

Interpreting Deception under Indonesian Arbitration Law: Balancing Finality and Legal Certainty

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Abstract

This study presents an overview and analysis of the ideal interpretation of "deception" as a basis for annulling arbitral awards. The interpretation of "deception" in Article 70 of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, and its application in Indonesian judicial practice, should not be construed narrowly. The central issue examined is the broad interpretation of this term and the lack of uniformity among judges in qualifying acts as trickery for the annulment of arbitral awards. Existing scholarship has not specifically addressed the interpretation of "deception," instead focusing more generally on the annulment of arbitral awards. This research adopts a normative juridical method, employing both statutory and case law approaches. Legal materials include primary sources, such as arbitration statutes and Constitutional Court decisions related to "deception," as well as secondary sources, including books and journals on arbitration. The analysis utilizes deductive and inductive reasoning to develop prescriptive arguments. The findings demonstrate that "deception" functions as an open norm, which in practice is interpreted not only as classical fraud but also as manipulation of facts, manipulation of the trial process, and deviations in the application of law by arbitrators that influence the issuance of arbitral awards. Judicial interpretations of this term are case-specific and lack a uniform standard, resulting in potential legal uncertainty. Although a broad interpretation is necessary to safeguard the integrity of the arbitration process from fraudulent practices, it may also compromise the principle of finality in arbitral awards.

Keywords: Annulment of Decision; Arbitration; Deception; Interpretation

1. INTRODUCTION

A decade after the ruling was announced, important questions arise concerning its broader implications. The process for seeking annulment has become more accessible, prompting a re-examination of annulment proceedings in Indonesian arbitration. The opportunity to challenge the formal aspects of an arbitral award serves as a crucial safeguard for parties dissatisfied with the arbitration process. Nevertheless, the increased accessibility of annulment proceedings has significant consequences for arbitral institutions and disputing parties. By the end of 2021, applications for the annulment of arbitral awards showed an upward trend. Data from the Indonesian National Board of Arbitration indicate that in approximately one out of every four or five cases resolved, a party files for annulment. The most frequently cited ground for annulment is the alleged use of deceit or fraud by the opposing party.¹

Effective business dispute resolution is essential for a country's economic development, as it significantly influences business owners' decisions to invest or operate within that jurisdiction. Uncertain legal conditions can negatively affect business confidence and satisfaction. Arbitration serves as a widely recognized international mechanism for resolving commercial

¹ Anangga W. Rosdiono 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, doi:10.63400/balj.v1i1.1.

disputes. In Indonesia, arbitration-based dispute resolution is governed by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (the Arbitration Law).²

An Arbitration Award is considered a final and binding decision. Nevertheless, judicial decisions may not always serve the interests of the parties, particularly if rendered negligently or in violation of legal principles. To safeguard parties who are disadvantaged or dissatisfied with an arbitration decision, the Arbitration Law grants courts the authority to annul such decisions, as stipulated in Article 70. Under this provision, parties may request annulment if the decision is suspected to involve: (a) letters or documents submitted during the examination that are later recognized or declared to be false; (b) the discovery, after the decision, of decisive documents that were concealed by the opposing party; or (c) a decision resulting from deception by one of the parties during the dispute examination.³

The annulment of an arbitration award is a legal remedy that allows disputing parties to petition the District Court to annul an arbitration award, either in part or in full.⁴ According to Hikmahanto Juwana, the annulment of an arbitration award is governed not by international treaties but by the procedures and grounds established under national law. The Constitutional Court of the Republic of Indonesia, in Decision Number 15/PUU-XII/2014 (“MK Decision No. 15/PUU-XII/2014”), annulled the explanation of Article 70 of the Arbitration Law. The Court determined that this explanation lacked binding legal force and was inconsistent with the 1945 Constitution of the Republic of Indonesia.⁵

Constitutional Court Decision No. 15/PUU-XII/2014 clarified that establishing the elements outlined in Article 70 of the Arbitration Law does not require a prior court decision in a criminal case. It is now sufficient to demonstrate during the trial that the annulment of the arbitration decision is based on the alleged presence of the elements regulated in Article 70. Previously, Supreme Court Circular Letter Number 07 of 2012 (SEMA No. 7/2012) mandated that Article 70 of the Arbitration Law,⁶ including the grounds for annulment of domestic arbitration decisions, could not be disregarded. Under SEMA No. 7/2012, proof that an arbitration decision contained the elements specified in Article 70 required a preceding court decision in a criminal case. With the issuance of Constitutional Court Decision No. 15/PUU-XII/2014, SEMA No. 7/2012 is no longer applicable, as it has lost its legal foundation.

The term "deception" in the context of arbitration proceedings is problematic and open to multiple interpretations. Normatively, the provision addressing trickery aims to preserve the

² Yusna Zaidah, *Penyelesaian Sengketa Melalui Peradilan dan Arbitrase Syari'ah Di Indonesia*. (Yogyakarta: Aswaja Pressindo, 2015).

