



Confidentiality In The Arbitration Process And Its Implications For Legal Transparency

¹Fitria Mukhtar Siregar, ²M. Abdillah, ³Suci Hidayati Malau, ⁴Raja Muda Pahlevi Siregar

^{1,2,3,4}Universitas Islam Negeri Sumatera Utara

E-mail: ¹fitriamukhtar21@gmail.com, ²abthie081004@gmail.com, ³sucihidayatimalau03@gmail.com,
⁴rajaapahlevisiregar@gmail.com

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Abstrak

This paper examines the application of the confidentiality principle in arbitration and its implications for legal transparency. Arbitration, as an alternative dispute resolution mechanism, emphasizes efficiency, procedural flexibility, and the protection of parties' interests, with confidentiality serving to safeguard sensitive information, trade secrets, and corporate strategies. Using a qualitative descriptive-analytical approach, data were collected through literature studies, including legislation, arbitration rules, awards, and academic sources. The research was conducted systematically in several stages: identification of issues, collection of secondary data, qualitative analysis through thematic coding, and formulation of conclusions and recommendations. The findings indicate that while confidentiality ensures secure dispute resolution and protects business interests, it can hinder transparency, limit public access to legal information, and create uncertainty for third parties. Legal mechanisms, such as judicial oversight and anonymized award publications, alongside digital security measures, are essential to balance confidentiality and transparency. These approaches contribute to the development of consistent, accountable, and modern arbitration practices.

I. INTRODUCTION

Arbitration, as one of the alternative dispute resolution mechanisms, has experienced significant development at both national and international levels. This method offers several advantages compared to conventional judicial procedures, including time efficiency, procedural flexibility, and the ability to preserve business relationships between disputing parties. One of the fundamental principles of arbitration is confidentiality. This aspect encompasses all stages of the arbitration process, from the filing of claims, exchange of evidence, to the final award. The confidentiality principle aims to protect the interests of the parties, safeguard brand reputation, and provide a dispute resolution space that is shielded from public scrutiny, which could negatively impact business or commercial relationships (Rafika, 2022).

Nevertheless, the application of confidentiality in arbitration often creates friction with the principle of legal transparency. Transparency is a crucial pillar in contemporary legal systems, as it ensures accountability, open access to information, and legal certainty for the public, including third parties who may be affected by the outcome of a dispute. In practice, limited public access to the proceedings and awards in

arbitration frequently raises debates about the balance between protecting the parties' confidentiality and the public's right to be informed about legal processes. These challenges become even more complex when disputes involve large corporations whose business activities have significant economic and social implications for the broader community (Makarim, 2019).

The application of the confidentiality principle in arbitration is governed by various legal frameworks. For instance, Indonesia's Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution emphasizes the non-public nature of arbitration proceedings. At the international level, arbitration rules such as UNCITRAL and ICC also stress the importance of maintaining confidentiality, including prohibitions on disclosing information without the parties' consent (Zaryanda, 2023). This principle reflects efforts to provide maximum protection for business interests while maintaining investor confidence in arbitration as a neutral and fair dispute resolution mechanism.

The limitation of transparency in arbitration has several legal implications. First, the low rate of publication of awards can hinder the development of legal precedent, thereby reducing

consistency and uniformity in legal practice. Second, strict confidentiality has the potential to create legal uncertainty for external parties or the public who have an interest in the dispute. Third, from an academic and practical legal perspective, limited access to arbitration data constrains the ability to evaluate the effectiveness of the mechanism and hinders reform efforts needed to ensure that the dispute resolution system remains relevant to the evolving needs of modern law (Mangei, 2020).

The restricted openness in arbitration proceedings gives rise to multiple legal consequences. Firstly, the low publication rate of awards may impede the establishment of precedent, thereby reducing consistency and uniformity in legal practice. Secondly, the strict application of confidentiality can generate legal uncertainty for external parties or the public with an interest in the dispute. Thirdly, from both an academic and practical legal standpoint, limited access to arbitration data restricts the capacity to assess the effectiveness of the mechanism while simultaneously obstructing reform initiatives necessary to keep the dispute resolution system aligned with the dynamic requirements of contemporary law (Mantili, 2021).

