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From Confidentiality to Judicial Transparency: The Challenge of Confidentiality in Proceedings to Set Aside Arbitral Awards

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Original Article

Abstract

Confidentiality is one of the principal reasons parties choose arbitration. However, proceedings to set aside an arbitral award may bring dispute-related information before courts, where judicial proceedings are generally governed by the principle of open justice. This study examines the legal status of confidentiality in arbitration and the limits on disclosure of information during proceedings to set aside arbitral awards. Employing a normative legal research methodology, the study adopts statutory, conceptual, and constitutional jurisprudential approaches, supported by systematic and teleological interpretation. The findings indicate that Article 27 of Law No. 30 of 1999 guarantees the private nature of arbitral proceedings but does not ensure absolute confidentiality once a dispute enters the judicial system. Furthermore, Constitutional Court Decision No. 15/PUU-XII/2014 and Supreme Court Regulation No. 3 of 2023 (PERMA No. 3 of 2023) do not establish a specific mechanism for protecting sensitive commercial information disclosed during proceedings to set aside arbitral awards. To address this regulatory gap, this study proposes a five-stage proportionality test for disclosure that seeks to balance judicial transparency, legal accountability, and the protection of confidential information.

Keywords: *Arbitration, Confidentiality, Setting Aside Arbitral Awards, Open Justice, Commercial Information.*

Abstrak

Kerahasiaan merupakan alasan penting pemilihan arbitrase, tetapi pembatalan putusan arbitrase dapat membawa informasi sengketa ke proses peradilan yang menganut prinsip keterbukaan. Penelitian ini menganalisis kedudukan kerahasiaan arbitrase dan batas pengungkapan informasi dalam permohonan pembatalan putusan. Penelitian hukum normatif ini menggunakan pendekatan perundang-undangan, konseptual, dan putusan konstitusional melalui penafsiran sistematis dan teleologis. Hasil penelitian menunjukkan bahwa Pasal 27 Undang-Undang Nomor 30 Tahun 1999 menjamin pemeriksaan arbitrase secara tertutup, bukan kerahasiaan mutlak setelah perkara memasuki pengadilan. Putusan Mahkamah Konstitusi Nomor 15/PUU-XII/2014 dan PERMA Nomor 3 Tahun 2023 belum mengatur mekanisme khusus perlindungan informasi komersial sensitif. Penelitian ini menawarkan uji pengungkapan proporsional melalui lima tahap untuk menyeimbangkan keterbukaan peradilan, akuntabilitas hukum, dan perlindungan informasi rahasia.

Kata kunci: *Arbitrase, Kerahasiaan, Pembatalan Putusan Arbitrase, Keterbukaan Peradilan, Informasi Komersial*

1. INTRODUCTION

Party autonomy and hearings conducted outside public view are distinguishing features of arbitration as a private dispute resolution mechanism. In commercial transactions, the choice of arbitration may reflect a desire to preserve business relationships, protect commercial strategies, and prevent the dissemination of documents whose value extends beyond the dispute itself. Expectations of confidentiality, however, often exceed what the law expressly protects. Private hearings, document confidentiality, the nonpublication of awards, and restrictions on third-party use of information raise distinct legal questions. These distinctions determine what remains protected when a party invokes judicial oversight of an arbitral award.[1]

Article 27 of Law No. 30 of 1999 provides that disputes heard by an arbitrator or an arbitral tribunal are examined in private. This provision directly safeguards the privacy of arbitral hearings but does not comprehensively prescribe duties binding every participant against disclosing all documents after the proceedings conclude. Broader confidentiality obligations may arise under contractual terms, institutional arbitration rules, and specific legal regimes, including trade secret and personal data protection laws. Accordingly, it would be mistaken to assume that every piece of information used in arbitration automatically falls within an exception to public access. Equally, disclosure does not become lawful merely because particular information is subsequently mentioned in a court filing.[2]

The two legal regimes intersect when an application is made to set aside an arbitral award. The applicant asks a court to determine whether one of the statutory grounds under Article 70 of the Arbitration Law has been established, while the opposing party seeks to uphold an award that is final and binding under Article 60. Resort to the courts may make contractual terms, the identities of commercial actors, correspondence, and portions of the arbitral record relevant to the application, the response, or judicial reasoning. At the same time, the Judicial Authority Law establishes openness as a governing principle of court proceedings, subject to statutory qualifications. The question, therefore, is not which principle should prevail absolutely, but which information must be disclosed to ensure a fair hearing, which information should be accessible to the public, and which information is entitled to specific legal protection.[3]

This tension has become more pronounced following procedural reforms. Constitutional Court Decision No. 15/PUU-XII/2014 deprived the Elucidation of

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1 Frans Hendra Winarta, *Hukum Penyelesaian Sengketa: Arbitrase Nasional Indonesia Dan Internasional* (Sinar Grafika, 2012); Maja Stanivuković, "Confidentiality and Transparency in International Arbitration," *Collected Papers of the Faculty of Law in Novi Sad* 52, no. 2 (2018): 449–76, https://doi.org/10.5937/zrpfns52-18945.

