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Choice of Arbitrators Regarding Dispute Settlement (Comparison Study Between Indonesia and Russia)

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Abstract
Arbitration is a mechanism for resolving civil disputes outside traditional courts, governed by a written arbitration agreement between the disputing parties. Limited to commercial and specific disputes like banking, an arbitration tribunal, consisting of arbitrators, hears and

decides these matters. In Indonesia, Law Number 30 of 1999 states that the appointment of two arbitrators grants them authority to select a third. Meanwhile, Russian laws, such as Federal Law No. 382-FZ and Law No. 5338-1, empower the Nomination Committee of Permanent Arbitration to appoint a third arbitrator from an approved list. This article employs a normative juridical method with a comparative law approach to scrutinize the selection and appointment of a third arbitrator according to Indonesian and Russian law. Qualitative analysis reveals that, under certain circumstances, all three arbitrators may be appointed by the Nomination Committee or even the general jurisdiction court, as outlined in the Russian International Commercial Arbitration Court's regulations. The article underscores the importance of providing legal certainty to disputing parties, empowering arbitrators, and avoiding conflicts that could impede dispute resolution. By shedding light on the appointment process, this research aims to contribute to the efficacy of arbitration as a judicious alternative for resolving disputes.

Keywords
Arbitrator, Appointment/Designation, Indonesia, Russia

Introduction

Arbitration is the foundation and origin of litigation as people used this method before the existence of justice in any country around the world[1]. Arbitration has been recognized, and applied, as a formal means of dispute resolution in Indonesia since the mid-nineteenth century. However, until late 1999 there was no specific law governing arbitration and for over 150 years all arbitration were regulated under a handful of provisions of the mid-19th Century Dutch Code of Civil

[1] Hesham Kamal Kotb Gaafar, "The Arbitration in Intellectual Property Disputes from Economic Perspective," *Journal of Intellectual Property and Innovation Management* 2, no. 2 (2019): 5–29, https://jipim.journals.ekb.eg/article_143501_36448630e1fd4ec260b9499cedefee1d.pdf.

Procedure, the *Reglement op de Rechtsvordering* (generally known as "RV"), while the substantive basis for the ability of parties to agree to arbitrate was to be found in the general freedom of contract provisions of them Indonesian Civil Code, also taken from the Dutch. After years in the drafting, on 12 August 1999, Indonesia finally promulgated its new comprehensive Law concerning Arbitration and Alternative Dispute Resolution, Law No.30 of 1999 ("the Arbitration Law"), superseding those articles of the RV covering arbitration.

Russia was one of the first member states to sign the New York Convention in 1958. Arbitration in Russia is governed by the Federal Law on Arbitration Courts in the Russian Federation (2003) (domestic arbitration) and the Federal Law on International Commercial Arbitration (1993) (international arbitration). This law is designed based on the UNCITRAL Model Law on International Commercial Arbitration[2].

Arbitration as a mechanism for resolving trade disputes can be interpreted as a mechanism for resolving trade disputes that is based on the agreement of the parties in the form of clauses or arbitration agreements to resolve their disputes in a final and binding manner through arbitration[3]. Arbitration in Russia is an alternative state judicial dispute resolution and is conducted by independent non-state organizations. The possible influence of public authorities on dispute resolution is insignificant. Arbitration courts are not judicial bodies and therefore do not belong to the judicial system of the Russian Federation[4]. Arbitration seeks to ensure that the law is followed wherever possible and friendly language is used between the parties to a dispute. In contrast to litigation, the use of arbitration requires the consent of both parties to the dispute[5].

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2 Dmitry Maleshin, "Chief Editor's Note on Arbitration Reform in Russia," *Russian Law Journal* 4, no. 1 (2016): 5–7.

3 Huala Adolf, *Hukum Arbitrase Komersial Internasional* (Bandung: CV Keni Media, 2016).

4 Aleksey Anisimov & Vladimir Gavrilenko, "Russia: Modern Problems of Arbitration in Land Disputes," *Conflict Studies Quarterly*, no. 28 (2019): 3–15.

5 Wesam S. Alaloul, Mohammed W. Hasaniyah, and Bassam A. Tayeh, "A Comprehensive Review of Disputes Prevention and Resolution in Construction Projects," in *MATEC Web of Conferences*, vol. 270, 2019, 05012.

