



The Existence of Arbitration as an Alternative to Business Dispute Resolution: Between Procedural Efficiency and Enforcement Challenges

Sandra Ayu Wandira¹, Fauzan Habibi Lubis², Jakaria³, Rabiatal Adawiyah Nasution⁴, Nadzri Adlani Nasution⁵

^{1,2,3,4,5}Universitas Islam Negeri Sumatera Utara

E-mail: : sandrayuwandira2904@gmail.com, Fauzanhabibi@gmail.com, jakaria@gmail.com, Rabiataladawiyah@gmail.com, Nadzriadlani@gmail.com

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Abstract

The development of modern business activities that are increasingly complex has increased the potential for disputes between parties, both in national and international business relations. The dispute resolution mechanism through litigation is often considered not to be fully able to meet the needs of the business world because the procedure is formal, takes a relatively long time, and lacks flexibility for the parties. These conditions encourage arbitration to develop as an alternative dispute resolution that offers a more adaptive mechanism through the principles of autonomy of the parties, confidentiality, and legal certainty. This study aims to analyze the position of arbitration as an alternative to dispute resolution in the context of business law, especially regarding its characteristics, underlying legal principles, and effectiveness in providing dispute resolution for business actors. This study uses normative legal research methods with statute *approaches* and conceptual *approaches*, through the study of primary, secondary, and tertiary legal materials that are analyzed juridically qualitatively. The results of the study show that arbitration has a strategic position in resolving business disputes because it provides procedural flexibility, expertise-based settlement, confidentiality protection, and final and binding awards. However, the effectiveness of arbitration still faces challenges related to the implementation of awards, the professionalism of arbitrators, and harmonization with the national judicial system. Thus, arbitration serves not only as an alternative to litigation, but also as a legal instrument that supports legal certainty, efficiency, and stability of modern business relationships.

I. INTRODUCTION

The development of global economic activity has brought fundamental changes to the business relations patterns of modern society. Business relationships that initially only took place in the local scope with a simple transaction character, have now developed into a complex network of legal relationships, involving various legal subjects, capital, technology, and economic interests that go beyond the territorial boundaries of a country. International trade, foreign investment, corporate cooperation, digital transactions, and various forms of modern commercial contracts show that business relationships are no longer only oriented towards the exchange of goods and services, but also form a legal construction that involves the rights, obligations, risks, and responsibilities of the parties in a sustainable manner. This complexity ultimately increases the potential for conflicts of

interest that can develop into business disputes (Kurniawan, 2024).

In the perspective of business law, disputes are consequences that cannot be completely avoided in a contractual relationship. Although the parties have drafted a detailed agreement to govern each other's rights and obligations, the performance of a contract in practice often faces various obstacles, whether caused by differences in interpretation of the clauses of the agreement, changes in economic conditions, failure to meet the performance, or the default of one of the parties. This condition is even more complex when business transactions involve parties from different legal jurisdictions, because each country has different legal systems, law enforcement mechanisms, and dispute resolution characteristics. Thus, the problem of dispute resolution is not only related to how to find the right or wrong party, but also how to create a settlement mechanism that is able to provide legal

certainty, maintain business relations, and protect the economic interests of the parties (Hombokau, 2024).

Conventionally, the settlement of business disputes is carried out through a litigation mechanism in court. However, in modern business practices, litigation is often considered to have a number of limitations. Formal judicial processes, lengthy procedures, open nature of trials, and the possibility of protracted settlement of cases through various levels of legal remedies are often seen as inappropriate for the character of business relationships that require speed, flexibility, and confidentiality. In addition, the relationship of the parties in a business transaction is not always antagonistic, but often requires the continuation of cooperation after the dispute is resolved. Therefore, dispute resolution through the courts should be placed as the last resort (*ultimum remedium*) after alternative settlement mechanisms are unable to produce a solution acceptable to the parties (Candra & Abrian, 2025).