2 Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa (1999); Nicolette Butler and Jasem Tarawneh, "Keeping It Quiet? A Social Contract Theory of Confidentiality in Arbitration," *Journal of International Dispute Settlement* 17, no. 3 (2026): idag023, https://doi.org/10.1093/jnlids/idag023.

3 Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa.

Article 70 of binding legal force; that elucidation had previously required the grounds for setting aside an award to be established through a court judgment. Supreme Court Regulation No. 3 of 2023 subsequently established procedures governing applications, supporting evidence, judicial examination, and remedies in set-aside proceedings, including electronic filing. These provisions, however, do not constitute a comprehensive regime governing access to commercial documents or their redaction in published judgments. The distinction between increasingly defined set-aside procedures and the absence of an integrated information-protection mechanism gives rise to the central normative issue addressed here.[4]

Judicial accountability itself rests on a strong legal foundation. Law No. 14 of 2008 establishes a framework for access to public information, subject to exceptions that must be applied responsibly. Chief Justice Decree No. 2-144/KMA/SK/VIII/2022 governs public information services in the courts, while Law No. 27 of 2022 and Law No. 30 of 2000 become relevant where documents contain personal data or information satisfying the legal requirements for trade secret protection. Such protection cannot be invoked to conceal the existence of proceedings, the legal basis of judicial authority, or judicial reasons that should be open to public scrutiny. Conversely, public access to judgments does not absolve courts of their responsibility to assess whether particular information is legally protected.[5]

Existing scholarship offers several distinct perspectives. Roosdiono, Taqwa, and Salsabila associate challenges to arbitral awards with a risk of undermining trust, good faith, and confidentiality when information about the dispute enters the public domain. Andriani examines annulment as an exception affecting the finality of arbitral awards. Prawiro and colleagues likewise assess the application of the final-and-binding principle in a set-aside case in Tarakan. These studies illuminate the limits of judicial supervision, but their principal concern is not to develop a structured information-screening test identifying what should enter the public record and what should remain protected in a published judgment.[6]

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4 Putusan Nomor 15/PUU-XII/2014, 15/PUU-XII/2014 (Mahkamah Konstitusi Republik Indonesia November 11, 2014); Peraturan Mahkamah Agung Nomor 3 Tahun 2023 Tentang Tata Cara Penunjukan Arbiter Oleh Pengadilan, Hak Ingkar, Pemeriksaan Permohonan Pelaksanaan Dan Pembatalan Putusan Arbitrase (2023).

5 Undang-Undang Nomor 14 Tahun 2008 Tentang Keterbukaan Informasi Publik (2008); Keputusan Ketua Mahkamah Agung Nomor 2-144/KMA/SK/VIII/2022 Tentang Standar Pelayanan Informasi Publik Di Pengadilan (2022); Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi (2022); Undang-Undang Nomor 30 Tahun 2000 Tentang Rahasia Dagang (2000).

6 Anangga W. Roosdiono et al., "The Non-Applications of Good Faith, Trust, and Confidentiality in Arbitration: A Study of the Annulment Cases in Indonesia," *Indonesia Law Review* 12, no. 2 (2022): 1–17, https://doi.org/10.15742/ilrev.v12n2.1; Agustini Andriani, "Akibat Hukum Pembatalan Putusan Arbitrase Dalam Kaitannya Dengan Prinsip Final and Binding," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 1 (2022): 25–36, https://doi.org/10.37680/almanhaj.v4i1.1528; Bagus Prawiro et al., "Tinjauan Terhadap Penerapan Asas Final and Binding Dalam Pembatalan Putusan Arbitrase Oleh Pengadilan Negeri Tarakan," *Borneo Law Review* 10, no. 1 (2026): 15–34, https://doi.org/10.35334/rjkqya31.

Other scholarship addresses confidentiality in different settings. Anggreini and Chariansyah examine the tension between arbitral confidentiality and disclosure obligations imposed on issuers and public companies. Chietra and colleagues investigate the risk of unauthorized third-party access to online arbitration proceedings. Siboro and colleagues compare arbitration and litigation in terms of confidentiality, efficiency, and legal certainty. These studies illuminate information-related vulnerabilities but do not provide an operational analysis of how documents should be screened when courts hear applications to set aside arbitral awards. This article does not conflate securities disclosure obligations, cybersecurity in online arbitration, and public access to judgments, because each is governed by a distinct legal basis and protective objective.[7]

Scholarship concerning judgment publication and privacy adds a further dimension. Nulhakim identifies limitations in personal data protection when judgments are made available through court directories. Ningrum and Hufron discuss the authority to publish judicial decisions involving private interests. Zulaichah, Amnesti, and Istiqomah emphasize the need to protect personal information when judgments are publicly accessible. Together, these studies underscore the distinction between the public's right to examine judicial reasoning and a purported right to obtain every item of personal information included in the case record. Screening arbitral materials, however, calls for additional consideration of the commercial value of information, the confidentiality undertakings of the parties, and the evidentiary requirements associated with Article 70 of the Arbitration Law.[8]

