

Legal Certainty of Arbitration in the Settlement of Islamic Economic Civil Cases in the Perspective of Positive Law in Indonesia

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Abstract: *Legal Certainty of Arbitration in the Settlement of Islamic Economic Civil Cases in the Perspective of Positive Law in Indonesia.* One of Law enforcement efforts can be conducted through a non-litigation approach. In this, arbitration can be seen as a non-litigation legal effort and can be used to resolve Islamic economic civil cases. So far, arbitration law effort has been regulated in the Law Number 30 of 1999 and is widely used in the law enforcement practices. This study uses a normative-juridical method and a qualitative approach. The sources and techniques of data collection refers to the number of relevant literatures, and also analyzed deductively and inductively. The results of this study show that legal certainty of arbitration in the settlement of Islamic economic civil cases in the perspective of positive law in Indonesia that regulated in regulated in the Law Number 30 of 1999 has proven to be quite effective in resolving Islamic economic civil cases. The benefit of Islamic economic civil cases settlement through arbitration is the parties have the same position in the form of equality before the law, the process is easy, not expensive, and a win-win solution. Moreover, arbitration can also guarantee legal certainty and justice for the disputing parties.

Keywords: legal certainty, arbitration, settlement, civil case, Islamic economics

Abstrak: *Kepastian Hukum Arbitrase dalam Penyelesaian Perkara Perdata Ekonomi Syariah dalam Perspektif Hukum Positif di Indonesia.* Penegakan hukum salah satunya dapat dilakukan melalui pendekatan non-litigasi, Arbitrase dipandang menjadi upaya hukum non-litigasi dan dapat digunakan untuk menyelesaikan perkara perdata ekonomi syariah. Selama ini upaya hukum arbitrase telah diatur dalam Undang-Undang Nomor 30 Tahun 1999 dan banyak digunakan dalam praktik penegakan hukum. Penelitian ini menggunakan metode normatif-yuridis dan pendekatan kualitatif. Sumber dan teknik pengumpulan data mengacu kepada sejumlah literatur yang relevan, dan dianalisis secara deduktif dan induktif. Hasil penelitian ini menunjukkan bahwa kepastian hukum arbitrase penyelesaian sengketa perkara perdata ekonomi Syariah dalam hukum positif di Indonesia yang diatur dalam Undang-Undang Nomor 30 Tahun 1999 terbukti cukup efektif dalam menyelesaikan perkara perdata ekonomi syariah. Manfaat dari penyelesaian perkara perdata ekonomi syariah melalui arbitrase adalah para pihak memiliki kedudukan yang sama di hadapan hukum, prosesnya mudah, murah, dan *win-win solution*. Lebih dari itu, arbitrase juga dapat menjamin kepastian hukum dan keadilan bagi para pihak yang saling berselisih.

Kata kunci: kepastian hukum, arbitrase, penyelesaian, perkara perdata, ekonomi Islam

Introduction

In every agreement, there is always the possibility of a dispute among the parties.¹ The dispute may be arisen because one of the parties does not fulfill their obligations to the other party and/or it may be caused by one of the parties renegeing on the agreement that has been made.² For example, in civil economics agreements, arbitration clauses are widely used as a dispute resolution option. The legal opinion given by the arbitration institution is binding because its will become an inseparable part of the main agreement and also requested at the arbitration institution.

In addition, all contradicted legal opinion to the formal law can be assumed as a breach of contract so that there can be no resistance in the form of any legal remedies. Therefore, the arbitration decisions are independent, final, and binding (*in kracht*), which the chairperson of the court is not allowed to examine the reasons or considerations of the arbitration decision. It means that the decision of the arbitration institution is considered valid if it is considered to have fulfilled in the sense of justice for the parties.³

Legal effectiveness is a specific theory to study and analyze the success, failure, and influence factors about the application of the rules. In order to realize the rules of law can be effective, law enforcement officers are needed to establish the rules and the punishment can be actualized to the citizens in the form of compliance and shows the indicators of law enforcement process is more effective.⁴ Non-litigation is a form of cases settlement with alternative routes that are carried out outside the court, which is commonly known as Alternative Dispute Resolution (ADR).⁵ The form of settlement is stated in Law Number 30 of 1999 on

¹ Yahya Harahap, *Hukum Acara Perdata Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2009), p. 236.

² Fitra Dewi Nasution and Ferry Aries Suranta, 'Penyelesaian Sengketa Perdata dengan Mediasi Menurut Peraturan Mahkamah Agung Nomor 1 Tahun 2008', *JURNAL MERCATORIA*, 5.1 (2012): 35–46 <<https://doi.org/10.31289/mercatoria.v5i1.625>>.

³ Suyud Margono, *Penyelesaian Sengketa Bisnis: Alternative Dispute Resolution (ADR)* (Ciawi-Bogor: Ghalia Indonesia, 2010), p. 54-55.

⁴ Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Jakarta: PT Raja Grafindo Persada, 2007), p. 110.

⁵ Nurul Fitriyah and Riqqa Soviana, 'Efektivitas Peran Arbitrase Syariah dalam Menyelesaikan

Arbitration and Alternative Dispute Resolution and the Supreme Court Regulation Number 1 of 2016 on Mediation Procedures in the Courts. The fundamental principle of a win-win solution has placed the parties in the same position, no one is won, and no one is defeated. Thus, it becomes the main approach for the community to prefer to resolve their disputes through non-litigation channels.⁶

Dispute settlement through non-litigation channels makes an advantage approach for the disputants. The settlement advantages through mediation are cheap and it certainly does not take a long time. In Article Number 1 the Law Number 30 of 1999 on the Arbitration and Alternative Dispute Resolution confirmed that arbitration is a way of resolving a civil dispute issue outside the court through using a written arbitration agreement between the disputing parties. The existence of this written arbitration agreement will nullify the rights of the parties to submit dispute resolutions to the District Court, and the District Court is not authorized to adjudicate the disputes of the parties who have been bound by the arbitration agreement.⁷

Based on Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, arbitration is a way of settling a civil dispute out of court institution based on a written arbitration agreement between the disputing parties. Dispute resolution through arbitration is a way to settle the disputes or civil opinion differences among the parties through other means of dispute resolution based on good faith overriding litigation settlement at the district court. For most legal scholars, arbitration can be said to be an effective alternative legal remedy for the parties to obtain justice and at the same time find the best solution for each dispute in a win-win solution.⁸

Sengketa Bisnis Syariah di Indonesia', *Jurnal Hukum Ekonomi Syariah*, 5.02 (2021): 180–89 <<https://doi.org/10.26618/j-hes.v5i02.5447>>.