Arbitration grows and develops from, for and by businessperson society or entrepreneur. What are the profits and benefits or advantages or disadvantages of arbitration for them? In general, arbitration has a certain advantage over the courts. The advantages include: (a). The guarantee of the secrecy of the dispute of the parties; (b). The avoidance of slowness of the dispute due to procedural or administrative matters; (c). The parties appointed their arbitrators who have knowledge, experience and skill about the issue of the dispute, honest and just; (d). The parties may designate the choice of law to settle their dispute and its process and place for the settlement by arbitration; and (e). The decision of the arbitrators is binding upon the parties and can be executed through a simple procedure or implemented.

Arbitration offers a fast, efficient, and inexpensive forum for dispute resolution, preferable to court proceedings[6]. Arbitration provides the parties with a neutral and confidential atmosphere, allowing for frank discussion and presentation of evidence without fear of public disclosure. This encourages transparency and cooperation between parties, resulting in a more efficient settlement process[7]. Dispute resolution through arbitration is an option because of the benefits that can be had by the parties. Apart from the characteristics of being fast, efficient, and complete, arbitration adheres to the principle of a win-win solution and is not long-winded because there are no appeals and cassation institutions. Arbitration costs are also more measurable because the process is faster. Another advantage of arbitration is that the decision is immediate (final) and binding, apart from its confidential nature, where the trial process and arbitration award are not made public[8]. Arbitration is a good litigation option to

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6 Orit Gan, "The Arbitration Debate: A Tale Of Two Contract Cities," *Ohio State Journal on Dispute Resolution* 39 (2024).

7 Yun Fang, "The Role , Responsibilities , and Arbitration of Credit Rating Agencies in Bankruptcy Proceedings : International Experience and Insights," *Science of Law Journal* 3, no. 1 (2024): 15–19. *See also* Nguyen Chi Thang, "Investor-State Dispute Settlement Mechanism in Vietnam's New Generation Free Trade Agreements: Challenges and Recommendations." *Lex Scientia Law Review* 7, no. 2 (2023): 740-770.

8 D Sulistianingsih and M S Prabowo, "Problematik Dan Karakteristik Penyelesaian Sengketa Kekayaan Intelektual Melalui Badan Arbitrase Nasional Indonesia," *Jurnal Ilmiah Hukum Qistie* 12, no. 2 (2019): 166–77.

resolve disputes[9]. Another advantage of arbitration is that the parties can each appoint an arbitrator of their choice who will consider the evidence presented as the basis for their decision[10].

The parties appointed their arbitrators. What does it mean? This article to be able to know, describe and analysis who is an arbitrator or arbitrators? How many arbitrators are usually appointed? How does choice of an arbitrator or arbitrators in Indonesia and Russia?

Global doctrine provides that "any person can be appointed as arbitrator by each Party". Parties Autonomy means Fundamental Principle in arbitrator's selection and appointment regarding dispute settlement among disputing parties. Arbitrator (s) mean person (s) selected and agreed to by disputing parties to solve their problems and give decision agreed by and complied with both disputing parties. According to Black's Law Dictionary, Arbiter means One with the power to decide disputes, such as judge. (the Supreme Court is the final arbiter of legal disputes in the USA). CF Arbitrator means A neutral person who resolves disputes between parties esp. by means of formal arbitration. Arbitration means a method of disputes resolution involving one or more neutral third parties who are usu. agreed to by the disputing parties and whose decision is binding – Also termed (redundantly) binding arbitration – arbiter).

This article uses a normative juridical writing method. Normative legal research examines legal rules or regulations as a building system related to a legal event[11]. Data collection techniques in normative legal research are conducted by literature study of legal materials. Data processing in this research is conducted by selecting secondary data or legal materials, then classifying them according to the classification of legal materials and compiling the research data systematically and logically. This research uses a statutory and regulatory approach as the initial basis for conducting analysis. Apart from that, this research also

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[9] Tavershima Audu, "The Scope of Arbitration Agreement in Nigeria: A General Overview," *Available at SSRN 4249360* 23529, no. 2 (2022): 1–45, https://ssrn.com/abstract=4249360.

