Cross border of Jurisdiction between Arbitration and District Court in Business Dispute Settlement under the Indonesian Legal System

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Abstract

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In principle, the settlement of business disputes in Indonesia can be done amicably either through the court or outside the court. The court proceeding usually takes a long time, impacting overall case costs in comparison to dispute settlement outside the court. Arbitration as an alternative dispute resolution offers advantages compared to mediation, conciliation, and negotiation as it has an identical adjudicative nature to court proceedings. Therefore, arbitration is the preferred method for settling business disputes due to its perceived effectiveness and efficiency, resulting in win-win solutions. In addition, within the Indonesian legal framework, arbitration closely parallels court proceedings for dispute resolution, and its decisions carry the same level of binding authority and enforceability. This article relies on secondary data analyzed using a qualitative-juridical method to examine the jurisdiction of district court and arbitration. The findings reveal that
arbitration has absolute jurisdiction when there exists an arbitration clause or an underlying arbitration agreement, thereby excluding the jurisdiction of the district court.

A. Introduction

In the digitalization era, business interactions have become increasingly convenient. As globalization continues to drive economic activities conducted electronically through digital media, what was once done in person and concretely has now transitioned into the digital realm. This transformation inevitably leads to a variety of disputes arising from both conventional business activities and digital transactions.

Disputes arising primarily from civil matters, such as breach of contract or unlawful acts, can be resolved through litigation. Litigation is the primary method for dispute resolution, and it is commonly understood that everyone has the right to bring their claims to court for protection by filing a lawsuit.¹

However, when it comes to resolving business disputes, there is a preference for a more efficient resolution that takes into account the preservation of the company's reputation (going concern). Litigation, on the other hand, involves a procedural process that can be unpredictable in terms of time and cost. Besides the role of the courts, business dispute resolution is also possible to be settled through arbitration and other alternative dispute resolution mechanisms.

The legal enforcement process through the courts in Indonesia shares similarities with other countries, particularly in adopting a system of justice from Europe.² The international principle of courts is to provide a fast, simple, and cost-effective resolution. However, in practice, these principles of quick, simple, and cost-effective proceedings are not always fully implemented, even though they are stipulated in legislation. Consequently, many individuals facing disputes and seeking to assert their rights in court are discouraged because litigation is often perceived as complex, expensive, and time-consuming.³

¹ Anita Afriana, Hazar Kusmayanti, Review of Syaria Economy Disputes in Religious Courts within the Perspective of Small Claims Court (SCC), Fiat Yustisia, Volume 15 Number 1, January-March 2021, p 186.
² Hikmahanto Juwono, Dispute Resolution Process in Indonesia, Institute of Developing Economies, 2003, p 7
To address these issues, a simplified dispute resolution procedure has been established in the form of a small claims court, as provided for in Article 2(4) of Law No. 48 of 2009 on Judicial Power (Indonesian Judicial Power Law). However, the jurisdiction of these courts is limited to cases with a value of less than IDR 500,000,000 (five hundred million Indonesian rupiah) and subject to other cumulative requirements as stipulated in Supreme Court Regulation No. 4 of 2019. Although small claims courts have demonstrated their effectiveness in practice, their low claim threshold is considered insufficient for most business disputes. A business dispute, as defined by Maxwell J. Fulton, is "a commercial dispute is one which arises during the course of the exchange or transaction process is central to a market economy".

The limitations of the court system in resolving business disputes have led to a paradigm shift towards arbitration and alternative dispute resolution, which are perceived to better accommodate the interests of the parties as they prioritize ease and simplicity of procedures, faster resolution times, and confidentiality. It is worth noting that civil cases can be resolved either through the courts or outside of the court system.

In the case of court-based resolution, it is essential to consider the court's absolute and relative competence to determine whether the chosen court has territorial and subject-matter jurisdiction. However, this requirement does not apply to arbitration, as the competence to adjudicate disputes in arbitration forums is not determined based on absolute and relative competence, except for institutional arbitrations.