⁶ Lina Nur Anisa, 'Implementasi Prinsip Neutrality dalam Proses Mediasi', *Al-Mabsut: Jurnal Studi Islam dan Sosial*, 9.1 (2015): 179–97 <<https://doi.org/10.56997/almabsut.v9i1.20>>.

⁷ Grace Henni Tampongangoy, 'Arbitrase Merupakan Upaya Hukum dalam Penyelesaian Sengketa Dagang Internasional.' *Lex Et Societatis*, 3.1 (2015): 160-169.

⁸ See Article 77 Number (2) The Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.

Referring to the description above, this paper will examine several aspects related to alternative dispute resolution through arbitration institutions in sharia economic civil cases. The focus of this study will be explained the understanding and legal basis of arbitration, the object and type of arbitration, the terms and procedures of arbitration, the benefits of arbitration in the law enforcement process, and the examples of case analysis on the application of arbitration in the civil law dispute resolution process. This paper also uses a normative-juridical method and a qualitative approach and the sources and techniques of data collection refers to the number of relevant literatures with the research objective, and also analyzed deductively and inductively.

Understanding Arbitration in Islamic Economic and Indonesian Positive Law

Linguistically, the word arbitration comes from the word *arbitrare* (Latin), which means the power to settle things according to wisdom. Arbitration also inherent with the meaning of dispute resolution through win-win solution.⁹ Arbitration is also known by other names or terms in the same meaning, such as: arbitration or *arbitrage* (Dutch), *arbitration* (English), *arbitraje* (Spanish), *schiedsruch* (Germany), or arbitrage (France), but all of them have almost the same meaning, namely the power to settle various cases according to wisdom.

Meanwhile, terminologically, arbitration is a private civil dispute resolution method outside the court institution, which is based on a written arbitration contract by the disputing parties, where the dispute resolution party is chosen by the concerned parties consisting of people who have no conflict of interests, with the case in question, or the people who will examine and give a decision on the dispute. In the other words, in arbitration, there are three parties, namely two disputing parties and 1 party who mediates or arbitrator.¹⁰

⁹ A. Entriani, "Arbitrase dalam Sistem Hukum di Indonesia," IAIN Tulungagung Research Collections, 2017, p. 277-293.

¹⁰ Jacqueline M. Nolan-Haley, *Alternative Dispute Resolution in a Nutshell* (St. Paul: West Publishing Co, 1992), p. 4.

In Islamic law, arbitration is referred to *Tahkîm*. *Tahkîm* is the appointment of a referee or peacemaker by the disputing parties to settle the matter they are disputing peacefully. In the classical Islamic law tradition, there are three forms of dispute resolution mechanisms that have developed, both during the time of the Prophet Muhammad, the Companions, the Umayyad Caliphs, and the Abbasids, namely: peace (*al-Sulh*), arbitration (*Tahkîm*), and a litigation process called judicial power (*Wilâyat al-Qâdhi*).¹¹

The principle of dispute resolution through Islamic arbitration in economic and business activities or dispute resolution is an element of Islamic compliance contained in the Law of Islamic Bank Number 21 of 2018 which regulated that all dispute resolution results either through arbitration or alternative dispute resolution must be in accordance or may not contradict sharia principles, so that sharia principles must really be applied in dispute resolution cases. The scope of Islamic banking disputes that can be resolved through Islamic arbitration depends on the legal awareness of the disputing parties, namely between the customer and the Islamic Bank Team.¹²

According to the general elucidation of the Islamic Arbitration Law, the philosophical basis for establishing the arbitration law is arbitral institutions have advantages as dispute resolution institutions when compared to general court institutions. The advantages of arbitration are to protect the confidentiality of the parties' disputes, which is guaranteed, delays and can be avoided due to procedural, as well as in administrative matters, so that the parties choose arbitrators who, according to their beliefs, have sufficient knowledge and background regarding the issues in dispute in an honest and fair manner. In other words, arbitration is an alternative dispute resolution mechanism that is often used generally in business disputes. Arbitration is also seen as an effective mechanism that can accommodate the interests of the parties involved in it because

¹¹ Andria Luhur Prakoso, 'Tinjauan Terhadap Arbitrase Syariah Sebagai Alternatif Penyelesaian Sengketa di Bidang Perbankan Syariah', *Jurnal Jurisprudence*, 7.1 (2017): 59–67 <<https://doi.org/10.23917/jurisprudence.v7i1.4356>>59-67.

¹² Musrifah & Madona Khairunisa. 'Penyelesaian Sengketa Ekonomi Syariah Melalui Arbitrase Syariah', *Al-Amwal*', 9.1, (2020): 1-12.

the procedure for its implementation can be determined by agreement and is confidential in nature.¹³

In Indonesian Positive Law, the existence of arbitration as an alternative dispute resolution has been actually known for a long time, although it is rarely used in 1999. Arbitration was introduced in Indonesia at the same time as the *Reglement op De Rechtsvordering (RV)* and *Het Herziene Indonesisch Reglement (HIR)* or *Rechtsreglement Bitengewesten (RBg)*, because this arbitration was originally regulated in the Articles 615-651 *Reglement of De Rechtvordering*. Today, these provisions are no longer valid with the promulgation of the Law Number 30 of 1999. Until now, the Law Number 14 of 1970 on the Basics of Judicial Power, the existence of arbitration can be seen in the explanation of Article 3 Paragraph 1, which states that settlement of cases out of the court on the basis of peace or through arbitration is still allowed, but the arbitrator's decision only have executive power after obtaining permission or an order to be executed from the Court.¹⁴

According to *Black's Law Dictionary*, arbitration. an arrangement for taking anabiding by the judgment of selected persons in some disputed matter, instead of carrying it to establish tribunals of justice, and is intended to avoid the formalities, the delay, the expense and vexation of ordinary litigation". Then, in the Article 1 Point 1 of the Law Number 30 of 1999, arbitration is a way of settling a civil dispute outside a general court based on an arbitration agreement made in writing by the disputing parties. Unfortunately, it does not fully describe the meaning of arbitration. Therefore, to understand fully about the meaning of arbitration, there is needed an explanation given by the experts, especially to examine the terms of a dispute so that it can be resolved through an arbitration mechanism and how the procedure for arbitration is carried out.¹⁵

¹³ Nurul Fitriyah and Riqqa Soviana, "Efektivitas Peran Arbitrase Syariah dalam Menyelesaikan Sengketa Bisnis Syariah di Indonesia," *Jurnal Hukum Ekonomi Syariah*, 5. 2, (2021): 180–89, <https://doi.org/10.26618/j-hes.v5i02.5447> 180-189.

