elucidation of Article 70 was Constitutional Court Decision Number 15/PUU-XII/2014, pronounced on November 11, 2014. This error is part of the broader problem of consistency in applying legal authorities.

South Jakarta District Court Decision Number 427 conflated two questions: whether the evidence was sufficient to establish a forged document or fraud, and whether proof was legally valid only after a criminal judgment. The Constitutional Court resolved the second question but did not relieve the applicant of the first.

2. South Jakarta District Court Decision Number 582/Pdt.Sus-Arbt/2021/PN Jkt.Sel in conjunction with Supreme Court Decision Number 244 B/Pdt.Sus-Arbt/2022

South Jakarta District Court Decision No. 582/Pdt. Sus-Arbt/2021/PN Jkt.Sel directly assessed allegations of concealed documents and fraud. The panel found that the Heads of Agreement dated January 11, 2019, was decisive and known to the opposing

²¹ Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven: Yale University Press, 1969), pp. 81–82; Philipus M. Hadjon and Tatiek Sri Djatmiati, *Argumentasi Hukum* (Yogyakarta: Gadjah Mada University Press, 2014).

²² South Jakarta District Court Decision Number 427/Pdt.Sus-Arbt/2021/PN JKT.SEL, decided 7 July 2021, p. 241.

party, and therefore held that the elements of Article 70(b) and (c) had been satisfied. The decision was subsequently reviewed by the Supreme Court Decision Number 244 B/Pdt. Sus-Arbt/2022.²³

Supreme Court Decision No. 244 B/Pdt. Sus-Arbt/2022 concerns the South Jakarta District Court Decision Number 582; it does not affirm Supreme Court Decision Number 327 B/Pdt. Sus-Arbt/2021. The Supreme Court accepted that fraud could be assessed without a prior criminal judgment and referred to the formula adopted by the Civil Chamber plenary meeting. Therefore, the two decisions should be cited as South Jakarta District Court Decision Number 582, in conjunction with Supreme Court Decision Number 244.

This line of cases supports direct proof in annulment proceedings. Its application must nevertheless identify the concealed document, its decisiveness, the opposing party's knowledge or control, and its effect on the arbitral process. Without examining these elements, annulment risks turning into a reconsideration of the merits.

3. Central Jakarta District Court Decision Number 699/Pdt.G/2019/PN Jkt.Pst in conjunction with Supreme Court Decision Number 327 B/Pdt.Sus-Arbt/2021

The second line of cases is the Central Jakarta District Court Decision Number 699/Pdt. G/2019/PN Jkt.Pst in conjunction with Supreme Court Decision No. 327 B/Pdt. Sus-Arbt/2021. The Central Jakarta District Court found that an independent auditor's report submitted in the arbitration was manipulated or supplemented with additional pages, satisfying Article 70(a). Supreme Court Decision No. 327 B/Pdt. Sus-Arbt/2021, dated March 15, 2021, affirmed the Central Jakarta District Court Decision Number 699/Pdt. G/2019/PN Jkt.Pst.²⁴

This line of cases confirms that civil courts may assess evidence of document forgery or manipulation in annulment proceedings. The phrase "contains false information" must, however, be used carefully because Article 70(a) refers to a document that is "acknowledged to be false or declared to be forged." Direct assessment is justified only when the panel identifies objective indicators of falsity or forgery, the reliability of comparator evidence, and the document's relevance to the arbitral award.

²³ South Jakarta District Court Decision Number 582/Pdt.Sus-Arbt/2021/PN Jkt.Sel in conjunction with Supreme Court Decision Number 244 B/Pdt.Sus-Arbt/2022, decided 24 February 2022.

²⁴ Central Jakarta District Court Decision Number 699/Pdt.G/2019/PN Jkt.Pst, decided 19 May 2020, in conjunction with Supreme Court Decision Number 327 B/Pdt.Sus-Arbt/2021, decided 15 March 2021.

