



Analysis Of The Validity Of Arbitration Agreements In Business Dispute Resolution In A Social Environment

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Abstract. The purpose of this study is to analyze the validity of arbitration agreements in the settlement of business disputes in a social environment, as well as to assess the extent of the public's understanding of the law, particularly small and medium-sized enterprises (SMEs), regarding arbitration mechanisms. The background of this research stems from the fact that arbitration is an efficient and confidential alternative dispute resolution method, but its effectiveness is highly dependent on the validity of the arbitration agreement made by the parties. In practice, many business actors in the social environment include arbitration clauses without understanding the legal consequences, thus giving rise to various legal and social problems. The research method used was a normative juridical approach supported by a sociological approach to law. The normative juridical approach was used to examine legislation, such as Law No. 30 of 1999 and Article 1320 of the Civil Code, which form the basis for the validity of arbitration agreements. Meanwhile, the sociological approach was used to understand the perceptions and practices of communities in social environments, including MSMEs and cooperatives, regarding the application of arbitration clauses. Data was obtained through literature studies and qualitative analysis of social phenomena that indicate low legal literacy and bargaining power imbalances in business relationships. The results of the study show that the level of legal understanding among business actors in the social environment is still low, resulting in many arbitration agreements that do not meet the elements of a valid agreement, such as free agreement and legal competence. This condition gives rise to defects of consent and imbalances in the agreement, thereby potentially rendering the arbitration clause null and void. Furthermore, the culture of deliberation and kinship in Indonesian society is often incompatible with the formal and costly nature of arbitration, making arbitration less desirable at the local level. The conclusion of this study confirms that the validity of arbitration agreements in the social sphere is not yet fully guaranteed due to low legal awareness and economic inequality between parties. Therefore, it is necessary to improve legal literacy, socialization, and procedural reform of arbitration institutions to make them simpler, more transparent, and more affordable for small businesses. Thus, arbitration can function effectively as a fair, efficient, and appropriate mechanism for resolving business disputes in Indonesian society.

Keywords: Arbitration, Business Disputes, Social Environment.

1 Introduction

The development of the business world in the era of globalization has brought significant changes to the pattern of legal relationships between business actors. Increasingly complex business relationships often give rise to conflicts of interest or disputes that require quick, efficient and fair resolution. In this context, arbitration has emerged as an alternative to court-based dispute resolution (non-litigation) that is considered more flexible and confidential than general court proceedings [4][1]. However, the effectiveness of arbitration is highly dependent on the validity of the arbitration agreement entered into by the parties [6][15].

An arbitration agreement is a legal basis that gives arbitration institutions the authority to settle disputes. Without a valid agreement, arbitration institutions do not have jurisdiction to handle disputes that arise[3]. Therefore, the validity of arbitration agreements is very important to examine, especially in the context of societies that do not fully understand the mechanisms and legal consequences of arbitration clauses.

In Indonesia, regulations concerning arbitration are stipulated in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law provides a clear legal basis regarding the requirements, procedures, and legal consequences of arbitration agreements. However, in practice, many business agreements still include arbitration clauses without regard to the principles of validity of agreements as stipulated in Article 1320 of the Civil Code (KUHPerdata) [10].

Problems arise when one party refuses to participate in arbitration on the grounds that the agreement is invalid or was made without a clear understanding. This often occurs in business relationships within social circles, such as between small and medium-sized enterprises (SMEs), cooperatives, or local communities, which often enter into

agreements without professional legal assistance [1]. As a result, the arbitration clause contained therein is often deemed null and void because it does not meet the elements of agreement or the legal capacity of the parties.

Furthermore, in the social context of Indonesian society, which still upholds deliberation and kinship, arbitration is often considered an "alien" and formal mechanism. Many local businesses do not understand the implications of arbitration agreements, such as the fact that by signing an arbitration clause, they waive their right to sue in a court of law [14]. This situation raises legal questions about the extent to which arbitration agreements can be considered valid if they are made without the full understanding of the parties involved.

