INTERNATIONAL JOURNAL OF GOVERNMENT SCIENCE AND PUBLIC ADMINISTRATION

NAWALA

Volume 4, Number 2, 2025

Arbitration as Lex Specialis: A Review of Position and Implementation in National Law

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Abstract

Article history:
Received: September 21, 2025
Revised: October 19, 2025
Accepted: November 20, 2025
Published: December 30, 2025

Keywords:
Arbitration,
Dispute Resolution,
Lex Specialis,
National Law.

Identifier:
Nawala
Page: 146-158
https://nawala.io/index.php/ijgspa

This study aims to analyze the position of arbitration as Lex Specialis Derogat Legi Generali (special law overrides general law) in the Indonesian national legal system and review its implementation, particularly in the context of commercial dispute resolution. This Lex Specialis principle grants higher legal force to mutually agreed arbitration provisions compared to general court litigation provisions. Normatively, the position of arbitration is affirmed by Law Number 30 of 1999 concerning Arbitration and Dispute Resolution Options, which explicitly limits the authority of general courts to interfere in the arbitration process. The implementation of this principle is tested through the practice of court decisions. The results of the review indicate that Indonesian courts, particularly at the cassation and judicial review levels, tend to be consistent in recognizing and enforcing valid arbitration clauses, and rejecting opposing requests that violate the principle of judicial non-intervention. However, there are challenges in its implementation, particularly regarding the interpretation of the objects of dispute that can be arbitrated and the execution of international arbitration awards. In conclusion, arbitration has been recognized as an effective Lex Specialis in resolving commercial disputes in Indonesia, but harmony of interpretation between the arbitration body and the judicial institution remains the key to ensuring legal certainty.

1. Introduction

Article 1 number 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution defines arbitration as a method of resolving civil disputes outside of general courts based on a written arbitration agreement between the parties. The decision resulting from arbitration is final and binding, requiring full compliance. Arbitration is often considered a lex specialis that overrides the lex generalis, which governs general courts. As a non-litigation dispute resolution mechanism, arbitration allows disputes to be resolved by a neutral and independent third-party arbitrator appointed by the disputing parties, who plays an essential role in issuing binding legal decisions in business contexts. Conflicts often arise in commercial relationships, even among long-term business partners with good reputations, typically as a result of defaults or disagreements stemming from business partnerships.[1]

Arbitration is therefore primarily used to resolve civil disputes that arise in trade or commerce, and such disputes are limited to those that involve business matters as stipulated in Article 5 of Law No. 30 of 1999 concerning Arbitration and APS. The disputing parties must explicitly agree to use arbitration as a dispute resolution mechanism, and such agreements may be made before or after a dispute arises. The process provides a faster, more accurate, and definitive resolution outside of court while maintaining confidentiality and good faith between parties, unlike

[1] Dhea Oktarini Oswari. "Analisis Hukum Terhadap Kerugian Akibat Wanprestasi Dalam Kontrak Bisnis." *Jurnal Jendela Hukum dan Keadilan* 9, no. 2 (2024): 48-57.

litigation, which is often lengthy, open to public scrutiny, and involves multiple levels of appeal.

A careful interpretation of Article 1 number 1 in connection with Article 1 number 10 of Law No. 30 of 1999 shows that arbitration and Alternative Dispute Resolution (ADR) are distinct and independent mechanisms. Article 1 number 1 states that arbitration is a civil dispute resolution method outside the general court based on a written agreement between disputing parties (Law (UU) No. 30, 1999). On the other hand, Article 1 number 10 defines ADR as an institution for resolving disputes or differences of opinion through agreed procedures such as consultation, negotiation, mediation, conciliation, or expert assessment. Hence, arbitration differs from ADR, which includes only non-adjudicative methods. Following the implementation of Law No. 30 of 1999, specialized professions such as arbitrators, consultants, negotiators, mediators, conciliators, and expert witnesses have emerged. Their procedures are governed by the BANI procedural rules or other mutually recognized procedural regulations.[2]

Furthermore, Law No. 30 of 1999 also regulates international arbitration and its enforcement within Indonesia under Articles 65 to 69 of Chapter VI. These provisions align with the 1958 New York Convention concerning the recognition and enforcement of foreign arbitration awards. Article 65 specifies that the Central Jakarta District Court has the authority to handle matters concerning the recognition and enforcement of international arbitration awards. Thus, arbitration serves as a