This condition encourages the development of an alternative dispute resolution (ADR) mechanism, one of which is through arbitration. Arbitration offers different characteristics compared to litigation because it gives the parties greater space to determine the dispute resolution mechanism, including choosing arbitrators who have specific competencies according to the area of dispute at hand. In an increasingly complex business world, the existence of an arbitrator who understands the technical aspects of a transaction is of importance because dispute resolution requires not only an understanding of legal norms, but also an understanding of the characteristics of the industry or economic activity that is the object of the dispute (Maharani et al., 2020).

In the Indonesian legal system, arbitration gains legitimacy through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which provides a legal basis for out-of-court dispute resolution through the agreement of the parties. The presence of these regulations shows a shift in the paradigm of business dispute resolution from a purely court-oriented approach to a mechanism that emphasizes the principles of autonomy of the parties, effectiveness, and efficiency of resolution. However, the development of arbitration is inseparable from various issues, such as the effectiveness of the implementation of the arbitral award, the

relationship between the authority of the arbitration institution and the absolute authority of the court, and the challenge of maintaining the independence and professionalism of arbitrators (Diansari, 2021).

These problems show that arbitration is not enough to be understood only as a technical alternative to resolving business disputes, but as a legal institution that has a strategic position in supporting legal certainty and stability of economic relations. On the one hand, arbitration offers various advantages in the form of procedural flexibility, confidentiality, speed, and the ability to present expertise-based settlements. But on the other hand, its success depends heavily on the effectiveness of the legal framework that governs the arbitration process and the enforcement of its award. Therefore, the study of the position of arbitration in the resolution of business disputes is important to analyze the extent to which arbitration is able to answer the needs of the modern business world as well as the legal challenges that arise in its implementation.

Based on this description, this study aims to analyze the position of arbitration as an alternative dispute resolution mechanism in business law, by examining the characteristics, advantages, and various challenges of arbitration implementation in providing effective, efficient, and legal certainty dispute resolution.

II. RESEARCH METHODS

This research is a normative legal research (*Normative Legal Research*) which aims to analyze the standing of arbitration as an alternative dispute resolution mechanism in the context of business law. Normative legal research is doctrinal research that makes legal norms, legal principles, doctrines of experts, and various legal documents the main object of study (Cape & Calvin, 2026). This research is not oriented towards collecting empirical data in the field, but rather conducting an analysis of the legal construction that governs arbitration, the characteristics of business dispute resolution through arbitration, and its relevance in providing certainty and effectiveness of dispute resolution for business actors.

The research approach used consists of several legal approaches. First, the approach to legislation (*Statute approach*) is used to review various positive legal provisions that govern arbitration and alternative dispute resolution, especially Law Number 30 of 1999 concerning Arbitration and

Alternative Dispute Resolution, as well as civil law provisions related to the principle of freedom of contract and legal relations of the parties in business transactions. Second, the conceptual approach (*conceptual approach*) is used to analyze the concept of arbitration, the principle of autonomy of the parties (*Party Autonomy*), the effectiveness of dispute resolution, as well as the position of arbitration in the development of modern business law. Where necessary, this study also uses a case approach (*Case Approach*) by reviewing court decisions or dispute resolution practices related to the implementation and recognition of arbitral awards (Mahmud Marzuki, 2005).

The sources of legal materials in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal material is legal material that has juridically binding power, which includes laws and regulations related to arbitration and business law relations, especially Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the Civil Code, especially provisions regarding agreements, and other regulations that have relevance to the implementation of dispute resolution through arbitration.

Secondary legal materials are used to provide explanation, interpretation, and development of understanding of primary legal materials. This legal material includes legal books, scientific journal articles, the results of previous research, the opinions of legal scholars, as well as various literature that discusses arbitration, alternative dispute resolution, business law, and the development of modern dispute resolution mechanisms. Meanwhile, tertiary legal materials are used as supporting materials that provide instructions and explanations of primary and secondary legal materials, such as legal dictionaries, encyclopedias, and other relevant reference sources.

All legal materials obtained are then analyzed using qualitative juridical analysis methods through the process of interpretation of legal norms, concepts, and doctrines related to arbitration. The analysis is carried out systematically by linking positive legal provisions with the legal principles of business dispute resolution to gain an understanding of the advantages, positions, and challenges of implementing arbitration as an alternative to dispute resolution. Based on the results of the analysis, this study then draws deductive

conclusions about the effectiveness of arbitration in meeting the needs of fast, flexible, and legal certainty in resolving business disputes.