³ Syafrida Syafrida and Mangisitua Marbun, “Ketidak Selarasan Putusan Arbitrase Bersifat Final Dan Mengikat (Pasal 60 UUAAPS) Dan Pembatalan Putusan Arbitrase (Pasal 70 UUAAPS),” *National Journal Of Law* 5, no. 2 (2021): 612, doi:10.47313/njl.v5i2.1451.

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 (2018): 701, doi:10.31078/jk1441.

⁵ Ahmad Frisky Paradipta Benfa, Marjo 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): 1–15, doi:10.14710/dlj.2025.49488.

⁶ Andhika Santoso Raihan, Elan Jaelani, and Utang Rosidin, “Kedudukan Dan Kekuatan Hukum Surat Edaran Mahkamah Agung (Sema) Dalam Hukum Positif Indonesia,” *Deposisi: Jurnal Publikasi Ilmu Hukum* 1, no. 4 (2023): 07–15, doi:10.59581/deposisi.v1i4.1392.

integrity of the arbitration process and prevent its compromise by parties acting in bad faith.⁷ However, the absence of an explicit legal definition for "deception" permits significant interpretive flexibility among practitioners and courts. This lack of definitional clarity can lead to legal uncertainty, particularly when judges must determine whether a specific action during arbitration constitutes deception sufficient to justify overturning an award.

The complexity of this issue arises from the overlap between the term "deception" and several legal concepts, such as fraud in civil law, unlawful acts, and fraud in criminal law. In the context of arbitration, trickery includes not only the falsification or concealment of documents but also the manipulation of facts, the presentation of misleading information, and litigation strategies intentionally designed to obscure material truth. Therefore, a systematic and teleological interpretive approach, rather than a solely grammatical one, is required to uphold arbitration's primary purpose as a forum for fair, expeditious, and good-faith dispute resolution.⁸

This development has a substantial impact on the evidentiary framework in annulment proceedings of arbitration awards, particularly with respect to the ground of "deception." After the removal of the explanation of Article 70 by Constitutional Court Decision No. 15/PUU-XII/2014, the requirement to substantiate claims of trickery with a final and binding criminal verdict has been eliminated. As a result, the evidentiary approach has transitioned from a rigid, formalistic model to a more flexible system that evaluates evidence presented during the annulment trial.

However, this change presents significant challenges concerning the standards and thresholds of proof for the term "deception" as referenced in Article 70 of Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.⁹ The absence of a clear normative definition provides judges with broad discretion in determining whether an act constitutes trickery. This ambiguity increases the risk of inconsistent judicial decisions, as similar conduct may be considered a legitimate litigation strategy in one case but classified as deception in another.

Furthermore, without the requirement for a criminal judgment, establishing fraud in arbitration annulment proceedings now aligns more closely with the civil evidentiary standard, which is based on the balance of probabilities (preponderance of evidence), rather than the criminal law standard of proof beyond a reasonable doubt. This shift highlights the need to articulate clear parameters for the elements of fraud, including the requirement of intent (*mens rea*), the presence of an active act to mislead, and the degree of influence on the issuance of the arbitration award.

Conversely, the relaxation of evidentiary requirements heightens the risk of moral hazard. A losing party in arbitration may exploit allegations of deception as a tactic to delay or obstruct

⁷ Nikita A. Antropov, "On Bad Faith Procedural Conduct in Determining the Case Jurisdiction in a Civil and Arbitration Procedure," *Russian Judge* 5 (2024): 15–18, doi:10.18572/1812-3791-2024-5-15-18.

⁸ Herliana Herliana and Meydora Cahya Nugraheni, "Arbitration and Alternative Dispute Resolution in Medical Disputes Within Sharia-Compliant Hospitals: The Role of Good Faith in Balancing Patient Justice and Professional Protection," *Mazahib* 24, no. 2 (2025): 221–47, doi:10.21093/mj.v24i2.10308.

⁹ Didit Wijayanto Wijaya, "The Ineffectiveness of Dispute Resolution Through Arbitration According to Indonesian Law No. 30 of 1999 on ADR (Alternative Dispute Resolution)," *Journal of Law, Politic and Humanities* 5, no. 3 (2025): 2288–92, doi:10.38035/jlph.v5i3.1433.

the enforcement of an arbitration award. In the absence of strict and consistent evidentiary standards, this risk could undermine the principle of finality in arbitration awards, which is a central advantage of out-of-court dispute resolution.

Accordingly, following Constitutional Court Decision Number 15/PUU-XII/2014, it is essential to establish a comprehensive interpretative framework for the term "deception." This interpretation should encompass not only grammatical considerations but also the systematic and teleological dimensions of arbitration law, including the principles of good faith, procedural fairness, and legal certainty. The term "deception" should be construed in a manner that avoids both excessive breadth, which could jeopardize the finality of arbitration, and undue narrowness, which could fail to protect parties harmed by fraudulent conduct during the arbitration process.

