

CHAPTER TWO

LITERATURE REVIEW

A. Overview of Inconsistency

According to KBBI (Indonesia Dictionary) Inconsistency /*in – con – sis – ten /* inconsistent /; 1. means not consistent; changing (about one's attitude or stance, usage or spelling words, etc.); 2. has some parts that do not conform; contradictory; contradictory: *the gift -;* 3 mismatched; it is not in accordance with; not suitable: *action man - with his own words or recommendations.*¹

The inconsistency of Supreme Court decision regarding the annulment of arbitration award refers to Article 70 of Arbitration Law raises to groups first Supreme Court which is consistent with the Article 70 states the reason for annulment of arbitration award that should refer to content of Article 70 is limitedly,² so the annulment of arbitration award which does not refer to Article 70 cannot be justified. The second group is Supreme Court that is not consistent with the Article 70, the reason for annulment of arbitration award can be outside of content of Article 70 and it is not limitedly.³

¹ Anonym, "Inkonsistensi" available at <http://kbbi.web.id/inkonsisten> accessed on November 5th, 2016, at 11.24 AM.

² Supreme Court decision No.293 K/Pdt.Sus/2012

³ Supreme Court decision No.26 B/Pdt.Sus-Arbt/2014

B. Overview Of Arbitration

1. Definition of Arbitration

The word arbitration is derived from Latin word “*arbitrare*” which means the power to settle something based on the "wisdom"⁴. Based on that term, there are some interpretations that the dispute settlement based on wisdom only, this interpretation is wrong because the arbitrator also applies the law as what is done by the judge in the court.⁵ While in Islam, arbitration called as *al-tahkim* which is a part of *al-qadla* (court).⁶

Arbitration is the submission for determination of dispute matter to private unofficial persons selected in manner provided by law or agreement.⁷ The dispute should be resolved stems from a dispute over a contract in the following forms:⁸

- a. The differences in interpretation concerning the implementation of the agreement include:
 - 1) Controversy;
 - 2) Misunderstanding;
 - 3) Disagreement.
- b. Breach of Contract, including:
 - 1) The validity of Contract;
 - 2) The enactment of Contract.

⁴ Fadia Fitriyanti, 2013, *Arbitrase Nasional & Arbitrase Syariah Suatu Kajian Perbandingan* Yogyakarta, Laboratorium Fakultas Hukum, UMY, p. 89.

⁵ Subekti, 1981, *Arbitrase Perdagangan*, Bandung, Binacipta, p. 1-3.

⁶ Said Aqil Husein Al Munawar, 1994, *Arbitrase Islam di Indonesia* Jakarta: Badan Arbitrase Muamalat Indonesia Bekerja Sama dengan Bank Muamalat, , p. 14.

⁷ Henry Campbell Black, 1968, *Black's Law Dictionary*, St. Paul, Minn, West Publishing, p. 134.

⁸ M. Yahya Harahap, 2006, *Arbitrase*, Jakarta, Sinar Grafika, p. 71.

- c. Termination of Contract
- d. Claims regarding compensation for breach of contract (*Wanprestasi*) or unlawful act.

The definitions of arbitration according to some expert are as follow:

According to Sukdino arbitration is a procedure of dispute settlement out of court by consent of the parties that concerned to submit their dispute to an arbitrator.⁹ Jean Robert stated arbitration means instituting a private jurisdiction by which litigations are withdrawn from the public jurisdiction in order to be resolved by individuals vested, for a given case, with the power to judge such litigation.¹⁰ While Riskin and Westbrook defined Arbitration as the form of adjudication in which the neutral decision maker is not a judge or an official of an administrative agency. There is no single, comprehensive definition of arbitration that accurately describes all arbitration system.¹¹

Another expert such as Priyatna Aburrasyid stated arbitration is a legal action which is the parties submitted their dispute to the expert with aim to get final and binding decision.”¹² While Peter V. Baugher stated arbitration is the dispute resolution mechanism of choice in the expanding world economy.¹³ Frank Alkoury and Eduar Elkoury defined Arbitration as an easy and simple process which chosen by the parties in order to settling their dispute by a neutral bailiff with the decision based on the argument of its dispute, and at the beginning the parties had agree with

⁹ Sudikno Mertokusumo, 1999, *Mengenal Hukum: Suatu Pengantar*, Yogyakarta, Liberty, p. 144.