4. Doctrinal Synthesis: Competing Interpretive Approaches and Their Consequences

The three lines of cases embody competing interpretive architectures, not merely different outcomes. Decision Number 427 combines reliance on the former Elucidation with institutional caution about a civil court determining forgery or fraud. Decisions Numbers 582 and 699 instead treat the Constitutional Court's ruling as authorizing direct evidentiary examination, although they apply that proposition to different grounds and different types of proof. The central disagreement thus concerns three prior questions: which source controls after constitutional review, what Article 70 permits the civil court to determine, and whether the difficulty of proving conduct that may also be criminal can be converted into a formal jurisdictional prerequisite.²⁵

Decision Number 427 reflects a defensible concern about institutional competence and the risk that an untested allegation of forgery may unsettle a final award. However, that concern should operate at the level of evidentiary reliability, not as a source of jurisdiction. By making a criminal judgment indispensable, the decision allowed the former Elucidation to determine the meaning of the principal provision after that explanation had lost binding force. It also collapsed the distinction between the standard of persuasion and the permissible forum of proof. A court may demand cogent documentary, expert, or testimonial evidence of forgery without requiring the applicant first to obtain a criminal conviction.

Decision No. 582 and Supreme Court Decision No. 244 follow a more systematic and purposive route. They preserve the remedial function of Article 70 by examining concealment and fraud within annulment proceedings, thereby avoiding a procedural dependency that is absent from the text and difficult to reconcile with Articles 71 and 72. Their interpretive strength lies in recognizing direct proof, while their methodological risk lies in moving too quickly from the existence of the Heads of Agreement to the legal conclusion that it was concealed, decisive, and causally connected to the award. A complete ratio decidendi must address each of these elements separately and explain the counterfactual question of whether disclosure of the document could materially have affected the arbitral process or result.

Decision Number 699 and Supreme Court Decision Number 327 similarly adopt direct proof, but their Article 70(a) analysis raises a distinct textual problem. Evidence that a report contains additions or inaccurate information may indicate

²⁵ Compare South Jakarta District Court Decision Number 427/Pdt.Sus-Arbt/2021/PN JKT.SEL; South Jakarta District Court Decision Number 582/Pdt.Sus-Arbt/2021/PN Jkt.Sel in conjunction with Supreme Court Decision Number 244 B/Pdt.Sus-Arbt/2022; and Central Jakarta District Court Decision Number 699/Pdt.G/2019/PN Jkt.Pst in conjunction with Supreme Court Decision Number 327 B/Pdt.Sus-Arbt/2021.

manipulation; however, the statutory language refers to a document acknowledged to be false or declared to be forged. The court must therefore identify who produced the document, which version is authentic, what objective comparison establishes alteration, and how the altered material was used by the arbitral tribunal. Without that bridge, a purposive concern for procedural integrity may broaden “forged” into any disputed or unreliable document and thereby weaken the textual boundary of annulment.

This comparison revealed two different forms of variation. The first is vertical and normative: Decision Number 427 applies a prerequisite derived from an invalidated explanatory norm, whereas the other cases regard that prerequisite as being removed. This is a genuine doctrinal divergence because similarly situated applicants face different rules before their evidence is even assessed. The second is horizontal and factual: the cases involve different documents, alleged conduct, grounds under Article 70, and evidentiary records. Different outcomes arising from these factual differences are not necessarily inconsistent, provided that the same legal test is transparently applied.

Therefore, legal certainty should not be equated with uniform success or failure in annulment applications. It requires an identifiable governing source, stable distinction between pleading and proof, consistent allocation of the burden of proof, differentiated elements for Articles 70(a), (b), and (c), and reasons that connect the accepted evidence to a material defect in the arbitral process. In Fuller’s terms, legality is impaired when official action is incongruent with the declared rule; in the present context, that risk arises both when a court revives the invalidated Elucidation and when it announces direct proof but fails to articulate the evidentiary steps by which the statutory element was established.²⁶

A coherent post-Constitutional Court approach should proceed in a controlled sequence: determine the semantic limits of Article 70; remove interpretations incompatible with the constitutional ruling; read the remaining meaning together with Articles 60, 71, and 72; identify the dual purposes of integrity and finality; assess the evidence element by element; and state why the examination does not reopen the merits. This sequence transforms the abstract claim that “a criminal judgment is unnecessary” into a reviewable decision-making method. The reconstruction proposed below provides an evidentiary structure for the method.²⁷

²⁶ Fuller, *The Morality of Law*, pp. 81–82; Mappiasse, *Logika Hukum Pertimbangan Putusan Hakim*; Hadjon and Djatmiati, *Argumentasi Hukum*.