Previous research demonstrates similarities with the present study. For example, Siregar's¹⁰ (2021) study emphasises that such decisions cannot be challenged through legal remedies such as appeal or cassation. The binding nature of these decisions requires parties to comply voluntarily and in good faith, as they had previously agreed to arbitration and its consequences. However, Siregar's approach was limited to statutory law and remained general in scope. In contrast, the current study, while also addressing arbitration awards, specifically examines the interpretation of Article 70 of the Arbitration Law, with particular attention to the "fraud" clause.

Nurhayati (2022)¹¹ examines the concept of setting aside arbitral awards in multiple jurisdictions, employing statutory and conceptual approaches. However, that study remains general and does not specifically reference the 2014 Constitutional Court ruling. In contrast, the present study focuses on interpreting the grounds for setting aside an award, particularly in relation to "deception", by referencing the 2014 Constitutional Court ruling and employing both statutory and case-based approaches.

Permana (2023)¹² identifies security for costs as an interim measure available under Article 32 of the Arbitration Law. That study utilises statutory and comparative methodologies, examining interim measures in arbitration practice that correspond with the interim rulings specified in Article 32 of the Indonesian Arbitration Law and Article 19 (5) of the BANI Rules. These provisions form the legal basis for an arbitrator or arbitral tribunal to issue an order for security for costs. In contrast, the present study, while also examining the Arbitration Law, concentrates on the application and interpretation of Article 70 concerning the setting aside of arbitral awards.

In light of the previously identified issues, this analysis focuses on the following questions: How is the term "deception" interpreted within Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution? Additionally, how should judicial

¹⁰ Resi Atna Sari Siregar, "Analisis Terhadap Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa," *Islamic Circle* 2, no. 1 (2021): 41–51, doi:10.56874/islamiccircle.v2i1.472.

¹¹ Yati Nurhayati, "Perbandingan Konsep Pembatalan Putusan Arbitrase Di Beberapa Negara," *Jurnal Ius Constituendum* 7, no. 2 (2022): 335–50, doi:10.26623/jic.v7i2.5700.

¹² Afrizal Hadi Permana and Teuku Syahrul Ansari, "Penerapan Security For Costs Dalam Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa," *Yustisi* 10, no. 3 (2023): 141–51, doi:10.32832/yustisi.v10i3.15207.

interpretation of this term be examined within the context of the same law? These questions aim to clarify the meaning of "deception" as a basis for setting aside an arbitral award under Law Number 30 of 1999 and to evaluate its relevance following the 2014 Constitutional Court decision.

2. METHOD

A normative-juridical research method is employed, incorporating both statutory and case-based approaches. These methods facilitate examination of the relationship between Law Number 30 of 1999 and Constitutional Court rulings, as well as their application in cases involving the annulment of arbitration awards on the grounds of deception. The legal sources consist of both primary and secondary legal materials. Primary legal materials include Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution; Supreme Court Circular Letter Number 7 of 2012 regarding Legal Formulations from Supreme Court Chamber Plenary Meetings as Guidelines for Court Duties; Constitutional Court Decision Number 15/PUU-XII/2014; and Central Jakarta District Court Decision Number 699/Pdt.G/2019/PN Jkt.Pst together with Supreme Court Decision Number 327 B/Pdt.Sus-Arbt/2021. Secondary legal materials comprise books and journal articles addressing arbitration and the concept of deception.

The methodology for collecting legal materials consists of identifying pertinent legislation, such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Supreme Court Circular Letter Number 7 of 2012, which provides guidelines for judicial duties. Additionally, the study examines legal issues arising from Constitutional Court Decision Number 15/PUU-XII/2014, Central Jakarta District Court Decision Number 699/Pdt.G/2019/PN Jkt.Pst, and Supreme Court Decision Number 327 B/Pdt.Sus-Arbt/2021.¹³ Analysis of these materials involves constructing arguments based on the legal issues identified in the aforementioned regulations and decisions, followed by recommendations derived from these arguments. The analytical framework utilises both deductive and inductive reasoning, drawing on general principles established in the Arbitration Law and Constitutional Court decisions regarding deception practices, and applying them to cases concerning the annulment of arbitral awards by district courts.¹⁴

3. RESULTS AND DISCUSSION

3.1 Use of the Phrase "Deception" in Article 70 of Law Number 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution

3.1.1 Cancellation of Arbitration Awards in Indonesia

Arbitration is a form of alternative dispute resolution (ADR) recognized in the Indonesian legal system and is final and binding. This is affirmed in Article 60 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (the Arbitration Law), which states that arbitration decisions are final and binding and cannot be appealed, cassated, or reviewed.

¹³ Fitri Yani et al., "Analisis Hukum Penyelesaian Sengketa Hak Paten Oleh Nokia Terhadap Oppo Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta Dan Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa," *Lex Justitia* 6, no. 2 (2024): 130–42, doi:10.22303/lj.6.2.2024.130-142.

¹⁴ Tri Rahayu Utami and Aditya Yuli Sulistyawan, "Urgensi Penalaran Dalam Argumentasi Hukum Guna Mengembangkan Pemikiran Hukum Yang Komprehensif," *Crepido* 1, no. 1 (2019): 32–39, doi:10.14710/crepido.1.1.32-39.

