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## ANNULMENT OF NATIONAL SHARIA ARBITRATION BODY (BASYARNAS) DECISIONS BY RELIGIOUS COURTS IN SHARIA ECONOMIC DISPUTES

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### Abstract

BASYARNAS decision should be final and binding, but it can still be canceled by the Religious Court if it is considered unfair or detrimental to one of the parties. However, in reality, decisions in the Religious Court are also often found to be weak, such as the lack of inclusion of legal basis or consideration of relevant aspects related to the decision. This research method is qualitative with the type of case study that uses a normative legal approach to examine the judge's legal considerations in deciding the case. The results showed that the cancellation of the BASYARNAS decision was granted because it was proven that there was a deception by the Respondents against the Peace Deed, and the determination of interest and fines was considered unfounded. However, the legal basis used by the judge is still incomplete. Moreover, in terms of the lack of good faith in dispute resolution. The legal consequences of this annulment are the elimination of the provisions of the BASYARNAS-MUIJT Peace Decision Number xx/BASYARNAS-xxx/xxxx so that SHM number xxx cannot be executed because lawsuit Number xx/Pdt.G/xxxx/PA.xxx is declared lacking parties so it cannot be accepted, and Respondent II must renew the contract based on the clauses in the decision.

**Keywords:** *BASYARNAS, Decision Cancellation, Legal Effects.*

### A. INTRODUCTION

Judges in deciding cases must apply the principles of justice to ensure that the legal process runs in accordance with fair and equitable values for all parties involved. Justice in the legal context aims not only to ensure compliance with the rules but also to ensure that every decision reflects the moral and ethical values underlying the justice

system.<sup>1</sup> However, in practice, there are still problems where the Panel of Judges and the Panel of Arbitrators do not consider other relevant aspects, which should be taken into consideration in deciding cases fairly. A concrete example of this problem can be found in decision No. Xxx/Pdt.G/XXXX/PA.xxx, where the Panel of Judges only focused on formal

<sup>1</sup> Amalia Amaya, "Reasoning in Character: Virtue, Legal Argumentation, and Judicial Ethics," *Ethical Theory and Moral Practice*, (October 2023), hlm.

8-11, <https://doi.org/10.1007/s10677-023-10414-z>.

requirements, such as a special power of attorney, without considering other substantive aspects that could potentially affect the fairness of the decision. In addition, other cases show that the Panel of Arbitrators often endorses peace deeds in disputes over defaults in murabahah financing contracts that contain interest and penalty provisions that are not agreed to by the defaulting party, even though the National Sharia Arbitration Panel (BASYARNAS) should have a deep understanding of sharia provisions.

Decisions that have been signed by a single Arbitrator or a panel are immediately binding (final and binding) with no further appeal, cassation, or judicial review.<sup>2</sup> Practice shows that compliance with Sharia arbitration awards is often voluntary but inconsistent, as the awards are often perceived to be inconsistent with the original agreement or adverse to one of the parties.

Submission of cancellation of BASYARNAS decisions has been explained in the provisions of Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The annulment of the decision can be submitted if it meets the provisions and elements mentioned, namely letters or documents submitted in the examination after the decision is made, are recognized as false or declared false; after the decision is made, a decisive document is found, which is hidden by the opposing party; or the decision is made as a result of deception by one of the parties in the dispute examination.<sup>3</sup> This issue became crucial in Religious Court Decision No. Xxx/Pdt.G/xxxx/PA.xxx, where the Plaintiffs filed for annulment alleging deception about the formal requirement of a special power of attorney (O as Applicant I and F as Applicant II against BASYARNAS-

MUI JT as Respondent I and Sharia Savings and Loan Cooperative xxx as Respondent II).

In the decision of the peace deed, the Petitioners argued that the BASYARNAS JT decision contained elements of deceit (one of the conditions for canceling an arbitration award) as outlined in the form of formal conditions in the form of a special power of attorney. This was done by the advocate of the power of attorney as the Respondent at the National Sharia Arbitration Board (BASYARNAS), hereinafter referred to as Petitioner I at the Religious Court of S. In considering the request for annulment, the Panel of Judges considered that the BASYARNAS award No. Xx/BASYARNAS-xxx/xxx had been proven to contain indications of deceptive practices carried out by one of the parties.