¹⁰ Jean Robert, 1993, *Arbitrase Komersial International*, Cet. Ke-2, Jakarta, Rajawali Press, p. 10-11.

¹¹ Riskin and Westbrook, 1987, *Dispute Resolution and Lawyer*, *American Casebook Series*, St. Paul, West Publishing Company, p. 250.

¹² Priyatna Abdurrasyid, 2002, *Alternatif Penyelesaian Sengketa: Suatu Pengantar*, Jakarta: Fikahati Aneka, p. 16.

¹³ Peter V. Baugher, 1998, *International Commercial Arbitration*, Chicago, Schopf & Weiss, p. 1.

its decision.¹⁴ Teresa F. Frisbie wrote in his book arbitration is confidential, binding procedure by one or three privates which involves somewhat less formality than court.¹⁵

Indonesian Law also mentions the definition of arbitration, in article 1 point 1 of Law No. 30 of 1999 which stated arbitration shall mean a mechanism of settling civil disputes outside the general courts based upon an arbitration agreement entered into in writing by the disputing Parties.

That Law No.30 of 1999 on Arbitration and Alternative Dispute Resolution also has been regulated several issues of arbitration, as follow:

- a. The requirements of arbitration, appointment of arbiter, refusal right (article 7 to 26)
- b. Procedures applicable before the of arbitration (article 27 to 51)
- c. Judgement and arbitral award (article 52 to 72)
- d. Termination of arbiter mandate (article 73 to 77)

In the arbitration law, there are some principles recognized and obeyed in the procedure of arbitration. These principles are basic of the implemented law in order to be in line with the law principles that have been determined. Those applicable principles are:¹⁶

- a. Consensus principle, it means the parties agreed to settle their dispute peacefully, and agreed to appoint someone to be an arbiter.

¹⁴ Salim H. S., 2003, *Hukum Kontrak Teori & Teknik Penyusunan Kontrak*, Cet. Ke-3, Jakarta, Grafika, p. 142.

¹⁵ Teresa F. Frisbie, 2002, "Negotiating and Drafting the Disoutes Resolution Clause in Major Agreements", Chicago, Newsletter of The Chicago International Dispute Resolution Association, p. 2.

¹⁶ Sudiarto and Zaeni Asyhadie, 2004, *Mengenal Arbitrase Salah Satu Alternatif Penyelesaian Sengketa Bisnis*, Jakarta, PT Raja Grafindo Persada, p. 32.

- b. Deliberation principle that every dispute is strived to settle by deliberation either with the arbiter or among arbiter itself.
- c. Limitative principle that there are limitations the dispute resolution by arbitration such as disputes on trading/business and industry and or personal rights which control by parties.
- d. Final and binding principles, an arbitration award, are final, bind the parties directly and there is no appeal/cassation. In principle, this principle has agreed by the parties in the clause or their arbitration agreement.

In general, arbitration institutions have advantages compared to the judiciary. The advantages among other are:¹⁷

- 1. Guaranteed confidentiality of the parties' dispute
- 2. The inevitable slowness caused due to procedural and administrative matters
- 3. The parties that can choose the Parties can also choose the arbitrator who believes to have the knowledge, experience as well as sufficient background on the issues in dispute and fair
- 4. The parties may determine the choice of law to resolve the problem as well as the process and the venue for the arbitration and
- 5. The arbitral award is binding on the parties through the simple procedure or it can be immediately implemented

The Sources of Law of Arbitration divided into two.They are:¹⁸

¹⁷ Fadia Fitriyanti, 2017, *Op. Cit.*

¹⁸ Fadia Fitriyanti, 2013, *Op. Cit.* p. 87-88.