[2] Dhaniswara K. Harjono. "Application of the Pacts Sunt Servanda Principles in the settlement of business Disputes through Arbitration." *International Journal of Law and Politics Studies* 5, no. 1 (2023): 70-76.

mechanism for resolving various civil conflicts, particularly business-related disputes involving private rights. However, certain personal rights—such as those concerning divorce, child status, guardianship, and other non-contractual matters—cannot be settled through arbitration because they pertain to public interest and are not subject to private agreement.[3]

Traditionally, litigation has been the primary avenue for dispute resolution. However, because the court process tends to be adversarial, slow, and public, it can exacerbate conflicts rather than resolve them (Frans Hendra, 2011:9). Higher courts may also review lower court decisions, prolonging the resolution process (Retnowulan Sutantio and Iskandar Oeripkartawinata, 1998:68). To address these issues, arbitration offers a non-litigation alternative that is final and binding under Article 60 of the AAPS Law. Arbitration awards cannot be appealed, reviewed, or challenged, and they become enforceable once registered with the District Court as stipulated in Article 59 paragraphs (1) and (4) of the same law. Nevertheless, Article 70 of the AAPS Law allows an arbitration award to be annulled if specific grounds are met, such as the discovery of falsified case files after the verdict, hidden documents uncovered post-judgment, or proven fraud committed by one of the parties during proceedings.

The explanation to Article 70 originally required that the grounds for annulment be supported by a separate court decision, a stipulation later deemed inconsistent with higher legal norms. The Constitutional Court Decision No.

[3] Sufiarina Sufiarina, Jarot Digdo Ismoyo, Loso Judijanto, Yeti Kurniati, Andi Annisa Nurlia Mamonto, Apriyanto Apriyanto, Poetri Enindah Suradinata et al. *Hukum Perdata: Asas-Asas dan Perkembangannya*. PT. Sonpedia Publishing Indonesia, 2024.

15/PUU-XII/2014 ruled that the explanation to Article 70 was contrary to the 1945 Constitution and therefore not legally binding. Consequently, the grounds for annulment no longer require confirmation by a separate judicial decision. Although arbitration awards are final and binding, they must first be registered with the court to obtain executory power. If one party refuses voluntary compliance, the enforcement may be executed under the supervision of the Chief Judge of the District Court. Under Articles 60, 61, and 70 of the AAPS Law, the District Court retains the authority to annul an arbitration award under the prescribed conditions.[4]

2. Methods

The research method applied in the preparation of this work is a normative legal study method. The normative legal research approach is a legal research library conducted using the study of reference sources and secondary data. By using deductive reasoning (a way of thinking that concludes from something more general that has been confirmed, and the conclusion is aimed at something specific). The normative legal approach is an approach that considers theories, concepts, legal principles, and legal regulations in the context of this research based on important legal sources. This perspective is also called a bibliographic strategy and is carried out through a review of books, laws, regulations, and other documents relevant to this research.

[4] Cut Memi. *Arbitrase Komersial Internasional: Penerapan Klausul dalam Putusan Pengadilan Negeri*. Sinar Grafika, 2024.

3. Results and Discussion

3.1. Arbitration Authority in Dispute Settlement

In Indonesia, the Indonesian National Arbitration Board (BANI Arbitration Center) serves as the leading institution that provides arbitration, mediation, and other out-of-court dispute resolution mechanisms. One of the fundamental aspects of arbitration is jurisdiction or legal authority, which determines whether an arbitral body has the competence to examine and resolve a particular dispute. Before deliberating on the substance of a dispute, the arbitral institution or tribunal must first establish its jurisdiction. If it determines that it possesses jurisdiction, the arbitration process continues; otherwise, the case will be dismissed. This jurisdictional authority is derived from two primary sources: legal instruments and the agreement of the parties involved.

Legal instruments, both national and international, provide the foundation for establishing the authority of arbitration bodies. For instance, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution stipulates in Article 5 that commercial conflicts eligible for arbitration are those that can be amicably resolved within legal boundaries. The scope of arbitration extends across various sectors, including commerce, banking, finance, investment, industry, and intellectual property rights. These provisions ensure that arbitration operates within defined parameters while accommodating the complexities of modern commercial relationships.