The gap in this research lies in the lack of an in-depth study of the application of the principles of justice in the process of annulment of arbitral awards and how judges can ensure that the decisions taken are consistent with the principles of justice, benefit, and legal certainty. The annulment of an arbitral award, which is final and binding, requires careful consideration so as not to harm either party and remain based on a consistent legal basis. Therefore, this study aims to analyze in depth the legal basis and considerations of judges in canceling BASYARNAS decisions and the legal impact of these decisions. This research is expected to provide a better understanding of the application of the principles of justice in arbitration and the steps that need to be taken to ensure decisions are by the values of justice and legal certainty.

This research examines the annulment of BASYARNAS awards based on Article 70 of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution. The

<sup>2</sup> “Undang-Undang Republik Indonesia Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif

Penyelesaian Sengketa,” in *Penjelasan Pasal 60* (Jakarta, Agustus 1999).

<sup>3</sup> *Ibid.*, Pasal 70.

literature review shows a lack of uniformity in the application of Article 70, with several journals such as those written by Nanda Bagus Trihatmojo and Adi Sulistiyono highlighting inconsistencies in the reasons for the annulment of arbitral awards.<sup>4</sup> Syafrida and Mangisitua Marbun point out the discrepancy between Article 60 and Article 70,<sup>5</sup> while Muhammad Haris Zulkarnaen Sitompul and Teuku Syahrul Ansari discuss the competence of the Religious Court in Sharia economic disputes.<sup>6</sup> Cristoporus Wahyu Suryo W and Nurbaedah deepen the application of Article 70 letter (c) related to deception, with a case study at the Kediri City District Court.<sup>7</sup> Nabilla Hayatunnufus' thesis focuses on formal defects in the peace deed and the authority of religious courts in execution,<sup>8</sup> while Elvi Eka Elvia's thesis analyzes the legal basis and challenges in the consistency of arbitration awards.<sup>9</sup>

The main difference between this research and previous research lies in the focus of analysis and point of view. This research uses the same decision as Nabilla Hayatunnufus' thesis, namely the cancellation of the BASYARNAS decision in Religious Court Case Number xxx/Pdt.G/xxxx/PA.xxx. While Nabilla Hayatunnufus' thesis focuses on analyzing formal defects in the peace deed and the

authority of religious courts in executing decisions, this research emphasizes more on the legal basis used by judges and critical analysis of the reasons for BASYARNAS decisions. This research also applies Gustav Radbruch's legal theory to understand the legal implications and impact of the annulment of the decision. The findings emphasize the need to increase the competence of arbitrators and judges, strengthen inter-institutional coordination, revise the law, apply substantive justice, and continuous monitoring and evaluation.

## B. RESEARCH METHODS

The research method used is qualitative research with a case study approach and normative law. This research analyzes Religious Court Decision Number xxx/Pdt.G/XXXX/PA.xxx (Cancellation of BASYARNAS Decision) and Religious Court Decision Number xxxx/Pdt.G/2020/PA.xxx (Sharia Economic Dispute) from the directory of decisions of the Supreme Court of the Republic of Indonesia. Research materials include primary law, namely Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and other related regulations, as well as secondary legal materials from books, journals, theses, and legal websites such as [hukumonline.com](http://hukumonline.com).

<sup>4</sup> Nanda Bagus Trihatmojo dan Adi Sulistiyono, "Prosedur Pasal 70 Undang-Undang Nomor 30 Tahun 1999 Dalam Pembatalan Putusan Arbitrase Di Indonesia," *Jurnal Privat Law* Vol. VII:2 (Desember 2019): 241–45.