1. Formal Legal Sources

The formal sources of Law of Arbitration are regulated in:

- a. Article 58 and 59 of Law No. 48 of 2009 on Judicial Power
- b. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution
- c. The decision enacted accordance to the provision as stated in Article 637 and 639 of Rv (*Burgerlijke Rechtvordering*)
- d. Law No. 5 of 1968 on the Approval of Convention on the settlement of Investment Disputes Between States and National of other States
- e. Presidential Degree No. 34 of 1981 on Approval of Convention on the Recognition and Enforcement of Foreign Arbitral awards
- f. Perma No. 1 of 1990 on the Procedure of Implementation of Foreign Arbitration Award

2. Material Legal Sources

According to Article 5, the dispute which can settle through Arbitration is only the dispute on the trading, however in the explanation of 66 (b) of that Law the implementation of international arbitration award cover the scope of industrial, finance, capital investment, banking, commerce, and intellect property rights. So, the legal Material sources are the regulation/Act related to Commerce Law.

2. Type of Arbitration

Arbitration consists of institutional arbitration and ad hoc arbitration.¹⁹

Institutional arbitration is an institution or permanent arbitral body²⁰, otherwise ad hoc arbitration will disband and ends its existence after the dispute handled has completed.²¹ The institutional arbitration, as follows:

- a. National arbitration institution, is arbitration that have scope and the jurisdiction cover the country concerned, e.g.:²²
 - 1) Indonesian Arbitration Institution (BANI);
 - 2) Indonesian Capital Market Arbitration Institution (BAPMI);
 - 3) Institution of Commodity Future Trading Arbitration (BAKTI);
 - 4) Indonesian Syariah Arbitration Institution (BASYARNAS);
 - 5) The American Arbitration Association;
 - 6) Netherlands Arbitrage Institution;
 - 7) The Japan Commercial Arbitration Association;
 - 8) The British Institute of Arbitrators.
- b. International arbitration institution, the arbitration that has scope and jurisdiction is international, e.g.:²³
 - 1) International Chamber of Commerce (ICC) in Paris;
 - 2) International Center for the Settlement of Investment Dispute (ICSID);
 - 3) Singapore International Arbitration Center (SIAC);

¹⁹ Joni Emirzon, 2001, *Alternatif Penyelesaian Sengketa di Luar Pengadilan*, Jakarta, Gramedia Pustaka Utama, p. 102.

²⁰ *Ibid.*

²¹ Rengganis, 2011, *Tinjauan Yuridis Pembatalan Putusan Arbitrase Nasional Berdasarkan Pasal 70 Undang-undang No. 30 Tahun 1999 (Studi Kasus Terhadap Beberapa Putusan Mahkamah Agung RI)*, Jakarta, Universitas Indonesia, p. 23.

²² *Ibid.*, p. 24.

²³ *Ibid.*

In article 34 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution also mention the national or institutional arbitration, which stated:

1. *Dispute resolution through arbitration may be referred to a national or international arbitration institution if so agreed upon by of the parties.*
2. *Resolution of a dispute through institutional arbitration, as contemplated in paragraph (1), shall be done according to the rules and procedures of such designated institution, except to the extent otherwise agreed upon by the parties.*

Whereas, *ad hoc* arbitration is arbitration established specifically to resolve certain disputes and the time period until the dispute is decided.²⁴ In article 13 (2) of Law No. 30 of 1999 mention the *ad hoc* arbitration, which stated in an *ad hoc* arbitration, where there is any disagreement between the parties with regard to the appointment of one or more arbitrators, the parties may request the Chief Judge of the District Court to appoint one or more arbitrators for resolution of such dispute.

