

## Arbitration in Agreement Dispute (Perspective of Law Number 30 Year 1999)

Rahmat Ihya<sup>1</sup>, Abdul Qudus Salam<sup>2</sup>, Muh Bangsu<sup>3</sup>, Rohman Hakim<sup>4</sup>, Hermawan<sup>5</sup>

<sup>1</sup>Universitasa Sunan Giri Surabaya, Indonesia

<sup>2</sup>Universitasa Sunan Giri Surabaya, Indonesia

<sup>3</sup>Universitasa Sunan Giri Surabaya, Indonesia

<sup>4</sup>Universitasa Sunan Giri Surabaya, Indonesia

<sup>5</sup>Universitasa Sunan Giri Surabaya, Indonesia

### ABSTRACT

**Background.** In business relations between the parties in the development does not rule out the possibility of problems that require solutions.

**Purpose.** This research aims to find out the process of resolving civil disputes through the Arbitrase court based on Law Number 30 of 1999

**Method.** The method in this research uses a normative juridical approach, which means that a study is carried out based on laws and judicial decisions that have permanent legal force. In the collection of legal materials using two ways, namely literature research by reviewing the literature and opinions of legal experts related to research problems.

**Results.** The results of the research can be concluded that the arbitration agreement cannot stand and cannot bind the parties if the arbitration agreement does not coincide with the main agreement, which will be handled by the arbitration agreement is regarding disputes arising from the main agreement, so a civil dispute can be submitted for resolution through the arbitration court if it meets the subjective and objective requirements in the Basic Agreement (JOC). the parties agree that if there is a civil dispute it will be resolved through arbitration.

**Conclusion.** The Arbitration institution has a binding nature on the parties and is final in the sense that the parties cannot appeal to the general court after the Arbitration decision.

### KEYWORDS

Arbitration, Basic Agreement, Civil Dispute

**Citation:** Fernando, A. B., Budiarsih, Budiarsih. (2023). Arbitration in Agreement Dispute (Perspective of Law Number 30 Year 1999). *Rechtsnormen Journal of Law*, 1(3), 141–150. <https://doi.org/10.55849/rjl.v1i3.458>

### Correspondence:

Rahmat Ihya,  
[ihya@unsuri.ac.id](mailto:ihya@unsuri.ac.id)

**Received:** September 12, 2023

**Accepted:** September 15, 2023

**Published:** September 31, 2023

## INTRODUCTION

Considering the dynamic development of Indonesia's business world with the outside world, especially with developed countries concerning the fields of joint ventures, trade and technology experts, it is time for us to prepare ourselves to anticipate it (Kourouxous & Bauer, 2019). In relation to the development of the business world in terms of law, the role and use of arbitration clauses is very prominent and dominant (Ariel dkk., 2019). From observations, developed countries always demand the inclusion of arbitration in every business agreement they make with Indonesian parties. In fact, there is a reluctance for developed countries to enter



into business relations without being bound by an arbitration agreement. Indeed, for developed countries commercial arbitration has been considered a business executive's court as an alternative dispute resolution (He dkk., 2019). How to resolve business disputes through official courts, in general, takes a long time due to the fact that the procedures of the judicial system are very complex and complicated (V'kovski dkk., 2019). They argue that the resolution of business disputes through the courts is more complex and time consuming procedures of the official court system (Groc & Choquet, 2020). In addition, the business community believes that dispute resolution in the business sector is less understood by judges than those who are involved in the business world itself.

In addition, the main reason for choosing the arbitration alternative in resolving business disputes is due to the characteristics of informal procedures so that it can be put in motion quickly. Coupled with the nature of the decision, it is immediately final and binding (Wang dkk., 2021). This is because arbitration decisions cannot be appealed, cassated or reviewed.

In connection with this, it is necessary to find and think about ways and systems of dispute resolution that are fast, effective and efficient (Schwartz & Graham, 2020). For this reason, a dispute settlement system must be developed and realized that can adapt to the pace of economic and trade development in the future (O'Toole dkk., 2021). In the face of trade liberalization, there must be an institution that is acceptable to the business world and has the ability to resolve disputes quickly and at low cost (quick and lower in time and money to the parties).

