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## Settlement of Business Disputes Through Arbitration Clauses at the Indonesian National Arbitration Board

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**Abstract:** *A Arbitration is an out-of-court method of resolving business disputes. In Indonesia, BANI (Indonesian National Arbitration Board) oversees the arbitration process and provides standard clauses that must be contained in contracts if arbitration is chosen. This study belongs to normative law by utilizing secondary information from various legal references (main, supporting, additional) processed through systematization and harmonization. The arbitration clause functions as a contract safeguard, ensuring legal certainty by binding the parties to resolve disputes based on an agreement. The Arbitration Clause is an element of the agreement that gives the parties the opportunity to determine legal options and/or locations to resolve business issues and their legal consequences. By including an arbitration clause in the contract, business people are guaranteed a fair and legally protected dispute resolution through BANI. This strengthens contract enforcement and provides a clear framework for handling potential conflicts.*

**Keywords:** Dispute Resolution, Arbitration, Indonesian National Arbitration Board

### INTRODUCTION

The development of a country's economy is greatly influenced by trade activities carried out by entrepreneurs to fulfill the needs of the population, both in the form of products and services. This buying and selling activity involves not only local entrepreneurs but also foreign entrepreneurs, often resulting in complicated business relationships that are prone to disputes. These disputes can arise between entrepreneurs or between entrepreneurs and consumers, often due to differences of opinion, demands for rights, or unfulfilled interests. (Alva, 2022, p. p. 625)

To anticipate disputes, entrepreneurs and related parties in a contract or business agreement usually include controlling rules regarding the rights and responsibilities of each party, including a dispute resolution clause. Dispute resolution, especially in the context of trade, requires legal rules to govern the process. During the medieval era, merchants developed their own legal framework known as Lex Mercatoria (Merchant Law), which served as a guide for resolving international trade disputes. These laws did not originate from any particular

country but were customary legal norms that were universally accepted by merchants in their trading practices. (Diansari & Hairlambang, 2020, p. p. 145)

Arbitration as one of the ways of resolving business conflicts outside the court mechanism has been known for a long time. In Indonesia, the concept of arbitration was already applied during the colonial law period through the provisions in the Civil Code (*Reglement op de Rechtsvordering*, RV) for European groups, while the HIR applied to indigenous people in Java and Madura Island, and the RBg applied outside Java and Madura Island. After independence, Indonesia enacted Law No.30/1999 which replaced the previous arbitration provisions. This regulation emphasized legal avenues for resolving disputes outside the court, not only arbitration, but also negotiation and compromise. (Fuady, 2003, p. p. 27)

Indonesia has adapted global conflict resolution agreements since the beginning of freedom, such as Law No.52/1968 which includes the 1965 UN Agreement. Law No.30/1999 regulates conflict resolution through arbitration and alternative dispute resolution. In practice, business disputes often arise due to the inefficiency and lack of professionalism of judicial institutions, which are sometimes considered to lack independence or even integrity in handling cases. This causes business actors to prefer conflict resolution through arbitration because it is considered faster, more effective, and private than through court procedures that are time-consuming, public, and costly. (Suparman, 2012, p. p. 2)

Including arbitration clauses in business contracts has become a major option in international business relations. The parties to the contract will usually determine in advance the applicable law (choice of law) and forum of authority (choice of forum) in the event of a dispute. The principle of discretion to make agreements (Article 1338 of the Civil Code) ensures the discretion of the parties to determine the method of resolving conflicts, including through arbitration provisions that ensure settlement outside the court. (Azmi, 2019, p. p. 4)

An arbitration clause in a business agreement, as argued by Huala Adolf, is a provision that regulates how to resolve disputes arising from an agreement, either through a previously agreed arbitration clause, or by submitting the dispute to arbitration through a submission clause. (Adolf, 2013, p. p. 106) This is especially important in the context of international trade, which prioritizes the efficiency and speed of dispute resolution to prevent business stagnation that could harm the participating parties.

In practice, issues regarding the binding force of arbitration clauses still remain. Under Law No.30/1999, the district court is not entitled to decide conflicts that fall under the arbitration agreement, as stipulated in Article 3. However, despite the existence of an arbitration agreement, there are cases where one of the parties violates the clause and chooses to bring the dispute to the district court. This issue is an important focus of this study because it risks creating legal uncertainty that can be detrimental to the business world.