III. RESULTS AND DISCUSSION

A. Transforming Business Dispute Resolution Through Arbitration

The development of modern business activities has led to a change in the perspective of dispute resolution. Business disputes are no longer understood solely as legal conflicts that must be resolved through state judicial institutions, but rather as issues that require a settlement mechanism that is able to consider aspects of legal certainty, economic efficiency, sustainability of business relationships, and protection of the commercial interests of the parties. In this context, arbitration has developed as one of the instruments of non-litigation dispute resolution that has different characteristics compared to conventional judicial mechanisms (Mantili, 2021).

Conceptually, arbitration is a dispute resolution mechanism based on the agreement of the parties to delegate dispute resolution authority to an independent third party, i.e. the arbitrator, who is given the authority to produce a final and binding award (*Final and binding*). In contrast to the litigation process that places judges as state organs that have authority based on legal attribution, arbitration derives its main legitimacy from the will of the parties outlined through the arbitration agreement. Thus, the fundamental character of arbitration lies not only in its existence as an alternative to the courts, but also in the application of the principle of freedom of contract (*freedom of contract*) in determining the means of resolving the dispute that is considered most appropriate by the parties (Baharuddin, 2024).

In the Indonesian legal system, the legitimacy of arbitration is specifically regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The law recognizes that the parties to a particular legal relationship have the freedom to determine dispute resolution mechanisms outside of state courts. The existence of arbitration shows a paradigm shift in dispute resolution law, namely from an approach oriented towards state authority to an approach that provides greater space for the participation and will of the parties in determining the dispute resolution forum (Mangei, 2020).

From a business law perspective, the paradigm shift has very strong relevance. Business relationships are basically built on the principles of trust, continuity of cooperation, and economic efficiency (Hardiati et al., 2021). Therefore, when a dispute occurs, the parties do not always need a process that is confrontational as is the nature of litigation, but needs a mechanism that is able to provide a legal solution without permanently damaging the commercial relationship that has been established. Arbitration exists to meet these needs because it provides a more flexible, closed, and professional-oriented dispute resolution space.

Based on Law Number 30 of 1999, arbitrators can be one or more who are chosen by the parties to the dispute or appointed through certain mechanisms to provide a decision on the disputes submitted. The position of arbitrator has a different character than that of a judge in the country's judicial system. The arbitrator is not a state official and does not exercise the function of judicial power in a formal sense, but obtains the authority to decide based on the contractual mandate of the parties. This shows that arbitration is a form of *private justice* whose existence is recognized by the national legal system.

The uniqueness of arbitration as a private court is increasingly seen in the authority of the parties to determine who will resolve their disputes. In certain business cases, especially those that have technical aspects such as construction, investment, technology, banking, or international trade, the ability to understand the substance of the industry is an important factor in producing quality decisions. Therefore, the freedom to choose arbitrators allows the parties to appoint individuals who have professional competence according to the character of the dispute that occurs. This condition is one of the fundamental differences compared to litigation, where the parties do not have the authority to determine the judge who will examine and decide their case (Tampubolon, 2019).

In addition to national arbitration, the development of international trade also gave birth to the need for international arbitration as a mechanism for resolving disputes across jurisdictions. An arbitration can be categorized as an international arbitration if the legal relationship of the parties has a foreign element, for example, the parties are from different countries or transactions are made in connection

with more than one national legal system. In such conditions, arbitration is an important instrument because it is able to provide a relatively neutral settlement forum for parties from different jurisdictions. The existence of international arbitration also reduces the concern of one party to the possible partiality of the other party's national judicial system (*Home Court Advantage*) (Isnaini, 2020).

Compared to dispute resolution through the courts, arbitration has several characteristics that make it attractive to business people. First, arbitration provides greater procedural flexibility. The parties can determine various aspects of the settlement process, ranging from the selection of arbitrators, the venue of the trial, the language used, to the laws applied in deciding the case. Such flexibility is essential in modern business transactions that often have special characteristics and cannot always be effectively resolved through formal procedural legal procedures (Latief et al., 2023).