Comparative scholarship further distinguishes confidentiality from transparency in international arbitration. Stanivuković examines this distinction, while Pislevik considers how the nonpublic nature of arbitral practice affects the development of legal precedent. Zamoff identifies tensions between public court access and confidential arbitral awards in proceedings to confirm awards in the United States. Mak and Rohatgi discuss the need to balance openness with protection of arbitral materials. Butler and Tarawneh additionally conceptualize confidentiality obligations as consent-based

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7 Mariani Anggreini and Hery Chariansyah, "Kedudukan Prinsip Kerahasiaan Arbitrase Dalam Pemenuhan Kewajiban Keterbukaan Informasi Oleh Emiten Dan Perusahaan Publik Di Indonesia," *Jurnal QOSIM: Jurnal Pendidikan Sosial & Humaniora* 4, no. 5 (2026): 1613–25, https://doi.org/10.61104/jq.v4i5.12476; Jenifer Wibisono Chietra et al., "Asas Kerahasiaan Dalam Proses Arbitrase: Potensi Risiko Akses Ilegal Oleh Pihak Ketiga Pada Platform Video Conference," *Jurnal Media Akademik* 4, no. 4 (2026), https://doi.org/10.62281/h04jpf96; Raymond Panuturi Siboro et al., "Analisis Literatur Tentang Perbandingan Arbitrase Dan Jalur Litigasi Dalam Penyelesaian Sengketa Bisnis," *Jurnal Ilmiah Wahana Pendidikan* 11, no. 11.C (2025): 188–96.

8 Ferdy Arya Nulhakim, "Aspek Keterbukaan Informasi Publik Dalam Kaitannya Dengan Perlindungan Data Pribadi Yang Terpublikasi Pada Direktori Salinan Putusan Mahkamah Agung Dalam Perkara Yang Diatur Dalam KMA Nomor 1-144/KMA/SK/I/2011," *Jurnal Hukum Dan Pembangunan Ekonomi* 10, no. 2 (2022): 306–23, https://doi.org/10.20961/hpe.v10i2.65115; Vernita Kusuma Ningrum and Hufron, "Kewenangan Mahkamah Agung Dalam Publikasi Pada Putusan Perkara Privat," *Law and Humanity* 2, no. 3 (2024): 248–63, https://doi.org/10.37504/lh.v2i3.659; Siti Zulaichah et al., "Public Information Disclosure and Personal Data Protection in Court Decisions: Legal and Islamic Law," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 15, no. 2 (2024): 265–85, https://doi.org/10.22212/jnh.v15i2.4528.

arrangements subject to exceptions grounded in law or the public interest. These insights inform the conceptual discussion but do not constitute authority for automatically importing foreign legal rules into Indonesia's award set-aside procedure.[9]

The research gap lies in the absence of an integrated analysis linking the law governing award set-aside proceedings after Supreme Court Regulation No. 3 of 2023 with a classification of information that may be disclosed or protected when courts process and publish cases. The claim to novelty is not that arbitral confidentiality in annulment proceedings has never been studied; the issue has already attracted scholarly attention. Rather, this article contributes a proportional disclosure test connecting evidentiary relevance, public access to judicial reasoning, legally recognized exceptions, and the need to limit dissemination of sensitive data. The contribution is a prescriptive construction derived from existing law, not a claim that Indonesian courts already apply the proposed procedure.[10]

Against this background, the study addresses two questions: (1) what is the legal status and scope of arbitral confidentiality under Indonesian law when an arbitration dispute enters award set-aside proceedings; and (2) how can a proportionate framework for information disclosure reconcile evidentiary requirements, transparency of judicial reasoning, and legitimate protection of commercial or personal information? The objectives are to distinguish the privacy of arbitral hearings from the protection of information once a matter enters court and to propose operational decision-making criteria for litigants and court information officers.

2. RESEARCH METHODOLOGY

This study adopts a normative legal research method using statutory, conceptual, and constitutional case-law approaches. The statutory analysis examines Law No. 30 of 1999, Law No. 48 of 2009, Law No. 14 of 2008, Law No. 27 of 2022, Law No. 30 of 2000, Supreme Court Regulation No. 3 of 2023, and Chief Justice Decree No. 2-144/KMA/SK/VIII/2022. The conceptual approach distinguishes the privacy of proceedings from duties of confidentiality and the principles of open justice and judicial accountability. The case-law approach focuses on Constitutional Court Decision No. 15/PUU-XII/2014 and the legal effect of invalidating the Elucidation of Article 70.