However, this principle of finality does not preclude the possibility of annulling an arbitration decision in limited circumstances, as stipulated in Article 70 of the Arbitration Law. This provision provides legal grounds for the District Court to annul an arbitration decision if there is evidence of fraud, forged documents, or the discovery of new, decisive evidence concealed by the opposing party.¹⁵

An arbitrator is defined as one or more individuals appointed by a District Court, an arbitration organization, or the disputing parties to render a decision on a specific dispute whose resolution is referred to arbitration (Article 1, number 7 of the Arbitration Law). An arbitrator acts as a third party responsible for mediating and resolving disputes through the issuance of a decision. An arbitrator is required to maintain independence and avoid any bias that favors one party in the dispute resolution process. The most fundamental element in this role is the arbitrator's independence, which ensures that the dispute resolution process can proceed objectively. Therefore, the final decision is expected to provide justice and a swift resolution for the parties in disagreement, conflict, or dispute. Therefore, the parties are obliged to accept the decision as final and binding in accordance with their previous agreement.¹⁶

The impact of an annulment of an arbitration award on the level of trust of business actors cannot be ignored. As the primary users of this mechanism, business actors tend to expect legal certainty and consistency in the implementation of arbitration awards. When the court annuls an arbitrator's award, it can create the impression that arbitration cannot provide the certainty that is supposed to be one of its advantages. In a business context, this can influence business actors' decisions to choose arbitration as a dispute resolution forum and may even reduce Indonesia's attractiveness as a venue for international arbitration.¹⁷

Trade disputes can be resolved through judicial proceedings, non-judicial mechanisms, or alternative dispute resolution methods.¹⁸ Indonesian laws and regulations offer comprehensive mechanisms for parties to address such disputes. The Arbitration Law identifies only three of the ten grounds for cancellation specified in Article 643 Rv. Article 70 of the Arbitration Law provides that parties may request cancellation of an arbitration award if the decision is suspected to involve the following: a) documents submitted during the examination are subsequently recognized or declared to be false; b) after the decision, a decisive document is discovered that was concealed by the opposing party; or c) the decision results from deception by one of the parties during the dispute examination.

The effectiveness of the arbitration process depends on the support provided by the Judicial Body. Article 3 of the Arbitration Law specifies that the District Court lacks authority to adjudicate disputes between parties bound by an arbitration agreement, thereby clearly defining

¹⁵ Ashton Sebastian and Baidhowi Baidhowi, "Implementasi Pembatalan Putusan Arbitrase Oleh Pengadilan Negeri," *Jurnal Sosial Humaniora Dan Pendidikan* 4, no. 1 (2025): 61–74, doi:10.55606/inovasi.v4i1.4187.

¹⁶ Yunitya Hilda Natasya and Aminah Aminah, "Analisis Yuridis Pembatalan Putusan Arbitrase Dalam Sengketa Bisnis Berdasarkan Putusan Nomor 524/Pdt.Sus-Arb/2023/Pn Jkt.Tim," *Jurnal Ilmu Multidisiplin* 4, no. 5 (2025): 3246–54, doi:10.38035/jim.v4i5.1517.

¹⁷ Miftachul Jannah and Rihantoro Bayuaji, "Analisis Hukum Pembatalan Putusan Arbitrase Nasional Terhadap Kepercayaan Pelaku Usaha," *Hukmy : Jurnal Hukum* 5, no. 2 (2025): 944–64, doi:10.35316/hukmy.2025.v5i2.944-964.

¹⁸ Rehulina Sitepu, "Pengaturan Arbitrase Sebagai Penyelesaian Sengketa Alternative Secara Online," *Jurnal Privat Law* 11, no. 1 (2023): 117, doi:10.20961/privat.v11i1.72888.

the limitations of the Court's jurisdiction.¹⁹ Nevertheless, the court retains a supportive role in facilitating arbitration. Article 11, paragraph (2) of the Arbitration Law requires the District Court to reject and refrain from intervening in disputes resolved through arbitration, except in circumstances explicitly prescribed by law, such as annulment of an arbitration decision. During annulment proceedings, the court is prohibited from examining the substance of the dispute.²⁰ Its authority is confined to reviewing the validity of the arbitration decision-making process, including the selection of arbitrators and the application of the law chosen by the parties, as stipulated in Article 70.²¹

Regarding requests for annulment of arbitration awards, the Constitutional Court issued Decision Number 15/PUU-XII/2014. This judicial review was initiated due to concerns about potential losses resulting from the application of the explanatory clause of Article 70 of the Arbitration Law. The explanation is viewed as lacking legal certainty and impeding access to justice, as it appears to contradict the substantive provisions of Article 70. The explanatory clause of Article 70 states: "An annulment request may only be submitted against an arbitration award that has been registered with the court. The reasons for the annulment request referred to in this article must be proven by a court decision. If the court declares that these reasons are proven or not proven, then this court decision can be used as a basis for consideration for the judge to grant or reject the request." The phrase "the reasons for the annulment request referred to in this article must be proven by a court decision" introduces a new norm and contains provisions that diverge from those established in the main body of the Arbitration Law.