Second, arbitration provides protection for business interests through the principle of confidentiality. Unlike court hearings which are in principle open to the public, the arbitration process can be carried out behind closed doors so that information regarding business conflicts, company strategies, trade secrets, and financial conditions of the parties can be more protected. This aspect of confidentiality is a strategic value for the company because disputes that are open to the public have the potential to have a greater reputational and economic impact compared to the value of the dispute itself.

Third, the arbitration award has a final and binding character so as to provide certainty for the parties. In the litigation process, disputes can last for a long time due to the existence of appeal, cassation, and other legal remedies. Instead, arbitration is designed to provide a faster resolution through restrictions on possible retesting of the substance of the award. From a business economic perspective, the certainty of dispute resolution time is an important factor because legal uncertainty can hinder investment activities and the sustainability of commercial relationships (Hakim, 2022).

However, the superiority of arbitration does not mean that it is a mechanism without weaknesses. In practice, arbitration still faces various challenges, especially related to the cost of the process which in some cases can be higher than litigation, the limitation of the supervision

mechanism for arbitrators, and the issue of the implementation of the arbitration award if the losing party does not have the good faith to implement the award voluntarily. Therefore, the effectiveness of arbitration depends heavily on the balance between respect for the autonomy of the parties and the existence of legal mechanisms capable of guaranteeing the implementation of the arbitral award.

Thus, arbitration in the context of Indonesian business law cannot be seen only as a technical alternative to avoid court proceedings, but as a form of development of legal institutions that adapt to the needs of the modern economy. Arbitration represents a shift in the orientation of dispute resolution from a purely state-centered approach to a mechanism that provides space for the parties to determine for themselves how their conflicts are resolved. Although it still faces a number of implementation challenges, arbitration still has a strategic position as a business dispute resolution instrument that prioritizes efficiency, professionalism, flexibility, and legal certainty.

B. The Principle of Good Faith in Arbitration as the Foundation of Contractual Trust and the Effectiveness of Business Dispute Resolution

Arbitration as a business dispute resolution mechanism is basically built on the main foundation in the form of agreement and trust of the parties. In contrast to litigation processes that derive authority from state power, arbitration derives legitimacy from the will of the parties who voluntarily hand over dispute resolution to a third party outside the general judicial institution. Therefore, the sustainability and effectiveness of arbitration is highly dependent on the existence of the principle of good faith (*Good Faith*) as a fundamental value that directs the behavior of the parties from the stage of forming the agreement, during the arbitration process, to the implementation of the arbitration award (Saputra et al., 2021).

From the perspective of legal theory, legal principles are basic abstract ideas that are the basis for the formation and application of legal norms. Sudikno Mertokusumo explained that legal principles are not concrete legal rules, but basic thinking that underlies the formation of positive legal norms and becomes a guideline in understanding the purpose of a legal provision (Mertokusumo, 2009). Thus, legal principles have a deeper function than just written rules, because

they are instruments for finding the values, directions, and rationality contained in a legal system.

The existence of legal principles in the legal system not only serves as a basis for the formation of regulations, but also as a parameter to assess whether the application of a norm has been in accordance with the values of justice and propriety. In the context of arbitration, the principle of good faith serves as a standard of conduct that requires the parties to carry out the dispute resolution process honestly, cooperatively, and not abuse their legal rights. In other words, arbitration not only requires compliance with formal procedures, but also requires moral and ethical qualities from the parties involved.

The important position of the principle of good faith in business relations cannot be separated from the legal character of Indonesian contracts which places agreements as the main basis of the legal relationship between the parties. Article 1338 paragraph (1) of the Civil Code (KUHPercivil) emphasizes that every agreement made legally is valid as a law for the party who makes it. The provision reflects the principle of binding force of contract (*Pacta Sunt Servanda*), i.e. the obligation of the parties to respect and implement the agreement that has been made voluntarily (Sukardi & Herlambang, 2020).