<sup>5</sup> Syafrida dan Mangisitua Marbun, "Ketidakselarasan Putusan Arbitrase Bersifat Final Dan Mengikat (Pasal 60 UUAAPS) Dan Pembatalan Putusan Arbitrase (Pasal 70 UUAAPS)," *NJL: National Journal of Law* Vol. 5:2 (September 2021): 612–35.

<sup>6</sup> Muhammad Haris Zulkarnaen Sitompul dan Teuku Syahrul Ansari, "Kepastian Hukum Eksekusi Dan Pembatalan Putusan Arbitrase Syariah," *Yustisi: Jurnal Hukum dan Hukum Islam* Vol. 10:3 (Oktober 2023): 152–59.

<sup>7</sup> Cristoporus Wahyu Suryo W dan Nurbaedah, "Tinjauan Yuridis Penerapan Pasal 70 Huruf (c) UU Arbitrase Sebagai Alasan Pembatalan Putusan Arbitrase (Studi Putusan Pengadilan Negeri Kota No. 54/Pdt.G/2015/PN.Kdr)," *Mizan: Jurnal Ilmu Hukum* Vol. 9:1 (Juni 2020): 45–50.

<sup>8</sup> Nabilla Hayatunnufus, "Kewenangan Pengadilan Agama Membatalkan Akta Perdamaian Badan Arbitrase Syariah Nasional" (Universitas Islam Negeri Syarif Hidayatullah, 2023), Fakultas Syariah dan Hukum: 1-69.

<sup>9</sup> Elvi Eka Elvia, "Analisis Terhadap Putusan Hakim Atas Permohonan Pembatalan Putusan Arbitrase" (Universitas Islam Negeri Sunan Kalijaga Yogyakarta, 2023), Fakultas Syariah dan Hukum: 1-125.

This research uses a descriptive analysis method to examine the consistency of the law and apply Gustav Radbruch's legal theory in analyzing the decision, focusing on the legal considerations used by the judge and then also analyzing the impact of the decision.

## C. RESULTS AND DISCUSSION

### a. Reasons for Consideration of the Panel of Judges Granting the Petition for Annulment of the Decision of the National Sharia Arbitration Board (BASYARNAS) at the S Religious Court Case Number xxx/Pdt.G/XXXX/PA.xxx

Article 70 of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution has regulated the annulment of arbitral awards. The article states that the parties may file a petition for annulment of an arbitral award if the award is alleged to contain elements such as the following: a). Letters or documents submitted in the examination, after the award is rendered, are recognized as false or declared false; b). After the verdict is rendered, a decisive document is found to have been concealed by the opposing party; or c). The decision is made as a result of deceit committed by one of the parties in the dispute examination.<sup>10</sup>

Regarding the reasons for the annulment of arbitral awards as explained in the article, the proof of reasons in the application for annulment of arbitral awards is

required by a court decision no longer has legal force because the Constitutional Court decision Number 15/PUU/XII/2014 has canceled this requirement because it is considered to contain new norms that result in injustice and legal certainty by and contrary to Article 28D Paragraph (1) of the 1945 Constitution.<sup>11</sup>

The legal consideration in granting the annulment of the BASYARNAS decision in the case is based on Article 70 letter (c) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The article refers to the alleged deception. Before making a decision, the panel of judges examined the arguments related to the deception submitted, examined the evidence from the petitioner and the respondent, and considered the testimony of witnesses, and the assessment of the experts involved.

These indicators can be seen and concluded from the following matters: Firstly, the Peace Deed was made and signed on behalf of Applicant I without the written consent or valid authorization of Applicant I. Although Hans Edward Hehakaya, S.H., M.H. was given power of attorney in the case, he was not permitted to sign the Deed of Settlement, especially in terms of approving the nominal value of the settlement. Applicant, I considered that the action caused losses and violated the limits of his authority

<sup>10</sup> Tehedi, "Analysis Of The Nature Of Final And Binding Decisions Of The National Sharia Arbitration Board (Basyarnas) In Sharia Economic Disputes," *International Journal of Humanities, Social Sciences and Business (INJOSS)* Vol 2:2 (May 2023): hlm. 277.