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[9] Stefan Pislevik, "Precedent and Development of Law: Is It Time for Greater Transparency in International Commercial Arbitration?," *Arbitration International* 34, no. 2 (2018): 241–60, https://doi.org/10.1093/arbint/aiy008; Mitch Zamoff, "Safeguarding Confidential Arbitration Awards in Uncontested Confirmation Actions," *American Business Law Journal* 59, no. 3 (2022): 505–57, https://doi.org/10.1111/ablj.12211; Charles Ho Wang Mak and Akshita Rohatgi, "Transparency in International Arbitration: Balancing the Need for Openness with the Need for Confidentiality," *ACICA Review* 11, no. 1 (2023): 44–47; Butler and Tarawneh, "Keeping It Quiet? A Social Contract Theory of Confidentiality in Arbitration."

[10] Roosdiono et al., "The Non-Applications of Good Faith, Trust, and Confidentiality in Arbitration: A Study of the Annulment Cases in Indonesia"; Mark Feldman, "International Arbitration and Transparency," in *Cambridge Compendium of International Commercial and Investment Arbitration*, ed. Stefan Kröll et al. (Cambridge University Press, 2023), https://doi.org/10.1017/9781108304467.056.

The study does not claim to undertake an empirical survey of publication practices across all set-aside cases, nor does it assert unverified facts concerning any particular commercial dispute.[11]

Primary legal materials were located through the Indonesian legislation portal, the Supreme Court's legal documentation network, and the Constitutional Court's legal documentation network. Secondary materials, including relevant scholarly articles and monographs, were identified through publishers' websites, academic libraries, and institutional repositories. Materials whose bibliographic identity could not be established were not treated as principal support for the conclusions. Grammatical interpretation is applied to the language of Articles 27 and 70; systematic interpretation relates those provisions to rules on court hearings, public access to information, data protection, and trade secrets; and purposive interpretation identifies the minimum safeguards consistent with judicial oversight. The resulting synthesis is prescriptive, setting out disclosure-limitation criteria that can be assessed by reference to their justification, scope, and consequences.[12]

3. RESEARCH RESULT AND DISCUSSION

3.1. The Legal Status of Arbitral Confidentiality under Indonesian Law

The privacy of arbitral hearings has a specific statutory basis in Article 27 of Law No. 30 of 1999. The provision requires the examination of disputes by an arbitrator or arbitral tribunal to take place in private. Its immediate object is the hearing itself; it does not declare that every document, aspect of a commercial relationship, or arbitral finding must remain undisclosed to every person in every circumstance. A distinction must therefore be drawn between restricting attendance at a hearing and limiting the subsequent disclosure of information. This distinction also prevents the imposition of unduly broad confidentiality obligations without regard to their legal basis, the parties' interests, and circumstances in which disclosure is lawfully required.[13]

Duties to protect documents may be reinforced through confidentiality clauses identifying the persons bound, the information covered, permitted uses, the duration of obligations, and exceptions for legal proceedings. Freedom of contract, however, does not empower private parties to displace the public-law obligations of courts. A clause prohibiting all disclosure in judicial proceedings may conflict with the lawful production of evidence or compliance with a judicial order. Conversely, the relevance of a document to a set-aside application does not necessarily require public

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[11] Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi revisi (Kencana, 2017); *Putusan Nomor 15/PUU-XII/2014*.

[12] Joni Emirzon, *Alternatif Penyelesaian Sengketa Di Luar Pengadilan: Negosiasi, Mediasi, Konsiliasi, Dan Arbitrase* (Gramedia Pustaka Utama, 2001); Winarta, *Hukum Penyelesaian Sengketa: Arbitrase Nasional Indonesia Dan Internasional*.

[13] Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa.

dissemination of every part of that document. Production to the judge, access by the opposing party for purposes of response, and public access to the court's decision should be treated as three distinct levels of disclosure.[14]

At the first stage, the requirement that arbitral hearings remain private continues to operate as a specific rule, even if a set-aside application is subsequently filed. Once the matter enters court, however, the nature of the proceedings changes: the application is reviewed by a state institution subject to principles of accountability and transparency. The change of forum does not extinguish the economic value or legal status of particular information, including material that qualifies as a trade secret or personal data protected by specific legislation. The more defensible approach is to tailor disclosure to the actual needs of judicial examination, rather than declaring either that all arbitral materials remain confidential or that all become freely reproducible public documents.[15]

Anggreini and Chariansyah demonstrate the need to reconcile arbitral confidentiality with disclosure obligations applicable to issuers. Their analysis is relevant by analogy, although securities disclosure requirements and public access to court judgments remain distinct legal categories. The studies by Mak and Rohatgi and by Stanivuković further show that transparency is not simply the opposite of confidentiality: the appropriate degree of disclosure depends on who seeks access, the information involved, and the purpose of the proceedings. Accordingly, arbitral confidentiality under Indonesian law has an express procedural dimension and an informational dimension requiring an additional legal basis for protection. The intermediate finding is that no sound normative basis exists for treating all arbitral information as a single category that must be either wholly secret or wholly public.[16]

3.2. Establishing Proportionate Limits on Disclosure in Arbitration Annulment Proceedings

Article 60 of the Arbitration Law provides that arbitral awards are final, have binding legal force, and bind the parties.[17] That finality does not eliminate the specific statutory mechanism for setting aside an award. Article 70 establishes grounds relating to forged documents, the discovery of decisive documents previously concealed, or fraudulent conduct by a party. A set-aside application is therefore not an unrestricted appeal through which the entire merits of the arbitral tribunal's decision may be relitigated. The submission of arbitral documents to a court should be guided by their

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[14] Butler and Tarawneh, "Keeping It Quiet? A Social Contract Theory of Confidentiality in Arbitration."