In addition to the conventional dispute resolution model through the litigation of the judicial system (ordinary court), in practice in Indonesia a relatively new model is also introduced (Moen dkk., 2019). This model is quite popular in the United States and Europe and is known as ADR (Alternative Dispute Resolution) which includes negotiation, mediation and arbitration. Although dispute resolution can be carried out using the ADR model, it does not close the opportunity to settle the case in litigation (O'Cathain dkk., 2019). Litigation settlement can still be used when non-litigation settlement does not produce results (Taufik dkk., 2023). So, the use of ADR is as one of the non-litigation dispute resolution mechanisms by considering all forms of efficiency and for future purposes while benefiting the parties to the dispute.

If each party wishes to resolve the dispute amicably, the dispute can be agreed to be resolved outside the procedural law (Mulizar dkk., 2022). Promises that have been mutually agreed upon are laws for those concerned (*pacta sunt servanda*) as stated in Article 1338 BW which reads in full as follows: All agreements made legally shall apply as law to those who make them (Asman & Muchsin, 2021). An agreement cannot be withdrawn other than by agreement of both parties, or for reasons stated by the law as sufficient for this (Mukhibad dkk., 2022). An agreement must be carried out in good faith (Ardiansyah Rakhmadi, 2022). Thus, the legal basis for Alternative Dispute Resolution is the orderly free will of the parties to a dispute to settle their dispute outside of a state judge. This issue is recognized by Law No. 4/2004 on the Basic Provisions of Judicial Power. In the explanation of article 3 of the law, it is stated that all courts throughout the territory of the Republic of Indonesia are state courts and are established by law.

Based on the above law, the method of dispute resolution is entirely up to each party whether through the judicial process or using other dispute resolution methods (Bussi res dkk., 2020). In Indonesia, parties to an agreement (in the case of a trade contract) are free to determine how to resolve disputes that arise in making business decisions (Abdul Muthalib dkk., 2021). The business world demands dispute resolution methods that are simple, fast and low cost or informal procedures and can be put in motion quickly. In the sense that dispute resolution remains in the path of a formal and official system justified by law, which is commonly called a formal and official law enforcement system. In fact, the simple, fast and low cost dispute resolution system has been

designed as one of the principles in the Indonesian judiciary (Kourouxous & Bauer, 2019). Article 4 paragraph (2) of Law Number 4 Year 2004 has made this system fundamental in the implementation of judicial functions. So theoretically, the demands of the business world that require informal dispute resolution procedures have been accommodated in Indonesian legislation.

The elucidation of Article 3 of Law Number 4 Year 2004 states that out-of-court settlement of cases on the basis of peace or through arbitration is still allowed (Aguirre, 2019), but the arbitration award only has executorial force after obtaining permission or an order to execute (*execuloir*) from the court.

Arbitration is an alternative legal institution for dispute resolution outside the Court. Most businessmen prefer to settle disputes arising between them through arbitration rather than the Courts for several reasons.

First, foreign businessmen prefer to settle disputes through arbitration abroad because they consider the local legal system and courts to be generally time-consuming due to the complex and complicated procedures of the judicial system (Lubit, 2019). Actually, this reason is not always true because they can appoint local lawyers to represent them before the Court.

Secondly, developed country businessmen 'think that developing country judges are not well versed in trade disputes involving complex international commercial and financial relationships'. This reasoning is also completely untrue - because judges can call expert witnesses (Chouksey & Pandey, 2020). Certain sister Courts, such as the Commercial Court in Indonesia allow for the appointment of *ad hock* Judges or judges appointed for their expertise.

Third, developed country entrepreneurs assume that dispute resolution through the Courts will be time-consuming and costly, due to the lengthy Court process from the first instance to the Supreme Court. Dispute settlement through arbitration for some cases - it turns out - also takes a long time.

Fourth, the reluctance of foreign businessmen to settle disputes before the Court stems from the assumption that the Court is subjective to them, because disputes are examined and adjudicated based on non-laws of their country, or by judges not from their country.

Fifth, dispute resolution in Court will find who is wrong and who is right, and the result will strain trade relations between them (Prescott & Rasmussen, 2020). Dispute resolution through arbitration is considered to result in a compromise award, which is acceptable to both parties to the dispute.