The process of proving cases for the annulment of arbitration awards presents significant challenges. Following Constitutional Court Decision No. 15/PUU-XII/2014, establishing the elements outlined in Article 70 of the Arbitration Law no longer requires a prior criminal court decision. Instead, it is sufficient to provide proof of the grounds for annulment during the trial, based on the alleged existence of the elements stipulated in Article 70 of the Arbitration Law.²²

The Constitutional Court's decision is *erga omnes*, signifying that it is binding not only on the parties involved (inter parties) but also on all individuals, legal entities, and state administrators. This principle is reflected in Article 10, Paragraph (1). Law Number 8 of 2011, which amends Law Number 24 of 2003 concerning the Constitutional Court, clarifies that the Constitutional Court's decisions can be implemented directly without requiring authorization from another official, unless otherwise stipulated by statutory regulations. As stated: "The Constitutional Court's decision is final, namely that the Constitutional Court's decision immediately obtains legal force from the moment it is pronounced and no legal remedy can be taken. The final nature of the Constitutional Court's decision in this Law also includes binding legal force (final and binding)."

¹⁹ Natalia A. Morozova, "Assessment by an Arbitration Court Amicable Agreement Between the Offender and the Administrative Jurisdiction Body," *Rossiiskoe Pravosudie* 7 (2024): 51–59, doi:10.37399/issn2072-909X.2024.7.51-59.

²⁰ Muhammad Andriansyah, "Pembatalan Putusan Arbitrase Nasional Oleh Pengadilan Negeri," *Jurnal Cita Hukum* 2, no. 2 (2014), doi:10.15408/jch.v1i2.1472.

²¹ Frans Hendra Winarta, *Hukum Penyelesaian Sengketa* (Jakarta: Sinar Grafika, 2013).

²² Nurbaedah Nurbaedah and Cristoporus Wahyo Suryo W, "Tinjauan Yuridis Penerapan Pasal 70 Huruf (C) UU Arbitrase Sebagai Alasan Pembatalan Putusan Arbitrase (Studi Putusan Pengadilan Negeri Kediri Kota No. 54/Pdt.G/2015/PN.Kdr)," *Mizan: Jurnal Ilmu Hukum* 9, no. 1 (2020): 45, doi:10.32503/mizan.v9i1.1053.

In practice, the Constitutional Court's decision has the potential to give rise to two schools of thought. The first school is the judge's. In practice, the Constitutional Court's decision has led to the emergence of two schools of thought.²³ The first asserts that proving the elements of Article 70 of the Arbitration Law must be preceded by a criminal court decision, as reflected in South Jakarta District Court Decision Number 427/Pdt.Sus-Arbt/2021/PN.JKT.SEL. The second maintains that a criminal court decision is not required; instead, parties may prove the elements of Article 70 during the annulment trial itself, as demonstrated in Central Jakarta District Court Decision Number 699/Pdt.G/2019/PN Jkt.Pst and Supreme Court Decision Number 327 B/Pdt.Sus-Arbt/2021. The number of arbitral awards in Indonesia is still in a transitional phase. The dualistic approach between requiring a prior criminal conviction and one requiring sufficient evidence in the annulment trial reflects the lack of a uniform standard for understanding Article 70 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This situation emphasizes the urgency of formulating clearer boundaries and parameters, particularly regarding the phrase "deception," to avoid creating legal uncertainty while maintaining a balance between the principle of finality of arbitral awards and protection of substantive justice for the parties.

3.1.2 Use of the Phrase "Deception" in Article 70 of the Arbitration Law

The concept of deception is interpreted broadly within legal contexts. Actions that compromise integrity, violate statutory regulations, contravene the rule of law, constitute abuse of rights, or result in unfair treatment during arbitration proceedings may be classified as deceptive. Arguments asserting deception must be substantiated by relevant facts, legal reasoning, and supporting evidence to persuade the court.²⁴

Research indicates that arguments regarding deception often focus on engineered and manipulative trial processes, which may be perpetrated by either the opposing party or the arbitration panel. For example, in the Jurisprudence of the Decision of the Central Jakarta District Court Number 699/Pdt.G/2019/PN.Jkt.Pst in conjunction with Supreme Court Decision Number 327 B/Pdt.Sus-Arbt/2021, evidence demonstrated that fictitious or deceptive activities included the submission of baseless claims. Consequently, the judge determined that deception had occurred, as reflected in the following consideration: "The Respondent committed fraud by submitting a baseless claim for additional work based on the Audit Report dated November 29, 2016, even though the Audit Report was made unilaterally and is legally flawed. The Arbitration Panel's decision in the a quo case was based on the basis of legal considerations containing the results of fraud carried out by the Respondent. The Respondent has committed fraud by submitting a claim/demand for additional work amounting to Rp 5,341,119,125 (Five billion three hundred forty-one million one hundred nineteen thousand one hundred twenty-five Rupiah), which is also suspected of containing elements of false information."