However, the binding power of a contract does not mean that the parties are only bound by what is explicitly written in the agreement. Modern contract law requires that the performance of an agreement must also take into account the principles of propriety, fairness, and honesty. This is reflected in Article 1338 paragraph (3) of the Civil Code which states that agreements must be implemented in good faith. This provision shows that the law not only assesses the formal aspects of the performance of the contract, but also considers the ethical and propriety aspects of the legal relationship of the parties (Ali & Fitriani, 2022).

In the context of arbitration, the principle of good faith has a broader dimension than ordinary contractual relationships. This is because arbitration is not only concerned with the performance of performance in the main contract, but also with the willingness of the parties to respect the dispute resolution mechanism they have agreed upon. When the parties include an arbitration clause in their contracts, they have consciously chosen to override the authority of

the state courts and give the arbitral forum the authority to resolve disputes. Therefore, refusing the arbitration process, obstructing the examination of the case, or avoiding the implementation of the arbitral award can be seen as a form of denial of the principle of good faith.

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution also explicitly places good faith as one of the bases for dispute resolution. Article 6 paragraph (1) of the law states that civil disputes or differences of opinion can be resolved through alternative dispute resolution based on good faith by setting aside settlement through the district court. The provision shows that the lawmakers understand that the mechanism for resolving non-litigation disputes cannot run based on procedural rules alone, but requires the commitment of the parties to seek a constructive settlement (Sumaya, 2013).

However, the regulation on the principle of good faith in Law Number 30 of 1999 still has normative weaknesses. The law only mentions the obligation to settle based on good faith without providing clear limits or indicators on the form of behavior that can be categorized as the exercise of good faith in the arbitration process. This condition causes the concept of good faith to be relatively open in nature and depends on the interpretation of judges, arbitrators, and developing legal practices (Hakim, 2022).

The absence of a more detailed definition of good faith in arbitration may raise questions in practice. For example, one party may formally follow an arbitration procedure, but substantially take actions aimed at obstructing the settlement process, such as delaying the hearing without a valid reason, concealing important information, or refusing to voluntarily execute an arbitral award. This kind of behavior shows that the success of arbitration is determined not only by the quality of the rule of law, but also by the integrity and adherence of the parties to the values underlying the arbitration.

From a business law perspective, the principle of good faith has a strategic function because business relationships are not solely based on formal legal certainty, but also on trust between business actors. The business world needs a dispute resolution mechanism that is able to maintain the stability of economic relations. Therefore, arbitration conducted in good faith can be an instrument for resolving conflicts without having to destroy previously established commercial relationships (Harahap, 2022).

Thus, the principle of good faith is a fundamental element that determines the legitimacy and effectiveness of arbitration in the settlement of business disputes. Arbitration is not just an alternative legal procedure, but a mechanism whose success depends on the parties' willingness to honor the agreement, conduct the process honestly, and accept the outcome of the settlement responsibly. Therefore, strengthening the principle of good faith in Indonesian arbitration law is an important need so that arbitration can function optimally as a professional, effective, and fair business dispute resolution instrument.

C. The Effectiveness of Arbitration as an Alternative to Dispute Resolution in Supporting Business Law Certainty in Indonesia

The existence of arbitration in the Indonesian business law system shows the need for a dispute resolution mechanism that is able to adapt to the character of modern business relationships. The business world not only needs dispute resolution that results in legal decisions, but also needs mechanisms that are able to provide certainty, efficiency, and maintain the sustainability of the parties' commercial relationships. In this context, arbitration has a strategic position as an alternative dispute resolution that offers a different approach than litigation mechanisms through the courts.

The effectiveness of arbitration as a business dispute resolution can basically be seen from its ability to meet the main needs of business actors, namely a fast, flexible, confidential, and legal certainty settlement. In contrast to litigation that is tied to relatively formal and lengthy procedural law procedures, arbitration provides a wider space for the parties to determine a settlement mechanism that suits their interests. This flexibility is one of the main reasons why arbitration is widely used in business relationships, especially in transactions that have a high level of complexity (Hakim, 2022).

From a business law perspective, the speed of dispute resolution has a very important economic value. Disputes that last for a long time can cause losses that are not only related to legal costs, but can also disrupt business stability, hinder investment, and reduce trust in the business relationships that have been built. Therefore, the final and binding character of the arbitral award (*Final and binding*) provides benefits in the form

of certainty for the parties to immediately determine legal and economic steps after the dispute is decided (Wijaya, 2021).