Research on arbitrators from the American Arbitration Association (AAA) says that 75% of them make decisions based on consensus. Informal consensus is the normal method to reach an award. 17% of the arbitrators said they resolve disagreements informally, Only three arbitrators interviewed in the study disclosed that disagreements were resolved by voting. Usually, arbitrators first discuss the issue(s), trying to reach a consensus. If this fails, negotiations among panel members usually lead to a compromise award. It is not always necessary to go to a vote. Even arbitrators who disagree usually follow the opinion of the other two arbitrators, so that in the end the decision is unanimous. 88% of the respondents in this study said that their other two peer arbitrators were always neutral. Most arbitrators believe their expertise is helpful in reaching an award, perhaps most importantly with respect to resolving technical disputes. Seven arbitrators thought that business experience in particular applied to reaching an award. One arbitrator said that experience and legal knowledge were not so decisive.

Sixth, dispute resolution through arbitration is private, so there is no publication of the dispute. Publication of disputes is something that employers do not like (Boute, 2020). Dispute settlement through the Court, conducted through an open hearing, can be broadcast by the mass media, which may create unfavorable judgment for both parties to the dispute.

Arbitration is an alternative to the courts. However, the assistance of the Court for the institution of arbitration to be effective is very decisive, recognized by both national and international law for a long time, starting from the 1923 Geneva Protocol to the 1958 New York Convention. For example, article II (3) of the 1958 New York Convention states:

"The Court of a contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article shall, at the request of one of the parties, refer the matter to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed".

The above explains that entering into an agreement outside the court, when the entrepreneurs hold a securities, which has a part made agreement with the intention of this letter issued from one of the requests of a part will indicate to the arbitration, if it does not find it then say the agreement is null and void, inoperative or in capable of being performed.

Furthermore, the Court is required to intervene when the arbitration process has been completed and one of the parties is not willing to enforce the arbitral award. It is not the arbitral institution that can compel the enforcement of the arbitral award, but the Court that must compel the party that refuses to enforce the arbitral award to comply with it (Agustanti & Astuti, 2022). The 1958 New York Convention includes the role of the Court in the enforcement of arbitral awards. This role of the Court can also be seen in the UNCITRAL Model Law on International Commercial Arbitration which was recommended by the UN General Assembly to its members in 1985 as a modern legal standard in arbitration (Jagannathan & Delhi, 2019). So far, Article 615 to Article 651 of the Civil Procedure Reglement (Reglement op de Rechtvordering, Staatsblad 1847:52), Article 377 of the updated Indonesian Reglement (Het Herziene Indonesia Reglement, Staatsblad 1941:44), of Article 705 of the Procedure Reglement for Regions Outside Java and Madura (Rechtsreglement Buitengewesten, Staatsblad 1927:227) have been used as the basis for arbitration hearings in Indonesia.

The rapid development of the business world and traffic in the field of trade, both national and international, as well as the development of law in general has resulted in the rules contained in the Civil Procedure Reglement (Reglement op de Rechtvordering) which are used as guidelines for arbitration need to be adjusted (Hansen, 2019). This is because international trade rules have become an absolute necessity (*conditio sine qua non*), while this is not regulated in the Civil Procedure Reglement (Reglement op de Rechivordering) (Stef & Zenou, 2021). In such circumstances, there is a need for substantial and fundamental changes to the Civil Procedure Reglement (Reglement op de Rechtvordering), both philosophically and materially.

After a long period of grappling with the need for changes regarding appropriate and acceptable arbitration guidelines, both nationally and internationally, as well as the need to institutionalize Alternative Dispute Resolution (ADR) through legislation, on 12 August 1999 the government passed Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

The arbitration model stipulated in Law Number 30 Year 1999 is a way of resolving a dispute outside the public court based on a written agreement and the parties to the dispute ("Existence of Cointegration between the Public and Private Bank Index," 2021). However, not all disputes can be resolved through arbitration, only disputes regarding rights that according to the law are fully controlled by the parties to the dispute on the basis of their agreement.

## RESEARCH METHODOLOGY

This research is a normative research, with a statutory approach (normative law) to find out the process of resolving civil disputes through the Arbitration court based on Law Number 30 of 1999 studies conducted based on the Law and judicial decisions that have permanent legal force. In collecting legal materials, two ways are used, namely literature research by studying literature and opinions of legal experts related to research issues. The processing of materials used is non-statistical, namely by providing a descriptive picture to draw general conclusions. Analysis of legal materials used is the method of induction, deduction in the sense of induction, namely departing and things that are general in nature to draw conclusions that are specific to the mindset above, it is expected to be able to determine the final conclusion to answer the research problem.