Article 11(1) of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution states, "The existence of a written arbitration agreement eliminates the right of the parties to submit the resolution of the dispute or difference of opinion contained in the agreement to the District Court." Therefore, in paragraph (2), it is clarified that the District Court must reject and refrain from intervening in a dispute that has been adjudicated through arbitration, except in specific circumstances defined by this law.

In practice, there are still cases where disputes with clear arbitration clauses and arbitration awards have been filed in court. This can be seen in cases such as the dispute between Bankers Trust Company and Bankers Trust International PLC (BT) against PT Mayora Indah Tbk (Mayora), where the

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South Jakarta District Court accepted Mayora’s claim and issued Decision No. 46/Pdt.G/1999 dated December 9, 1999, in favor of Mayora. Another case is the dispute between PT Berkah Karya Bersama and Siti Hardianti Rukmana regarding the ownership of 75% of PT TPI shares, which had a final Supreme Court decision in 2014, despite the parties initially agreeing to settle the matter through the National Indonesian Arbitration Board (BANI).

This article discusses the absolute jurisdiction of arbitration from the jurisdiction of a court, particularly in business law enforcement, and the entry point of arbitration institutions capable of limiting the court's jurisdiction.

The method used in this research is a juridical-normative approach, involving an examination of legal principles, norms, and legal theories. The juridical-normative method is a scientific research procedure aimed at finding truths based on the logic of law, particularly from a normative perspective. This legal research perspective focused on the normative aspects related to the rules and norms of Civil Procedure Law and arbitration. The research specification adopted a descriptive-analytical approach providing the most possible detailed data or descriptive representation concerning the subject matter.

B. Discussion

1 Absolute Jurisdiction of Arbitration Based on Arbitration Agreements or Arbitration Clause

In Indonesia’s dispute resolution system, the conventional method for resolving civil (business) disputes involves litigation in court, where the aggrieved party files a lawsuit against another party deemed responsible for causing the alleged harm. Business disputes, in principle, fall under the category of ordinary civil disputes and can be based on breach of contract or unlawful acts. As a result, the jurisdiction to resolve such disputes lies within the District Court, based on the prevailing procedural laws in Indonesia, primarily derived from HIR (Het Herziene Indische Reglement) and RBg (Reglement Buitengeweisten).

District Courts have the authority to adjudicate business disputes at the first-instance level, and their dispute resolution mechanisms possess the following characteristics: a highly formal process, decisions made by a third

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party appointed by the state (judges), parties not actively involved in decision-making, legally binding decisions, a focus on legal facts (determining the liable party), and open court proceedings. If a party is dissatisfied with the initial judgment issued by the District Court, they can initiate an appeal to the High Court. Should they still find the decision from the appeal unsatisfactory, they have the right to seek cassation to the Supreme Court.

Within the institutional framework of the Indonesian judiciary, there exists the Commercial Court, which essentially functions as a specialized court with the authority to adjudicate commercial disputes, or in other words, business disputes. However, according to existing regulations, the Commercial Court in Indonesia is considered a specialized court within the general judiciary system, with competence limited to examining and deciding on Bankruptcy and Suspension of Debt Payment Obligations (PKPU) petitions, intellectual property disputes (HKI), and, since 2020, appeals against decisions of the Business Competition Supervisory Commission (KPPU).

Observing the realities, litigation-based dispute resolution is often perceived as ineffective and inefficient, potentially disrupting business activities. This is due to the slow and time-consuming nature of the court-based dispute resolution process, stemming from its highly formalistic and technical examination system. The costs involved, including registration fees of approximately IDR 500,000 to IDR 750,000, repeated litigation costs, attorney fees, execution costs, witness activity expenses, and other trial-related spending, further add to the burden. Moreover, the judicial system is sometimes seen as unresponsive to public interests, potentially biased, and its judgments often generate additional problems, as disputes typically result in winning and losing parties.  

Business or civil dispute resolution, particularly in cases with relatively small monetary claims, can benefit from simplified proceedings. However, it should be noted that there are limitations on the value of claims in simplified proceedings. Philipp Sebastian Angermeyer has stated that small claims courts, used by the general public, resemble public service institutions. In contrast to formal courts where interactions with the public are mediated through lawyers, many users of small claims courts lack legal experience thus seeking guidance and instructions on procedural or substantive matters from the institution. At the same time, due to the low claim amounts, individual cases are relatively insignificant for the entire New York court system, which allocates limited resources for small claims courts.  