In addition to statutory authority, the jurisdiction of arbitration fundamentally rests on the agreement of the parties. An arbitration agreement, as defined in

Indonesian law, is a written agreement in which the disputing parties express their intent to resolve potential or existing disputes outside the court system through an arbitrator. Such an agreement may appear as a clause within a broader contract (pactum de compromittendo) or as a separate agreement executed after a dispute has arisen (acta compromis). This agreement outlines critical procedural aspects, including the appointment of arbitrators, the place of arbitration, and cost allocation, ensuring clarity and mutual consent between the parties. It is this mutual consent that grants legitimacy to the arbitration process, reflecting the principle of autonomy in private dispute resolution.[5]

According to Redfern and Hunter, as cited in Huala Adolf's work, "An arbitral tribunal may only validly resolve those disputes that the parties have agreed that it should resolve. This rule is an inevitable and proper consequence of the voluntary nature of arbitration. In consensual arbitration, the authority or competence of the arbitral tribunal comes from the agreement of the parties; indeed, there is no other source from which it can come." This statement underscores that the source of an arbitral tribunal's authority is purely consensual, emphasizing the voluntary foundation of arbitration.

Within BANI's jurisdiction, the procedural framework further reinforces this principle. As stated in Article 1 of the BANI Procedural Rules, if the parties in an agreement or business transaction agree in writing to bring a dispute to arbitration

[5] Bosni Gondo Wibowo. "Dapatkah Menyelesaikan Sengketa Melalui Arbitrase jika Tidak Diperjanjikan Sebelumnya?". Hukum Online, February 4, 2025. Retrieved in August 9, 2025 from https://www.hukumonline.com/klinik/a/dapatkah-menyelesaikan-kembang-ancang- melalui-arbitrase-jika-tidak-diperjanjikan-dahulunya-lt5ca46f65350e0/

before BANI or to use its procedural rules, the dispute will be resolved under BANI's administration in accordance with those rules. Consequently, any contract intending to submit disputes to BANI must include a clause such as: "All disputes arising from this agreement will be resolved and decided by the Indonesian National Arbitration Board (BANI) according to BANI's arbitration procedure regulations, whose decision is binding on both parties to the dispute, as a decision in the first and final instance." The inclusion of this clause emphasizes that BANI's decisions are final and binding, representing the first and last instance of adjudication without appeal to the Supreme Court.[6] Through this structure, the arbitration authority in Indonesia reflects both legal certainty and respect for the autonomy of the contracting parties.

3.2. The Principles and Practice of Arbitration and Out-of-Court Settlement

Arbitration in Indonesia operates under several fundamental principles outlined in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. At its core, arbitration is a process in which disputing parties submit their conflict to one or more impartial arbitrators for a binding decision. According to Article 1 Paragraph 1 of Law Number 30 of 1999, arbitration is defined as a civil dispute resolution mechanism outside the general court system based on a written arbitration agreement between the disputing parties. This definition reveals three essential elements: the existence of a dispute, the mutual agreement to submit it to an arbitrator, and the finality of the arbitral decision. The arbitration agreement,

[6] Muhammad Iqbal Baiquni. "Arbitrators as a legal profession in the alternative role of dispute resolution in Indonesia." *Jurnal Humaya: Jurnal Hukum, Humaniora, Masyarakat, Dan Budaya* 2, no. 1 (2022): 12-20.

grounded in the concept of contractual rights, derives its binding force from Article 1338 of the Indonesian Civil Code, which affirms that agreements made lawfully bind the parties as if they were law themselves.

Law Number 30 of 1999 also regulates other non-litigation mechanisms such as conciliation, mediation, negotiation, and consultation. However, in practice, arbitration remains the most significant among these methods. Institutions like the Consumer Dispute Resolution Agency (BPSK) utilize arbitration alongside conciliation and mediation to address consumer-related conflicts. According to the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12.2001, "arbitration is a process for resolving consumer disputes outside the courts in which the disputing parties fully submit the resolution to the BPSK" (Fakultas Hukum, 2016). This approach underscores arbitration's role in promoting fair, efficient, and impartial consumer dispute resolution.