[15] Undang-Undang Nomor 30 Tahun 2000 Tentang Rahasia Dagang; Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi.

[16] Anggreini and Chariansyah, "Kedudukan Prinsip Kerahasiaan Arbitrase Dalam Pemenuhan Kewajiban Keterbukaan Informasi Oleh Emiten Dan Perusahaan Publik Di Indonesia"; Mak and Rohatgi, "Transparency in International Arbitration: Balancing the Need for Openness with the Need for Confidentiality."

[17] Juan Matheus, "E-Arbitration: Digitization Of Business Dispute Resolution Pada Sektor E-Commerce Dalam Menyongsong Era Industri 4.0 Di Tengah Pandemi Covid-19," *Lex Renaissance* 6, no. 4 (2021): 692–704.

relevance to those statutory grounds, rather than requiring wholesale disclosure of commercial dealings outside the scope of the application.[18]

Constitutional Court Decision No. 15/PUU-XII/2014 removed the binding force of the Elucidation of Article 70, which had linked proof of the grounds for annulment to a prior court judgment. The decision did not invalidate Article 70 itself. Supreme Court Regulation No. 3 of 2023, particularly Articles 24 and 26, requires the grounds for setting aside an award and supporting evidence to be presented in the application and directs judicial examination toward the statutory grounds. The Supreme Court's procedural framework also allows judges to assess those grounds without requiring a separate prior judgment as an initial basis. These developments provide a clearer framework for assessing the relevance of evidence but do not, by themselves, establish which portions of the documents may be reproduced in a publicly available judgment.[19]

Article 24 of Supreme Court Regulation No. 3 of 2023 further permits an application to be filed in person or electronically within the applicable time limit. Article 25 specifies the procedural form of the application, and Article 26 sets out the examination process. These provisions matter because electronic proceedings increase the exchange of information among litigants, court registry personnel, and judges. The relationship among electronic case management, party access, and the publication of judgments must nevertheless be governed carefully by the rules on court information services. The ability to use electronic filing does not confer on everyone a right to obtain all evidentiary documents; likewise, public access to judgments is not equivalent to unrestricted access to the entire arbitral record.[20]

Prawiro and colleagues examine the limits of finality in a set-aside dispute in Tarakan, while Andriani addresses the legal consequences of annulment. More directly, Roosdiono and colleagues identify the risk that set-aside proceedings may expose arbitral case information to the public. The present study builds on those findings by separating a necessary consequence of seeking judicial relief public oversight of the legality of the arbitral award from a consequence that is not invariably required: publishing every commercial detail unrelated to the court's reasoning and disposition. This distinction qualifies the proposition that confidentiality is 'lost' during judicial review. More accurately, the basis and scope of protection shift according to the type of information and the function served by disclosure.[21]

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[18] Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa.

[19] *Putusan Nomor 15/PUU-XII/2014*; Peraturan Mahkamah Agung Nomor 3 Tahun 2023 Tentang Tata Cara Penunjukan Arbiter Oleh Pengadilan, Hak Ingkar, Pemeriksaan Permohonan Pelaksanaan Dan Pembatalan Putusan Arbitrase.

[20] Peraturan Mahkamah Agung Nomor 3 Tahun 2023 Tentang Tata Cara Penunjukan Arbiter Oleh Pengadilan, Hak Ingkar, Pemeriksaan Permohonan Pelaksanaan Dan Pembatalan Putusan Arbitrase; Keputusan Ketua Mahkamah Agung Nomor 2-144/KMA/SK/VIII/2022 Tentang Standar Pelayanan Informasi Publik Di Pengadilan.

[21] Prawiro et al., "Tinjauan Terhadap Penerapan Asas Final and Binding Dalam Pembatalan Putusan Arbitrase Oleh Pengadilan Negeri Tarakan"; Roosdiono et al., "The Non-Applications of Good Faith, Trust, and

Open justice enables public scrutiny of the exercise of judicial power. Its essential functions are generally served through lawful access to the existence and nature of proceedings, the basis of jurisdiction, the legal questions presented, judicial reasoning, and the operative order. Public scrutiny of judicial reasons does not, however, invariably require publication of comprehensive pricing structures, customer lists, internal cost calculations, or personal identifying data that have no bearing on the grounds for setting aside the award. Pislevik's discussion of transparency and legal development, together with Feldman's treatment of the public interest in arbitration, supports the view that legal reasons should not be wholly obscured. Excessive redaction can likewise undermine public oversight and deprive judgments of their educational and precedential value.[22]