Ad hoc arbitration characteristic is the appointment of arbitrators individually.²⁵ In principle, *ad hoc* arbitration is not bound by any arbitration institution. The arbitrators are determined by consensus of the parties. Therefore, it can be said that this type of arbitration does not have its own rules about the manner of checking the dispute.²⁶

C. The Arbitration Award

Generally, arbitration award is divided into two that are national arbitration award and international arbitration award. Law No. 30 of 1999 is not defined the definition of

²⁴ Gunawan Widjaja and Ahmad Yani, 2000, *Hukum Arbitrase*, Jakarta, PT. Raja Grafindo Persada, p. 53.

²⁵ Rengganis, *Op. Cit.* p. 25.

²⁶ Suyud Margono, 2004, *ADR (Alternative Dispute Resolution) & Arbitrase, Proses dan Aspek Hukum*, Bogor, Ghalia Indonesia, 2004, p. 123.

national arbitration award, but the definition of international arbitration award only.

Article 1 point 9 of law No. 30 of 1999 stated:

“International arbitration awards shall mean awards handed down by an arbitration institution or individual arbitrator outside the jurisdiction of the Republic of Indonesia, or an award by an arbitration institution or individual arbitrators which under the provisions of Indonesian law are deemed to be International arbitration awards.”

To decide whether an arbitration awards are national arbitration award or international arbitration award, it's depend on the territory principle and law applicable in its dispute.²⁷ The characteristic of arbitration award which is based on the territory principle; it does not depend on the nationality of the parties. In other word, although the parties are the same nationality (Indonesian), but the decision of the dispute is decided outside of Indonesian territory, so its decision qualified as international arbitration award. While the characteristic of arbitration award which is based on law applicable means it does not depend on territory and nationality of the parties. Although the parties are the same nationality (Indonesian) and also the decision is decided in Indonesia, but the applicable law in the dispute settlement is the law of other countries (Australian law), so it's qualified as international arbitration award.

The implementation of the arbitral award can be carried out in accordance of the type of the arbitral award that national and international arbitration award. The implementation of national the arbitral award, the parties must fulfill what is regulated in Article 59 of Law No. 30 of 1999 which stated:

- 1. Within thirty (30) days from the date the arbitral award is rendered, the original or an authentic copy of the award shall be submitted for registration to the Clerk*

²⁷ *Ibid*, p. 63.

- of the District Court by the arbitrator(s) or a legal representative of the arbitrator(s).*
2. *The submission and registration, as contemplated in paragraph (1), shall be carried out by recording and signature at the end, or on the margin, of the award by the Clerk of the District Court and by the arbitrator or his/her representative, and such submission shall constitute a deed of registration.*
 3. *The arbitrator(s) or legal representative(s) shall deliver the original, or authentic copy, of the award and of the instrument of appointment of such arbitrator(s) to the Clerk of the District Court.*
 4. *Failure to comply with the requirements set out in paragraph (1) above shall render the arbitration award unenforceable.*
 5. *All costs connected with the making of the deed of registration shall be borne by the parties.*

Arbitration award should be basically done voluntarily, but if in the event that parties fail voluntarily to implement the arbitration award, the award may be enforced on the basis of an order from the head of district court at the request of one of the parties to the dispute²⁸ and have to fulfill what is regulated in Article 62 of Law No. 30 of 1999 which stated:

1. *The order referred to in Article 61 shall be issued not later than thirty (30) days after an application for execution of the award is submitted to the Clerk to the District Court.*
2. *Prior to issuance of the order of execution, the Chief Judge of the District Court contemplated in paragraph (1) shall examine whether the arbitration award fulfils the requirements set out in Articles 4²⁹ and 5³⁰, and is not in conflict with public morality or order.*

²⁸ Article 61 of Law No. 30 of 1999

²⁹ Article 4:

1. In the event the parties have previously agreed that disputes between them are to be resolved through arbitration and have granted such authority, the arbitrators are competent to determine in their award the rights and obligations of the parties if these matters are not regulated in their agreement.
2. The agreement to resolve disputes through arbitration, as specified in paragraph (1), shall be contained in a document signed by the parties.
3. In the event the agreement for resolution of disputes by arbitration is contained in an exchange of correspondence, including letters, telexes, telegrams, faxes, e-mail, or any other form of communication, the same shall be accompanied by a record of receipt of such correspondence by the parties.