¹⁴ Mohammad Irfan. "Mediation as A Choice of Medical Dispute Settlements in Positive Law of Indonesia." *Sociological Jurisprudence Journal*, 2.2 (2019): 141-145.

¹⁵ See Article 1 Point 1 The Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.

To understand the meaning of arbitration, two experts have provided the understanding of arbitration, namely: first, Priyatna Abdurrasyid¹⁶ has explained that arbitration is one of the alternative solutions for dispute resolution or a form of legal action recognized by law in which one or more parties submit their dispute or disagreement with someone or more parties with one person or more (arbitrator or panel) as the professional experts, who will act as the judges or private courts. In this, someone will apply the applicable state legal procedures or apply legal procedures peace agreement that has been mutually agreed upon by the previous parties to arrive at the final and binding decision.¹⁷

Second, R. Subekti Kedua, R. Subekti¹⁸ explained that arbitration is the settlement of a dispute (case) by one or several referees (arbitrators) who are jointly appointed by the parties to the litigation that are not resolved through the Court. Based on the opinions of the two experts, it can be concluded that the meaning of arbitration is: The process of resolving disputes between the parties entering into an agreement to appoint one or more arbitrators in deciding cases whose decisions are final and binding.

Third, H.M.N. Purwosutjipto¹⁹ use the term arbitration for mediation which is defined as a court of peace, where the parties agree that their disputes regarding personal rights which they can control are fully examined and tried by an impartial judge appointed by the parties themselves and the decision is binding on both parties. Therefore, referring to the opinion of the three figures above, arbitration is basically a special form of court. The important point that distinguishes courts and arbitrations here is when the judicial settlement uses a permanent court or standing court, while arbitration uses a tribunal forum that is

¹⁶ Priyatna Abdurrasyid, 'Solusi Alternatif Penyelesaian Sengketa Perdata', 'Uzone - Informasi Teknologi Terkini' <https://uzone.id/?utm_source=internetpositifid&utm_medium=uzone>.

¹⁷ Abdul Hamid, "Aplikasi Teori Mashlahah (Maslahat) Najm al-Din al-Thufi dalam Penyelesaian Sengketa Perjanjian Bisnis di Bank Syariah," *Al-Adalah*, 12.2 (2015): 729-42, <https://doi.org/10.24042/adalah.v12i2.210> 729-742.

¹⁸ R. Subekti, *Arbitrase Perdagangan* (Bandung: Bina Cipta, 1979), p. 3.

¹⁹ H.M.N. Purwosutjipto, *Pengertian Pokok Hukum Dagang*, (Jakarta: Jambatan, 1988), p. 34.

specially formed for this activity as the permanent judge, even it is only be used for the case being treated.

The Scope and Classification of Arbitration

The object of the arbitration agreement (disputes to be resolved out of court through an arbitration institution and or other alternative dispute resolution institutions), according to Article 5 paragraph 1 of Law Number 30 of 1999, is only disputes in the trade sector and the rights which are fully controlled by the disputing party in the line of laws and regulations. It is also related to the several activities in the trade sector such as commerce, banking, finance, investment, industry and intellectual property rights. Meanwhile, in the Article 5 (2) of the Arbitration Law provides a formulation for disputes that are deemed unable to be resolved through arbitration way according to laws and regulations, cannot be reconciled as regulated in the Civil Code Book III Chapter XVIII Articles 1851 to 1854.

Arbitration can also be conducted in the form of temporary arbitration (*Ad Hoc*) or through a permanent body (institution). Ad hoc arbitration is carried out based on rules that were deliberately established for arbitration purposes, for example Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution or UNCITRAL Arbitration Rules. In general, the Ad Hoc Arbitration is determined based on the agreement that mentions the appointment of the arbitral tribunal and the implementation procedure agreed upon by the parties, and the use of the Ad Hoc Arbitration model needs to be mentioned in the arbitration clause.²⁰

The institutional arbitration system is also a permanent institution managed by various arbitration bodies based on their own set of rules. Currently, there are various arbitration rules issued by arbitration bodies such as the Indonesian National Arbitration Board (BANI), or

²⁰ Raden Tanzil Fawaiq Sayyaf and Ashfa Afkarina, "Online Dispute Resolution (Odr): Online Mediation As An Alternative For Dispute Settlement During The Covid-19 Pandemic In Religious Courts," *AL-'Adalah : Jurnal Syariah dan Hukum Islam*, 7.1 (2022): 39–56, <https://doi.org/10.31538/adlh.v7i1.2119> 39-56.

international ones such as the Rules of Arbitration from the International Chamber of Commerce (ICC) in Paris and the Arbitration Rules from The International Center for Settlement of Investment Disputes (ICSID) in Washington. These bodies have their own rules and arbitration system.²¹

Meanwhile, Indonesian National Arbitration Board (BANI) has provided the standard arbitration clauses that all disputes arising from this agreement will be resolved and decided by the Indonesian National Arbitration Board (BANI), in which according to the rules of BANI arbitration procedure, the decision is binding on both parties disputing, as a decision in the first and last instance. In the other words, the standard UNCITRAL emphasized that any dispute, conflict or claim arising out of or in connection with this agreement, or the default, termination or validity of the agreement, will be resolved by arbitration in accordance with the UNCITRAL rules.²²

In this case, the author supports the explanation given by Priyatna Abdurrasyid,²³ Chairman of BANI, who first examined the arbitration clause, whether or not there is, or not, the arbitration clause is valid, he will determine whether a dispute will be resolved through arbitration. An arbitration clause or agreement may be made after the dispute arises. Thus, basically arbitration can take the form of two forms, namely: (1) Factum de compromitendo, namely the arbitration clause contained in a written agreement made by the parties before a dispute arises; and (2) Deed of Compromise, which is a separate arbitration agreement made by the parties after a dispute arises.

Any form of arbitration agreement can be declared null and void, if during the dispute resolution process the following events occur: (1) one of the disputing parties dies; (2) one of the disputing parties

²¹ Y.P. Lahema & I. Haryanto. "Analisis Hukum Pelaksanaan Penyelesaian Sengketa Bisnis dengan Metode Arbitrase Online di Indonesia dan di Singapura." *Wajah Hukum*, 5.1 (2021): 137-148.

²² Hendhy Timex, "Pelaksanaan dan Pembatalan Putusan Arbitrase." *Lex Privatum*, 1.2 (2013): 79-90.