²⁷ Mappiasse, *Logika Hukum Pertimbangan Putusan Hakim*.

RECONSTRUCTING THE EVIDENTIARY MODEL FOR APPLICATIONS TO ANNUL ARBITRAL AWARDS

1. Filing Threshold and Initial Evidence

The first stage is an admissibility assessment. The phrase “is alleged” in Article 70 operates as a filing threshold rather than the ultimate standard for granting relief. The applicant must specifically identify the conduct, document, parties involved, time of discovery, and connection to the arbitral proceedings and submit initial evidence. A general allegation that the arbitrator misappraised the evidence or misapplied the law does not meet this threshold requirement.

2. Burden and Degree of Proof

The second stage concerns the allocation of the burden and degree of proof. The initial burden rests on the applicant because the applicant asserts the circumstance that would invalidate the award, consistently with Article 163 of the *Herzien Inlandsch Reglement* and Article 1865 of the Indonesian Civil Code.²⁸ A criminal judgment is not a prerequisite, but the applicant must still establish the elements of Article 70 through the cumulative force of lawful civil evidence. Annulment cannot rest on conjecture; the reasons must explain why the supporting evidence is more persuasive than the respondent’s rebuttal.

3. Differentiated Assessment of Each Ground

The third stage differentiates the elements of each ground type. Under Article 70(a), the court assesses the document’s authenticity, the source of any alteration, the comparator evidence, and its relevance to the award. Under Article 70(b), the applicant must prove that the document existed during the arbitration, was decisive, was controlled or known by the opposing party, and was concealed from the Tribunal. Under Article 70(c), the applicant must establish fraudulent conduct during the proceedings and its causal connection to the process or outcome of the proceedings. These distinctions prevent all three grounds from being collapsed into the generic label of a “criminal element.”

4. Limits of Judicial Examination

The fourth stage limits the scope of judicial examination. Evidence and witness testimony must address the integrity of the arbitral process, not repeat the entire evidentiary inquiry into the merits. This limitation is consistent with Article 34 of the UNCITRAL Model Law, which treats setting aside as the exclusive recourse against an arbitral award and defines its grounds restrictively.²⁹ Experts may explain technical

²⁸ *Herzien Inlandsch Reglement* (HIR), Staatsblad 1941 Number 44, Article 163; Indonesian Civil Code, Article 1865.

²⁹ United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006, Article 34.

standards, document forensics, or arbitral practice; however, they do not replace the judge's function of deciding whether the legal elements have been established.

5. Structure of Judicial Reasoning

The fifth stage requires a structured reasoning. A decision should identify at least the Article 70 element examined, the party bearing the burden of proof, the evidence accepted or rejected and the reasons for doing so, the connection between the procedural defect and the arbitral award, and the reasons why the examination does not enter the merits. This structure promotes consistency without displacing judicial independence in the evaluation of facts.³⁰

The model treats finality and procedural justice as complementary interests of the parties. Finality protects the parties' choice to resolve their dispute through arbitration, while annulment protects the process from being exploited by material fraud. Because annulment is exceptional, the proven defect must be relevant and potentially decisive, rather than a minor error that does not affect the integrity of the award.³¹

6. Reformulating the Governing Norm and Supreme Court Guidance

At the regulatory level, Article 70 should be clarified to state that the grounds for annulment may be proven directly in annulment proceedings without a prior criminal ruling. A supplementary elucidation or implementing regulation should define the filing threshold, burden of proof, elements of each ground, and prohibition on re-examining merits. Any new formulation must avoid the uncontrolled expansion of the grounds for annulment.³²

At the institutional level, the Supreme Court should amend or revoke Circular Letter Number 7 of 2012, which continues to refer to the Elucidation of Article 70. A new chamber formula could adopt the five components of the proposed model and require the ratio decidendi to be expressly stated. Consistent standards would increase predictability for the parties without converting annulment into disguised appeal.