³⁰ Article 5:

1. Only disputes of a commercial nature, or those concerning rights which, under the law and regulations, fall within the full legal authority of the disputing parties, may be settled through arbitration.
2. Disputes which may not be resolved by arbitration are disputes where according to regulations having the force of law no amicable settlement is possible.

3. *In the event the arbitration award does not meet the requirements set out in paragraph (2) above, the Chief Judge of the District Court shall reject the request for execution and shall not order such execution, and there shall be no recourse whatsoever to the judgement of the Chief Judge of the District Court.*
4. *The Chief Judge of the District Court shall not examine the substantive reasons or considerations upon which the arbitration award was based.*

In the implementation of the arbitral award that is based request of party to be executed on the orders of the chairman of the district court must be examined first whether it meets the following criteria:³¹

1. The parties agree that the dispute among them will be carried through arbitration.
2. The agreement to resolve the dispute through arbitration contained in a document signed by the parties.
3. Disputes can be settled by arbitration only in the field of trade.

If the application meets these conditions, the Chief Judge of District Court orders executed in accordance with the implementation of decisions in civil cases which the decision has had permanent legal force.³² In the event the arbitration award does not meet the requirements set out in article 62 (2), the Chief Judge of the District Court shall reject the request for execution and shall not order such execution, and there shall be no recourse whatsoever to the judgement of the Chief Judge of the District Court.

D. Judiciary System

1. General Court

³¹ Frans Hendra Winarta, 2011, *Hukum Penyelesaian Sengketa; Arbitrase Nasional Indonesia dan Internasional*, Jakarta, PT Sinar Grafika, p. 71.

³² Fitriana, 2015, *Upaya Pembatalan Putusan Arbitrase Nasional (Analisis Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014)*, Jakarta, Universitas Islam Negeri (UIN) Syarifah Hidayatullah Jakarta, p. 42.

Court of General Jurisdiction is one of the executors of Judicial Power for the people seeking justice.³³ There are two Courts of General Jurisdiction. They are:³⁴

- 1) General Court located in the municipality or in the district capital, and jurisdiction covers the territory of the Municipality or District;
- 2) Appeal Court located in the capital of the province and jurisdiction covers the province.

General Court is the Court of First Instance³⁵ and the Appeal Court is the Court in Appeal Level.³⁶ The duty and authority of District Court are to examine, decide and resolve criminal cases and civil cases in the first instance.³⁷ The duty and authority of High Court are to hear criminal cases and civil cases on appeal.³⁸ The Court of Appeal also has a duty and authority to hear at the first and final authority to hear disputes between the District Court jurisdictions.³⁹ The Court may provide information, consideration, and advice about the law to the Government institution in his area, if requested.⁴⁰ Upon the enactment of this law, all existing regulations regarding the implementation of the General Court shall remain valid for the new provisions under the legislation have not yet been issued and all the rules are not in conflict with the law.⁴¹ The head of the District Court has authorized to supervise over the work of a notary in his jurisdiction, and reports the results to the head of the Court of Appeal, the Justice (head of Judges) of the Supreme Court, and the Minister

³³ Article 2 of Law No. 8 of 2004 on The Court of General Jurisdiction

³⁴ Article 4

³⁵ Article 6 (1) of Law No. 2 of 1986 on Court of General Jurisdiction

³⁶ Article 6 (2)

³⁷ Article 50

³⁸ Article 51 (1)

³⁹ Article 51 (2)

⁴⁰ Article 52 (1)

⁴¹ Article 69

whose duties and responsibilities related to the notary's affairs.⁴² The head of the Court shall determine the case which shall be heard according to the serial number, except to the offense that the examination shall take precedence, namely:⁴³

- a. corruption;
- b. terrorism;
- c. narcotics / psychotropic substances;
- d. money laundering; or
- e. other criminal offenses prescribed by the law and the case that the defendant already in the imprisonment.