In addition to the speed aspect, confidentiality is a characteristic of arbitration that has great relevance in the business world. Commercial disputes are often related to the company's strategic information, trade secrets, financial conditions, or certain business strategies which, if disclosed to the public, can have a negative impact on the company's reputation and sustainability. Through a closed arbitration mechanism, the parties obtain protection of their business interests without prejudice to the right to a fair legal settlement.

Another advantage of arbitration lies in the authority of the parties to choose arbitrators who have competence in accordance with the field of dispute at hand. In modern business transactions, many disputes not only require an understanding of legal norms, but also require special knowledge of the character of a particular industry. Therefore, the existence of arbitrators who have professional expertise can improve the quality of decisions because dispute resolution is carried out by parties who understand the legal aspects as well as the technical aspects of the disputed issue (Sinaga & Susanti, 2025).

However, the effectiveness of arbitration cannot only be seen from the various normative advantages it has. In practice, arbitration also faces a number of challenges that can affect the level of confidence of the business community in the mechanism. One of the main issues is the implementation of the arbitration award if the losing party does not voluntarily fulfill its obligations. Although the arbitral award is final and binding, its implementation still requires the support of the state legal system through the recognition and enforcement mechanism of the award.

Another issue relates to the understanding that arbitration is not just an alternative legal process, but is a mechanism that relies heavily on the commitment and behavior of the parties. The principle of freedom of contract on which arbitration is based must go hand in hand with the principle of good faith. Without the willingness of the parties to respect the arbitration clause, follow the process honestly, and implement the award that has been given, arbitration may lose its effectiveness as a dispute resolution instrument. Thus, the success of arbitration is determined not only by the quality of the regulation, but also by

the legal culture of the business people (Al-Ghifari et al., 2025).

In the Indonesian context, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution has provided a sufficient legal basis for the development of arbitration as a mechanism for resolving business disputes. However, strengthening arbitration is still necessary through improving the professionalism of the arbitration institution, the quality of arbitrators, harmonization between the arbitration institution and the court, and increasing the legal awareness of the business community regarding the benefits and consequences of using arbitration.

Based on this description, arbitration can be understood not as an absolute substitute for dispute resolution through the courts, but as an alternative mechanism that has special characteristics and is able to answer certain needs in the business world. Arbitration provides an option for business actors to obtain a dispute resolution that is more in accordance with the nature of commercial relationships that require efficiency, certainty, and protection of business interests. Therefore, the position of arbitration in Indonesian business law is increasingly important as a dispute resolution instrument that supports the creation of a stable business climate and has legal certainty.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

Arbitration has a strategic position as an alternative to business dispute resolution that is able to answer the limitations of litigation mechanisms in dealing with the complexity of modern business relationships. The characteristics of arbitration that emphasize the principles of autonomy of the parties, procedural flexibility, confidentiality, arbitrator competence, and the final and binding nature of the award make it a mechanism that is in accordance with the needs of the business world that prioritizes legal efficiency and certainty. The success of arbitration does not only depend on the existence of regulations, but also on the implementation of the principle of good faith of the parties in respecting the arbitration agreement, following the settlement process, and implementing the award that has been set. Despite this, arbitration still faces challenges, especially related to the effectiveness of the implementation of awards, the professionalism of arbitrators, and the

harmonization of relations between arbitration institutions and the state judicial system. Therefore, arbitration needs to be understood not as a substitute for the courts, but as a complementary mechanism that strengthens the business dispute resolution system in Indonesia through a more flexible, professional, and legal certainty-oriented approach.

B. Suggestions

Strengthening arbitration in Indonesia needs to be done through improving the quality and integrity of arbitrators, improving regulations related to the implementation of arbitration awards, and increasing the understanding of the business community regarding the benefits and consequences of using arbitration as a dispute resolution mechanism. In addition, better synergy is needed between the arbitration institution and the court so that arbitration can run effectively as part of the national dispute resolution legal system.

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