<sup>11</sup> Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014 Perihal Pengujian Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase dan Alternatif Penyelesaian Sengketa Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945., hlm. 75-76.

by signing the BASYARNAS-MUI JT Peace Deed on December 5, 2022. The Applicant also asserted that the hearing agenda should have focused on the Continuation of the Evidentiary Hearing, not the making or signing of the Peace Deed, as per the Summons for the 4th Arbitration Hearing from BASYARNAS-MUI JT Number xx/BASYARNAS-xxx/28/XI/xxx dated November 28, 2022. The Claimant has requested a postponement of the hearing on December 05, 2022, and has also revoked the power of attorney granted to Hans Edward Hehakaya, S.H, M.H before the signing through a letter dated December 02, 2022, regarding Notice of Revocation of Power of Attorney.

Secondly, the Deed of Settlement was made and signed without the consent of the 2nd Applicant, either orally and/or in writing, while the 2nd Applicant in the case a quo was also the Respondent (Respondent II); Thirdly, the stipulation of interest and penalties in the Deed of Settlement was considered unfounded and was made without any prior agreement. Applicant I explained that at the time of the Murabahah Agreement, they were asked to pay a total of Rp. 500,000,000.00, with an upfront payment of Rp. 100,000,000.00, Respondent II's management services of Rp. 150,000,000.00, and Respondent II's friends' brokerage fees of Rp. 250,000,000.00. Subsequently, Claimant I paid in

stages a total of Rp. 973,200,000.00. In addition, Applicant I also paid an additional Rp. 100,000,000.00 at the request of Respondent II to obtain additional time to pay off its obligations under the Murabahah Agreement. Thus, the 1st Applicant did not accept the total obligations to be paid again in the peace deed. Therefore, Applicant I rejected the total obligations to be paid again in the Deed of Settlement because it was considered not by the previous agreement, so according to him there was additional interest and penalties that were outside the previous agreement.

The Supreme Court of Indonesia has stipulated that in making a decision, judges must consider all aspects of a juridical, philosophical, and sociological nature. Thus, the justice to be achieved, realized and accounted for in a judge's decision must include legal justice, moral justice, and social justice.<sup>12</sup> These principles are reflected in Article 5 paragraph (1) of Law No. 48 of 2009 concerning Amendments to the Judicial Power Act, which emphasizes that judges must explore legal values that live in society. The guidelines and code of ethics for judges are based on three basic values that must be realized in the application of the law, as proposed by Gustav Radbruch, namely the values of justice (*gerechtigkei*t), legal certainty (*rechtssicherheit*), and expediency (*zweckmassigkeit*).<sup>13</sup> Unlike other legal approaches, Gustav prioritizes

<sup>12</sup> Budi Abdullah, Ansari, Asmuni, "Penyelesaian Sengketa Ekonomi Syariah Di Peradilan Umum Dalam Perspektif Hukum Positif Di Indonesia," *Istinbáth* Vol 21:1 (Juni 2022): hlm. 219.

<sup>13</sup> Robert Alexy, "Gustav Radbruch's Concept Law," *Law's Ideal Dimension*, (July 2021), hlm. 1-14, [https://www.researchgate.net/publication/353967956\\_Gustav\\_Radbruch's\\_Concept\\_of\\_Law](https://www.researchgate.net/publication/353967956_Gustav_Radbruch's_Concept_of_Law).

legal certainty first, followed by expediency and justice. Gustav's view is that justice must be established first because justice has a strong relationship with law, and therefore, justice is always the basis of law. Without justice, a rule does not deserve to be called a law. In considering these values, judges are expected to render decisions that are not only in accordance with the law but also take into account aspects of moral and social justice in society.<sup>14</sup>

The Panel of Judges concluded that the Panel of Arbitrators was not careful in making a decision that resulted in harm to the Claimants because the Peace Deed was invalid. Although the Panel of Judges did not explicitly mention the legal basis, namely the existence of a legal vacuum in the consideration of the Panel of Judges related to BASYARNAS-MUI decision No. Xx/BASYARNAS-xxx/xxxx which should also review Article 18 paragraph (3) and Article 27 paragraph (3) of PERMA No. 1 Year 2016.<sup>15</sup>

These articles emphasize the important role of the attorney in the mediation process. The attorney must obtain the express instructions and consent of his/her principal to reach an agreement. Article 18 paragraph (3) allows the attorney to represent the parties with a special power of attorney that includes the authority to make decisions.