²³ Priyatna Abdurrasyid, *Arbitrase dan Alternatif Penyelesaian Sengketa (APS)*. (Jakarta: Fikahati Aneska, 2011). See also Muhibuthabary, Muhibuthabary. "Arbitrase Sebagai Alternatif Penyelesaian Sengketa Ekonomi Syariah Menurut Undang-Undang Nomor 30 Tahun 1999." *Asy-Syari'ah*, 16.2 (2014): 99-112.

experiences bankruptcy, innovation (renewal of debt), and insolvency; (3) inheritance; (4) the abolition of the basic terms of the engagement; (5) the implementation of the arbitration agreement is transferred to a third party with the approval of the party making the arbitration agreement; and (6) expiration or cancellation of the principal agreement.

Based on the description above, the author formulates that basically arbitration can take the form of 2 (two) forms, namely: first, the arbitration clause contained in a written agreement made by the parties before a dispute arises (*Factum de Compromitendo*); and second, a separate Arbitration agreement made by the parties after a dispute arises (*Deed of Compromise*). Arbitration can only be applied to commercial matters. For entrepreneurs, arbitration is the most attractive option to resolve disputes according to their wishes and needs.

Requirement, Procedure, and Mechanism of Arbitration

The main requirement for proposing arbitration is the agreement from the parties to resolve the dispute through an arbitration mechanism. The agreement can exist before or after the dispute. If the arbitration is carried out without the arbitration agreement between the disputing parties, it is not arbitration. Through the existence of arbitration agreement, the District Court can not authorize to adjudicate the disputes of the parties. The implementation of the arbitration agreement does not effort to solve the issue of implementing the agreement, but what is legal issue and what the institution has the authority to resolve the disputes among the promised parties. Therefore, the arbitration agreement has to fulfil the requirements, namely the point of the arbitration agreement and it must be made in a written agreement signed by the parties.²⁴

Arbitration agreements are often referred to as arbitration clauses in the body of the main agreement. This can be interpreted as a principal agreement followed or accompanied by the agreement related with the implementation of arbitration. This arbitration clause is placed in the

²⁴ Paustinus Siburian, *Arbitrase Online (Alternatif Penyelesaian Sengketa Perdagangan Secara Elektronik)* (Jakarta: Djambatan, 2003), p. 42.

main agreement so that it is referred to as an accessory agreement. Its existence is only the addition clause within the main agreement and does not affect to the fulfillment of the main agreement. Without a principal agreement, this arbitration agreement cannot stand alone, because the dispute arises due to the existence of main agreement.

A consequence may arise from the nature of the arbitration agreement like an accessory agreement. Through its accessory nature, the arbitration agreement will not be terminated due to the expiration or cancellation of the main agreement. In addition, the arbitration agreement will also not be canceled by the circumstances of the death of the parties, the bankruptcy of one party, novation, insolvency of one of the parties, inheritance, and transfer of the agreement to the third party based on the approval of the party who entered into the arbitration agreement. In this context, the arbitration procedure needs to be understood to see whether the conventional arbitration procedure as contained in the Law Number 30 of 1999, which can be applied through an online mechanism. In general, the arbitration procedure can be divided into three stages such as:²⁵

1. Procedures before Hearings. The dispute resolution through arbitration begins with a pre-hearing procedure consisting of several stages:
 - a. Notice to the arbitrator of his appointment. The first step that needs to be taken to conduct arbitration is notification in writing to an expert that he or she has been selected as arbitrator to settle a dispute;
 - b. Arbitrator preparation. The important thing that the arbitrator needs to pay attention to is that the appointment has been made based on law in accordance with applicable regulations;
 - c. Preliminary examination. In practice, the arbitrator usually holds a meeting with the parties before holding a formal hearing;

²⁵ M. Yahya Harahap, *Arbitrase Ditinjau dari Reglemen Acara Perdata (RV), Prosedur BANI, International Centre for the Settlement of Investment Dispute (ICSID), UNICITRAL Arbitration Rules, Convention on the Recognition and Enforcement of Foreign Arbitral Award, PERMA No. 1 Tahun 1990* (Jakarta: Pustaka Kartini, 1991), p. 97.

- d. The implementation procedure of the arbitrator's duties. Based on the Law Number 30 of 1999, arbitrators are authorized to order and conduct interrogations in the hearing process. In the process, the arbitrator can be active, which the arbitrator acts to seek data. However, the arbitrator can also be passive, namely the parties who convey the data while the arbitrator just listens;
 - e. Set a time and hearing. If one of the parties does not attend the hearing, the arbitrator can still conduct the hearing;
 - f. Individual communication of the parties. If one of the parties in the arbitration process contacts the arbitrator without the knowledge of the other party, the arbitrator must refuse.
2. Hearing Procedure. The arbitrator has the position of a judge based on the agreement among the appointment of the disputing parties. This appointment by the parties authorizes by the arbitrator to be able to decide based on the facts given to him. During the arbitration process, the third parties or other (general) parties are not allowed to be present in the process. This is a reflection of the nature of arbitration which maintains the confidentiality of the parties to the dispute;
 3. The Implementation of the decision. In implementing the arbitration decision, there are implementation procedures that must be followed by the parties. Based on the Article 59 of the Law Number 30 of 1999, the procedure for implementing the main points in the decision depends on whether it has been registered in court or not.

Relating to the court institutions, arbitration institutions still have dependence on courts, for example in terms of implementing arbitral awards. There is a requirement to register the arbitral decision in the District Court. This shows that the arbitration institution does not have any coercive efforts against the parties to comply with its decision, especially in civil cases.²⁶The role of the District Court in administering

²⁶ Budhy Budiman, *Mencari Model Ideal Penyelesaian Sengketa: Kajian Terhadap Praktik Peradilan Perdata dan Undang-Undang Nomor 30 Tahun 1999* (2015).

arbitration decision is based on the Arbitration Law which regulated about the appointment of an arbitrator or a panel of arbitrators in the event that there is no agreement between the parties in Article 14 Paragraph (3) and in the case of the implementation of national and international arbitral decision must be carried out through the mechanism of the judicial system, namely the registration of the decision by submit an authentic copy of the decision. In this regard, for international arbitration, it needs to take place at the Central Jakarta District Court. In practice, the mechanism of arbitration is divided into two institutions, such as national arbitration and international arbitration:²⁷

1. National Arbitration

The implementation of national arbitration is regulated in Articles 59-64 of the Law Number 30 of 1999. Basically, the parties must implement the decision voluntarily. In order for the arbitral decision to be enforced, it must be submitted and registered with the clerk of the district court, while registering and submitting the original sheet or an authentic copy of the national arbitration decision by the arbitrator or his proxy to the clerk of the district court within 30 (thirty) days after the arbitration decision be spoken by the judges. Thus, the national arbitration decision is independent, final, and binding.²⁸

The national arbitration decision is independent, final, and binding (such as a permanent legal force), the head of the district court is not allowed to examine the reasons or considerations of the national arbitration decision. The authority to examine the Head of the District Court is limited to a formal examination of the national arbitration decision conducted by the arbitrator or arbitration tribunal. Based on Article 62 of Law Number 30 of 1999, before giving an execution order, the Head of the Court first checks whether the arbitration decision complies with Articles 4 and 5 (specifically

²⁷ Gatot Soemartono, *Arbitrase dan Mediasi di Indonesia* (Jakarta: PT Gramedia Pustaka Utama, 2006), p. 3.