2. Religious Court

Judicature of Religious is court for people Muslims.⁴⁴ The Court means the court of Religion and High Religious Court in the religious judicature scope.⁴⁵ Religious Court is one of the executors of the judicial authorities seeking justice for the people who are Muslims on certain civil matters regulated in this Law.⁴⁶ In the jurisdiction of religious courts can be established special court regulated by law⁴⁷ such as Islamic Shari'ah Courts in the Province of Nanggroe Aceh Darussalam are special courts within the jurisdiction of the religious courts. Judicial Power in the Religious Court is culminating to the Supreme Court as the Highest Court of State.⁴⁸ Religious Courts

⁴² Article 54

⁴³ Article 57

⁴⁴ Article 1 (1) of Law No. 50 of 2009 on Religious Court

⁴⁵ Article 1 (2)

⁴⁶ Article 2 of Law No. 7 of 1989 on Religious Court

⁴⁷ Article 3A (1) of Law No. 50 of 2009 on Religious Court

⁴⁸ Article 3 (2) of Law No. 7 of 1989 on Religious Court

located in the municipality or in the district capital, and jurisdiction covers the municipality or district.⁴⁹ High Religious Court is based in the provincial capital, and covers an area of provincial jurisdiction.⁵⁰ The court consists of:

1. Religious Court, which is the Court of First Instance;
2. High Religious Court, which is the Court of Appeal.

The duty and authority of Religious Court are to examine, decide and settle the cases in the first level among people who are Muslims in field of:⁵¹

- a. marriage;
- b. inheritance,
- c. wills
- d. grants
- e. waqaf
- f. zakat
- g. infaq
- h. shadaqah; and
- i. ecomic sharia

In the event of a dispute concerning civil rights or property of another in cases referred to in Article 49, the special of the object into the dispute must be made first by the Court in the General Courts.⁵² High Religious Court has a duty and authority to

⁴⁹ Article 4 (1)

⁵⁰ Article 4 (2)

⁵¹ Article 49 of Law No. 3 of 2006 on Religious Court

⁵² Article 50

hear the case which is within its jurisdiction in the appeal.⁵³ The duty and the authority of High Religious Court are to hear at the first and final authority to adjudicate disputes between Religious Courts jurisdiction.⁵⁴ The Religious Court is not authorized to hear the cases but also to give the testimony “*Isbat*” of rukyat hilal in the determination of the beginning of the month in Hijriyah year.⁵⁵

The court cannot refuse to examine and decide a case filed on the grounds that the law does not or less clear, but obliged to examine and decide upon it.⁵⁶ The court hearing is open to the public, unless the law or the judge with important reasons noted in the report of the hearing, ordered that the examination in whole or in part shall be done by closed session.⁵⁷ The Courts are obliged to provide access to the public to obtain information relating to decisions and court fees in the proceedings.⁵⁸ Internal supervision over the behavior of Religious Court judges is done by the head of Court.⁵⁹

3. Supreme Court

As the highest Court, the Supreme Court is the court of cassation in charge foster uniformity in the application of the law through cassation decision and judicial review in order to all the laws and regulations throughout the territory of the Republic of

⁵³ Article 51 (1)

⁵⁴ Article 51 (2)

⁵⁵ Article 52A of Law No 3 of 2006 on Religious Court

⁵⁶ Article 56 (1)

⁵⁷ Article 59

⁵⁸ Article 64 of Law No. 50 of 2009 on Religious Court

⁵⁹ Article 12

Indonesia applied fairly, accurately and completely.⁶⁰ Supreme Court is the highest of supervisory body in term of administration of justice on the judicial power in all the courts under the jurisdiction.⁶¹