Meanwhile, Article 27 paragraph (3) confirms that the signing of the peace agreement by the attorney can only be done if there is consent from the party he represents. These articles do not require the direct presence and signing of the parties if the authority has been given to the attorney through a special power of attorney.

This statement can also be linked to Article 1340 of the Civil Code which states that "Agreements are only valid between the parties that make them." This is used to assess whether the resulting verdict is contrary to the law, as the Deed of Settlement made is invalid due to the lack of consent from the represented party.

This is also in line with Article 1795 of the Civil Code which stipulates that the signing of a Deed of Settlement by a power of attorney must be done with a special power of attorney, while the granting of power of attorney formulated in general only covers actions related to management, by the provisions of Article 1796 of the Civil Code, while to transfer objects, or other actions that are only carried out by the owner, cannot use a general power of attorney. From a legal point of view, a general power of attorney cannot be used as a basis for representing the granting of power of attorney before the court.<sup>16</sup> Thus, a special power of attorney is

<sup>14</sup> Aprina Chintya, "Menerjemahkan Kemaslahatan Dalam Putusan (Studi Terhadap Putusan Verstek Ekonomi Syariah di Pengadilan Agama Sijunjung)," *Jurnal Integrasi Ilmu Syariah* Vol. 4:2 (Agustus 2023), hlm. 268-269.

<sup>15</sup> Hayatunnufus, "Kewenangan Pengadilan Agama Membatalkan Akta Perdamaian Badan Arbitrase Syariah Nasional," hlm. 56.

<sup>16</sup> Christian Tarihoran, "3 Perbedaan Surat Kuasa Umum Dan Surat Kuasa Khusus," *Hukumonline.com*, accessed April 10, 2024, <https://www.hukumonline.com/klinik/a/perbedaan-surat-kuasa-umum-dan-surat-kuasa-khusus-cl5976/>.

required which expressly grants authority. Thus, the Panel of Arbitrators should have assessed and scrutinized the power of attorney underlying Hans Edward Hehakaya, S.H., M.H., to ascertain his authority to enter into the terms of the Deed of Settlement.

According to the author, in examining and adjudicating the annulment of the BASYARNAS-MUI JT decision, judges are bound by procedural law that regulates the entire process from examination to decision. Therefore, juridically, the decision is considered appropriate and by the applicable norms, especially in the absence of formal requirements related to the power of attorney to act and represent the principal in determining the nominal peace, peace agreement, and signing the peace deed. In line with Articles 1795 and 1796 of the Civil Code regarding power of attorney, Article 70 letter c of Law Number 30 of 1999, Article 22 of PER-01/BASYARNAS-MUI/XI/2021 which regulates the requirements for canceling BASYARNAS decisions, and Article 18 paragraph (3) and Article 27 paragraph (3) of PERMA No. 1 of 2016 concerning the Mediation Process in Court.

Then, regarding the determination of interest or fines, according to the author, the Panel of Arbitrators should consider it again because in the context of Sharia economic disputes, even though one party is in breach of promise, the determination of interest or fines must be by previously agreed

provisions or based on sharia law. In practice, the process of resolving sharia economic disputes very carefully considers the available evidence. The decision taken is not only based on the facts revealed but also ensures that all stipulations and sanctions imposed are by applicable legal provisions and reflect the ethical values and justice underlying the principles of Islamic economics.<sup>17</sup> This is important to ensure that the outcome of dispute resolution achieves not only material justice but also procedural and moral justice consistent with the deeply held principles of Sharia economics.