## RESULT AND DISCUSSION

### Arbitration Hearing Process

Law No. 30/1999 includes the role of the Courts in Indonesia to strengthen the arbitration process from the beginning until the enforcement of the arbitral award. Article 11(1) states that the existence of a written arbitration agreement negates the right of the parties to submit the settlement of the dispute or disagreement contained in the agreement to the District Court. Paragraph 2 of this Article states that the District Court shall refuse and shall not intervene in a dispute settlement provided for in this Law. Article 13(1) states that in the event that the parties are unable to reach agreement on the choice of an arbitrator or no provision has been made for the appointment of an arbitrator, the President of the District Court shall appoint an arbitrator or arbitral tribunal. In an ad-hoc arbitration for disagreement on the appointment of one or more arbitrators, the parties may apply to. The President of the District Court to appoint one or more arbitrators in order to resolve the parties' dispute. Likewise, if within a maximum period of 14 (fourteen) days after the respondent receives the petitioner's proposal, the parties are unable to determine a single arbitrator, at the request of either party, the President of the District Court may appoint a single arbitrator (Article 14 paragraph 3). The President of the District Court shall appoint a sole arbitrator, based on the list of names submitted by the parties, or obtained from the arbitration organization or institution referred to in article 34, taking into account both the recommendations and objections raised by the parties against the person concerned.

In the arbitration hearing process there are standard designations that have been internationalized both in the literature and various rules. For example, in various conventions the designation is standardized. As found in Article 3 of UNCITRAL. There it is explained that the designations of the parties are claimant and respondent

1. Claimant in the sense of language is "a person making a claim", namely someone who makes a claim commonly called "plaintiff" plaintiff. In a legal sense, the meaning of claimant as stipulated in Article 3 of UNCITRAL is the party who takes the initiative to submit a claim to arbitration.
2. Respondent in terms of language is "a person who responds" or "being a defendant", which means the person being sued or the person being sued and is commonly called the "defendant". In terms of legal understanding, the respondent is the party who is drawn or made a defendant by the party who sues in an examination process of the body authorized to conduct an examination and decide on a dispute.

Judging from the nature of the problem submitted to arbitration is in the form of a dispute, and the parties consist of at least two parties. So that it is truly contentious in nature, it is more appropriate that the terms plaintiff and defendant are used by the Rv in the arbitration hearing



process. In contrast, the terms applicant and respondent referred to in the BANI Rules of Procedure contain connotations, as if the issues submitted to be resolved and decided by arbitration are "voluntary" with the process of arbitration.

examination ere parte (unilaterally). Admittedly, arbitration itself is a voluntary body. It is a private body born out of a "voluntary" agreement. Of the parties. However, even though the birth and existence of arbitration is voluntary, once it is born, it is formal and legal as a power body with absolute authority to settle and prosecute disputes. Therefore, it is not appropriate to identify the nature of its voluntary existence with the nature of the dispute. How the terms claimant and respondent are referred to in the BANI Rules of Procedure Regarding this matter, it can be seen in Article 3 paragraph (3) and Article 5 paragraph (1). In Article 3 paragraph (3) BANI gives the term claimant as "applicant". While the term respondent in Article 5 paragraph (1) refers to it as "respondent". Another case in Rv. The Rv does not give a specific designation to each party at all, but only gives a general designation in the form of the term "partij en" (party) or "parties". Perhaps the RV is more concerned with procedural rules. From the point of view of procedural rules, every dispute that will be raised as a case is contentious in nature, consisting of at least "two parties" who oppose and face each other. The party who takes the initiative to attract the opposing party to the official examination forum, in order to resolve and decide the dispute is called the plaintiff. While the opposing party that is drawn into the ams of the case process is called the defendant.

### **Arbitration Court Process**

In the arbitration judicial process, all disputes in the settlement of the dispute examination of the arbitrator or arbitral tribunal are conducted in private and the language used is Indonesian, except on the basis of the agreement of the arbitrator / arbitral tribunal the parties to the dispute may choose the language to be used. According to Law Number 30 Tahun 1999, the examination of the dispute must be completed within a maximum period of 180 (one hundred and eighty) days after the arbitrator or tribunal is formed.