The general expression 'confidential dispute information' can obscure distinctions among the materials requiring examination. At least three categories should be distinguished. The first consists of information necessary to understand the grounds for the application and the ratio decidendi, such as a particular document alleged to have been forged or concealed where that allegation falls within Article 70. The second comprises commercial documents or identifying details subject to a specific legal ground for protection, including qualifying trade secrets or legally protected personal data. The third is administrative information identifying the existence of proceedings and their procedural status. Each category calls for a different assessment of access; a party's unilateral designation of a document as 'confidential' does not determine its classification under public information law.[23]

As a public information holder, a court is subject to rules governing disclosure and exemptions. Chief Justice Decree No. 2-144/KMA/SK/VIII/2022 should be understood as establishing information-service standards, including procedures for redacting specified information where the applicable rules permit or require it. In commercial disputes, its application must distinguish among forms of access: publication of judicial reasoning is different from furnishing complete copies of internal documents in the case file. A party seeking protection for particular passages should identify the legal basis and its concrete connection to specific information, rather than merely asserting that arbitration is confidential. This requirement prevents the private

Confidentiality in Arbitration: A Study of the Annulment Cases in Indonesia"; Frangky Wamnebo et al., "Kepastian Hukum Arbitrase Penyelesaian Sengketa Bisnis Sesuai Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Legal Certainty," *SINERGI: Jurnal Riset Ilmiah* 2, no. 9 (2025): 4407–21, https://doi.org/10.62335/sinergi.v2i9.1759.

22 Pislevik, "Precedent and Development of Law: Is It Time for Greater Transparency in International Commercial Arbitration?"

23 Undang-Undang Nomor 30 Tahun 2000 Tentang Rahasia Dagang; Undang-Undang Nomor 27 Tahun 2022 Tentang Pelindungan Data Pribadi.

character of the arbitral forum from becoming a general exception to disclosure not authorized by statute.[24]

From the perspective of personal data protection, the question is not whether every company name may be removed. The need for redaction must be linked to the data subject, the nature of the data, the risk of disclosure, and the duties imposed on the information provider by applicable law. Nulhakim, as well as Ningrum and Hufron, show that publishing judicial documents can raise privacy concerns when the boundary between information requiring public access and information warranting protection is not carefully maintained. Zulaichah, Amnesti, and Istiqomah similarly stress the protection of personal data in publicly accessible decisions. In arbitration-related proceedings, these concerns become salient when evidence includes identification numbers, personal contact details, bank account information, or private circumstances irrelevant to the grounds for setting aside an award.[25]

A further risk concerns the disclosure of commercially valuable information. Law No. 30 of 2000 defines the categories of information eligible for trade secret protection and the conditions that must be met. Not all business information automatically qualifies as a trade secret; a party seeking protection must establish that the information is not generally known, has economic value, and is subject to appropriate measures to preserve secrecy. The assessment should therefore concern the relevant portions of information, rather than necessarily treating an entire document as protected. An overly broad approach may marginalize the public function of judicial reasons, whereas indiscriminate disclosure may inflict harm unrelated to the judicial assessment of an award's validity.[26]

In electronic proceedings, these risks are amplified because documents can be copied and redistributed with ease. Chietra and colleagues examine confidentiality in online arbitration and the threat of unauthorized third-party access. Although that issue is not identical to official publication of judgments, it underscores the importance of access controls and document management. Zamoff's analysis of United States courts likewise demonstrates how protecting arbitral materials can become contested when an award enters public judicial proceedings. Foreign law, however, is not treated here as authority to close Indonesian court proceedings or judgments; the comparative analysis

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[24] Keputusan Ketua Mahkamah Agung Nomor 2-144/KMA/SK/VIII/2022 Tentang Standar Pelayanan Informasi Publik Di Pengadilan; Nulhakim, "Aspek Keterbukaan Informasi Publik Dalam Kaitannya Dengan Perlindungan Data Pribadi Yang Terpublikasi Pada Direktori Salinan Putusan Mahkamah Agung Dalam Perkara Yang Diatur Dalam KMA Nomor 1-144/KMA/SK/I/2011."

[25] Ningrum and Hufron, "Kewenangan Mahkamah Agung Dalam Publikasi Pada Putusan Perkara Privat"; Zulaichah et al., "Public Information Disclosure and Personal Data Protection in Court Decisions: Legal and Islamic Law."