Generally, Supreme Court has 5 (five) function as follows:

a. Functions of Justice

- 1) Besides his duties as the Court of Cassation, the Supreme Court has the authority to examine and decide the cases on request for a review court decisions that have permanent legal power (Article 28, 29,30,33 and 34 of Law No. 14 of 1985 jo Law No.3 of 2009 on Supreme Court)
- 2) Supreme Court also authorized to examine all disputes arising out of seizure of foreign ships and cargo ships by warships of the Republic of Indonesia based regulations (Article 33 and Article 78 of the Law No. 14 of 1985 jo Law No. 3 of 2009 on Supreme Court)
- 3) Supreme Court also has authority to test/ examine the substantive of regulations under the Law about whether regulations in terms of its content (the material) are contrary to the regulations of the higher level (Article 31 of the Law No. 14 of 1985 jo Law No. 3 of 2009 on Supreme Court).

b. Functions of Monitoring

- 1) Supreme Court functions to supervise the highest on the course of justice in all courts in order that justice is done and courts have held closely and reasonable based on the principle of justice that is simple, fast and low cost,

⁶⁰ Supreme court/function and duties/<https://www.mahkamahagung.go.id/id/tugas-pokok-dan-fungsi>, access at November 3rd, 2016, 11.48PM.

⁶¹ Article 32 (1) of Law No. 3 of 2009 on Supreme Court

without prejudice to the freedom of the judge in the hearing and decide the case (Article 4 and Article 10 of Law No. 14 of 1970 jo Law No. 3 of 2009 on Supreme Court).

- 2) The Supreme Court has the authority to request information about matters concerned with the technical judiciary of all subordinate courts.
- 3) Supreme Court also monitors:
 - a) Internal supervision over the behavior of Supreme Court Justices (judges) is done by the Supreme Court.⁶² While, the external supervision over the behavior of Supreme Court Justices is conducted by the Judicial Commission.⁶³
 - b) Supreme Court authorized to monitoring against Legal Consultant /Lawyer and Notary as long as related to the judiciary (Article 36 of Law No. 14 of 1985 jo Law No. 3 of 2009 on Supreme Court).

c. Functions of Setting

- 1) The Supreme Court can further regulate the things that are necessary for the smooth administration of justice, if there are things that are not adequately regulated in the Law on the Supreme Court as a complement to fill a gap or void the law necessary for the smooth administration of justice (Article 27 of the Law No.14 of 1970, Article 79 of Law No.14 of 1985 jo Law No. 3 of 2009 on Supreme Court).
- 2) The Supreme Court can make its own regulations when necessary to satisfy the procedural law that has regulated by the law.

⁶² Article 32A (1)

⁶³ Article 32A (2)

d. Advisory Function

- 1) Supreme Court may give advice or considerations of law to another State Agency (Article 37 of Law No. 14 of 1985 jo Law No. 3 of 2009 on Supreme Court).
- 2) Supreme Court may give advice to the President as Head of State in the context of the granting or refusal of a clemency (Article 35 of Law No. 14 of 1985 jo Law No. 3 of 2009 on Supreme Court).
- 3) Supreme Court the authority to request information from and give guidance to the courts in all an environmental justice in the implementation of the provisions of Article 25 of Law No.14 of 1970 on Basic Provisions on Judicial Power and (Article 32 (4) of Law No. 3 of 2009 on Supreme Court).

e. Functions of Administration

- 1) Judicial bodies (the General Courts, Religious Courts, Military Courts and State Administrative Court) referred to Article 10 Paragraph (1) of the Act No.14 of 1970 organizationally, administratively and financially until now still under the Department concerned, although Article 11 (1) of Law No. 35 of 1999 has been transferred under the authority of the Supreme Court.
- 2) The Supreme Court is authorized to regulate the duties and responsibilities, organizational structure and working procedures of the Secretariat of the Court (Act No. 35 of 1999 on the Amendment of the Law No.14 of 1970 on Basic Provisions on Judicial Power). Other function that is to receive, investigate and adjudicate and resolve any matter referred to it, pursuant to Article 2 paragraph (2) of Law Number 14 Year 1970 as well as Article 38 of

Law No. 14 of 1985, the Supreme Court can be entrusted with duties and other authorities under the law.