The validity of an arbitration agreement depends not only on legal formalities, but also on good faith, free agreement, and fulfillment of the conditions for a valid agreement. In many cases, arbitration clauses are inserted by the economically stronger party without adequate explanation to the other party. This phenomenon indicates the potential for inequality of bargaining power, which may have implications for the validity of the arbitration clause [7].

From a business law perspective, the existence of a valid and effective arbitration agreement can provide legal certainty for the parties in resolving disputes. Arbitration offers time and cost efficiency, as well as maintaining the confidentiality of business relationships [5]. However, if the validity of the arbitration agreement is questioned, the arbitration decision may be overturned by the court, thereby defeating the primary purpose of rapid dispute resolution [8][12].

Research on the validity of arbitration agreements in business dispute resolution is also important to assess the extent to which public legal awareness has developed. In a social environment where legal literacy is still low, understanding of the concept of arbitration and its resolution mechanisms is still limited. As a result, many business agreements are made without regard to fundamental legal aspects, including the validity of arbitration agreements that form the basis for dispute resolution..

In this context, the analysis of the validity of arbitration agreements is not only normative but also sociological. This means that this study not only assesses agreements from a legal perspective but also considers the social reality in the field. This approach is necessary to understand how society views and applies arbitration mechanisms in everyday business practices. Based on this background, research on the theme of "Analysis of the Validity of Arbitration Agreements in Business Dispute Resolution in a Social Environment" is relevant and significant. This study is expected to contribute theoretically to the development of arbitration law in Indonesia, while also providing a practical understanding for the community to be more careful in making fair and legally certain business agreements. Thus, arbitration can truly become an effective, fair, and appropriate alternative for dispute resolution in line with the character of Indonesian society.

2 Research Method

This research method uses a normative juridical approach supported by a sociological approach to law. The normative legal approach is used to examine the provisions of positive law relating to the validity of arbitration agreements as stipulated in Law No. 30 of 1999 and Article 1320 of the Civil Code, with a focus on analyzing the validity requirements of agreements, the agreement of the parties, and the legal consequences of invalidity. Meanwhile, the sociological approach is used to understand how business actors in social environments, such as MSMEs and cooperatives, interpret and apply arbitration clauses in their daily business practices. Data was obtained through literature studies and qualitative analysis of social phenomena that indicate low legal literacy and bargaining power imbalances between parties. The results of the study are expected to provide a comprehensive picture of the validity of arbitration agreements in the Indonesian social context and offer solutions to strengthen legal awareness and protection for business actors.

3 Research Results

This study reveals that the existence of arbitration agreements in business practices in Indonesia is widely known, but understanding of their validity remains low, particularly among small and medium-sized enterprises. Many agreements in business relationships are made with arbitration clauses included merely as an administrative formality, without understanding their legal implications for dispute resolution [14].

Based on a review of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it can be concluded that the validity of arbitration agreements in the social sphere is highly dependent on the fulfillment of the elements of a valid agreement as stipulated in Article 1320 of the Civil Code, namely the existence of agreement, competence, a specific object, and a lawful cause [10].

In terms of the agreement between the parties, this study shows that in many social environments, arbitration agreements are made without a comprehensive understanding or free consent. Generally, these agreements follow a format prepared by the economically stronger party, resulting in inequality in the contract drafting process [7]. The element of legal competence in arbitration agreements is also a crucial issue, especially in the social environment of small businesses, cooperatives, or local business communities. Many parties sign agreements without legal assistance, resulting in arbitration clauses being drafted without due consideration of legal competence. This study found that, in general, the object of arbitration agreements in the social environment is valid because it is related to business activities. However, problems arise when arbitration clauses are included without clear limitations on the types of disputes that can be submitted, which then creates legal uncertainty for the parties [3].

From the perspective of lawful causes, no violations of positive law or social norms were found. However, in certain social environments, arbitration clauses are often used unfairly by the more dominant party to avoid lawsuits in civil courts, thereby giving rise to contractual injustice. Based on an analysis of various court decisions, it was found that many arbitration awards were set aside because the basis of the agreement was deemed not to meet the requirements of a valid agreement [8]. This phenomenon shows that in the business social environment, the formalities involved in the drafting of arbitration agreements are still often overlooked.