Third parties outside the arbitration agreement may participate and join in the dispute resolution process through arbitration. If the third party has a related element of interest, provided that:

1. The participation of the third party is agreed by the parties, and
2. Approved by the first arbitrator of the panel of arbitrators examining the dispute.

Law No. 30/1999 provides a legal means at the request of one of the parties to the arbitration panel to be able to take a professional decision or other decision in regulating the orderly course of the dispute examination, including, among others: 1). The imposition of security seizure; 2). Ordering the entrustment of goods to a third party; or 3). Selling perishable goods.

Furthermore, the determination of valid evidence in a dispute examination before a court forum or arbitral tribunal depends on the provisions in a particular legislation. The determination of this reference lies in the arbitration clause. If the parties appoint BANI as a dispute resolution institution, the parties submit themselves to the process of determining evidence based on its provisions. However, specifically regarding evidence, we agree to be subject to the applicable procedural law in Indonesia,

If the parties point to Indonesian procedural law as the applicable provision regarding the rules of evidence in the arbitration clause that is considered valid as evidence is to point to Article 164 HIR. Valid evidence according to this provision consists of: 1). Letter evidence; 2). Witness evidence; 3). Testimonial evidence; 4). Evidence of recognition; and 5). Sworn evidence.

Article 631 of the Rv lays down the principle that the arbitral award must be based on the rules of law applicable in the disputed field.

The arbitral tribunal may render an award based on an *ex aequo et bono* award, which is also commonly called *compositeur*. This award is rendered according to justice or according to the jurisdiction. This method is allowed if the parties to the arbitration agreement authorize the tribunal to decide the dispute based on policy or justice.

In Law No. 30/1999, parties have the right to request a binding opinion from an arbitration institution on certain legal relations and an agreement.

In making a decision of the Court of Arbitration, the decision is made by majority vote.

It should be noted that it is no longer possible to challenge an arbitration decision (*verzet*). In addition, if in national arbitration there is still the possibility of interference from the general court such as in the appointment of the arbitrators, the rejection (*wraking*) of the arbitrators, the hearing of witnesses and so on, then this is not found in international arbitration of international trade arbitration.

In the Arbitration Act 1934 in England Party Arbitration majority system was replaced by the Umpire system. In the party arbitration system the parties each appoint an umpire and the two umpires together appoint a third umpire, The three of them examine and decide with an excess of votes, this system is considered less practical and less good because it is feared that the two umpires and the arbitrators are still too much to see and try to please the third umpire, therefore the Party Arbitration system is then replaced by the umpire system here the impartiality of the umpires of the parties is doubtful.

The reference to the application of the umpire system in making decisions can be explained as follows (1). In principle, the award is made based on the majority, (2). But if a majority cannot be reached, the third arbitrator, who acts as the presiding arbitrator, has the authority as an umpire to "decide for himself" without regard to the opinions of the other arbitrators.

### **Execution of Arbitral Award**

In the execution of the National award, the implementation of the award is carried out within a maximum of 30 (thirty) days from the date of the award, the original sheet or authentic copy of the arbitration award is submitted and registered by the arbitrator or his attorney to the registrar of the district court and by the registrar a record is given which constitutes a registration deed.

This is a requirement and if it is not fulfilled, the arbitral award cannot be enforced. Based on Law Number 30 of 1999, the arbitrator's decision is final and has permanent legal force and is binding on the parties. The arbitration decision is final meaning that the arbitration decision is final and therefore cannot be appealed, cassation, or judicial review.

The president of the district court in granting an enforcement order shall first examine whether the arbitral award has met the following criteria:

1. The parties agree that the dispute between them will be resolved through arbitration.
2. The agreement to settle the dispute through arbitration is contained in a document signed by the parties.
3. Disputes that can be resolved through arbitration are only disputes in the field of trade and regarding rights according to laws and regulations.
4. Other disputes that can be resolved through arbitration are those that are not contrary to decency and public order.

The arbitration award is affixed with an order by the chairman of the district court to be implemented in accordance with the provisions for the implementation of the award. In civil cases where the verdict has permanent legal force, the verdict is set within a maximum of 30 (thirty) days after the examination is closed. In the execution of International Arbitration awards *Reglement op de Rechtvording*. Presidential Decree No. 34 of 1981 dated August 5, 1981, the Government of

Indonesia has ratified the results of the 1958 New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Award) as part of the national legal system. This means that juridically the Indonesian judiciary recognizes the decisions of foreign arbitration (which are decided abroad) and is willing to carry out their execution in the jurisdiction of the Republic of Indonesia.