This study was conducted to find out how the regulation of resolving business issues through arbitration, as well as how strong arbitration provisions are in business contracts. This study explores in depth the challenges arising from the weak enforcement of arbitration agreements and their impact on the resolution of business issues, as well as how BANI implements arbitration clauses in practice.

Previous studies on business dispute resolution through arbitration have explored various aspects of its effectiveness and implementation challenges. For example, Pujiyono (2018) highlights the absolute authority of arbitral institutions in Indonesia, by examining cases where courts exceeded their authority by intervening in the arbitration process. Another study conducted by Tri Aripabowo (2017) states that the annulment of arbitral awards by the courts weakens the principle of final and binding arbitration, thus fostering legal uncertainty and the perception of Indonesia as a country that is "unfriendly to arbitration". Meanwhile, Rahayu Hartini (2023) revealed a normative conflict between Arbitration Law No.30/1999 and Bankruptcy Law No.37/2004), causing inconsistencies in the application of arbitration clauses in bankruptcy cases, causing confusion among the public and business actors.

This study differs from previous studies in that it focuses specifically on the application of arbitration clauses in business contracts in Indonesia, including an analysis of the challenges in their implementation. It also explores the role of national arbitration institutions such as BANI in ensuring compliance with arbitration clauses, a topic that has rarely been discussed in depth in previous studies. In addition, it links the binding force of arbitration clauses with their impact on business continuity, thus offering a more practical and relevant perspective for domestic businesses.

The novelty of this study lies in its approach that combines legal analysis with a business perspective. This chapter not only examines the normative aspects of arbitration clauses but also provides insight into their practical implications for business efficiency. It then proposes recommendations to strengthen the regulations and mechanisms for the application of arbitration clauses in Indonesia so as to increase entrepreneurs' confidence in arbitration as a conflict resolution option.

Its findings show that although arbitration is often chosen for its quick and efficient nature, the implementation of arbitration clauses in Indonesia faces various obstacles. These include businesses' lack of understanding of arbitration clauses, inappropriate court intervention, and the suboptimal role of arbitration institutions in providing strong legal support. The study also finds that strengthening regulations and educating businesses on the importance of arbitration clauses can improve the effectiveness of conflict resolution through arbitration in Indonesia.

## **METHOD**

This study is classified as a normative legal study. As stated by Soerjono Soekanto and Sri Mamudji, in normative legal studies, reference literature is the main information which in the study science is categorized as secondary information (Soerjono Soekanto & Mamudji, 2013, p. p. 24) . This normative legal study utilizes secondary information from various legal references (main, supporting, additional). Information is processed through systematic organization, alignment, and adjustment. The legal structure centers on the main and supporting legal references. (Soerjono Soekanto & Mamudji, 2013, p. p. 70) Alignment is used to adjust legal rules. Adjustment is divided into two types: vertical (reviewing the compatibility of higher and lower rules) and horizontal (reviewing the compatibility of balanced rules). (Soerjono Soekanto & Mamudji, 2013, p. p. 74) Law No. 30/1999 determines arbitration as an absolute authority if there is an arbitration agreement ...

## **RESULTS AND DISCUSSION**

### **Arrangement of Business Dispute Resolution through Arbitration**

Law No. 30/1999 manages the resolution of business conflicts through arbitration in Indonesia, replacing colonial regulations such as articles 615-651 of the KUHP. Arbitration is an out-of-court conflict resolution based on written agreement.

Arbitration offers advantages such as flexibility, time efficiency, and confidentiality over litigation in court. The arbitration process allows parties to choose experts to resolve their issues. The arbitration award is final, must be complied with, and has legal force if it is ratified by the district court. The district court is not allowed to deal with matters that have already had an arbitration agreement, as stated in Article 3 of Law No.30/1999.

Law No.30/1999 regulates all matters related to arbitration, such as provisions, selection of arbitral judges, stages of proceedings, and enforcement of arbitral awards. Other regulations, such as Law No.25/2007 on Investment, Law No.20/2011 on Occupancy, and Law No.48/2009 on Judicial Authority, also support arbitration as a method of dispute resolution, either directly or after unsuccessful negotiations.

Arbitration is considered an effective alternative mechanism for resolving business disputes, offering faster, efficient, and customized solutions for the parties compared to formal litigation in court.