However, in terms of the cancellation of the peace deed due to the absence of the signature of Applicant II, the author has a different view from the Panel of Judges, which based on the explanation of the Panel of Arbitrators and the legal counsel of KSP Syariah xxx in answering the Applicants and the evidence of the summons letters for the 1st to 4th hearings, it appears that Applicant II did not show good faith during the proceedings at BASYARNAS-MUI JT. This absence was evidenced by the lack of response to the summons sent to Applicant II's home address.

Article 1338 paragraph (3) of the Civil Code: "All agreements must be performed in good faith." Good faith in the performance of an agreement or dispute resolution process requires the parties to act honestly and conscientiously in

<sup>17</sup> Zaidah Nur Rosidah dan Layyin Mahfiana, "Efektifitas Penerapan Prinsip Syariah Dalam Penyelesaian Sengketa Ekonomi Syariah Di Badan

Arbitrase Syariah Nasional (BASYARNAS)," *Tawazun: Journal of Sharia Economic Law* Vol 3:1 (Maret 2020): hlm. 24-26.

fulfilling their obligations,<sup>18</sup> Including attending the hearing and responding to the official summons. Applicant II's absence without a clear reason and lack of response to the summons demonstrates a lack of good faith in the dispute resolution process at BASYARNAS-MUI JT and shows that Applicant II did not fulfill this obligation.

Article 44 paragraph (2) of Law No. 30/1999 on Arbitration and Alternative Dispute Resolution states that if the respondent is absent without a valid reason before the trial, the examination will continue without his/her presence, and the claim of the applicant may be granted in full unless the claim is unreasonable or not based on the law.

PERMA No. 1 of 2016 concerning Mediation Procedures in Courts also emphasizes that; in the event that the parties are more than one, Mediation is still held after the summons is made legally and properly even though not all parties are present.<sup>19</sup> The absence of Claimant II, indicating a lack of good faith, could slow down the dispute resolution process by extending the time. Therefore, the Arbitral Tribunal had a legitimate basis for disregarding the presence of Claimant II and proceeding in his absence.<sup>20</sup>

Moreover, the factor in the cancellation of BASYARNAS-MUI

JT's decision is allegedly related to insolvency, namely the inability of the Plaintiffs to pay, in accordance with the provisions of Article 10 letter (d) of Law No. 30 of 1999 which states that the arbitration agreement will not be declared void due to the insolvency of one of the parties.<sup>21</sup> Therefore, the Panel of Judges in deciding the case was only based on the non-fulfillment of the formal requirement, namely the special power of attorney, by not considering other factors/aspects of consideration from the Respondent's reasoning that should have been taken into legal consideration to provide a fair decision. However, the judges have attempted to make a decision that is by the fairness aspect of the decision.

Furthermore, the aspect of expediency is considered a principle that accompanies justice and legal certainty. In the context of legal objectives in Islam, this benefit can be linked to the concept of *maslahat*. The element of community benefit (*kemashalahatan*) is the main parameter, thus obliging judges to prioritize benefit and avoid harm. This is a manifestation of the application of *maqasid ash-shari'ah*.<sup>22</sup> In other words, when deciding to cancel a BASYARNAS decision, the judge needs to consider the final consequences of the decision, whether the cancellation will have a positive or useful impact

<sup>18</sup> Dhaniswara K. Harjono, "Application of the Pacts Sunt Servanda Principles in the Settlement of Business Disputes through Arbitration," *International Journal of Law and Politics Studies* Vol. 5:1 (2023): hlm. 75.

<sup>19</sup> Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan, Pasal 17 Ayat (4).

<sup>20</sup> Hayatunnufus, "Kewenangan Pengadilan Agama Membatalkan Akta Perdamaian Badan Arbitrase Syariah Nasional," hlm. 60.

<sup>21</sup> Undang-Undang Republik Indonesia Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, Pasal 10 huruf (d).