²³ Soni Septiyanda and Abdurrahim Abdurrahim, "Pembatalan Putusan Arbitrase Di Indonesia Menurut Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa," *Terang : Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 2, no. 2 (2025): 127–40, doi:10.62383/terang.v2i2.973.

²⁴ Arlis Arlis, "The Concept of Legal Intensity: Harmonizing God's Rule within Constitutional Law," *Walisono Law Review (Walrev)* 5, no. 2 (2023): 245–74, doi:10.21580/walrev.2023.5.2.14123.

Furthermore, deception may also encompass actions by arbitrators who fail to apply the law, thereby contravening legal order. This interpretation is evident in the 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. In this instance, the arbitrator violated Article 56 paragraph (1) of the Arbitration Law and Article 16 paragraph (3) of the BANI Procedural Regulations of 2020 and 2021. As a result, the BANI Decision was found to contain a clear error or misapplication of the law and was thus categorized as a decision that violates public order.

In the South Jakarta District Court Decision Number 582/Pdt.Sus-Arbt/2021/PN.JKT.SEL, the panel of judges determined that the arbitration decision was contrary to public order. The court's considerations included the following: "Considering, that in the opinion of the panel of Respondent II in the above considerations, it has been considered not in accordance with the matters agreed upon by the Petitioner and Respondent I in the Sale and Purchase Agreement, because it is proven that the Petitioner and Respondent I in the Sale and Purchase Agreement and the object agreed upon has been clearly stated", "Considering, that based on the provisions of Article 1338 of the Civil Code, all agreements made legally apply as a law for those who make them, therefore the Petitioner and Respondent must comply with what they have agreed upon in the Sale and Purchase Agreement, therefore Respondent II cannot consider outside of what has been agreed upon by the Petitioner and Respondent I in the Conditional Sale and Purchase Agreement dated January 17, 2019;", "Considering, that based on the Explanation of Paragraph - 3 of Article 56 paragraph (1) of the Law Arbitration states that in the event that the Arbitrator is not authorized to issue a Decision based on justice and fairness (*Ex Aequo Et Bono*), then the Arbitrator can only issue a Decision based on the principles of Material Law as carried out by the Judge;", "Considering, that Respondent II in its Decision applies *Ex Aequo Et Bono* without any written approval or agreement from the Applicant and Respondent, so that the Arbitration Decision is a Decision that contains a clear error or mistake or a Decision that incorrectly applies the law, therefore the decision can be qualified/categorized as a Decision that violates/contradicts public order;"

Such judicial reasoning may serve as evidence of deception, providing grounds for the annulment of an arbitration award. This approach enables the development of facts during the trial and allows all relevant considerations to be presented to the Arbitration Panel. Jurisprudence and legal practice indicate that the term "rule" in Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is not limited to classical fraud but also encompasses process engineering, claim manipulation, and deviations in legal application by arbitrators that affect the issuance of awards.²⁵ This broader interpretation affirms that "rule" operates as an open concept, heavily reliant on the quality of argumentation and evidence presented during annulment proceedings.

The analysis of Article 70 of Law Number 30 of 1999 and its judicial application demonstrates that the principal problem is no longer the existence of annulment as an exceptional judicial

²⁵ Glora Meliana Sitohang, Jinner Sidaurok, and Sovia Simamora, "Legal Analysis of the Legal Force of Mediation Results as a Dispute Resolution Method in Business Contracts (Based on Law Number 30 of 1999 Concerning Alternative Dispute Resolution)," *Journal of Legal and Cultural Analytics* 4, no. 1 (2025): 235–46, doi:10.55927/jlca.v4i1.13878.

remedy, but the absence of a sufficiently determinate boundary for identifying conduct that qualifies as “deception.” The Constitutional Court’s removal of the requirement for a prior criminal judgment has strengthened access to judicial review by allowing the elements of Article 70 to be established directly in annulment proceedings; however, this procedural shift simultaneously expands the interpretive responsibility of judges and creates a potential tension with the final and binding character of arbitral awards under Article 60. The divergent approaches reflected in judicial practice further indicate that the concept of deception cannot be determined solely through a literal reading of Article 70, because an excessively broad interpretation may transform annulment proceedings into an indirect review of the arbitral merits, whereas an excessively narrow interpretation may leave serious procedural manipulation and bad-faith conduct without an effective remedy. Therefore, the central interpretive task is to establish substantive and evidentiary boundaries that distinguish genuine deception from ordinary evidentiary disputes, legitimate litigation strategies, and errors of legal reasoning, while preserving the exceptional nature of annulment proceedings. This tension provides the normative basis for examining the phrase “deception” more systematically in the following section, particularly by identifying its constituent elements, forms, and limiting criteria necessary to reconcile procedural integrity, substantive justice, legal certainty, and arbitral finality.

