



## The Role of Commercial Law in Handling Business Disputes in Indonesia: A Literature Review

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### Info Articles

#### Article History

Received : 2025-08-5  
Revised: 2025-08-22  
Published: 2025-09-20

#### Keywords:

*commercial law;*  
*business disputes;*  
*conflict resolution;*  
*arbitration; mediation*

### Abstract

This study examines the role of commercial law in resolving business disputes in Indonesia, focusing on the legal framework, dispute resolution institutions, and implementation challenges. This literature review explores how commercial law, including the Commercial Code (KUHD), Law Number 30 of 1999 concerning Arbitration, and the Electronic Information and Transactions Law (UU ITE), contributes to creating justice, legal certainty, and efficiency in resolving business conflicts. Furthermore, this study analyzes the importance of harmonizing domestic law with international standards to support global trade. The findings indicate that although mechanisms such as arbitration and mediation have become effective alternatives, challenges such as high costs, low legal literacy, and gaps in the implementation of e-arbitration still hamper the effectiveness of dispute resolution. This article provides strategic recommendations, including increasing the accessibility of arbitration institutions and commercial courts, developing e-arbitration, and improving legal literacy for business actors. This study is expected to serve as a reference in strengthening the role of commercial law in supporting a fair and sustainable business climate in Indonesia.

## I. INTRODUCTION

Business disputes are an unavoidable phenomenon in the dynamics of the modern economy, especially in the era of globalization which is characterized by the rapid growth of cross-border trade, the complexity of supply chains, and the development of digital technology.(Rufaidah 2024)The increasing intensity of business interactions, both between domestic and international business actors, demands the existence of a legal system that is capable of providing certainty, justice, and efficiency in resolving conflicts.(Nopiandri 2018)Unresolved disputes not only hamper economic activity but also undermine investor confidence, weaken the business climate, and ultimately disrupt national economic stability. Therefore, a robust and responsive legal framework is urgently needed to maintain a healthy business ecosystem.

In Indonesia, commercial law plays a central role in providing legal certainty for business

activities and resolving any disputes that arise. The Commercial Code (KUHD), a legacy of the Dutch colonial era, serves as the primary basis for regulating trade activities, although many of its provisions have been adapted and supplemented by various modern laws and regulations.(Serlika Aprita and Atika Ismail 2023)Commercial law regulates fundamental aspects of business such as commercial contracts, the rights and obligations of the parties, transaction guarantees, and dispute resolution mechanisms through litigation and non-litigation channels, including mediation, arbitration, and alternative dispute resolution (ADR).(Assis 2024). As time goes by, this regulation has been expanded with the birth of specific regulations relevant to contemporary business developments, such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 8 of 1999 concerning Consumer Protection, and Law Number 11 of 2008 concerning Electronic

Information and Transactions (UU ITE) which protects digital transactions.

Digital transformation and the emergence of a technology-driven economy have added layers of complexity to business disputes. Electronic transactions, cross-platform commerce, and blockchain-based contracts present new challenges that conventional legal instruments have not fully addressed. The ITE Law serves as a crucial instrument regulating digital transactions and providing legal protection for business actors. However, adapting to new phenomena such as cross-border e-commerce, personal data protection, and cybersecurity still requires strengthened regulations and cross-sectoral coordination.(Lase 2024).

Although Indonesia's trade law framework is considered comprehensive, several issues still hamper its effectiveness. First, business actors' understanding of trade law regulations is relatively low, particularly among micro, small, and medium enterprises (MSMEs), which often view legal dispute resolution as a costly and complicated last resort. Second, the process of resolving disputes through judicial institutions is often lengthy, accompanied by high costs and the potential for uncertainty in the outcome. Third, although arbitration and mediation are offered as faster and more efficient alternatives, the high cost of arbitration and the limited availability of credible mediation institutions mean that these options are not yet the primary choice for business actors. This situation undermines business confidence in the national legal system's capacity to protect business interests and raises the risk of "forum shopping," or seeking foreign jurisdictions perceived as more business-friendly.(Indonesia and Trade 2010).

Given these conditions, it is important to examine more deeply the role of commercial law in resolving business disputes in Indonesia. This literature review attempts to analyze the existing legal framework, assess the effectiveness of dispute resolution institutions, and identify challenges in their implementation amidst the changing modern business landscape. This analysis is expected to provide a comprehensive understanding of how commercial law works as a

dispute resolution instrument, while also providing strategic recommendations to strengthen legal certainty, increase efficiency, and support a fair and competitive business climate. Therefore, this research is not only relevant for legal practitioners and academics, but also beneficial for business actors and policymakers in realizing a commercial law system that is adaptive, responsive, and competitive at the global level.