<sup>22</sup> Aprina Chintya, hlm. 270.



on people's lives. By canceling the BASYARNAS decision, at least it can restore social balance through the provision of compensation or rights that should be. In terms of legal certainty, judges are always consistent in considering the provisions of Article 70 of Law No. 30 of 1999 when granting annulment of BASYARNAS decisions. This means that the reasons submitted by the Applicant in the argument for annulment that are outside the provisions of Article 70 will be rejected by the judge.

**b. Legal Consequences of Granting the Request for Annulment of the Decision of the National Sharia Arbitration Board (BASYARNAS) at the Religious Court Case Number xxx/Pdt.G/XXXX/PA.xxx**

The consequence of the provision of annulment of arbitral awards in the District Court is the loss of confidentiality, which is one of the characteristics of arbitration. Arbitration is often an option in dispute resolution due to its closed process, especially favored by business people.<sup>23</sup> However, the annulment of an arbitral award in the District Court changes the closed nature to be open to the public and can be covered by the mass media. While this annulment is a control measure to address possible errors in the arbitral award, on the other hand, it is considered to weaken the

arbitration process. The annulment provision has a dual nature, it can be used to uphold justice if a party is harmed by fraud, but it can also potentially be used to simply delay or avoid the obligation to execute the award, which would likely require execution through the District Court.<sup>24</sup> Article 72 paragraph (2) of the Arbitration Law states that if the petition for annulment of arbitration is granted, the President of the District Court determines the consequences of the annulment, either in whole or in part.<sup>25</sup>

Based on the considerations that have been given by the Panel of Judges in the trial, it can be concluded that the annulment of the BASYARNAS decision granted in the decision of the S Religious Court Number xxx/Pdt.G/XXXX/PA.xxx, has caused legal consequences. The legal consequences include, among others, the abolition of the provisions of the Peace Decision of the National Sharia Arbitration Board-Majelis Ulama Indonesia (BASYARNAS-MUI) JT Representative Office Number xx/BASYARNAS-xxx/xxxx dated December 5, 2022,<sup>26</sup> In terms of which states that the BASYARNAS decision is no longer final and binding. Of course, this creates a contradiction in the judge's consideration which states that the decision made by the National

<sup>23</sup> Fathur Riyadhi Aarsal, "The Role Of International Arbitration Institutions in Resolving Business Disputes Between Countries," *Indonesian Journal of Law and Justice* Vol. 1:4 (2024): hlm. 4.

<sup>24</sup> Mosgan Situmorang, "Pembatalan Putusan Arbitrase (Annulment of Arbitration Awards)," *De Jure: Jurnal Penelitian Hukum*, (Desember 2020), Vol. 20:4, hlm. 583.

<sup>25</sup> Undang-Undang Republik Indonesia Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa, Pasal 72 Ayat (2) dan penjelasan Pasal 72 Ayat (2).

<sup>26</sup> Putusan No. xxx/Pdt.G/XXXX/PA.xxx, hlm. 52-72.

Sharia Arbitration Board-Majelis Ulama Indonesia (BASYARNAS-MUI) according to the law is final and has permanent legal force and is binding on the parties to the dispute as stipulated in Article 60 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

If one of the parties submits the BASYARNAS decision to the court for a request for annulment, then the BASYARNAS characteristics of the decision will be lost and will be replaced by the principles that apply in court and are considered to have never existed. Therefore, according to the author, this shows that the authority of the BASYARNAS institution is still limited because it requires intervention from the court in terms of canceling BASYARNAS decisions.

In addition, regarding the losses incurred due to the delay in execution used by the losing party to cancel the BASYARNAS decision, it is feared that it is only to avoid or at least delay the implementation of the BASYARNAS decision. This can be seen from the 1st Respondent's firm rejection of the Petitioners' arguments which try to find loopholes by highlighting one particular aspect and ignoring other aspects in letter evidence such as the Summons of Hearing sent to the Parties. In this context, the Claimants were attempting to delay payment by filing an Application for Cancellation of the Peace Judgment, which was driven by the insolvency of the Claimants.