²⁸ F. H. Winarta, *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional* (Jakarta: Sinar Grafika, 2022), p. 24

for international arbitrations). If it does not fulfill, the Head of the District Court may reject the request for arbitration and there will be no legal remedy against that refusal.

2. International Arbitration

Initially, the implementation of foreign arbitration decision in Indonesia was based more on the provisions of the 1927 Geneva Convention, and the Dutch government, which is a party to the convention, stated that the Convention also applies in the territory of Indonesia. On June 10, 1958 in New York, the UN Convention on the Recognition and Enforcement of Foreign Arbitral Award was signed. Indonesia has acceded to the New York Convention by Presidential Decree Number 34 of 1981 dated on 5 August 1981 and registered with the UN Secretary dated on 7 October 1981.²⁹

On 1st arch 1990, the Supreme Court issued Supreme Court Regulation Number 1 of 1990 on the Procedures for Implementing Foreign Arbitration Decision in connection with the ratification of the 1958 New York Convention. Referring to this regulation, the obstacles to the implementation of foreign arbitration decision in Indonesia should have been overcome even through in practice, there are still exist some difficulties in the execution of foreign arbitration decision.

The Advantages and Deficiencies of Arbitration in Law Enforcement Process

Law enforcement is the most important aspect to support the supremacy of law in the development process of the nation. Law enforcement and the supremacy of law are not merely the duties and obligations of the law enforcement officers, but also the duties and obligations of everyone in society. This is very necessary for the goal of establishing the justice and peace in society based on respect for human rights.³⁰

²⁹ S. Batubara & O. Purba, *Arbitrase Internasional* (Jakarta: Raih Asa Sukses, 2013), p. 33

³⁰ Jefri Siregar. "Eksistensi Polri dalam Penegakan Hukum Sanksi Pidana Pengrusakan Fasilitas Umum dalam Kebebasan Mengeluarkan Pendapat di Muka Umum." *Khazanah Hukum*, 3.1 (2021): 20-25.

Law enforcement can be understood as a systematic process of functioning legal norms and also the guidelines for ruling human behavior or interhuman relationship in the society, nation and state.³¹ Meanwhile, Law enforcement is also defined as an activity to harmonize the outlined values in the rules or the views of judgment that are steady and manifest from the action attitude as a series of final stage value elaborations, to create, maintain, and sustain a peace in social life.

Another definition was put forward by Liliana Tedjosaputro,³² who explained that law enforcement does not only include law enforcement, but also peace maintenance. In her opinion, law enforcement is a process of harmonization between values, rules and real behavior patterns, which aims to achieve peace and justice. The main task of law enforcement is to bring about justice, therefore, it is with law enforcement that the law becomes a reality. Without law enforcement, the law is just like a textual formulation that has no guts or "dead law".

Referring to the point of view, law enforcement can be divided into two, namely from a subjective point of view and from an objective point of view. From the point of view of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as an effort to enforce law by the subject in a limited or narrow sense. In a broad sense, the law enforcement process involves all legal subjects in every legal relationship. Anyone who applies normative rules or does something or does not do something based on the norms of the applicable law, means that he is carrying out or enforcing the rule of law. In a narrow sense, in terms of the subject, law enforcement is only defined as the efforts of certain law enforcement officials to guarantee and ensure that a rule of law runs as it should.³³

Meanwhile, from the point of view of the object, namely in terms of the law. In this context, the meaning of law enforcement also includes

³¹ Sasmitasari, Novi, Sisilya Saman, and Patriantoro Patriantoro. "Senyapan dan Penyebabnya Pada Debat Final Pemilihan Kepala Daerah Khusus Ibukota Jakarta Tahun 2017." *Jurnal Pendidikan dan Pembelajaran Khatulistiwa (JPPK)*, 8.1 (2013): 1-13.

³² Tedjosaputro Liliana, *Etika Profesi Notaris; Penegakan Hukum* (Yogyakarta, PT Bayu Indra Grafika, 1995), p. 55.

³³ B. Waluyo, *Penegakan Hukum di Indonesia* (Jakarta: Sinar Grafika, 2022). 25

a broad and narrow meaning. In a broad sense, law enforcement also includes the values of justice contained in the sound of formal rules and the values of justice that live in society. However, in a narrow sense, law enforcement only concerns the enforcement of formal and written regulations. Therefore, the meaning of the law enforcement can be understood in a broad sense and in a narrow sense.³⁴

Discussing the advantages and disadvantages of arbitration cannot be separated from the nature of arbitration as an alternative dispute resolution whose procedural process is adjudication. This is in line with the opinion that arbitration is the most formalized alternative to the court adjudication of disputes that results the legal certainty and justice for the parties.³⁵ The advantages of arbitration compared to the usual litigation process will be explained such as follows:

1. Confidential. This means that the confidentiality of the disputing parties in the arbitration will be maintained, so that the negative impacts arising from the involvement of the parties in a dispute do not undermine the credibility of the parties. This is related to the good names of the parties who are currently one of the company's assets that must be protected. For instance, polluting the good name of a party can cause great losses for that party. The good name of a party will usually be tarnished if that party experiences a dispute that is known to the public. In the litigation process, it is known that the principle is open to the public, meaning that anyone can witness the ongoing trial process. This will certainly have a negative impact on parties experiencing disputes and resolving disputes through litigation and then the trial process is exposed to the public. By itself the value of public trust in him will decrease. Through arbitration, the confidentiality of the parties is maintained. Unlike the general court, the arbitrator is not required to deliver his decision publicly. Not only in delivering the decision, based on

³⁴ Laurensius Arliman S, 'Mewujudkan Penegakan Hukum Yang Baik di Negara Hukum Indonesia', *Dialogia Iuridica*, 11.1 (2019): 1–20 <<https://doi.org/10.28932/di.v11i1.1831>>.