II. RESEARCH METHODS

This section explains the methodological framework applied to examine the issue of confidentiality in arbitration and its implications for legal transparency (Suyanto, 2023). The study adopts a qualitative approach with a descriptive-analytical method, allowing for a detailed depiction of legal phenomena, the identification of the relationship between the principle of confidentiality and the principle of transparency, as well as an analysis of the resulting legal impacts. Data were collected through a literature review, including statutory regulations, arbitration documents, national and international legal sources, and academic articles discussing arbitration practices and disclosure policies.

The research process was conducted systematically through several key stages. The first stage involved the identification of issues and the formulation of research problems related to arbitration confidentiality and legal transparency. The second stage consisted of collecting secondary data from legislation, documents from arbitration institutions, and relevant academic literature. The third stage involved qualitative data analysis, including

thematic coding of regulations, arbitration awards, and related case studies. The final stage was the drawing of conclusions and the development of recommendations regarding the balance between confidentiality and transparency within arbitration practices.

The research population comprised legal documents, arbitration awards, and academic literature addressing confidentiality in arbitration and its implications for transparency. Samples were selected purposively, consisting of documents and literature that are relevant and possess significant legal weight or academic credibility. The research location was non-geographical, focusing on documents and literature accessible at both national and international levels, including Indonesian legislation, UNCITRAL regulations, ICC Arbitration Rules, and academic books and articles related to arbitration practices. This approach enables a comprehensive analysis of the legal phenomena without relying on field surveys.

III. RESULTS AND DISCUSSION

A. The Application of the Principle of Confidentiality in Arbitration and Its Limits

Arbitration, as one of the alternative dispute resolution (ADR) mechanisms, emphasizes a fundamental principle of confidentiality. This principle is considered crucial as it protects sensitive information of the parties, including trade secrets, business strategies, and internal documents that could harm a company's reputation if disclosed to the public. In Indonesia, the principle of confidentiality in arbitration is governed by Law No. 30 of 1999 on Arbitration and ADR. Article 53 of this law stipulates that all arbitration proceedings are conducted privately, with access to information related to the dispute limited to the parties and the arbitrators involved (Sugiarto, 2019).

The application of confidentiality in arbitration covers all stages of the process, from claim filing, exchange of evidence, hearings, drafting arbitration agreements, to the final award. All documents and communications related to the arbitration process must be kept confidential and may not be disclosed to external parties without the consent of all disputing parties. In addition, arbitrators are responsible for maintaining the confidentiality of information, including a prohibition on using such information for

personal gain or for the benefit of third parties. This principle provides maximum protection for corporations, allowing them to resolve disputes without the risk of strategic information being exposed to the public or business competitors (Diansari, 2021).

At the international level, the principle of confidentiality in arbitration is also explicitly regulated through various rules, including the UNCITRAL Arbitration Rules, ICC Arbitration Rules, and LCIA Rules. For example, UNCITRAL emphasizes that all arbitration proceedings are confidential and information related to the arbitration may not be disclosed unless agreed upon by all parties. Similarly, the ICC Arbitration Rules stipulate that all procedures and documents, including the final award, are confidential unless the parties consent to disclosure for specific purposes. These provisions underline that confidentiality is a defining feature of international arbitration, distinguishing it from national court systems, which are generally open to the public (Sugiarto, 2019).

Although confidentiality is a key characteristic of arbitration, it is not absolute. Various legal regulations, both national and international, impose certain limitations on the application of confidentiality. In practice in Indonesia, while arbitration hearings are conducted privately, arbitration awards must still go through court procedures for recognition, annulment, or enforcement. Through this mechanism, parties with a legal interest can gain access to certain information, albeit in a limited scope. Furthermore, disclosure of arbitration information is permitted under specific circumstances, particularly when broader public interests must be protected, such as cases involving indications of criminal acts or legal violations that significantly impact the public interest (Triana & Si, 2019).

In the international context, the application of the confidentiality principle is also influenced by public law norms and the obligation to comply with applicable regulations in each country. For instance, when arbitration involves government institutions or entities managing public interests, the disclosure of certain information is often required to ensure transparency and accountability to the public. Additionally, several legal systems in different countries

grant courts or regulatory bodies the authority to access arbitration documents when there is a compelling legal need, such as enforcement of awards, criminal investigations, or the protection of consumer rights. Thus, the principle of confidentiality in arbitration is not absolute; its flexibility depends on factors such as the nature of the dispute, the identities of the parties, and the applicable legal framework (P. Harahap, 2018).