To resolve business disputes exceeding the monetary claim of IDR 500,000,000 (five hundred million Indonesian rupiah), a small claim court is not suitable. According to the author, in the event mediation proves ineffective, it is advisable to emphasize the freedom of the parties to seek a simpler mechanism. The appropriate choice of forum in this case is arbitration. Arbitration can also be referred to as adjudicative resolution as it bears similarities to court proceedings.

Adjudicative dispute resolution, whether through litigation in court or arbitration, is primarily conducted to resolve disputes arising from contractual relationships. However, while arbitration resembles the judicial system in its adjudicative nature, it does not constitute a court process but rather falls within the realm of non-litigation proceedings. This distinction arises from the fact that arbitration does not qualify as a judicial body, as stipulated by Article 24(2) of the Indonesian Constitution and Article 10 of the Indonesian Judicial Power Law, which specify that there are only four judicial bodies in Indonesia: General Courts (comprising District Courts and High Courts), Religious Courts (comprising Religious Courts and High Religious Courts), Military Courts (comprising Military Courts and High Military Courts), and Administrative Courts (comprising Administrative Courts and High Administrative Courts). These judicial bodies are ultimately subordinated to the Supreme Court holding the highest judicial authority.

The term "arbitration" derives from the Latin word "arbitrare," meaning "the power to resolve a matter at one's discretion." The process of dispute resolution through arbitration is based on several principles, including the principle of agreement, signifying the agreement of the parties to appoint one or more arbitrators; the principle of deliberation, whereby every dispute is attempted to be resolved through consultation, both between the arbitrators and the parties involved and among the arbitrators themselves; the principle of limitation, signifying restrictions on resolving disputes through arbitration, limited to disputes in the fields of trade and rights entirely owned by the parties; and the principle of finality and binding effect, meaning that an arbitration decision is a final and binding decision that cannot be challenged through other legal avenues, such as appeals or cassation. These principles are generally agreed upon by the parties within the arbitration clause or agreement.

In light of these principles, it can be concluded that the primary purpose of arbitration is to efficiently and fairly resolve disputes in the field of trade and rights fully controlled by the parties, issuing a fair and efficient decision without the unnecessary formalities and procedures that may hinder dispute resolution.

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Institutionally, arbitration encompasses permanent and ad-hoc arbitration. Specialized arbitrations are also established to settle specific cases, such as the International Centre for the Settlement of Investment Disputes (ICSID) for resolving investment disputes. ICSID, for instance, holds absolute jurisdiction when parties agree to resolve disputes through arbitration concerning investment-related disputes.

Compared to arbitration, the jurisdiction of courts to adjudicate disputes must be based on absolute competence or jurisdiction. For example, the court has jurisdiction to accept and adjudicate civil cases, including business disputes. The intersection of the court system with cases already arbitrated may occur, such as when the District Court intervenes in the annulment of an arbitral award. However, court intervention in the annulment of an arbitral award is usually limited to situations where certain elements are suspected to be present, such as: 1. submitted documents during the examination, after the award has been rendered, are acknowledged as fake or declared fake; 2. after the award is issued, decisive documents concealed by the opposing party are discovered; or 3. the award is obtained through deceitful practices by one of the parties during the dispute resolution process. Therefore, based on normative principles, the court's involvement in arbitral institutions is generally limited, and outside of the above-mentioned circumstances, the District Court is obliged to reject the examination and adjudication of cases already decided by an arbitral institution (choice of forum).

Article 3 of the Indonesian Arbitration Law stipulates that district courts are not authorized to adjudicate disputes involving parties bound by arbitration agreements. However, conflicting jurisdiction between arbitration and the courts persists. An arbitration agreement refers to an agreement in the form of an arbitration clause included in a written agreement made by the parties before the dispute arises or a separate arbitration agreement entered into by the parties after the dispute arises. Regarding agreement-related issues, the pacta sunt servanda principle, which is a fundamental principle of contract law, emphasizes that parties are bound by the agreements they have consented. This is due to the binding force of an agreement being equated with the legal force derived from the law, as stipulated in Article 1338 (1) of the Indonesian Civil Code. Cases such as Bankers Trust v. PT Mayora Indah Tbk and PT Berkah Karya Bersama v. Siti Hardianti Rukmana all involved lawsuits filed in court despite prior agreements to resolve their cases through arbitration.