[10] Ariful Hakim Waruwu et al., "Kewenangan Arbiter Dalam Memutus Sengketa Bisnis Arbitrase Secara Ex Aequo Et Bono," *Locus Journal of Academic Literature Review* 2, no. 12 (2023): 986–99.

[11] Mukti Fajar & Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2009).

uses a comparative approach. A comparative approach is always used by comparing the legal system of one country with the legal system of another country. Search and compare the rules of arbitration law in Indonesia and Russia. Comparative in the vertical comparison method, which help clarify the pillars of the arbitration regime and legal provisions regarding arbitration in Indonesia and Russia.

After the legal materials are collected, an analysis is then conducted to obtain a final argument in the form of an answer to the research problem. The analysis technique used is descriptive technique. With descriptive techniques, the researcher means to explain what is true about a legal event or legal condition.

Selection of Arbitrators for Effective Dispute Resolution: Legal Developments in Indonesia and Russia

Arbitration, which is an alternative forum for resolving disputes outside of court, is now increasingly popular, especially in resolving disputes in the business/commerce sector. Every business activity must be preceded by a business contract which can then become an entry point for disputes between the parties bound by the contract[12]. In the practice of making business agreements, both national and international, it is known that the parties need to agree on a mechanism in case a dispute occurs in the future, even though it is not certain that the dispute will occur. Preventive efforts to deal with the possibility of disputes include including a clause regarding dispute resolution in their agreement. The clause is entitled Settlement of Disputes, which contains an agreement regarding which forum will resolve the parties' disputes, whether through court or arbitration[13]. Arbitration is a dispute resolution institution that uses an adversarial approach with win-lose results chosen as an alternative by businesspeople[14].

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[12] Jafar Sidik et al., "Peningkatan Kemahiran Advokat Dalam Registrasi Putusan Arbitrase Asing Di Indonesia," *Jurnal Pengabdian Tri Bhakti* 5, no. 1 (2023): 8–15.

[13] Cut Memi, "Penyelesaian Sengketa Kompetensi Absolut Antara Arbitrase Dan Pengadilan," *Jurnal Yudisial* 10, no. 2 (2017): 115.

[14] Michael Jordi Kurniawan & Harjono, "Implikasi Yuridis Pembatalan Putussan Arbitrase Di Indonesia (Studi Putusan Nomor:

Arbitration is a form of Alternative Dispute Resolution mechanism that benefits the parties. Parties use arbitration to avoid the normal lengthy process of reaching court for dispute resolution. It is a legal ideology for resolving disputes outside the court which is referred by the parties in dispute to one or more people, namely the arbitrator, whose decision or who gives the arbitration award, they agree to be bound. The word arbitration in simple language is nothing other than settlement. This is part of alternative dispute resolution, namely methods of resolving disputes outside official judicial mechanisms or referring to all methods that resolve disputes outside the courtroom[15]. Arbitration means judgment, trial, rule, and sentence[16]. This means that after the parties submit their case to arbitration, the decision to use arbitration is binding[17]. Understanding regarding arbitration here is good for parties who use arbitration as a form of dispute resolution. The understanding related to arbitration must be understood properly before using arbitration so that the existing principles are not damaged. Like the efforts in implementing the first arbitration, namely peace, if there is no understanding regarding arbitration using peace, it will make these efforts difficult to carry out.

Arbitration functions as a means of resolving disputes by entrusting the resolution of the dispute to a party called an arbitrator[18]. The parties can choose their own arbitrators and for this of course they will choose those who are believed to have integrity, honesty, expertise,

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305/Pdt.G/Bani/2014/Pn.Jkt.Utr)," *Jurnal Verstek* 4, no. 3 (2016): 119–27, https://doi.org/https://doi.org/10.20961/jv.v4i3.38770.

15 Sneha Jaiswal, "Arbitration Law in India- an Overview," *SSRN Electronic Journal*, 2020, 1–6.

16 Hadi Ghorbani Alireza Abin, Zeinab Haghtalab, "Examining The Provisional Order In Arbitration In Domestic Law, Explaining The Needs, Gaps, And Harms of The Current Situation," *Russion Law Journal* 11, no. 10s (2023): 223–36.

17 Gregory Mathews, "Using Negotiation, Mediation, and Arbitration to Resolve IRS-Taxpayer Disputes," *Ohio State Journal On Dispute Resolution* 19, no. 2 (2004).