To overcome the obstacles and to realize the Presidential Decree, the Supreme Court of Indonesia has issued Perma No. 1 of 1990 dated March 1, 1990. This regulation regulates the provisions of the procedures for the execution of foreign arbitral awards. So far, since the enactment of the Presidential Decree ratifying the 1958 New York Convention, there has been a "vacuum" regarding the procedure for the execution of foreign arbitral awards,

Submission of requests for execution of foreign arbitral awards has always run aground and cannot be executed by Indonesian courts because there are no rules of procedure. With the issuance of the perma, the legal vacuum has been filled. Several principles are used as the basis (fundamentum) in carrying out the execution of foreign arbitral awards, these principles are parallel to the principles stated in the 1958 New York Convention, including the following: 1). The principle of nationality. 2). The principle of reciprocity. 3). Limitation in the scope of trade law.

In Law Number 30 Year 1999, the authority to handle the issue of recognition and enforcement of international arbitration awards is the Central Jakarta District Court. Arbitration awards can be recognized and enforceable in the jurisdiction of the Republic of Indonesia with the following conditions:

1. The international arbitration award is rendered by an arbitrator or tribunal in a country with which Indonesia is bound by an agreement, either bilaterally or multilaterally, regarding the recognition and enforcement of international arbitration awards.
2. International arbitration awards are limited to awards that according to the provisions of Indonesian law fall within the scope of commercial law.
3. The international arbitration award is not contrary to public order.
4. If the international arbitration award concerns the state of the Republic of Indonesia as one of the parties to the dispute, it can only be implemented after obtaining an executor from the Supreme Court of the Republic of Indonesia which is then delegated to the Central Jakarta District Court, and against this Supreme Court decision no opposition can be filed.

In this case for the party that recognizes and implements the international arbitration award, the decision of the Chairman of the Central Jakarta District Court cannot be appealed or cassated. Conversely, if the party refuses to recognize and execute an international-arbitration award, cassation may be filed.

Confiscation of execution and enforcement of international arbitration awards follow the procedures in civil procedure law and can be carried out on the property of the respondent to the execution. The Chairman of the Central Jakarta District Court delegates the execution to the chairman of the District Court which is relatively authorized to carry it out.

That the arbitration agreement is a valid agreement based on articles 1320 BW, 1338 BW when one denies the results of the arbitration judge's decision is considered to have denied the agreement, for that the party who refuses to implement the results of the judge's decision is the same as denying the agreement and can be sued for default Article 1365 BW "Every unlawful act, which brings harm to another person, obliges the person who because of his fault causes the loss, to compensate for the loss".

Binding Force of Arbitration Clauses in Agreements As explained earlier, an arbitration agreement can be part of a contract or a separate contract. If the arbitration agreement is part of a



contract, it is often called an arbitration clause. Many people misunderstand the position of arbitration clauses in a contract, so these arbitration clauses often function as they should. With the principle of separability in an agreement, if one of the obligations in the agreement is void, it does not cause the other obligations in the agreement to be void. This also applies to arbitration clauses contained in an agreement. So the consequences of the enactment of the principle of separability, there can be several possibilities, namely:

1. The main agreement is void, then the arbitration agreement is also void.
2. The main agreement is void, but the arbitration agreement does not become void.

The Arbitration Court is binding on the parties and final in the sense that the parties cannot appeal to the general court after the Arbitration decision.

## CONCLUSION

An arbitration agreement cannot stand and cannot bind the parties if the arbitration agreement does not coincide with the main agreement. what will be handled by the arbitration agreement is regarding "disputes" arising from the main agreement, so a civil dispute can be submitted for resolution through the arbitration court if it meets the subjective and objective requirements in the Basic Agreement (JOC). the parties agree that if there is a civil dispute, it will be resolved through arbitration. ADR (alternative dispute resolution) is the development of cooperative conflict resolution methods out of court. ADR dispute resolution methods are consensus, mutually acceptable solution, and informal procedure. With the principle of separability in an agreement, if one of the obligations in the agreement is void, it does not cause the other obligations in the agreement to be void. This also applies to the arbitration clause contained in an agreement. So the consequences of the enactment of the principle of separability, there can be several possibilities, namely: 1). The main agreement is void, then the arbitration agreement is also void. 2). The main agreement is void, but the arbitration agreement does not become void. Meanwhile, the Arbitration institution has a binding nature on the parties and is final in the sense that the parties cannot appeal to the general court after the Arbitration decision.

## AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

Author 2: Conceptualization; Data curation; In-vestigation.

Author 3: Data curation; Investigation.

Author 4: Formal analysis; Methodology; Writing - original draft.

Author 5: Supervision; Validation.

## REFERENCES

- Abdul Muthalib, S., M. Jakfar, T., Maulana, M., & Hakim, L. (2021). Changes in Congregational Prayer Practices During the Covid-19 Pandemic in Aceh from Maqashid al-Sharia Perspective. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 16(2), 421–449. <https://doi.org/10.19105/al-lhkam.v16i2.5250>
- Aguirre, E. (2019). Do changes in divorce legislation have an impact on divorce rates? The case of unilateral divorce in Mexico. *Latin American Economic Review*, 28(1), 9. <https://doi.org/10.1186/s40503-019-0071-7>
- Agustanti, A., & Astuti, K. (2022). Relationship Between Social Skills and Social Support with Peers' Academic Confidence on Boarding High School Students. *Journal International Dakwah and Communication*, 2(2), 97–110. <https://doi.org/10.55849/jidc.v2i2.201>

- Ardiansyah Rakhmadi, A. R. (2022). Measuring Shari'ah Compliance Model: Evidence from Islamic Banks in Indonesia. *Journal of King Abdulaziz University Islamic Economics*, 35(1), 23–40. <https://doi.org/10.4197/Islec.35-1.2>
- Asman, A., & Muchsin, T. (2021). Maqasid al-Shari'ah in Islamic Law Renewal: The Impact of New Normal Rules on Islamic Law Practices during the Covid-19 Pandemic. *Mazahib*, 77–102. <https://doi.org/10.21093/mj.v20i1.2957>
- Boute, A. (2020). Regulatory stability and renewable energy investment: The case of Kazakhstan. *Renewable and Sustainable Energy Reviews*, 121, 109673. <https://doi.org/10.1016/j.rser.2019.109673>
- Bussi res, A., Hartvigsen, J., Ferreira, M. L., Ferreira, P. H., Hancock, M. J., Stone, L. S., Wideman, T. H., Boruff, J., & Elklit, A. (2020). Adverse childhood experience and adult persistent pain and disability: Protocol for a systematic review and meta-analysis. *Systematic Reviews*, 9(1), 215. <https://doi.org/10.1186/s13643-020-01474-8>
- Chouksey, A., & Pandey, S. (2020). Functional Movement Disorders in Children. *Frontiers in Neurology*, 11, 570151. <https://doi.org/10.3389/fneur.2020.570151>
- Existence of Cointegration between the Public and Private Bank Index: Evidence from Indian Capital Market. (2021). *Advances in Decision Sciences*, 25(4), 152–172. <https://doi.org/10.47654/v25y2021i4p152-172>
- Groc, L., & Choquet, D. (2020). Linking glutamate receptor movements and synapse function. *Science*, 368(6496), eaay4631. <https://doi.org/10.1126/science.aay4631>
- Hansen, S. (2019). Challenging Arbitral Awards in the Construction Industry: Case Study of Infrastructure Disputes. *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, 11(1), 06518004. [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000281](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000281)
- He, R.-Z., Luo, D.-X., & Mo, Y.-Y. (2019). Emerging roles of lncRNAs in the post-transcriptional regulation in cancer. *Genes & Diseases*, 6(1), 6–15. <https://doi.org/10.1016/j.gendis.2019.01.003>
- Jagannathan, M., & Delhi, V. S. K. (2019). Litigation Proneness of Dispute Resolution Clauses in Construction Contracts. *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, 11(3), 04519011. [https://doi.org/10.1061/\(ASCE\)LA.1943-4170.0000301](https://doi.org/10.1061/(ASCE)LA.1943-4170.0000301)
- Kourouxous, T., & Bauer, T. (2019). Violations of dominance in decision-making. *Business Research*, 12(1), 209–239. <https://doi.org/10.1007/s40685-019-0093-7>
- Lubit, R. (2019). Valid and invalid ways to assess the reason a child rejects a parent: The continued malignant role of “parental alienation syndrome.” *Journal of Child Custody*, 16(1), 42–66. <https://doi.org/10.1080/15379418.2019.1590284>
- Moen, E., Bannon, D., Kudo, T., Graf, W., Covert, M., & Van Valen, D. (2019). Deep learning for cellular image analysis. *Nature Methods*, 16(12), 1233–1246. <https://doi.org/10.1038/s41592-019-0403-1>
- Mukhibad, H., Setiawan, D., Rahmawati, N. A., Rochmatullah, M. R., & Warsina, N. A. (2022). Sharia supervisory board, *maqasid syariah*, and accounting-based performance: Evidence from Indonesia. *International Journal of Monetary Economics and Finance*, 15(3), 213. <https://doi.org/10.1504/IJMEF.2022.126902>
- Mulizar, M., Asmuni, A., & Tanjung, D. (2022). Maqashid Sharia Perspective of Legal Sanction for Khalwat Actors in Aceh. *Al-Istinbath: Jurnal Hukum Islam*, 7(1), 161. <https://doi.org/10.29240/jhi.v7i1.3587>
- O’Cathain, A., Croot, L., Duncan, E., Rousseau, N., Sworn, K., Turner, K. M., Yardley, L., & Hoddinott, P. (2019). Guidance on how to develop complex interventions to improve health and healthcare. *BMJ Open*, 9(8), e029954. <https://doi.org/10.1136/bmjopen-2019-029954>
- O’Toole,  ., Scher, E., Underwood, A., Jackson, B., Hill, V., McCrone, J. T., Colquhoun, R., Ruis, C., Abu-Dahab, K., Taylor, B., Yeats, C., Du Plessis, L., Maloney, D., Medd, N., Attwood, S. W., Aanensen, D. M., Holmes, E. C., Pybus, O. G., & Rambaut, A. (2021). Assignment of epidemiological lineages in an emerging pandemic using the pangolin tool. *Virus Evolution*, 7(2), veab064. <https://doi.org/10.1093/ve/veab064>