3.2 Analysis of the Interpretation of the Phrase “Deception” in Article 70 of the Arbitration Law

Deception (*listige kunstgrepen*), as defined in the *Arrest Hoge Raad* (Dutch Supreme Court) decision of January 30, 1911, encompasses a series of misleading actions that generate false pretexts and impressions, thereby inducing others to accept them as truth.²⁶ The principal distinction between deception and lying lies in the conduct: deception consists of physical or tangible acts, while lying is verbal and conveyed through speech or written words.²⁷

Deception may also be characterized as the creation of a series of falsehoods employed systematically by an individual to mislead others for personal gain.²⁸ Alternatively, deception can be understood as a particularly sophisticated trick capable of misleading an ordinary person.

With respect to the term “deception” in Article 70 of the Arbitration Law, its interpretation has evolved to emphasize a series of active, systematic, and misleading actions that create a false perception in the opposing party.²⁹ Within arbitration, deceit is not limited to a simple lie or an unsubstantiated argument; rather, it must involve structured and intentional conduct aimed at

²⁶ Farkhan Umarudi et al., “Analisis Putusan Mahkamah Agung Nomor 126b/Pdt.Sus-Arbt/2021 Tentang Putusan Perjanjian Yang Mengandung Tipu Muslihat Dalam Pekerjaan Kontruksi Dihubungkan Dengan Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa,” *Indonesian Research Journal on Education* 5, no. 3 (2025), doi:10.31004/irje.v5i3.2748.

²⁷ Nahda Hasibuan, Budi Sastra Panjaitan, and Annisa Sativa, “Tinjauan Hukum Pidana Islam Terhadap Tindak Pidana Penipuan,” *Hukum Dan Demokrasi (HD)* 24, no. 4 (2024): 216–30, doi:10.61234/hd.v24i4.52.

²⁸ Muhammad Arullah Aqil, Endang Prasetyawati, and Suta Ramadhan, “Pertimbangan Hakim Terhadap Tindak Pidana Penipuan Dengan Menggunakan Identitas Palsu Dengan Tipu Muslihat Kepada PT. Adira Dinamika Multifinance Tbk Sebagai Korban Dalam Memberikan Hutang Piutang (Studi Putus Nomor 572/ PID.SUS/2023/PN Tjk),” *Sakola: Journal of Sains Cooperative Learning and Law* 1, no. 2 (2024): 435–49, doi:10.57235/sakola.v1i2.3352.

²⁹ Olusesan Olusesan, “Third-Party Funding And Its Impact On International Investment Arbitration,” *Udus Law Journal* 2, no. 2 (2025): 61–74, doi:10.61955/GLOBDD.

influencing the examination process and the substance of the arbitral decision. Such conduct includes, for example, the preparation of fictitious claims supported by fabricated documents, the concealment of material facts, or the orchestration of proceedings to mislead the arbitral tribunal.³⁰

The distinction between deception and fraud is particularly significant in the context of annulling arbitral awards. Not every false or inaccurate statement qualifies as deception.³¹ The conduct must exhibit manipulative, repeated, or systematic characteristics and must significantly affect the arbitrator's judgment in issuing the award. This standard functions as a safeguard to prevent parties from exploiting annulment provisions solely due to dissatisfaction with the arbitration outcome.

In connection with the objectives of Article 70 of the Arbitration Law, the term "deception" should be interpreted both restrictively and functionally. Restrictively, it should not be broadened to include all forms of ordinary dishonesty; functionally, it must still encompass fraudulent practices that substantially undermine the integrity of the arbitration process. Accordingly, deception in arbitration is best defined as conduct that meets three criteria: (i) the presence of an active and misleading act, (ii) the act is committed in bad faith, and (iii) it directly influences the issuance of the arbitral award.³²

Judicial practice has established a case-by-case interpretation of "deception" under Article 70 of the Arbitration Law, using both teleological and grammatical approaches. This has led to jurisprudentially grounded classification patterns.³³ As a result, courts interpret deception not only as classical fraud but also as any form of deceit that undermines the integrity of the arbitration process and the substance of the arbitral award.

Factual fraud involves the construction or submission of claims lacking a legal or factual basis, including the use of legally flawed reports or documents to support misleading arguments. This pattern is demonstrated in the Central Jakarta District Court Decision No. 699/Pdt.G/2019/PN.Jkt.Pst and Supreme Court Decision No. 327 B/Pdt.Sus-Arbt/2021, where the panel identified fictitious claims as a form of deception that influenced arbitration considerations.

Procedural fraud refers to actions that create unfairness during arbitration proceedings, such as the fabrication of evidence or the use of strategies designed to systematically mislead the arbitral tribunal.³⁴ In this context, fraud is present not only in the outcome but also within the

³⁰ Harven Filippo Taufik, "Pembatalan Putusan Arbitrase Akibat Ditemukannya Dokumen Menentukan Yang Disembunyikan: Studi Putusan Ma No. 470b/Pdt.Sus-Arbt/2022," *Masalah-Masalah Hukum* 53, no. 2 (2024): 191–202, doi:10.14710/mmh.53.2.2024.191-202.