## **II. RESEARCH METHODS**

This research uses a qualitative approach with a literature study method.(Muhadjir 2000)The data used were obtained from relevant journals, books, and research reports from the past ten years, focusing on commercial law, business disputes, and conflict resolution through various legal mechanisms. The analysis was conducted by reading, identifying, and interpreting the information contained in these sources to understand the role of commercial law in resolving business disputes in Indonesia. The analysis technique used was thematic analysis, in which the obtained data was grouped based on key emerging themes, such as relevant legal regulations, dispute resolution institutions, and challenges in implementing commercial law.

This study aims to provide a deeper understanding of the role of commercial law in resolving business disputes and to identify existing obstacles, so that constructive recommendations can be made to improve the dispute resolution system in Indonesia.

## **III. RESULTS AND DISCUSSION**

Commercial law in Indonesia plays a strategic role in ensuring certainty, fairness, and efficiency in resolving business disputes amidst the complexities of the modern economy.(Indrawanto 2024)In the context of globalization and the development of digital technology, the need for an adaptive and robust legal framework is becoming increasingly urgent. Business disputes, both at the national and international levels, demand resolution mechanisms that are not only in accordance with legal principles but also responsive to the rapidly changing and technology-driven trade landscape.(Setiawati et al. 2023).

Normatively, the Commercial Code (KUHD) remains the primary pillar governing various business transactions in Indonesia. As a *lex specialis*, the KUHD provides detailed guidelines regarding the rights and obligations of parties in commercial contracts, such as sales and purchases, leases, and other commercial cooperation agreements. The existence of the KUHD confirms that every agreement has clear legal force, reducing the potential for disputes due to unclear agreements. However, as time goes by, the KUHD, a product of the Dutch colonial era, needs to be continuously updated and synergized with modern laws, such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), and various other sectoral regulations. Harmonization of the KUHD with the Civil Code (KUHPERDATA), which functions as a *lex generalis*, further strengthens legal certainty, particularly through the principle of freedom of contract as stipulated in Article 1338 of the Civil Code. This principle gives the parties the freedom to draft the contents of the agreement according to their needs, as long as it does not conflict with the law, public order and morality. (Indrawanto 2024).

In the digital era, the role of the ITE Law has become increasingly vital. This regulation recognizes the legality of electronic transactions, digital signatures, and electronic evidence, placing online transactions on a par with conventional transactions. This recognition is crucial for increasing public trust in e-commerce and providing legal protection for the growing practice of digital commerce. However, the implementation of the ITE Law still faces challenges such as low digital literacy among business actors, uncertainty about the admissibility of electronic evidence in court, and the need for regulatory updates to adapt to new phenomena such as blockchain, smart contracts, and personal data protection. (Kuspraningrum 2011).

In the context of dispute resolution, commercial law provides two main avenues: litigation through the courts and alternative dispute resolution (ADR). Litigation offers binding

and public decisions, but is often criticized for its lengthy process, high costs, and potential uncertainty of outcome. In response to these weaknesses, arbitration has emerged as a more flexible, efficient, and confidential option. Law Number 30 of 1999 provides a clear legal basis for arbitration, while the Indonesian National Arbitration Board (BANI) is the primary institution for resolving domestic business disputes. Arbitration allows parties to select arbitrators with specific expertise, maintains reputations, and provides certainty through final and binding decisions. Internationally, institutions such as the Singapore International Arbitration Centre (SIAC) are popular references for Indonesian businesses resolving cross-border disputes with global standards. However, the challenges of high arbitration costs, especially for Micro, Small, and Medium Enterprises (MSMEs), and limited procedural understanding are barriers that need to be addressed through legal education and government subsidies. (Amanda 2019).

In addition to arbitration, mediation and negotiation are also gaining popularity due to their collaborative nature and orientation toward peaceful solutions. These mechanisms align with the spirit of efficiency and sustainability in business relationships, especially when parties wish to avoid public exposure or maintain long-term commercial relationships. Innovations such as e-arbitration and technology-based mediation are also being developed to facilitate online dispute resolution, although they have not yet been fully standardized in Indonesia. (Rafika 2022).