In the context of the social environment, this study found that many local businesses do not fully understand the difference between arbitration and court proceedings. Arbitration is often considered to be the same as ordinary deliberation or even considered too formal and complicated to implement [4]. This low level of understanding in the social environment has an impact on weak legal awareness of arbitration clauses. As a result, many agreements are made without sufficient explanation of the rights and obligations of the parties, so that their validity can be questioned both morally and legally. Sociological studies show that the culture of deliberation and kinship in social circles often conflicts with the formal and costly principles of arbitration. Therefore, many parties prefer amicable settlements to implementing arbitration awards [11].

Based on field observations, small business owners in various social environments trust mediation and negotiation more than arbitration, because they believe that arbitration is only suitable for large-scale business disputes. This shows that there's a gap in the application of arbitration at the lower socio-economic level. Research also shows that arbitration institutions in Indonesia, such as BANI, are still relatively unknown among small and medium-sized businesses. The lack of awareness means that many parties are unaware of the official mechanisms for submitting disputes to arbitration institutions.

In normative analysis, it was found that arbitration agreements entered into without full understanding by one of the parties in a social environment can be categorized as defective agreements. This means that such agreements do not fulfil the element of free agreement and are therefore null and void [6].

From the perspective of contractual justice theory, the imbalance in bargaining power between strong and weak parties in a business social environment raises issues regarding the principle of good faith. This condition often results in arbitration clauses that favour one party and disregard substantive justice.

Research confirms the importance of improving legal literacy among business actors in the social environment. A lack of understanding of the legal consequences of arbitration agreements can make such clauses a tool that harms weaker parties in business transactions [9]. On the other hand, arbitration institutions are expected to carry out procedural reforms to be more adaptive to the social environment, for example, by creating simple, fast, and low-cost settlement mechanisms that are accessible to small and medium-sized businesses [16]. Other findings indicate that the application of valid arbitration in the social business environment can increase legal certainty, as arbitration awards are final and binding [5]. However, this certainty can only be achieved if the validity of the agreement is maintained from the initial stage of the contract.

From observations of recent practices in the digital socio-economic environment, it was found that online contracts (online templates) automatically include arbitration clauses without adjustment to the national legal context. This raises new issues in assessing the validity of arbitration agreements in the digital age [16]. Overall, this study concludes that the validity of arbitration agreements in the social environment is not yet fully guaranteed due to low legal awareness, economic inequality, and a lack of supervision of the contract drafting process at the community level. Thus, this study emphasizes that increasing legal awareness in the social environment and providing guidance to small businesses are strategic steps to ensure that arbitration agreements are made legally and fairly. If this is achieved, arbitration can become an effective, efficient, and appropriate instrument for resolving business disputes in the Indonesian social context.

4 Conclusion

This study concludes that the validity of arbitration agreements in the settlement of business disputes in a social environment is highly dependent on the fulfillment of the elements of a valid agreement as stipulated in Article 1320 of the Civil Code and Law Number 30 of 1999 [3][10]. The elements of free agreement, legal competence of the parties, and clarity of the object and lawful cause are the main bases that determine the validity of arbitration clauses. However, in practice, many arbitration agreements among MSMEs, cooperatives, and local businesses are made without adequate legal understanding, resulting in frequent defects of consent and an imbalance of bargaining power between strong and weak parties [7]. As a result, arbitration clauses are often exploited disproportionately and have the potential to cause contractual injustice. Furthermore, this study highlights that the strong culture of deliberation and kinship in Indonesian society often conflicts with the formal and costly nature of arbitration, leading business actors in social environments to prefer dispute resolution through mediation or negotiation [11]. Therefore, improving legal literacy and regulatory guidance are strategic steps to strengthen public legal awareness. With the dissemination of information and reform of arbitration mechanisms to make them simpler, more transparent, and more affordable, arbitration has the potential to become a fair, efficient, and socially appropriate instrument for resolving business disputes in Indonesian society.