Arbitration is characterized by several guiding principles: voluntariness, independence, binding authority, confidentiality, and efficiency. The voluntary nature of arbitration ensures that participation is based on mutual consent. Independence and neutrality of arbitrators guarantee impartiality, ensuring fairness in the decision-making process. The binding nature of arbitral decisions distinguishes arbitration from other forms of ADR, providing legal certainty to the parties. The privacy principle allows for confidentiality, protecting sensitive business

information from public exposure. Lastly, arbitration's efficiency offers a faster resolution compared to litigation, which is often prolonged and costly.[7]

Dispute resolution through arbitration can be initiated through an arbitration clause (pactum de compromittendo) or a separate submission agreement (acta compromis).[8] Arbitrators, typically experts in their fields, provide not only legal but also technical insights into the subject matter of disputes. One of arbitration's major advantages is that it is conducted privately, thus safeguarding trade secrets and business reputations from public scrutiny. Furthermore, arbitration is efficient, concluding disputes more swiftly than the court system. It fosters amicable settlements, preserving business relationships while ensuring that outcomes are confidential and enforceable.

According to Article 1 of Law Number 30 of 1999, arbitration is a civil dispute resolution method outside the jurisdiction of general courts, requiring a written agreement by the disputing parties. As affirmed by Article 59, Paragraph 2 of Law Number 48 of 2009 concerning Judicial Power, arbitral awards are final and binding, holding legal standing equivalent to a court judgment. Enforcement may proceed either voluntarily or through court recognition. Thus, arbitration operates as a closed, self-contained system that prioritizes confidentiality, efficiency, and expertise. In essence, arbitration functions as a vital legal mechanism for maintaining trust and stability in commercial relationships, ensuring that disputes are resolved

[7] Kumparan. Pengertian Arbitrase: Penyelesaian Sengketa yang Efisien dan Netral. Kumparan, November 27, 2023. Retrieved in August 12, 2025 from https://kumparan.com/pengertian-dan-istilah/pengertian-arbitrase-penyelesaian-kembang-yang-efisien-dan-netral-21egTAj4soe/full

[8] Habib Adjie. "The Role of Notarists in Formulating the Inclusion of Arbitrate Clauses in Notarists Act in the form of Pactum De Compromittendo." *Journal of Positive Psychology and Wellbeing* 6, no. 1 (2022): 1212-1219.

justly and privately while safeguarding business interests in Indonesia's evolving legal landscape.[9]

4. Conclusion

From the above explanation, it is clear that arbitration has sole authority to resolve issues involving arbitration provisions. The provisions of Articles 3 and 11 of the Arbitration Law form the basis for this. Due to the arbitration clause, the arbitration institution has full control over dispute resolution. The opportunity to pursue dispute resolution in the District Court is not available to parties bound by an arbitration agreement. This indicates a conflict between the Judicial Powers Law and the Arbitration Law. The District Court is not permitted to determine cases involving parties bound by an arbitration agreement, in accordance with Articles 3 and 11 of the Arbitration Law. However, Article 10 of the Judicial Powers Law stipulates that the Court must handle and decide cases submitted on the grounds that the law is confusing or absent. Meanwhile, executive authority is crucial for arbitration awards. The parties' good faith compliance with the award is a fundamental component of executive authority. Since the decision is requested to be implemented by registering the arbitration decision at the District Court, the lack of good faith does not negate the executive authority of the arbitration decision.

Based on the findings of the current research, it is recommended that the parties to the dispute who have determined arbitration as a model for resolving the

[9] Habibi Natama Ritonga, Raja Brahma Sembiring, Nurhatifah Manurung, and Muhammad Herry Samzidane. "Kewenangan Arbitrase Dalam Penyelesaian Sengketa Bisnis Di Indonesia." *Jurnal Cendikia Isnu Su* 1, no. 2 (2024): 97-105.

dispute understand and prioritize in good faith that arbitration has the authority to resolve their dispute therefore, the parties must comply with the arbitration decision, which has permanent legal force, so that no objections arise to the decision and the court instrument is used to initiate the implementation of the arbitration decision. When accepting or rejecting the conditions containing the arbitration clause, the judge must consider the principle of court limitations in addition to using reasoning in the law contained in the Judicial Power Law. In addition, the idea of lex specialis derogate legi generali must be used by the judge.

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