### **Binding Legal Force of Arbitration Clause**

Arbitration clauses have significant binding force in business agreements, based on mutual agreement between the parties involved. Arbitration as an alternative method of resolving issues can only be used if the parties have agreed to have an arbitration clause in their agreement. This agreement, set out in Law No.30/1999, provides parties with a firm legal basis to choose arbitration as a method of resolving issues rather than going to court. However, the choice is not mandatory but optional, as reflected in the use of the term "may" in Article 7 of the law.

The arbitration clause may stand alone or be part of the main contract. According to Frans Hendra Winarta, the arrangement has legal force if mutually agreed by the parties. The arbitration clause is not the main substance of the contract but an additional part based on mutual consent. Huala Adolf emphasized that choice of law and choice of forum clauses are important components that direct the applicable law and the place of dispute resolution, both in Indonesia and in other countries.

BANI plays an important role in the application of arbitration clauses in Indonesia. As stated in Law No.30/1999, BANI acts as a body that facilitates the resolution of disputes submitted under an agreed arbitration clause. In practice, when a dispute is brought to BANI, the parties involved must comply with the arbitration procedures, and the resulting decision is final and binding. This means that neither party can take their dispute to court unless there is a valid reason, such as a legal defect in the agreement or coercion.

Furthermore, based on Article 7 of Law No.30/1999, if the parties agree to use arbitration through BANI, the arbitrator's decision has the same enforcement power as the court's decision. This ensures that the arbitration decision made by BANI can be enforced through the court if one of the parties does not comply. Thus, the binding force of the arbitration clause applied by BANI in Indonesia is substantial, providing an efficient and final dispute resolution system for parties who agree to use arbitration.

### **Arbitration Clause Implemented by BANI as an Arbitration Institution in Indonesia**

The arbitration clause implemented by BANI has a clear legal basis and procedure. Based on Law No.30/1999, arbitration is a dispute resolution mechanism carried out by an institution chosen by a number of parties concerned, only applicable to disputes in the commercial sector and specific authorities that are fully owned by the parties to the conflict. Arbitration does not apply to non-commercial disputes, such as family matters.

In practice, BANI allows parties to a contract to include a binding arbitration clause. The clause stipulates that any disputes relating to business agreements or transactions will be resolved at BANI through arbitration procedures determined by the institution. BANI operates independently and independently, ensuring that the resulting arbitration decision is final and binding. BANI has rules and procedures governing the arbitration process, which stipulate that any dispute submitted must be resolved in accordance with BANI's rules. Without an express arbitration clause, BANI is authorized to reject the dispute and the district court has no authority. Parties that specify BANI arbitration are obliged to submit to the arbitrator's definitive and binding award.

BANI applies a standard arbitration clause that requires all disputes related to the agreement to be resolved through arbitration based on the applicable BANI rules. For example, BANI's standard arbitration clause states that all disputes arising from this agreement will be resolved and decided by BANI based on BANI's arbitration rules. Therefore, the arbitration clause applied by BANI must clearly and specifically explain that the dispute will be resolved

through arbitration at BANI. If the clause is unclear or misspelled, neither BANI nor the district court will accept the dispute. For this reason, it is crucial for the parties to the contract to ensure the existence and clarity of the arbitration clause to ensure an appropriate dispute resolution mechanism.

## CONCLUSION

The Arbitration Clause acts as a guardian of the agreement, signaling the agreement between the parties concerned. It ensures that the implementation of the agreement is safeguarded and shaded by the rule of law. The Arbitration Clause is an element of the agreement that gives the parties the opportunity to determine legal options and/or locations to resolve business issues and their legal consequences. The Arbitration Clause implemented by BANI is a standard clause that must be included in an agreement if the parties choose to resolve disputes through BANI. The arbitration clause implemented by BANI plays an important role in ensuring that business disputes are resolved efficiently and professionally outside the court system. BANI as the leading arbitration institution in Indonesia provides a dispute resolution mechanism that adheres to established arbitration rules and procedures. BANI arbitration clauses are usually included in business agreements, where the parties agree that all conflicts arising from the agreement will be resolved through arbitration under BANI. This clause contains provisions regarding the appointment of arbitrators, the location of the arbitration, the language used, and the application of BANI rules in the dispute resolution process. By applying the BANI arbitration clause, the parties are bound to comply with the applicable rules and procedures, including adhering to the arbitrator's decision which is final and binding. BANI arbitration decisions can also be enforced through the courts if one party fails to fulfill its obligations.

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