³¹ Mariëlle Stel et al., "The Limits of Conscious Deception Detection: When Reliance on False Deception Cues Contributes to Inaccurate Judgments," *Frontiers in Psychology* 11 (2020): 1331–52, doi:10.3389/fpsyg.2020.01331.

³² Nurul Wahyu Wijayanti and Siti Malikhatun Badriyah, "Akibat Hukum Perjanjian Pengikatan Jual Beli Yang Dibuat Dengan Adanya Tipu Muslihat Dan Daya Paksa (Studi Kasus Putusan Nomor 241/PDT/2020/PT.BDG)," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 4 (2024): 904–13, doi:10.38035/jihhp.v4i4.2108.

³³ Adhitya Yulwansyah and Aria Adipura Nataatmadja, "Urgensi Amandemen Terhadap Pasal 70 Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Sebagai Salah Satu Variabel Penting Dalam Pembangunan Ekonomi Indonesia," *BANI Arbitration and Law Journal* 1, no. 1 (2024): 43–57, doi:10.63400/bal.v1i1.4.

³⁴ Adilbek Tussupov, *Corruption and Fraud in Investment Arbitration*, vol. 22 (Cham: Springer International Publishing, 2022), doi:10.1007/978-3-030-90606-1.

process itself, which may be manipulated to produce a decision that does not reflect the material truth.

Normative fraud, or deception through deviation from the proper application of the law, is exemplified by South Jakarta District Court Decision No. 582/Pdt.Sus-Arbt/2021/PN.JKT.SEL and Supreme Court Decision No. 244 B/Pdt.Sus-Arbt/2022. In these cases, the arbitrator was found to have departed from applicable legal provisions, including the application of the *ex aequo et bono* principle without the parties' agreement. Such deviation is regarded not as a mere legal error, but as conduct resulting in a decision that contravenes public order.

However, this classification underscores that not every mistake, error, or difference in legal interpretation constitutes fraud. An element of intentionality is required, specifically the presence of manipulation or bad faith that significantly affects the arbitration process and outcome. Although the term "fraud" is an open norm, judicial practice has implicitly established boundaries, treating it as serious procedural misconduct rather than a mere adjudicative error.

Judicial practice and interpretive patterns indicate that the term "deception" in Article 70 of the Arbitration Law should be understood as a form of fraud that is serious, systematic, and directly affects the issuance of an arbitral award. Although the term is an open norm, its interpretation is constrained by jurisprudential limitations, specifically the presence of fact manipulation, process engineering, or legal deviations committed in bad faith. Consequently, invoking trickery as grounds for annulment of an arbitral award requires careful and measured application to balance the protection of substantive justice with the principle of finality, which underpins dispute resolution outside the court system.

The foregoing analysis demonstrates that the interpretation of "deception" under Article 70 of Law Number 30 of 1999 should not be reduced to the existence of a false statement or an ordinary legal error, but must be constructed as a material form of bad-faith conduct that compromises the integrity of the arbitral process and has a demonstrable causal relationship with the issuance of the award. The distinction between factual, procedural, and normative deception provides a more coherent analytical framework for courts to assess annulment applications while preventing Article 70 from becoming a mechanism for re-litigating the merits of an arbitral dispute. In this context, the decisive criterion is not merely whether misleading conduct occurred, but whether such conduct was intentional, materially misleading, and sufficiently influential to affect the arbitral tribunal's reasoning or the resulting award. This interpretation simultaneously accommodates the Constitutional Court's removal of the requirement for a prior criminal judgment and preserves the exceptional character of annulment proceedings by requiring substantial proof of misconduct rather than dissatisfaction with the arbitral outcome. Accordingly, the novelty of this analysis lies in conceptualizing "deception" through a cumulative threshold of intentionality, materiality, and causal influence, thereby providing a judicially operational boundary between legitimate advocacy, adjudicative error, and fraud warranting annulment. Such a framework strengthens legal certainty by constraining judicial discretion without undermining the corrective function of Article 70, ultimately establishing a principled equilibrium between the integrity of arbitration, substantive justice, and the finality of arbitral awards.

4. CONCLUSION

The term "deception" in Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution denotes active, intentional, and misleading acts of deception that affect the arbitration process or its outcome. This concept includes not only false statements but also the manipulation of facts, fabrication of claims, and other dishonest conduct during proceedings. Jurisprudence reveals that legal interpretations of "fraud" remain inconsistent and continue to evolve. Some rulings interpret the term narrowly, restricting it to the presentation of misleading evidence. In contrast, others adopt a broader perspective that encompasses procedural manipulation and irregularities in the application of law. While a broad interpretation may offer greater protection against fraudulent practices in arbitration, it can also generate legal uncertainty and allow losing parties to invoke "deception" as grounds to challenge arbitral awards. Consequently, a clearer and more precise definition is necessary to balance the interests of justice with the principle of finality in arbitral awards. Additionally, the interpretation of grounds for setting aside an award based on fraud should strictly adhere to Constitutional Court rulings by prioritising teleological and grammatical interpretations to ensure legal certainty.

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