The arbitration agreement is closely related to the competence of the court. In this regard, Sudikno Mertokusumo explains the issue of the application of judicial competence: When a case is submitted to a judge who is not authorized to hear it, the judge must declare that it does not have the authority by ex officio thus they lack jurisdiction to adjudicate the dispute regardless of whether or not the defendant raises an objection regarding their

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lack of jurisdiction. At any time during the proceedings, an objection can be raised that the judge lacks jurisdiction to hear the case (Article 132 of the Tv, Article 134 of the HIR, Article 160 of the Rbg).  

2 The Entry Point of Absolute Jurisdiction in Arbitration for Business Dispute Resolution in Indonesia

In both domestic and international contract drafting practices, it is widely acknowledged that parties should agree on the forum to settle the potential dispute, even when such disputes may not be certain to occur. The preventive measure to tackle the possibility of disputes is to include a clause regarding dispute resolution in their agreements. This clause is titled "Settlement of Disputes" and outlines the agreement on which forum will resolve the disputes, whether through litigation or arbitration. This is based on the principle of freedom of contract, which is a universally recognized principle. If arbitration is chosen as the dispute resolution method, the rules governing it can be found in the Arbitration and Alternative Dispute Resolution Law.

The provisions on arbitration, as regulated by the old RV, remained in force until the issuance of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Indonesian Arbitration Law). Consequently, the position and authority of arbitration in Indonesia became clearer and stronger. Currently, arbitration is widely utilized by business entities that prefer it as an alternative dispute resolution method (non-litigation).

An arbitration institution is an entity chosen by disputing parties to render decisions on specific disputes. Article 5 of the Indonesian Arbitration Law governs that disputes that can be resolved through arbitration are limited to those in the field of commerce and related to rights governed entirely by the parties. Since business relationships occur in the field of commerce, disputes arising from such relationships fall under the category of trade disputes and can be resolved through arbitration.

Arbitration is a method of resolving disputes outside of the court based on a written arbitration agreement made by the parties. “Towards the particular choice, a written agreement must be made and the formal requirements must be applied based on the regulation in the chosen forum.”

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An arbitration agreement shall be a clause within a written agreement made by the parties before a dispute arises or a separate arbitration agreement created by the parties after a dispute has arisen. Therefore, the authority of arbitration can arise from either an arbitration clause or an arbitration agreement.

Both the arbitration clause and the arbitration agreement serve as entry points for resolving business disputes through arbitration, granting full authority to settle business disputes. Article 3 of the Indonesian Arbitration Law states that the District Court does not have jurisdiction over a dispute when the parties are bound by an arbitration clause in their main agreement. Thus, if a business dispute arises within an agreement containing an arbitration clause, the full authority to settle that dispute lies with arbitration.

A written arbitration agreement extinguishes the parties' right to pursue dispute resolution or differences of opinion in the District Court, as stated in Article 11 of the Indonesian Arbitration Law. Such a written agreement can be an arbitration clause within a main agreement or a standalone arbitration agreement made after a dispute arises between the parties.

Based on the provisions of Article 3 and Article 11 of the Indonesian Arbitration Law, the existence of an arbitration clause or arbitration agreement eliminates the District Court's authority to examine disputes and confers absolute jurisdiction upon arbitration to examine and adjudicate disputes arising from business relationships.

As is commonly understood, the District Court has the authority to adjudicate and settle civil and criminal cases at the first instance. Civil procedure law recognizes two types of jurisdictions which are relative jurisdiction (competent jurisdiction) and absolute jurisdiction (absolute competence).