New challenges to the confidentiality principle in arbitration have emerged with the use of digital technology, particularly electronic platforms for document exchange and virtual hearings, which may increase risks to data security. This situation encourages arbitrators and arbitration institutions to develop and implement stricter security standards to ensure the protection of confidentiality, including the use of encryption systems and restricting access to information only to authorized parties. While technological innovations offer benefits such as process efficiency and increased accessibility, the protection of information security remains a fundamental requirement that cannot be compromised to prevent violations of confidentiality in arbitration (Hamka, 2014).

B. Challenges to the Principle of Transparency Due to the Application of Confidentiality in Arbitration

Arbitration is recognized as an alternative dispute resolution mechanism that emphasizes efficiency, procedural flexibility, and protection of the parties' interests. One of its fundamental characteristics is the application of the confidentiality principle, which safeguards sensitive information, including trade secrets, corporate strategies, and internal documents related to the dispute. Although this principle offers various benefits to the parties, a critical issue arises concerning its implications for the principle of legal transparency. Transparency is an essential element of contemporary legal systems as it ensures accountability, open access to information, and legal certainty for third parties and the broader public (Sutrisno, 1994).

The application of confidentiality in arbitration can create several obstacles to transparency. One of these is the closed nature of arbitration proceedings and awards. The low rate of award publication limits access to legal

information, reducing the availability of precedent for other parties, including legal practitioners, academics, and companies facing similar disputes. This condition, in turn, hinders the development of substantive and procedural law that could evolve based on arbitration practices, as many decisions remain unknown to the public (Ngantung, 2017).

Furthermore, the application of confidentiality in arbitration can generate legal uncertainty for external parties. In some situations, arbitration awards may affect parties not directly involved in the proceedings, such as shareholders, consumers, or business partners related to contracts. Since information regarding the arbitration process and arbitrators' reasoning is not publicly available, these external parties face limitations in understanding the legal consequences of the dispute. This situation creates tension between the private interests of the disputing parties and the public or third parties' right to access information about legal processes affecting their interests (SETYALAKSONO, 2024).

Thirdly, from a monitoring and legal reform perspective, confidentiality in arbitration limits the ability to assess the effectiveness of the dispute resolution mechanism. The lack of access to data makes it difficult for academics, courts, and regulators to evaluate the extent to which arbitration upholds principles of fairness, legal certainty, and the protection of parties' rights. This condition may hinder the development of arbitration practices that are consistent, transparent, and fair (Japar, 2025).

Nonetheless, limitations on transparency in arbitration do not imply that the principle of confidentiality is applied absolutely. In the Indonesian legal system, although arbitration proceedings are conducted privately, control mechanisms through the role of the courts remain available. For example, arbitration awards may be submitted to the courts for recognition or enforcement, allowing third parties with legal interests to access certain information within prescribed limits. A similar pattern is observed in international arbitration practices, where disclosure of information may be required to ensure legal compliance, support criminal investigations, or in cases involving entities managing public interests (S. K. Harahap, 2022).

C. Obstacles to Transparency Arising from Confidentiality in Arbitration

Arbitration is recognized as an alternative dispute resolution mechanism that emphasizes efficiency, procedural flexibility, and protection of the parties' interests. A fundamental aspect of arbitration is the application of the principle of confidentiality, which safeguards crucial information, including trade secrets, corporate strategies, and internal company documents. This principle enables parties to resolve disputes securely without concern that sensitive information might be leaked, potentially harming their reputation or business interests.

However, the implementation of confidentiality in arbitration can create challenges to legal transparency, an essential element of the judicial system that ensures accountability, open access to information, and legal certainty for the public. A primary obstacle arises from the limited public access to arbitration awards and documents, which complicates the establishment of legal precedents that could serve as references for future similar cases. Consequently, the development of legal practices, both substantive and procedural, may be hindered (DEWI et al., 2021).

