IMCO Law

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Fraud as a Statutory Ground for the Annulment of Arbitral Awards: Legal Framework and Evidentiary Standards

Based on data from the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal*), investment realization in Indonesia on I quarter of 2026 have a grew by 7.2% year on year. This growth indicates that business activities in Indonesia continue to develop positively, These growing business activities are supported by business relationships and partnerships between corporate entities to establish strategic collaborations and mutually beneficial partnership.

On that business partnership, there are always potential dispute that may arise in the course of business operations. Such disputes may arise from differences in the interpretation of an agreement, breach of contract, or an unlawful act in the course of a commercial relationship.

When facing a legal dispute in a business partnership, business entities naturally prefer a dispute resolution process that is fast and provides legal certainty to protect their business interests. Based on that, arbitration is often the preferred method of resolving disputes because it provides a faster dispute resolution mechanism, private and allows the parties to appoint arbitrators with expertise relevant to the subject matter of the dispute.

Arbitration in Indonesia is regulated by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution ("**Arbitration Law**"). Under the Article 48 Arbitration Law, an arbitration process must be completed within 180 days (Approximately 6 months) after the arbitrator or arbitral tribunal is formed. The Arbitration Law does not provide an appeal mechanism against an arbitral award. However, Arbitration Law recognizes a mechanism for the annulment of arbitral awards, as provided under Article 72 of the Arbitration Law.

An application for the annulment of an arbitral award that regulated under Article 72 Arbitration Law may only be submitted on the statutory grounds provided under Article 70 of the Arbitration Law that stated, one of the reasons an arbitral award may be annulled is if it was made based on **fraud** committed by one of the parties during the arbitration process.

Procedural Mechanism for the Annulment of Arbitral Awards

Arbitration is a method of alternative dispute resolution mechanism outside the court system that may be chosen by disputing parties where the agreement between the parties contains an arbitration clause. In principle, an arbitral award is final and legally binding. Nevertheless, the Arbitration Law provides a mechanism for the annulment of arbitral awards, subject to the limited grounds regulated in Article 70 of the Arbitration Law, which regulated as follows:

"The parties may file for the annulment of an arbitral award if the award is alleged to contain any of the following elements:

a. *any letter or document submitted during the proceedings is, after the arbitral award has been rendered, acknowledged or declared to be forged;*
b. *following the issuance of the arbitral award, a material and decisive document is discovered that had been deliberately concealed by the adverse party; or*
c. *The award was made as a result of* ***fraud*** *committed by one of the parties during the arbitration proceedings*."

Furthermore, the general procedural frame for an application for annulment is regulated under Article 72 of the Arbitration Law, which stated that:

a. an application for annulment shall be submitted to the Chief Judge of the District Court;
b. the District Court shall render its decision on the application within thirty (30) days from the date the application is submitted; and
c. the District Court's decision may be appealed to the Supreme Court, which shall render its decision within thirty (30) days from the date the appeal is filed.

The detailed procedural stages for examining an application for the annulment of an arbitral award are further regulated in Article 26 of Supreme Court Regulation No. 3 of 2023 concerning Procedures for Court Appointment of Arbitrators, Challenges to Arbitrators, and the Examination of Applications for the Enforcement and Annulment of Arbitral Awards ("**Supreme Court Regulation No. 3/2023**"), which stated as follows:

Filing and Reading of the Application

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Response from Respondent

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Interlocutory Decision (if any)

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Examination of Evidence

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Verdict

Aligned with Article 72 of the Arbitration Law, Article 26 paragraph (1) Supreme Court Regulation No. 3/2023 also regulates that the procedural stages above must be completed within a maximum period of 30 calendar days. The other fundamental rule is that, under Article 27 paragraph (3) of Supreme Court Regulation No. 3/2023, a court decision rejecting an application for annulment of an arbitral award is final, and there are no legal remedies available. Accordingly, appeals are allowed only against a court decision granting an application for the annulment of an arbitral award.

Concept and Definition of Fraud : According to Court Decisions Precedents

As already explained before, "fraud" as one of the statutory grounds for the annulment of an arbitral award regulated under Article 70 paragraph (c) of the Arbitration Law, although the Arbitration Law recognizes fraud as a reasons for annulment, it does not explain the definition of fraud in arbitration proceedings. In practice, this makes it difficult to determine and prove the elements of fraud in a arbitration awards.

However, Court Decision No. 258B/Pdt.Sus-Arbt/2023 in the matter of PT Wijaya Karya Bangunan Gedung Tbk v. PT Indraco provides a definition of fraud in arbitration as follows:

"*In principle, fraud is when a person creates a false situation and presents it as if it were true*."

Furthermore, in Court Decision No. 555/Pdt.Sus-Arbt/2021/PN.Jkt.Sel in the matter of PT Perusahaan Listrik Negara (Persero) v. PT Sumsel Energi Gemilang, the court stated that:

"*fraud occur when one of the party influences the arbitrator through false statements or other acts that affect the arbitrator's judgment, causing the arbitrator to issue an unfair decision*."