- Prescott, C., & Rasmussen, J. M. (2020). Exploring the “Cozy Cabal of Academics, Dealers and Collectors” through the Schøyen Collection. *Heritage*, 3(1), 68–97. <https://doi.org/10.3390/heritage3010005>
- Schwartz, D. A., & Graham, A. L. (2020). Potential Maternal and Infant Outcomes from Coronavirus 2019-nCoV (SARS-CoV-2) Infecting Pregnant Women: Lessons from SARS, MERS, and Other Human Coronavirus Infections. *Viruses*, 12(2), 194. <https://doi.org/10.3390/v12020194>
- Stef, N., & Zenou, E. (2021). Management-to-staff ratio and a firm’s exit. *Journal of Business Research*, 125, 252–260. <https://doi.org/10.1016/j.jbusres.2020.12.027>
- Taufik, M., Muhammad, R., & Nugraheni, P. (2023). Determinants and consequences of maqashid sharia performance: Evidence from Islamic banks in Indonesia and Malaysia. *Journal of Islamic Accounting and Business Research*. <https://doi.org/10.1108/JIABR-07-2021-0205>
- V’kovski, P., Gerber, M., Kelly, J., Pfaender, S., Ebert, N., Braga Lagache, S., Simillion, C., Portmann, J., Stalder, H., Gaschen, V., Bruggmann, R., Stoffel, M. H., Heller, M., Dijkman, R., & Thiel, V. (2019). Determination of host proteins composing the microenvironment of coronavirus replicase complexes by proximity-labeling. *ELife*, 8, e42037. <https://doi.org/10.7554/eLife.42037>
- Wang, H., Kulas, J. A., Wang, C., Holtzman, D. M., Ferris, H. A., & Hansen, S. B. (2021). Regulation of beta-amyloid production in neurons by astrocyte-derived cholesterol. *Proceedings of the National Academy of Sciences*, 118(33), e2102191118. <https://doi.org/10.1073/pnas.2102191118>

---

**Copyright Holder :**

© Rahmat Ilya et al. (2023)

**First Publication Right :**

© Rechtsnormen Journal of Law

**This article is under:**