³⁵ Ananda Puspita Aminuddin. "Peranan Badan Arbitrase Nasional Indonesia dalam Menyelesaikan Sengketa Penanaman Modal." *Lex Administratum*, 5.1 (2017): 90-98.

Article 27 of Law Number 30 of 1999 it is stated that all dispute examinations by the arbitrator or arbitral tribunal are carried out in a closed manner. Thus, the confidentiality of the parties will be maintained.

2. The fees for arbitration are cheaper than litigation costs and dispute resolution is faster. Opinions about this fee are still debated, not always the cost of arbitration is cheaper than the cost of litigation. For example, if there is a dispute between a businessman from Indonesia and a businessman from Vietnam, then they agree to appoint an arbitrator who is in New York to settle the dispute in Singapore. On the one hand, it is very necessary to calculate how much must be spent for case registration, the cost of accommodation for the arbitrator, accommodation costs for the parties, honorarium for the arbitrator, and the cost of expert witnesses if used. Of course the parties will incur considerable costs for the arbitration. On the other hand, for an entrepreneur who needs legal certainty in a dispute concerning his business, the cost is insignificant compared to having to take a long time to settle a case in court because he has to wait for the order in which his case is heard and he cannot continue his business. For them, the sooner the dispute is resolved and the legal force is obtained, the sooner it will return to trying to make a profit, so in general the costs will be lower.

Disputes Settlement through arbitration is seen faster than the litigation process because in arbitration process the parties do not have to wait for the case to be tried. The parties can directly choose an arbitrator to resolve their dispute, so there is no waiting time as in the litigation process. In addition, dispute resolution can be carried out at any time based on the agreement of the parties, so it is very possible that in one week the dispute examination process can be carried out several times. This is different from the litigation process. In the litigation process, the Panel of Judges does not only examine one case, so that in one week a case is likely to be examined only once. In other words, procedural and administrative delays can be avoided.

3. Choice of forum. It means that the parties may choose an arbitrator based on their belief that they have adequate knowledge, experience, and background regarding the issue in dispute. In the litigation process, the parties cannot choose a judge who will decide the dispute but has been determined by the Head of the District Court based on his determination. As the weakness of the stipulation, the judge's ability is limited to legal knowledge while he only has general knowledge of another knowledge. With arbitration, the parties can choose an arbitrator who does master the field or knowledge being disputed, so that the decision is more comprehensive and professional.
4. The parties can determine the choice of law to resolve the dispute, the process, and the venue for the arbitration. This advantage is felt by the party who feels that he will experience discrimination if the dispute is in the legal domicile of the opposing party.

In reality, what has been mentioned previously in this is not all true, because in certain countries the judicial process can be faster than the arbitration process. The only advantage of arbitration over courts is its confidential nature because its decisions are not made public. However, dispute resolution through arbitration is still more desirable than litigation, especially for international business contracts. In addition, there are also disadvantages of the arbitration process such as follows:³⁶

1. Based on Article 1 point 1 jo. Article 5 of Law Number 30 of 1999, the resolved disputes through arbitration are limited to civil disputes, especially regarding the trade and rights which according to the law and statutory regulations are fully controlled by the disputing parties. Thus, not all cases can be resolved through arbitration. Even though the case is in the form of a civil dispute, it may not necessarily be resolved by arbitration.
2. Although the arbitration award is final and binding, its process still requires the District Court stipulation to carry out the execution process.

³⁶ Grace Henni Tampongangoy. "Arbitrase Merupakan Upaya Hukum dalam Penyelesaian Sengketa Dagang Internasional." *Lex Et Societatis*, 3.1 (2015): 160-169.

3. The implementation of foreign arbitration can be hampered due to the principle of nationality and the principle of reciprocity. The principle of nationality states that to determine and assess whether an arbitral award can be qualified as a foreign arbitral award, it must be tested according to the provisions of the Republic of Indonesia law.

The advantages of arbitration can be formulated through the General Elucidation of Law Number 30 of 1999 that there are several advantages of dispute resolution through arbitration compared to judicial institutions. Those advantages consist of:

1. Confidentiality of the dispute of the parties is guaranteed;
2. Delays caused by procedural and administrative matters can be avoided;
3. The parties may choose an arbitrator who is experienced, has sufficient background on the matter in dispute, and is honest and fair;
4. The parties can determine the choice of law for the resolution of the problem, the parties can choose the venue for the arbitration;
5. An arbitration award is a decision that binds the parties through a simple procedure or can be directly implemented.

The legal experts also express their opinion regarding the superiority of arbitration. According to Subekti,³⁷ dispute resolution through arbitration has several advantages for the trade or business cases which can be solved quickly, by experts, and confidentially. In this regard, H.M.N. Purwosutjipto³⁸ stated that the importance of arbitration consists of:

1. Dispute resolution can be carried out quickly;
2. The referees consist of experts in the disputed field, who are expected to be able to make decisions that satisfy the parties;
3. The decision will be more in line with the feelings of justice of the parties;
4. The decision of the referee's court is kept confidential, so that

³⁷ R. Subekti, *Arbitrase Perdagangan* (Bandung: Bina Cipta, 1979), p. 5.

³⁸ H.M.N. Purwosutjipto, *Pengertian Pokok Hukum Dagang*, p. 34.

the public does not know about the weaknesses of the company concerned. The secret nature of arbitration decisions is what entrepreneurs want.

In addition to the advantages of arbitration as described above, arbitration also has disadvantages of arbitration. From the current practice in Indonesia, the weakness of arbitration is that it is still difficult to execute an arbitral award, even though the arrangements for the execution of national and international arbitral awards are quite clear. Although the civil cases settlement through arbitration is believed to have advantages compared to court proceedings, settlement through arbitration also has weaknesses. Some of the disadvantages of Arbitration and ADR consists of:³⁹

1. Arbitration is not widely known, neither by the general public, nor the business community, even by the academic community itself. As an example, there are still many people who do not know about the existence and progress of institutions such as BANI, BASYARNAS and P3BI:
2. The public has not put sufficient trust, so they are reluctant to submit their cases to Arbitration institutions. This can be seen from the small number of cases submitted and resolved through the existing arbitration institutions:
3. The arbitration institution and ADR do not have coercive power or authority to execute their decisions:
4. Lack of compliance of the parties to the results of the settlement reached in the Arbitration, so that they often deny it in various ways, either by delaying techniques, resistance, cancellation claims and so on;
5. Lack of parties holding business ethics. As a extra judicial mechanism, Arbitration can only rely on business ethics, such as honesty and fairness.