Based on this definition, fraud may be understood as an intentional act to create or present a false situation as a true fact, causing the arbitrator to rely on such false circumstances causing the issuance of unfair arbital awards.

The Evidentiary Standard of Fraud in the Annulment of Arbitral Award

The standard of proof for fraud in the annulment of an arbitral award has significantly changed after the Constitutional Court Decision No. 15/PUU-XII/2014 ("**Constitutional Court Decision No. 15**") determined that the Elucidation of Article 70 of the Arbitration Law is invalid and declared that it is no longer legally binding.

The Elucidation of Article 70 of the Arbitration Law previously governed as follows:

"*An application for annulment may only be submitted against an arbitral award that has been registered with the court. The grounds for annulment referred to in this Article must be proven by a court decision. If the court determines that such grounds are proven or unproven, the court decision may be used as a basis for the judge's consideration in granting or rejecting the application*."

This is also consistent with Court Decision No. 665B/Pdt.Sus-Arbt/2024 in the matter of PT HK Realtindo v. Badan Arbitrase Nasional Indonesia, which, in its legal considerations, stated as follows:

"Considering that Constitutional Court Decision No. 15/PUU-XII/2014 dated 11 November 2014 has declared the elucidation of Article 70 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution have no binding legal force; accordingly, ***the ground of annulment of arbitral awards under Article 70 of Law No. 30 of 1999 on Arbitration and Alternative Dispute does not require a prior final and binding court decision***."

Therefore, the Constitutional Court Decision No. 15 caused significant legal consequences that will govern an allegation of fraud within the arbitration process does not need to be proven through another court decision. The alleged fraud can be proven during the annulment proceedings of the arbitral award. Even if it is only an allegation, it may still become a reason to annul the arbitral award. Therefore, the authority to determine whether fraud has occurred is entirely became the authority of the judges who in charge in the annulment of the arbitral award case.

Elements of Fraud

Furthermore, in Court Decision No. 555/Pdt.Sus-Arbt/2021/PN.Jkt.Sel in the matter of PT PLN (Persero) v. PT Sumsel Energi Gemilang, the court stated in its legal consideration that fraud may occur through two forms of conduct:

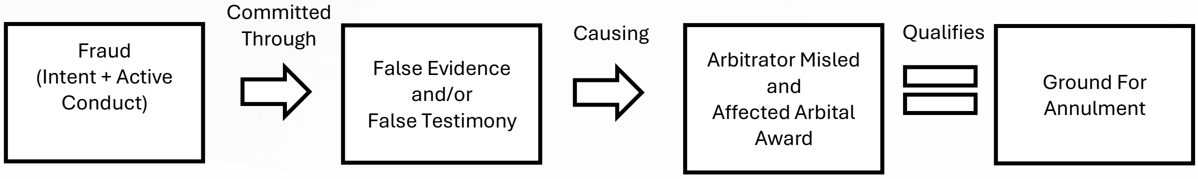
a. Submitting evidence that creates a false representation of facts; or
b. Presenting a witness who gives false testimony.

Both fraud forms of conduct show that its requires two elements:

a. Intent; and
b. an active act by the party committing the fraud.

Accordingly, only fraud committed through the submission of false evidence or false testimony that influences the arbitrator's judgment and directly affects the arbitral award can be categorized as fraud and serve as a statutory ground for the annulment of the arbitral award. In addition, a causal link between the form of conduct and its consequences shall be an important thing to highlight. Therefore, intent and active conduct carried out through false evidence and/or false testimony must result in the arbitrator being misled and the arbitral award being affected.

Key Elements of Fraud in Annulment of Arbitral Awards Proceedings



To prove the elements of fraud, it is the duty of 'the accuser' who alleging the existence of such fraud. This principle is in line with the doctrine of *Actori Incumbit Probatio*, as reflected in Article

1865 of the Indonesian Civil Code, which generally regulated that the party who making a claim or allegation bears the burden of proving it.

The Consideration of Presenting Same Evidences

In order to prove the elements of fraud, the claimant will often resubmit evidence presented in the arbitration hearing. However, it is important to note that there is precedent in court decisions that differ on the method of presenting the same evidence.

The Court Decision No. 258 B/Pdt.Sus-Arbt/2023 in the matter of PT Wijaya Karya Bangunan Gedung Tbk v. PT Indraco sets out important considerations regarding the standard of proof required to establish fraud as a ground for annulment of an arbitral award. The court stated as follows:

"*Fraud cannot be established based on evidence that has already been examined and assessed by the Arbitrators, as this would simply duplicate the arbitrator legal consideration. Such an approach is inconsistent with Article 3 and Article 11 paragraph (2) of the Arbitration Law.*"

This court decision can be the reference that annulment proceedings are not intended to allow the district court to reconsider evidence that has already been assessed by the arbitral tribunal.

Accordingly, if evidence relating to an allegation of fraud has already been examined by the arbitration tribunal, relying on the same evidence in annulment proceedings **may** result in the court reviewing the case substance of the arbitration dispute, which is exclusively within the jurisdiction of the arbitration under Article 3 and Article 11 paragraph (2) of the Arbitration Law.

Further information

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