[26] Undang-Undang Nomor 30 Tahun 2000 Tentang Rahasia Dagang; Zamoff, "Safeguarding Confidential Arbitration Awards in Uncontested Confirmation Actions."

is used solely to assess the rationale for separating transparent judicial oversight from evidence whose dissemination may lawfully be restricted.[27]

The interaction among the relevant legal rules and earlier scholarship supports the construction of a proportional disclosure test. This framework is the authors' prescriptive proposal, not a newly conferred power to close court hearings or a rule already enacted by the Supreme Court. Its application remains subject to applicable procedural law and court information regulations. The test is designed to assist judges and information officers in reconciling two legitimate interests: the public must be able to understand why a court exercises its power to set aside an arbitral award, but public accountability does not require publication of every transactional detail or item of personal data. The five stages are sequential so that restrictions can be justified and do not become unsupported redactions.[28]

Table 1. *Five-Stage Proportional Disclosure Matrix for Arbitral Award Set-Aside Proceedings*

Stage	Review question	Prescriptive implication
1. Relevance	Is the information necessary to evaluate Article 70 grounds, procedural fairness, or the court's ratio decidendi?	Irrelevant documents or passages should not be published merely because they appear in the case file.
2. Legal basis for protection	Is particular information protected by an applicable legal rule, such as personal data or trade secret law?	A confidentiality claim must identify a specific legal ground; a contractual label alone is insufficient.
3. Necessity of disclosure	Can the purposes of examination and transparency be achieved through a summary or partial disclosure?	Disclose only what is genuinely necessary, while keeping judicial reasons open to scrutiny.
4. Form of access	Should the judge and parties receive access while certain details are redacted from the public version?	Differentiate access, redact, or restrict appendices where legally permitted.
5. Accountability	Can the reasons for granting or restricting access be explained and reviewed under information-service procedures?	Record the legal grounds and scope of restrictions and the available lawful review mechanism.

The first stage confines disclosure to information relevant to the statutory grounds for setting aside an award and to the public's ability to scrutinize judicial reasoning. As a normative illustration, where an application alleges that a single document was forged, the court may need to examine that document's authenticity, context, and effect on the arbitral award. This does not automatically require every provision of the underlying contract and every transaction involving other parties to appear in a downloadable judgment. The illustration does not describe an actual case; it demonstrates how

[27] Chietra et al., "Asas Kerahasiaan Dalam Proses Arbitrase: Potensi Risiko Akses Ilegal Oleh Pihak Ketiga Pada Platform Video Conference"; Zamoff, "Safeguarding Confidential Arbitration Awards in Uncontested Confirmation Actions."

[28] Keputusan Ketua Mahkamah Agung Nomor 2-144/KMA/SK/VIII/2022 Tentang Standar Pelayanan Informasi Publik Di Pengadilan; Feldman, "International Arbitration and Transparency."

relevance-based limits can prevent a set-aside application from becoming a vehicle for exposing information beyond what the dispute requires.[29]

The second stage asks whether specific information is protected under an identifiable legal rule. A confidentiality clause may establish the parties' expectations, but it cannot, without consideration of the governing legal regime, override lawful public access. The third stage selects the least extensive disclosure that still enables the court to explain its reasons intelligibly. The fourth distinguishes providing evidence to the court and opposing party from making documents available to the general public. The fifth requires a reviewable explanation for any restriction, thereby preventing arbitrary information-protection decisions. These stages do not displace statutory requirements for open court proceedings; limitations apply only to the extent authorized by law.[30]

The theoretical foundation is the need to reconcile contractual autonomy with judicial accountability. Butler and Tarawneh view confidentiality as a contextual obligation subject to legitimate exceptions, while Feldman distinguishes the public interest in commercial arbitration from that in investment arbitration. Pislevik emphasizes the contribution of accessible judicial reasoning to the development of precedent. Drawing selectively on these insights, the five-stage framework does not propose restricting judgments to the parties alone. Instead, it preserves judicial reasons and the applicable legal rules while addressing unnecessary details and specially protected information through mechanisms authorized by the laws governing access to court information.[31]

This construction is subject to important limitations. First, not every commercial document constitutes a trade secret, and reputational concerns cannot be converted into exemptions from access without a legal basis. Second, a confidentiality clause does not override a party's duty to produce legally required evidence. Third, courts cannot guarantee complete secrecy for judgments that the law requires to be accessible. Fourth, effective information screening depends on administrative capacity to identify and consistently redact the appropriate passages. Fifth, the practical effectiveness of the framework remains to be evaluated through empirical study of published judgments

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[29] Peraturan Mahkamah Agung Nomor 3 Tahun 2023 Tentang Tata Cara Penunjukan Arbiter Oleh Pengadilan, Hak Ingkar, Pemeriksaan Permohonan Pelaksanaan Dan Pembatalan Putusan Arbitrase; Andriani, "Akibat Hukum Pembatalan Putusan Arbitrase Dalam Kaitannya Dengan Prinsip Final and Binding."

[30] Undang-Undang Nomor 14 Tahun 2008 Tentang Keterbukaan Informasi Publik; Keputusan Ketua Mahkamah Agung Nomor 2-144/KMA/SK/VIII/2022 Tentang Standar Pelayanan Informasi Publik Di Pengadilan.