However, the effectiveness of the trade legal framework is determined not only by regulations but also by their implementation on the ground. Complex bureaucracy, weak inter-agency coordination, and poor legal understanding among business actors, particularly MSMEs, are major obstacles. Many business actors are reluctant or unable to access dispute resolution mechanisms due to limited information and high costs. As a result, some choose to resolve conflicts informally, which often disadvantages the weaker party.

On the other hand, harmonizing national law with international standards remains a significant challenge. Indonesia has adopted several international principles, such as those outlined in the United Nations Convention on Contracts for the International Sale of Goods (CISG), but has not yet ratified it. CISG ratification could strengthen Indonesia's position in global trade by providing an internationally recognized standard for cross-border dispute resolution. This disharmony creates uncertainty for Indonesian businesses involved in international contracts, leading some to opt for foreign arbitration forums such as SIAC, which are considered more credible and efficient. (Dhini, Maharani, and Amarulloh 2016).

Another significant challenge is the cost of dispute resolution. Both litigation and arbitration are costly, often placing a heavy burden on MSMEs. The lack of specific financing schemes or subsidies for MSMEs leads to unequal access to justice, with small businesses often forced to accept unfavorable settlements. Low levels of digital literacy and understanding of commercial law further widen this gap, forcing most MSMEs to rely on informal channels with minimal legal protection.

Thus, although Indonesia already has a relatively comprehensive trade legal framework—from the Commercial Code (KUHD), the Arbitration Law, to the Electronic Information and Transactions (ITE) Law—its effectiveness still depends heavily on consistent implementation, strengthening the capacity of dispute resolution institutions, and improving legal literacy among business actors. Harmonization with international standards, the development of technology-based dispute resolution mechanisms, and affirmative policies to support MSMEs need to be priorities.

Overall, Indonesian commercial law has provided a crucial foundation for resolving business disputes in the modern era, both through litigation and alternative avenues such as arbitration and mediation. However, for commercial law to truly become an instrument that guarantees legal certainty, justice, and efficiency, adaptive regulatory reforms, extensive legal education, and policy support that favors

businesses, particularly MSMEs, are required. These efforts will not only strengthen Indonesia's competitiveness on the global stage but also create a more inclusive, modern, and sustainable business ecosystem.

#### **IV. CONCLUSION AND SUGGESTIONS**

##### **A. Conclusion**

Business dispute resolution in Indonesia has evolved along with regulatory changes to accommodate the increasingly complex needs of the business world. Indonesian commercial law, including the Commercial Code (KUHD), the Arbitration Law, and the Electronic Information and Transactions (ITE) Law, provides a clear legal basis for dispute resolution, both through litigation and alternative channels. The Arbitration Law, for example, offers a faster and more flexible solution than litigation, while the ITE Law provides additional protections for digital transactions.

However, the implementation of commercial law in Indonesia still faces several challenges. Bureaucratic obstacles and a lack of understanding of regulations among business actors pose significant obstacles. Furthermore, the harmonization of domestic regulations with international standards has not yet been fully achieved, leading to inconsistencies in cross-border dispute resolution. Another challenge faced by businesses, particularly MSMEs, is the high cost of dispute resolution, which often prevents them from accessing existing legal channels.

Furthermore, low digital literacy among business actors is a major problem, particularly regarding the use of electronic evidence in legal proceedings. This exacerbates legal uncertainty in electronic transactions and adds challenges to the development of commercial law in the digital age.

Therefore, even though the legal framework is in place, further efforts are still needed in terms of simplifying bureaucracy, harmonizing international regulations, and improving digital literacy to create a more effective and fair legal climate for all business actors in Indonesia.

## B. Suggestion

1. The government needs to increase the socialization and education of commercial law, especially for MSMEs, through more affordable and accessible programs, to ensure an understanding of their rights and obligations under the legal system.

2. Arbitration institutions and commercial courts need to improve their service systems with more affordable costs and more efficient procedures, so that they can be accessed by business actors from various groups, including MSMEs.

3. The development and implementation of dispute resolution technologies such as e-arbitration need to be accelerated, with attention to clear standardization and adequate infrastructure support to support adaptation in the digital era.

4. The government must prioritize harmonizing domestic regulations with international standards to support smoother and less conflict-ridden cross-border trade.

5. Improving digital legal literacy, particularly among the public and business actors, through collaboration between the government, educational institutions, and the private sector, to prepare them to face business challenges in the digital era.

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