For commercial actors, the principal implication concerns procedural predictability rather than the number of applications granted or denied by the INPI. Businesses need certainty about the evidence they must prepare, the applicable time limits, the permissible scope of judicial examination, and the risk of annulment. A transparent evidentiary model strengthens confidence in arbitration while preventing awards procured through fraud from being preserved in the name of finality.

³⁰ Mappiasse, *Logika Hukum Pertimbangan Putusan Hakim*.

³¹ Sugiyono, Suyanto, and Agustanti, "The Law of Arbitration Rules that are Final and Binding," Article 6; Rossdiono and Taqwa, "Dampak dari Putusan No. 15/PUU-XII/2014," 1-14.

³² Benfa, Marjo, and Utama, "Pelaksanaan Pembatalan Putusan Arbitrase."

Harmonizing legislation and internal Supreme Court guidance is more accurate than declaring Circular Letter Number 7 of 2012 as formally ceased to exist. As long as the Supreme Court's legal-documentation network continues to record it as in force, an express revocation or amendment is required to eliminate the tension between its formal status and the substantive effect of the Constitutional Court Decision Number 15/PUU-XII/2014.

CONCLUSION

The evidentiary problem under Article 70 of the Arbitration Law arises from a divergence concerning the forum and prerequisites of proof after the Constitutional Court Decision Number 15/PUU-XII/2014. South Jakarta District Court Decision Number 427 retained a criminal judgment as a prerequisite, whereas South Jakarta District Court Decision Number 582 in conjunction with Supreme Court Decision Number 244 and Central Jakarta District Court Decision Number 699 in conjunction with Supreme Court Decision Number 327 accepted direct proof in annulment proceedings. The Constitutional Court removed the requirement for a prior court judgment but did not specify the threshold, burden, degree, or limits of proof. Therefore, consistency cannot be achieved merely by declaring that a criminal judgment is unnecessary.

The proposed reconstruction comprises five components: specific allegations and initial evidence at the filing stage; allocation of the burden of proof to the applicant; differentiated assessment of the elements in Articles 70(a), (b), and (c); confinement of review to the integrity of the arbitral process; and judicial reasoning expressly connecting the evidence to a material procedural defect. The legislature should clarify Article 70, while the Supreme Court should amend Circular Letter Number 7 of 2012 and formulate post-constitutional court evidentiary guidance. Future research should examine a larger corpus of decisions to test the consistency with which this model can be applied.

DISCLOSURE

Conflicts of Interest

The authors declare that they have no conflicts of interest regarding the publication of this paper.

Declaration of Generative AI in Scientific Writing

During the preparation of this manuscript, the authors used QuillBot and Grammarly to improve readability, grammar, and language clarity. Following the use of these tools, the authors carefully reviewed and edited the manuscript and take full responsibility for its content.

Funding Statement

This study received no financial support or external funding.

Authorship and Level of Contribution

Mohamad Toha Hasan (1), as the lead author, conceived the research idea, developed the theoretical framework, conducted the primary legal analysis, and led the drafting and refinement of the manuscript. Chairul Lutfi (2) contributed to the methodological design, analysis of legislation and judicial decisions, and critical revision of the manuscript. Bintan Dzumirroh Ariny (3) assisted in collecting and organizing legal materials, validating references, and reviewing the manuscript for clarity and consistency. All authors reviewed and approved the final version of the manuscript and agreed to be accountable for its content.