[31] Butler and Tarawneh, "Keeping It Quiet? A Social Contract Theory of Confidentiality in Arbitration"; Feldman, "International Arbitration and Transparency"; Pislevik, "Precedent and Development of Law: Is It Time for Greater Transparency in International Commercial Arbitration?"

and interviews with relevant officials; this normative study does not claim to have established its effectiveness in practice.[32]

The findings indicate that moving from arbitration to court does not automatically extinguish every form of information protection. Rather, the transition changes the grounds and procedures governing disclosure. The confidentiality of arbitral hearings rests on Article 27 of the Arbitration Law, whereas set-aside proceedings are governed by judicial procedure and Supreme Court Regulation No. 3 of 2023. Public access to judicial decisions must satisfy principles of information disclosure while respecting lawful exemptions. The apparent conflict cannot therefore be resolved by a simple confidential-versus-public dichotomy; it requires an assessment of the information concerned, the interest protected, and the necessity of using that information to evaluate the grounds under Article 70.[33]

This study extends the work of Roosdiono, Taqwa, and Salsabila, who identify the risk of publicity inherent in award set-aside proceedings, by proposing an operational distinction that can be tested. It also supplements the studies of Nulhakim and of Ningrum and Hufron on judgment publication by considering arbitral materials that carry economic value and may be governed by confidentiality clauses. The conceptual contribution is to distinguish transparency of judicial reasoning, the parties' access to evidence, and public access to the details of the underlying dispute. The prescriptive contribution is a five-stage matrix designed to discipline decisions restricting disclosure while ensuring that restrictions do not eliminate judicial accountability.[34]

At the institutional level, these findings support the development of more detailed technical guidance for handling sensitive commercial documents in set-aside applications. Such guidance should implement existing rules on public information and data protection rather than create an unauthorized exception to statutory transparency obligations. Strengthening staff expertise and adopting targeted redaction may reduce unnecessary dissemination of information. Any administrative recommendation, however, must be further specified in light of the relevant allocation of authority and actual court information-management practices, since this article does not empirically

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[32] Zulaichah et al., "Public Information Disclosure and Personal Data Protection in Court Decisions: Legal and Islamic Law"; Ningrum and Hufron, "Kewenangan Mahkamah Agung Dalam Publikasi Pada Putusan Perkara Privat."

[33] Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa; Peraturan Mahkamah Agung Nomor 3 Tahun 2023 Tentang Tata Cara Penunjukan Arbiter Oleh Pengadilan, Hak Ingkar, Pemeriksaan Permohonan Pelaksanaan Dan Pembatalan Putusan Arbitrase; Keputusan Ketua Mahkamah Agung Nomor 2-144/KMA/SK/VIII/2022 Tentang Standar Pelayanan Informasi Publik Di Pengadilan.

[34] Roosdiono et al., "The Non-Applications of Good Faith, Trust, and Confidentiality in Arbitration: A Study of the Annulment Cases in Indonesia"; Nulhakim, "Aspek Keterbukaan Informasi Publik Dalam Kaitannya Dengan Perlindungan Data Pribadi Yang Terpublikasi Pada Direktori Salinan Putusan Mahkamah Agung Dalam Perkara Yang Diatur Dalam KMA Nomor 1-144/KMA/SK/I/2011"; Keputusan Ketua Mahkamah Agung Nomor 2-144/KMA/SK/VIII/2022 Tentang Standar Pelayanan Informasi Publik Di Pengadilan; Ningrum and Hufron, "Kewenangan Mahkamah Agung Dalam Publikasi Pada Putusan Perkara Privat."

assess the consistency with which the Chief Justice's decree is applied across arbitration-related cases.[35]

4. CONCLUSION

First, the scope of arbitral confidentiality under Indonesian law must be differentiated. Article 27 of Law No. 30 of 1999 requires arbitral hearings to be held in private, while duties to protect substantive information may arise from contracts, institutional arbitration rules, or specific legislation. Once a set-aside application is filed, the openness of judicial proceedings and public access to judicial reasons operate in accordance with procedural and public information law. Constitutional Court Decision No. 15/PUU-XII/2014 and Supreme Court Regulation No. 3 of 2023 clarify the framework for filing and examining such applications but cannot be interpreted as automatically eliminating all lawful protection for personal data or commercially sensitive information.

Second, evaluating relevance, the legal basis for protection, disclosure necessity, the form of access, and accountability provides a normative framework for preserving transparency in judicial reasoning without turning published judgments into a means of disclosing every aspect of the arbitral record. The study's novelty lies in integrating award set-aside rules with public information rules through a five-stage assessment, not in discovering that set-aside proceedings may compromise arbitral confidentiality. The framework is a prescriptive proposal requiring further evaluation against court information-management practices. Accordingly, defensible confidentiality protections are limited, grounded in law, and compatible with public scrutiny of the court's exercise of authority.

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[35] Keputusan Ketua Mahkamah Agung Nomor 2-144/KMA/SK/VIII/2022 Tentang Standar Pelayanan Informasi Publik Di Pengadilan; Chietra et al., "Asas Kerahasiaan Dalam Proses Arbitrase: Potensi Risiko Akses Ilegal Oleh Pihak Ketiga Pada Platform Video Conference."

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