Then, regarding material losses by the winning party in the

BASYARNAS dispute settlement, in this case, the relatively expensive court fees, which require the use of lawyers and with the delay of the BASYARNAS decision in Murabaha financing, the profits or results obtained by the winner in the BASYARNAS dispute, namely Respondent II, are also delayed. Moreover, more court costs must be paid by the losing party, based on the provisions of Article 181 Paragraph (1) HIR, in this case punishing the Respondents to pay court costs in the amount of Rp. 705,000.00 (seven hundred five thousand rupiah).<sup>27</sup>

Cancellation of the Decision of the National Sharia Arbitration Board-Majelis Ulama Indonesia (BASYARNAS-MUI) JT Representative Office number xx/BASYARNAS-xxx/xxxx dated December 5, 2022, regarding the Applicants not carrying out their monthly installment payment obligations promptly by pledging one of the Certificate of Ownership (SHM) no. xxx in the name of F in this case Petitioner II located in B cannot be executed because the lawsuit filed by Respondent II, lacks parties because the SHM in the name of F as the legal wife of the respondent should have been drawn as a defendant, by the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 365/K/Pdt/1984 dated August 31, 1985. "The lawsuit must sue all persons involved". Likewise, the Decision of the Supreme Court of the Republic of Indonesia Number 546 K/Pdt/1984 dated August 31, 1985 "The lawsuit cannot be

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<sup>27</sup> *ibid.*

accepted because the case lacks parties” and Respondent II must renew the contract based on the clauses; that the loan ceiling becomes Rp. 1,100,000,000.00 (one billion one hundred million rupiah); profit sharing for the next 36 months is Rp. 792,000. 000.00 (seven hundred ninety-two million rupiah); the Applicant's total payment obligation is Rp. 1,892,000,000.00 (one billion eight hundred ninety-two million rupiah); the installment period is 36 (thirty-six) months; the realization date is October 23, 2019; the payoff date is October 23, 2021; the monthly installment amount is Rp. 52,560,000.00 (fifty-two million five hundred sixty rupiahs); the payment date is every 23<sup>rd</sup> of the month.<sup>28</sup>

#### D. CONCLUSION

Based on the analysis that has been presented, it can be concluded that the main reason for granting the annulment of the BASYARNAS decision is the alleged deception of a special power of attorney, which is only based on Article 70 letter (c) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The Panel of Judges did not explicitly state the relevant legal basis and the author thinks that the Panel of Judges did not consider other relevant laws, such as Article 1338 paragraph (3) of the Civil Code and Article 44 paragraph (2) of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution which requires that the agreement

be executed in good faith and Article 17 Paragraph (4) the absence of the signature of Claimant II. In addition, the Panel of Judges also did not pay attention to other aspects of the Respondent’s response.

As a result of the cancellation of the BASYARNAS decision, the Certificate of Ownership (SHM) on behalf of Applicant II cannot be executed because Respondent II's lawsuit was declared lacking parties in the previous Religious Court. Therefore, the author emphasizes the importance of judges in ensuring the careful application of the law to the facts revealed in the process of canceling the BASYARNAS decision. To overcome these weaknesses and ensure fair and effective arbitration practices, several solutions need to be implemented. First, improving the competence of arbitrators and judges through periodic training on sharia principles and arbitration techniques. Second, strengthen coordination between BASYARNAS and the Religious Courts by drafting clear guidelines and communication mechanisms that will reduce overlap and misalignment. Third, revise the law regarding the annulment of arbitral awards to avoid legal manipulation. Fourth, ensure the application of the principle of substantive justice in every decision by assessing the impact on all parties. Finally, conduct periodic monitoring and evaluation by an independent body to ensure that fairness standards are consistently applied. These measures are expected to correct existing weaknesses, improve quality, and ensure fair arbitral decisions that do not harm the parties involved.

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<sup>28</sup> Putusan Pengadilan Agama L Nomor: xxxx/Pdt.G/XXXX/PA.xxx, hlm 23-45.

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