BIBLIOGRAPHY

- Andriansyah, Muhammad. 2014. "Pembatalan Putusan Arbitrase Nasional oleh Pengadilan Negeri." *Jurnal Cita Hukum* 2(2): 331-340. <https://doi.org/10.15408/jch.v1i2.1472>.
- Aripabowo, Tri, and R. Nazriyah. 2017. "Pembatalan Putusan Arbitrase oleh Pengadilan dalam Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014." *Jurnal Konstitusi* 14(4): 701-727. <https://doi.org/10.31078/jk1441>.
- Barak, Aharon. 2005. *Purposive Interpretation in Law*. Translated by Sari Bashi. Princeton: Princeton University Press.
- Benfa, Ahmad Frisky Paradipta, Marjo, and Kartika Widya Utama. 2025. "Pelaksanaan Pembatalan Putusan Arbitrase Badan Arbitrase Nasional Indonesia Pasca-Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014." *Diponegoro Law Journal* 14(2). <https://doi.org/10.14710/dlj.2025.49488>.
- Fuller, Lon L. 1969. *The Morality of Law*. Revised edition. New Haven: Yale University Press.
- Hadjon, Philipus M., and Tatiek Sri Djatmiati. 2014. *Argumentasi Hukum*. Yogyakarta: Gadjah Mada University Press.
- Kelsen, Hans. 1967. *Pure Theory of Law*. Translated by Max Knight. Berkeley: University of California Press.
- Kurniawan, Michael Jordi, and Harjono. 2016. "Implikasi Yuridis Pembatalan Putusan Arbitrase di Indonesia." *Jurnal Verstek* 4(3): 119-127. <https://doi.org/10.20961/jv.v4i3.38770>.
- MacCormick, D. Neil, and Robert S. Summers, eds. 1991. *Interpreting Statutes: A Comparative Study*. Aldershot: Dartmouth.
- Mappiasse, Syarif. 2017. *Logika Hukum Pertimbangan Putusan Hakim*. Jakarta: Kencana.
- Marzuki, Peter Mahmud. 2007. *Penelitian Hukum*. Jakarta: Kencana.

- Mertokusumo, Sudikno, and A. Pitlo. 1993. Bab-bab tentang Penemuan Hukum. Bandung: Citra Aditya Bakti.
- Pratidina, Ilhami Ginang. 2014. "Interpretasi Mahkamah Agung terhadap Alasan Pembatalan Putusan Arbitrase dalam Pasal 70 UU No. 30/1999." *Yuridika* 29(3). <https://doi.org/10.20473/ydk.v29i3.374>.
- Rossdiono, Anangga W., and Muhamad Dzadit Taqwa. 2024. "Dampak dari Putusan No. 15/PUU-XII/2014 terhadap Eksistensi Arbitrase di Indonesia: Menguji Kembali Pembatalan Putusan Arbitrase." *BANI Arbitration and Law Journal* 1(1): 1-14. <https://doi.org/10.63400/balj.v1i1.1>.
- Sugiyono, Heru, Heru Suyanto, and Rosalia Dika Agustanti. 2020. "The Law of Arbitration Rules that are Final and Binding." *Indonesia Law Review* 10(3), Article 6. <https://doi.org/10.15742/ilrev.v10n3.655>.
- Winata, Frans Hendra. 2013. *Hukum Penyelesaian Sengketa*. Jakarta: Sinar Grafika.
- Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.
- Law Number 24 of 2003 on the Constitutional Court, most recently amended by Law Number 7 of 2020.
- Law Number 48 of 2009 on Judicial Power.
- Herzien Inlandsch Reglement (HIR), Staatsblad 1941 Number 44, Article 163.
- Indonesian Civil Code, Art. 1865.
- UNCITRAL Model Law on International Commercial Arbitration, 1985, with amendments as adopted in 2006, Article 34.
- Supreme Court Circular Letter Number 7 of 2012 on the Legal Formulations of the Supreme Court Chamber Plenary Meeting as Guidelines for the Courts
- Constitutional Court Decision Number 15/PUU-XII/2014, pronounced on November 11, 2014.
- South Jakarta District Court Decision No. 427/Pdt. Sus-Arbt/2021/PN JKT.SEL, decided on July 7, 2021.
- South Jakarta District Court Decision No. 582/Pdt. Sus-Arbt/2021/PN Jkt.Sel in conjunction with Supreme Court Decision Number 244 B/Pdt. Sus-Arbt/2022, delivered on February 24, 2022.
- Central Jakarta District Court Decision No. 699/Pdt. G/2019/PN Jkt.Pst, decided May 19, 2020, in conjunction with Supreme Court Decision No. 327 B/Pdt. Sus-Arbt/2021, decided on March 15, 2021.



© 2026 by the authors. Published as an open-access publication under the terms and conditions of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>).