³⁹ S. H. Grasia Kurniati, 'Studi Perbandingan Penyelesaian Sengketa Bisnis dan Implementasinya Antara Lembaga Badan Arbitrase Nasional Indonesia dan Singapore International Arbitration Centre', *Jurnal Ilmiah Hukum DEJURE: Kajian Ilmiah Hukum*, 1.2 (2016): 201–34 <<https://doi.org/10.35706/dejure.v1i2.507>201-234>.

Referring to the principle of reciprocity in the law enforcement process, the author is of the opinion that not all foreign arbitral awards can be recognized and enforced. Therefore, foreign arbitration awards that are recognized and can be executed are only limited to decisions taken in foreign countries that have bilateral ties with the Republic of Indonesia and are jointly related to the Republic of Indonesia in an international convention. The existence of the principle of nationality and reciprocity causes the absence of legal certainty for disputes decided by foreign arbitrations that do not meet the requirements of the two principles.

The Analysis Model on the Application of Arbitration for Civil Cases Settlement

1. Islamic Arbitration Case: PT. Atriumasta Sakti and PT. Bank Syariah Mandiri Tbk.

PT. Atriumasta Sakti and PT. Bank Syariah Mandiri Tbk. agreed to conduct *Murâbahah* Financing Agreement Number 53 dated 23rd February 2005 made by and before Efran Yuniarto, S.H., Notary in Jakarta. In the clause of the agreement, there is stated that PT. Atriumasta Sakti is committed to paying installments on a regular basis according to a set agenda (due date). In its development, PT. Atriumasta Sakti had defaulted and became a problematic financing which resulted unable to pay the installments.

In that case, PT. Atriumasta Sakti and PT. Bank Syariah Mandiri Tbk had agreed that if a dispute occurs, they agreed to settle it through the arbitration institution firstly. In the end, PT. Atriumasta Sakti and PT. Bank Syariah Mandiri Tbk submitted a request for arbitration to the National Sharia Arbitration Board (BASYARNAS). Basyarnas Arbitrator Council, who examined and decided the arbitration case between PT. Atriumasta Sakti and PT. Bank Syariah Mandiri Tbk, noted in the Registration Number: 16/Tahun 2008/BASYARNAS/Ka.Jak on behalf of Prof. H. Bismar Siregar, S.H., Hj. Fatimah Achyar, S.H., and Prof. Dr. Sutan Remi Sjahdeini, S.H.⁴⁰

⁴⁰ Anisa.

On 16th September 2009 the Basyarnas Arbitrator Council read out the Decision on Case Number: 16/Tahun 2008/BASYARNAS/Ka.Jak and registered the decision with the Registrar Office of the Central Jakarta Religious Court as stated in the Registration Deed Number: 01/BASYARNAS/2009/PA.JP dated 12nd October 2009. The BASYARNAS Panel of Judges as the Arbitrator acted as the arbitrator to conclude a peace agreement between PT. Atriumasta Sakti and PT. Bank Syariah Mandiri Tbk both of which agree that the settlement of problem financing cases is carried out through rescheduling of debt payments which is then stated in the decision Number: 16/Tahun 2008/BASYARNAS/Ka.Jak and has been stipulated in the Decision of the Religious Court Number: 792/Pdt.G/2009/PA.JP dated 10th December 2009, so that the BASYARNAS decision has binding legal force (*In Kracht*).⁴¹ Referring to this case, we can emphasize that arbitration legal efforts have proven effective in resolving Sharia economic disputes.

2. National Arbitration Case: PT. Indosat Tbk Purchase by PT. Temasek Ltd

Indonesia through the Business Competition Supervisory Commission (KPPU) once decided that PT. Temasek is proven to have cross-ownership practices in PT. Telkomsel and PT. Indosat, then it is likely that PT. Temasek will take the case to international arbitration, PT. Temasek bought PT. Indosat, the Singaporean company has prepared everything, including all agreements so that its investment in Indonesia is safe. If the company is deemed to have cross-ownership, it will certainly bring the matter to international arbitration. If Indonesia is defeated in international arbitration, Indonesia could be subject to a very large fine. KPPU suspects that PT. Temasek has violated Article 27 of Law Number 5 of 1999, namely related to the existence of cross ownership by PT. Temasek in PT. Telkomsel and PT. Indosat Tbk.⁴²

⁴¹ Deni Kamaludin Yusup, 'Analisis Putusan Mahkamah Agung Nomor: 56/PK/AG/2011 Tentang Penyelesaian Sengketa Ekonomi Syari'ah', *Jurnal Kajian Putusan Pengadilan, Diktum Syariah*, 3, 2014.

⁴² Ari Purwadi, 'Implikasi Hukum Temasek Atas Pembelian Saham Indosat dan Telkomsel', *Perspektif: Kajian Masalah Hukum dan Pembangunan*, 15.1 (2010): 1–18.

In judicial process, PT. Temasek is reported through its two subsidiaries, namely Singapore Telecommunications Ltd (SingTel) and Singapore Technologies Telemedia Pte. Ltd. (STT) has shares in the two telecommunications companies in Indonesia. However, some say that this is not the case. If later Temasek is proven to have cross-ownership and violates Law number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition, then there are three sanctions that can be given, namely firstly stopping cartel/anti-competitive behavior by releasing one of its ownership in Indosat or Telkomsel, secondly being imposed fines ranging from 1 billion Rupiahs to 25 billion rupiahs and the third payment of compensation to the state.⁴³

Temasek Holding's cross-ownership of PT. Indosat and PT. Telkomsel allegedly causes the two mobile phone operators in Indonesia to still charge high tariffs compared to other operators, which has a detrimental impact on consumers. It is reported that the conclusion of the KPPU's Advanced Examination Team regarding the case is not unanimous because one of its members, Benny Pasaribu, has a different view from the other four members. He was subsequently not included in the Commission Council to say this could raise questions. It is normal for someone to have a different opinion. Meanwhile, STT's Senior Vice President of International Operations, Jaffa Sany, said that STT would make an appeal if KPPU stated that STT was proven to have cross-ownership. Jaffa said the appeal was made as a form of self-defense of STT's rights to the shares it owns in Indosat. The defense will be carried out in stages later. This is if STT is found guilty by the KPPU.⁴⁴

In contrast, according to STT's Senior Vice President of Strategic Relations Corporate Communications, Kuan Kwee Jee, said that Temasek Holding, STT, and SingTel are different companies, as evidenced by the separate Board of Directors, the absence of central management from the parent company and no central economic activity plan. Thus, he does not feel violate the Business Competition Law (in share ownership

⁴³ A. Kusumadara, *Indonesian Private International Law* (Bloomsbury Publishing, 2021), p. 43.