Additionally, the application of confidentiality in arbitration can generate legal uncertainty for third parties with an interest in the dispute. Without access to the proceedings and arbitrators' reasoning, they face difficulties in understanding the legal implications of the decisions rendered. This situation also limits the ability of academics and regulators to evaluate the effectiveness of arbitration mechanisms, as the available information for legal analysis and the development of practices is highly restricted (Ngantung, 2017).

Although confidentiality is a critical feature of arbitration, its application is not absolute. In Indonesia, courts maintain an oversight role over arbitration proceedings through mechanisms for award recognition or enforcement, allowing third parties with a legitimate interest to access certain information in a limited scope. At the international level, disclosure of arbitration data may be required to ensure legal compliance, support criminal investigations, or when disputes involve public entities. Certain

arbitration institutions, such as the ICC and LCIA, also permit the publication of anonymized award summaries that omit sensitive information, as a way to balance confidentiality and transparency (Swarna, n.d.).

D. Legal Efforts to Balance Confidentiality and Transparency in Arbitration

The principle of confidentiality in arbitration serves to protect the interests of the parties, particularly in safeguarding sensitive information and trade secrets. On the other hand, its implementation poses challenges to legal transparency, a vital component for ensuring accountability, legal certainty, and the development of precedents for third parties. Therefore, legal mechanisms are needed to balance the protection of the private interests of the parties with the public's right to access information.

One common approach to maintaining this balance is through judicial oversight. In Indonesia, although arbitration proceedings are conducted privately, arbitration awards may still be submitted to the courts for recognition or enforcement. Through this mechanism, third parties with a legitimate interest can gain limited access to specific information, thereby addressing public interest concerns without compromising the confidentiality of the disputing parties (Andriani, 2022).

Furthermore, several international arbitration institutions have developed limited publication mechanisms to create a balance between confidentiality and transparency. For example, the ICC and LCIA implement policies for publishing anonymized award summaries or removing sensitive portions, allowing the public to access legal information without disclosing the parties' confidential data. Such mechanisms help establish legal precedents while enabling academics, regulators, and legal practitioners to evaluate arbitration practices, all while safeguarding the private interests of the parties (DEWI et al., 2021).

In the era of digital arbitration, protecting confidentiality has become even more crucial, as data and documents are stored and exchanged online. Modern legal approaches emphasize the implementation of information security protocols, data encryption, and restricted access to authorized parties only. Accordingly, technology can be leveraged to

maintain a balance between the principle of confidentiality and the need for transparency, provided that effective oversight mechanisms and appropriate publication policies are in place.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

In conclusion, the principle of confidentiality is a cornerstone of arbitration, serving to protect sensitive information, trade secrets, and internal corporate documents. Its application spans all stages of the arbitration process, from claim filing to the final award, and is reinforced by both national laws, such as Indonesia's Law No. 30 of 1999, and international rules, including UNCITRAL, ICC, and LCIA regulations. Confidentiality ensures that parties can resolve disputes securely, maintaining business reputations and strategic interests, while modern challenges, particularly those arising from digital platforms, have necessitated stricter security measures, including data encryption and restricted access to authorized individuals.

However, the strict application of confidentiality can impede legal transparency, limiting public access to arbitration awards and documents, and creating uncertainty for third parties affected by disputes. Such limitations may also constrain academic and regulatory evaluation of arbitration practices, affecting the development of consistent and fair legal standards. To address these challenges, judicial oversight and limited publication mechanisms have been introduced, allowing access to certain information while preserving confidentiality. Additionally, digital technologies, when combined with appropriate oversight and security measures, can help balance the protection of private interests with the need for transparency, ensuring arbitration remains both secure and accountable in contemporary legal practice.

B. Suggestions

As a recommendation, it is necessary to develop more adaptive legal mechanisms to balance the principles of confidentiality and transparency in arbitration. This may include enhancing the role of judicial oversight, formulating policies for publishing anonymized award summaries, and implementing stricter digital security

standards. With this approach, the private interests of the parties remain protected, while the public's and third parties' right to access legal information can be accommodated proportionally.

Furthermore, future research in the field of arbitration should focus on evaluating the effectiveness of these mechanisms, including analyzing arbitration practices across different jurisdictions and their impact on the formation of legal precedents. Empirical and comparative studies will aid in developing consistent, transparent, and digitally adaptive arbitration practices, thereby making a substantial contribution to the advancement of legal science and modern dispute resolution practices.

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