18 Ayush B Gurav and Rutuja Moon, "Med-Arb: Ethical Challenges and Effectiveness in Hybrid ADR," *KnowLaw Journal on Socio-Legal and Contemporary Research* 02 (2024): 1–17. *See also* Herliana Herliana, et al. "Enhancing ADR through Collaborative Clinical Legal Education: Law Schools and BANI's Optimized Partnership in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 5, no. 2 (2023): 247-272.

and professionalism in the field of dispute (and in no way represent the party who chooses them)[19]. The parties to the dispute benefit from extremely broad freedom in nominating arbitrators[20]. This freedom is based on the choice of each party to choose a suitable arbitrator. This freedom will be beneficial for the parties to the dispute because they can choose an arbitrator according to their wishes without coercion from any party.

To maintain the integrity of arbitration as a mechanism for settlement and general agreement, the principle of equality for the parties in the appointment of the arbitration panel must be respected[21]. Although arbitration is considered a quick and effective way to resolve disputes, there are concerns about its overuse in inappropriate situations, which could undermine fairness. If the use of arbitration is not organized and carried out[22]. Included in this is the selection of arbitrators in the dispute resolution process using arbitration.

Arbitration can be voluntary or mandatory. In voluntary arbitration, the parties agree to submit their dispute to arbitration once the dispute arises. In mandatory arbitration, the parties agree to submit their dispute to arbitration before the dispute arises. Arbitration can be ad hoc or institutional arbitration. Ad hoc arbitration occurs when the parties agree to the arbitration terms themselves, without the involvement of a third-party institution[23]. Arbitration in dispute resolution that can be chosen by the parties to resolve their disputes can

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19 Ananda Puspita Aminuddin, "Peranan Badan Arbitrase Nasional Indonesia Dalam Menyelesaikan Sengketa Penanaman Modal," *Lex Administratum* 5, no. 1 (2017): 1–8.

20 Akin Gump Strauss Hauer & Feld, "Party Nomination of Arbitrators: Égalité of Parties and the 'Dutco Principle,'" International Arbitration Alert, 2020, https://doi.org/10.1177/000271629200200404.

21 Thomas Bevilacqua and Ricardo Ugarte, "Ensuring Party Equality in the Process of Designating Arbitrators in Multiparty Arbitration: An Update on the Governing Provisions," *Journal of International Arbitration* 27, no. Issue 1 (2010): 9–49, https://doi.org/10.54648/joia2010003.

22 Michael Herdi Hadylaya, "Harmonizing Arbitration : Clarity , Consistency , and Consent in the Application of Ex Aequo Et Bono," *Jambura Law Review* 6, no. 01 (2024): 88–101, https://doi.org/https://doi.org/10.33756/jlr.v6i1.19703.

23 Gideon Idike Owo, "The Relevance Of Logic To Alternative Dispute Resolution In Modern Society," *EBSU Journal of Social Sciences & Humanities* 14, no. 2 (2014): 470–76.

be in the form of ad hoc arbitration and institutional arbitration. Ad hoc arbitration is not related to any of the arbitration bodies, meaning that this arbitration does not have its own procedural rules, both regarding the appointment of arbitrators and procedures for examining disputes. Ad hoc arbitration follows the procedural rules specified in the legislation. Meanwhile, institutional arbitration is an institutional arbitration institution or body that is established and attached to a particular institution. The nature of this arbitration is permanent and deliberately established to resolve disputes, and has its own procedures and procedures for examining disputes, and once the dispute is finished, this arbitration will not end[24].

A. Choice of Arbitrator (s) and Arbitration according to Law No. 30 of 1999

Regarding to Indonesia Political Law under prevailing regulations having the force of law, civil dispute resolution besides being submitted to the public courts also has the possibility of being submitted to arbitration and/or alternative dispute resolution. Article 58 – 61 Indonesia Law Number 48 of 2009 concerning Power of Justice, Indonesia Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and several provisions regulation on civil dispute resolution of Indonesia Laws. Arbitration means a mechanism of settling civil disputes outside the general courts based upon an arbitration agreement entered in writing by the disputing Parties. The disputing parties shall be legal entities, based upon civil and/or public law.