⁴⁴ Lut/Sut, 'Ramai-ramai Ajukan Banding', *hukumonline.com* <<https://www.hukumonline.com/berita/a/ramairamai-ajukan-banding-hol18032>>.

in PT. Telkomsel and PT. Indosat). He also said that 65 percent of PT. Telkomsel's ownership is mastered by PT. Telkom so that PT. Temasek cannot control PT. Telkomsel. Meanwhile, 40 percent of PT. Indosat's ownership are owned by STT together with Qatar Telecom, and the other 14 percent of shares are owned by the Indonesian Government and Golder Shares, and the remaining 46 percent are free shares. After the establishment of the verdicts by the Business Competition Supervisory Commission (KPPU) to PT. Temasek and PT. Telkomsel, the case of Alleged Violation of Law Number 5 of 1999 Relating to Cross Ownership Conducted by Temasek and the Monopoly Practice of Telkomsel is now being tested at the objection appeal level by the Jakarta District Court Panel of Judges. Central or South Jakarta.

The investigation of this case will be a little complicated, because PT. Telkomsel registered an objection to the South Jakarta District Court, while PT. Temasek and Cs filed an objection to the Central Jakarta District Court, then in accordance with Article 4 of the Supreme Court Regulation Number 3 of 2005, the Supreme Court will appoint one of the District Courts to examine the objections of PT. Temasek and PT. Telkomsel. Since the beginning, the alleged monopoly case between PT. Temasek and PT. Telkomsel has attracted attention. Many investors have a wait and see attitude towards this case. They are waiting to see if the law can really be enforced in this case.

Moreover, the existence of the Anti-monopoly and Unfair Business Competition Law in Indonesia is a natural thing and applies in many other countries, but the application of the anti-monopoly and anti-unfair business competition law by the Business Competition Supervisory Commission (KPPU) in this case is still quite confusing. It is difficult to understand how KPPU has decided on this case after more than one year since this case was reported on October 18, 2006. In fact, if it is calculated based on the articles in Law Number 5 of 1999, the time period for KPPU to make a decision is not more than 160 days. The 160-day time limit by this law is aimed at maintaining legal certainty and not using the law without due process of law.

3. International Arbitration: The Case of PT. Semen Gresik Tbk and PT. Cemex Ltd

In the clause of the investment cooperation agreement between PT. Cemex and PT. Semen Gresik it is stated that if a problem occurs, it will lead to international arbitration. However, it is good for both PT. Semen Gresik and PT. Semen Padang to see this problem for an even greater interest.⁴⁵ BAPEPAM is currently waiting for an explanation from the management of PT. Semen Gresik regarding this case. However, so far there is no explanation. The affairs between shareholders will usually not interfere with the performance of the issuer concerned. Usually Dispute between shareholders should not interfere with performance, he said. Regarding the financial statements of PT. Semen Gresik, it can be completed on time as has been decided.⁴⁶

As reported, the PT. Cemex-Semen Gresik case arose as a result of the delay in the completion of PT. Semen Gresik's financial statements because PT. Semen Padang's financial reports had not yet been completed. PT. Cemex before submitting this case to arbitration has offered a number of alternative settlements, which PT. Cemex will buy the government's shares in PT. Semen Gresik until it becomes the majority or vice versa the government will buy PT. Cemex's shares in PT. Semen Gresik. In this context, the Minister of State for SOEs at the time, Laksamana Sukardi, at the same time said that the government currently did not have the funds to replace the investment that Cemex had made in Semen Gresik of US\$400 million to US\$500 million. The Indonesian Government do not have the funds and our state budget is in deficit. There is no longer a question. Thus, to overcome the financial problems in PT. Semen Gresik, it is possible for the government will sell PT. Cemex's shares to a third party.⁴⁷

⁴⁵ Puadi, T.A.M. Sariman & M. Teguh, *Keterkaitan Tingkat Konsentrasi Industri Terhadap Nilai Tambah, Efisiensi dan Jumlah Perusahaan dalam Industri Semen di Indonesia* (Doctoral dissertation, Sriwijaya University, 2011).

⁴⁶ Liputan6.com, 'Cemex Menggugat Indonesia di Arbitrase Internasional', *liputan6.com*, 2005 <<https://www.liputan6.com/news/read/97642/cemex-menggugat-indonesia-di-arbitrase-internasional>>.

⁴⁷ 'Sidang Juli, Sengketa RI-Cemex Berakhir di Arbitrase', *detikfinance* <<https://finance.detik.com/berita-ekonomi-bisnis/d-317904/sidang-juli-sengketa-ri-cemex-berakhir-di-arbitrase>>.

He is also optimistic that the cement industry still has very good prospects. However, it depends on the physical development in Indonesia. If the physical development, infrastructure and construction continues to grow, he think that the demand for cement companies is very good. It is not only the government that has to buy it. The government can bridge the gap with third parties. Unfortunately, he did not ask the party who had expressed interest in buying PT. Cemex's shares, he only admitted that he could not mention it because it was still a secret and it is currently still in talks with PT. Cemex to find the best solution.

Conclusion

Arbitration or *Tahkim* is an alternative dispute resolution out of court (non-litigation). Disputes and solutions often occur, especially in the business world. In general, the Indonesian people resolve disputes by way of deliberation and make traditional elders as mediators over disputes that occur. However, along with the progress of civilization, there is a tendency to use court institutions to resolve disputes that occur. The length of the court process and the relatively large costs are obstacles in resolving disputes. Therefore, an alternative was introduced. to resolve disputes out of court, namely negotiation, mediation, conciliation and arbitration. In this context, arbitration is seen as an alternative for resolving a dispute or case by one or several referees (arbitrators) who are jointly appointed by the parties to the litigation without being resolved through the court, both for cases at the national and international levels. Shortly, referring to the provisions of Article 1 Point 1 Jo. Article 5 of the Law Number 30 of 1999, arbitration is only limited to civil disputes, especially regarding the trade and rights cases in line with the law and statutory regulations and also fully controlled by the disputing parties although not all cases can be resolved through arbitration, for instance, for the several types of civil case can also be resolved and carried out through arbitration with simply, quickly, and at low cost. However, arbitration legal efforts have proven effective in resolving Islamic economic and business disputes.

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