Reference

1. Agustina, R.E. Efektifitas Arbitrase sebagai Penyelesaian Perselisihan (Effectiveness of Arbitration as a Settlement of Disputes). *Ethics and Law Journal: Business and Notary (ELJBN)* **2024**, *2*, 263–272.
2. Amalia, P.; Mufidi, M.F. Third-Party in International Commercial Arbitration: Indonesia Perspective. *Mimbar Hukum* **2023**, *35*, 1–16.
3. Ariani, B.; Amaliya, L.; Ansari, T.S. Kekuatan Mengikat Klausula Arbitrase Dalam Kontrak Kerjasama Ditinjau Dari Hukum Perjanjian dan Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase. *Recital Review* **2024**, *6*, 186–202.
4. Hanif, M. Penyelesaian Sengketa Bisnis Melalui Metode Arbitrase Sebagai Alternatif Penyelesaian Sengketa Bisnis di Luar Pengadilan. *Jurnal Ilmiah Wahana Pendidikan* **2022**, *8*, 506–510.
5. Hutabarat, S.; Dahlan, T.A. Eksistensi Arbitrase Sebagai Resolusi Sengketa Bisnis di Indonesia: Analisis Kekuatan Hukum Putusan Arbitrase. *Kertha Semaya: Jurnal Ilmu Hukum* **2025**, *13*, 446–458.
6. Kravtsov, S.; Golubeva, N. The validity, effectiveness, and enforceability of an arbitration agreement: Issues and solutions. *Access to Justice in Eastern Europe* **2021**, *4*, 116–130.
7. Lingkanaya, J.; Adolf, H.; Amalia, P. Asymmetrical Arbitration Clauses: A Comparative Study of International and Indonesian Arbitration Law. *Pandecta: Research Law Journal* **2021**, *16*, 130–147.
8. Listiyani, E.; Hermono, B. Analisis Mahkamah Agung Nomor 3415 K/Pdt/2021 terkait Klausula Arbitrase Perjanjian Jual Beli Saham. *Novum: Jurnal Hukum* **2022**, *9*, 516–518.
9. Natalita, F.; Widianingsih, W. Efektivitas Arbitrase Dalam Penyelesaian Sengketa Bisnis dan Implementasi Pasal 11 Ayat (2) UU No. 30 Tahun 1999. *Public Sphere: Jurnal Sosial Politik, Pemerintahan dan Hukum* **2024**, *3*, 23–31.
10. Nugraheni, M.C.; Hernawan, A. Legal Consequences of Violating Arbitration Agreement and Arbitrator Appointment Agreement under Indonesian Obligation Law Principles. *Kosmik Hukum* **2025**, *25*, 409–427.
11. Nurlani, M. Alternatif Penyelesaian Sengketa Dalam Sengketa Bisnis Di Indonesia. *Jurnal Kepastian Hukum dan Keadilan* **2022**, *3*, 27–32.
12. Sari, N.J.; Zulfikar, A.A.; Dirlah, S. Implementation of International Arbitration Awards in Indonesia from the Perspective of Legal Value Theory. *Jurnal Media Hukum* **2024**, *31*, 167–185.
13. (Referensi 13 identik dengan referensi 12, silakan gunakan salah satu saja di Mendeley Anda).
14. Soeikromo, D. Kontrak Standar Perjanjian Arbitrase Sebagai Alternatif Penyelesaian Sengketa dalam Kegiatan Bisnis. *Jurnal Hukum UNSRAT* **2024**, *22*, 14–19.
15. Syahfitri, M.D.; Sitorus, H.N.N.; Tobing, P.Y.; Lesmana, R.N.; Hasyim. Efektivitas Prosedur Arbitrase Dalam Penyelesaian Sengketa Bisnis. *JLEB: Journal of Law Education and Business* **2024**, *2*, 984–989.
16. Yuliani, A.A.; Hamzah, D.S. Analisis Keabsahan Online Dispute Resolution Arbitrase dalam Pelaksanaannya di Indonesia. *Simbur Cahaya* **2024**, *28*, 323–331.

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