Arbitration agreement means a written agreement in the form of an arbitration clause entered by the parties before a dispute arises, or a separate written arbitration agreement made by the parties after a dispute arises. Vide Article 1 point 3 Law No.30 of 1999. Only disputes of a commercial nature, or those concerning rights which, under the law and regulations, fall within the full legal authority of the disputing

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[24] Muskibah & Lili Naili Hidayah, "Penyelesaian Sengketa Konstruksi Melalui Arbitrase Berdasarkan Peraturan Perundang-Undangan," *Jurnal Padecta: Research Law Journal* 16, no. 1 (2021): 15, https://journal.unnes.ac.id/nju/pandecta/article/view/25671/11885.

parties, may be settled through arbitration. Disputes which may not be resolved by arbitration are disputes according to regulations. "The scope of trade law" is the activities in the field of, among others: trading; banking; financing; investment; industry; intellectual property rights. If attempts to reach an amicable settlement are unsuccessful, the disputing parties, based on a written agreement, may submit the matter to resolution by an arbitration institution or ad-hoc arbitration.

Arbitration Institution shall mean a body designated by the parties in dispute to render an award regarding a particular dispute. This institution may also give a binding opinion concerning a particular legal relationship where a dispute has not yet arisen. Arbitrator (s) means one or more persons designated by the disputing parties in dispute or appointed by the District Court or by an arbitration institution to render an award regarding the dispute submitted for resolution by arbitration.

An arbitrator is one or more persons selected by the parties to the dispute or appointed by the District Court or by an arbitration institution, to provide decisions regarding certain disputes which are submitted for resolution through arbitration. An absolute requirement for an arbitrator is to be professional, this is closely related to the ethics of the legal profession in carrying out its duties and authority. The professional position of an Arbitrator is as a private party who is given rights and obligations, authority, and responsibility by the state[25].

Conditions of Appointment of Arbitrators in Article 12 Law of 1999 provide that: (1) The parties who may be appointed or designated as arbitrators must meet the following requirements: a). Being authorized or competent to perform legal actions; b). Being at least 35 years of age; c). Having no family relationship by blood or marriage, to the third degree, with either of the disputing parties; d). Having no financial or other interest in the arbitration award; and e). Having at least 15 years experiences and active mastery in the field. (2) Judges, prosecutors, clerks of courts, and other government or court officials may not be appointed or designated as arbitrators. The prohibition of

[25] 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, https://doi.org/10.33830/humaya_fhisip.v2i1.3057.

the persons mentioned in this paragraph to be arbitrators would be to ensure the objectivity of the process and the provision of the awards by arbitrators or the arbitration tribunal.

The provisions regarding the expertise requirements for arbitrators, apart from the law, also include broader requirements, including arbitrators must have expertise in a field or several fields and be supported by extensive experience, have a clean name, and also high integrity[26]. The arbitrator as judge in terminating an arbitration dispute has full responsibility for how an arbitration dispute is resolved. Good resolution will lead to important levels of trust among parties who choose arbitration as a dispute resolution method.

If attempts to reach an amicable settlement are unsuccessful, the parties, based on a written agreement, may submit the matter to resolution by an arbitration institution or ad-hoc arbitration.

B. Choice of Arbitrator (s) Ad-Hoc according to Law No. 30 of 1999

Arbitrator(s) shall mean one or more persons designated by the parties in dispute or appointed *by the District Court* or by an arbitration *institution* to render an award regarding the dispute submitted for resolution by arbitration. An arbitrator is a neutral third party who acts as a judge in an arbitration dispute. In the arbitration process, it is led by one or more arbitrators in the form of an arbitration panel. The arbitrator has quite a significant role in the arbitration trial, although the decision that will be decided by the arbitration panel is derived from what the parties put forward in the trial and the agreements that were made. However, the arbitrator has a significant role in how the trial proceeds. So, a mutually beneficial decision or win-win solution can be obtained easily if an arbitrator is able to control the parties and the existing dispute.

In the event the parties cannot reach agreement on the choice of arbitrators, or no terms have been set concerning the appointment of arbitrators, the Chief Judge of the District Court shall be authorized to appoint the arbitrator or arbitration tribunal. In an ad hoc arbitration, where there is any disagreement between the parties regarding the

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[26] Cicut Sutiarso, *Pelaksanaan Putusan Arbitrase Dalam Sengketa Bisnis* (Jakarta: Yayasan Pustaka Obor Indonesia, 2011).

appointment of one or more arbitrators, the parties may request the Chief Judge of the District Court to appoint one or more arbitrators for resolution of such dispute.