Relative jurisdiction pertains to the allocation of power among similar courts, depending on the defendant's place of residence (as mandated by Article 118 paragraph 1 of the HIR). This involves the division of authority among equal courts to handle a case, also known as "distributie van rechtsmacht." For instance, when the defendant's residence is in the city of Bandung, it falls within the jurisdiction of the Bandung District Court, and if the defendant’s residence is in Garut, the Garut District Court has jurisdiction.

Absolute jurisdiction concerns the allocation of power among different types of courts based on the nature of the court. This involves the granting of authority to adjudicate which is also known as "attributie van rechtsmacht." For example, inheritance disputes among Muslims fall under the jurisdiction of Religious Courts, while debt-related disputes fall under the jurisdiction of District Courts. Therefore, relative jurisdiction answers the question of which District Court is competent to adjudicate a case, such as the Bandung District Court.

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16 Efa Laela Fakhriah, Perbandingan HIR dan RBg Sebagai Hukum Acara Perdata Positif di Indonesia, Keni Media, Bandung, 2015.
Court or the Jakarta District Court, while absolute jurisdiction answers the question of which judicial body is competent to adjudicate a dispute, whether it is the District Court or the Religious Court.

Regarding the competence of arbitration institutions as a dispute resolution mechanism outside the court system, the presence of an arbitration clause or an arbitration agreement grants them absolute competence to handle disputes arising from agreements containing such clauses, simultaneously depriving the District Court of jurisdiction. This illustrates that an arbitration clause or arbitration agreement serves as a limitation of the jurisdiction of the District Court to settle such dispute.

In practice, disputes that have been bound by a commercial arbitration agreement persist brought before the courts in Indonesia and subsequently adjudicated by the court system instead of the chosen arbitration tribunal agreed upon by the parties. This occurs even when a court decision asserts authority to adjudicate the matter, while another party subsequently files the same case with the Badan Arbitrase Nasional Indonesia (BANI). This leads to a conflict of jurisdiction between the District Court and arbitration. In one case, the court, through Decision Number 10/PDT.G/2010/PN.JKT.PST, declares its authority to adjudicate the case, while BANI, through Decision Number 547/XI/ARB-BANI/2013, also asserts jurisdiction based on the argument that the investment agreement explicitly stipulates dispute resolution through arbitration (BANI).

On one hand, judges are prohibited from dismissing cases under Article 10, paragraph (1) of the Indonesian Judicial Power Law. On the other hand, Article 3 of the Indonesian Arbitration Law stipulates that the District Court lacks jurisdiction to adjudicate disputes between parties bound by an arbitration agreement. However, despite in general the exercise of judicial authority being rooted in the Law on Judicial Power, with the enactment of the Arbitration and Alternative Dispute Resolution Law, the principle of *lex specialis derogat legi generalis* applies. The presence of Article 3 implies that the absolute competence of arbitration arises when parties explicitly agree to resolve their dispute through arbitration, rendering the court without authority to examine and adjudicate such disputes.

Under civil procedural law in Indonesia, the settlement of civil disputes arising from contractual breaches in business disputes falls under the jurisdiction of the District Court if an amicable settlement cannot be reached. However, if there is a clause appointing arbitration as the dispute resolution forum (an arbitration clause) in the underlying agreement, or if an arbitration agreement is entered into after a dispute arises between the parties, the jurisdiction of the District Court is shifted to the jurisdiction of arbitration. This is the intended meaning that arbitration clauses or arbitration agreements represent a shift of authority from the District Court to arbitration for settling business disputes that occur.
C. Conclusion

Disputes arising from contractual relationships fall under the jurisdiction of arbitration if there is an arbitration clause specified in the agreement. To enhance public trust in arbitration institutions as a dispute resolution mechanism, the Indonesian Arbitration Law empowers these institutions with absolute adjudicative authority. This means that if an arbitration clause or arbitration agreement is present in the contract, it effectively removes the District Court's jurisdiction to adjudicate disputes arising from contractual relationships.

In the legal system of Indonesia, the presence of an arbitration clause in the main agreement that underlies the contractual relationship, or the existence of an arbitration agreement settled after a dispute has arisen, based on the parties agreement to choose arbitration as their dispute resolution forum, is a “cross-border” absolute authority in resolving disputes between the Court and arbitration when conflicts over jurisdiction arise.

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