In the event the parties have agreed that a dispute arising shall be heard and decided upon by a sole arbitrator, the parties must endeavor to reach an agreement concerning the appointment of such sole arbitrator. If within no more than thirty (30) days after notification is received by the Respondent one of the parties has failed to appoint a person as member of the arbitration panel, the arbitrator chosen by the other party shall function as sole arbitrator and his/her award shall be binding upon both parties. (Article 8 (1) & Article 15 (3) RI Law No.30 of 1999).

The appointment of two arbitrators by the parties shall constitute authority to *the two arbitrators* to elect and appoint *a third arbitrator*. The third arbitrator contemplated shall be appointed *as the chair of the arbitration tribunal*. In the event the two arbitrators appointed by the parties fail in appointing a third arbitrator within fourteen (14) days after the last arbitrator was appointed, then at the request of one of the parties the Chief Judge of the District Court may appoint the third arbitrator. No attempt may be made to nullify the appointment of an arbitrator by the Chief Judge of the District Court.

An arbitrator appointed or designated may accept or refuse the appointment or nomination. The parties must be advised by the arbitrator(s), in writing, of the acceptance or rejection of the appointment, as contemplated in paragraph (1) within fourteen (14) days from the date of the appointment or designation.

A prospective arbitrator asked by one of the parties to sit on the arbitration panel shall be obliged to advise the parties of any matter which could influence his independence or give rise to bias in the rendering of the award. Anyone accepting an appointment as arbitrator as contemplated in paragraph (1) shall inform the parties of his appointment. If an arbitrator states his/her acceptance of the appointment or designation, the arbitrator concerned may not withdraw his/her acceptance except with the approval of the parties. In the event the arbitrator, who has accepted the appointment or designation, wishes to withdraw, such arbitrator shall submit a written request to the parties. In the event the parties may consent to the request

to withdraw, the arbitrator concerned may be released from his/her duties as arbitrator.

In the event the request for withdrawal does not receive the consent of the parties the Chief Judge of the District Court may release such release of the arbitrator from his/her duties. The arbitrator or arbitration tribunal may not be held legally responsible for any action taken during the proceedings to conduct the function of arbitrator or arbitration tribunal unless it is proved that there was bad faith in the action.

An arbitrator's authority shall not be nullified by the death of the arbitrator and the authority shall thereupon be continued by a successor arbitrator appointed in accordance with this Law. An arbitrator may be dismissed from his/her mandate if he/she is shown to be biased or demonstrates disgraceful conduct, which must be legally proven. If during hearing of the dispute an arbitrator dies, is incapacitated, or resigns, and so is unable to meet his/her obligations, a replacement arbitrator shall be appointed in the manner applicable to the appointment of the arbitrator concerned. In the event a sole arbitrator or the chair of the arbitration tribunal is replaced, all hearings previously held shall be repeated. In the event a member of the arbitration tribunal is replaced, the hearing of the dispute shall only be repeated among the arbitrators themselves.

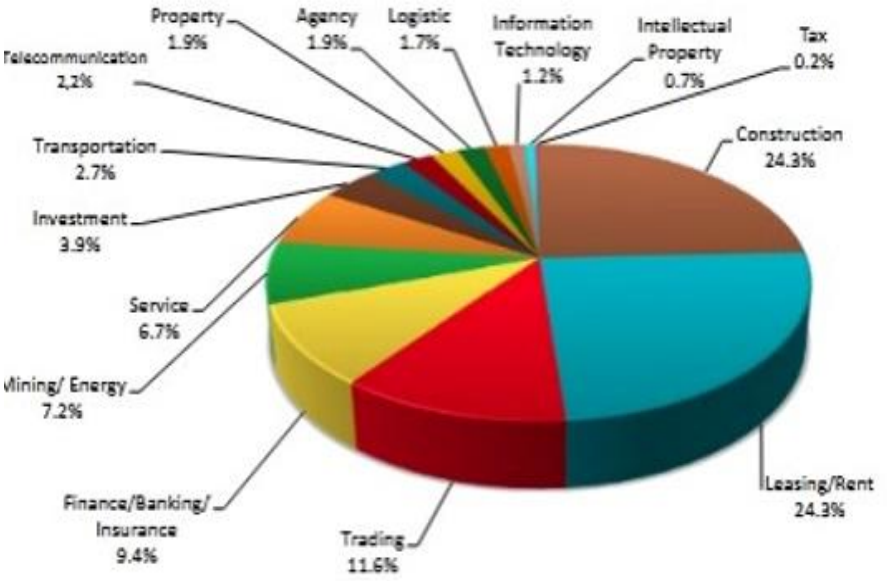
C. Choice of Arbitrator(s) According to (An Arbitration Institution): Indonesia, BANI Rules 2022

The Indonesian National Arbitration Board, or better known as BANI, is an independent institution or body that provides numerous services related to arbitration, mediation, and other forms of alternative settlements outside the court. The Indonesian National Arbitration Board (BANI) is an arbitration institution established by the Indonesian Chamber of Commerce and Industry (KADIN Indonesia) based on the Decree of the Management Board of the Indonesian Chamber of Commerce and Industry Number: SKEP/152/DPH/1977 dated November 30, 1977. BANI has obtained the status of a Legal Entity based on the Decree of the Minister of Law and Human Rights of the Republic of Indonesia dated December 28, 2018, Number AHU-0016026. AH.01.07.2018. In addition, the name and logo of BANI has also been protected by the registration of the trademark of *the Badan*

Arbitrase Nasional Indonesia at the Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia.

In BANI arbitration, disputes can be resolved in a brief time, because the process is more focused and structured. This reduces uncertainty and allows the parties to quickly reach a final decision[27]. As the oldest arbitration institution in Indonesia, BANI has experience in handling disputes in various trade and industrial sectors, including disputes in the fields of commerce, construction, banking, finance, natural resources, telecommunications, investment, insurance, intellectual property, agency, shipping/maritime, sharia, and others, in national and international scope.

BANI has rules and arbitration procedures in resolving disputes. These rules and procedures continue to be developed from time to time in accordance with developments in arbitration practices and procedures in the country and in the world.



Source: Profile of BANI (2023).

[27] Dewi Ratrika Rinupa Sejati, "Penyelesaian Sengketa Wanprestasi Secara Alternatif Melewati Badan Arbitrase Nasional Indonesia (BANI)," *Indonesian Journal of Law and Justice* 1, no. 3 (2024): 1–12, https://doi.org/https://doi.org/10.47134/ijlj.v1i3.2074.

BANI Arbitration Center was established for the following purposes: (1) To participate actively in the law enforcement process in Indonesia through the application of arbitration and alternative dispute resolution for resolving disputes in the various sectors of trade, investment, industry and finance, such as corporate, insurance, financial institution matters, aviation, manufacturing, telecommunication, sea, land and air transportation, mining, intellectual property rights, licensing, franchise, construction, shipping/maritime issues, environmental issues, remote sensing and others within the scope as set forth by laws and regulations and international practices; (2) To provide services for the dispute settlement through arbitration or other forms of alternative dispute resolution, such as negotiation, mediation, conciliation and binding opinion in accordance with the BANI Arbitration Center Arbitration Rules or other rules as opted by the parties; (3) To act autonomously and independently in regard of upholding law and justice; (4) To carry out studies, research and training/education programs as well as seminars or workshops pertaining to arbitration and alternative dispute resolution.

The agreement between the parties is the main thing in resolving disputes using arbitration at BANI. There is an arbitration clause which states that all disputes arising because of this agreement will be resolved at the first and final stages according to BANI's procedural rules through appointed arbitration in accordance with applicable regulations[28]. If the parties to a commercial agreement or transaction have agreed in writing that disputes in relation to that agreement or transaction shall be referred to arbitration before the Indonesian National Board of Arbitration ("BANI Arbitration Center"), or under the Rules of BANI, then such dispute shall be settled under the administration of BANI in accordance with these Rules, subject to such modifications as the parties may agree in writing, so long as such modifications do not contradict mandatory provisions of law nor the policies of BANI.

"BANI" shall be Badan Arbitrase Nasional Indonesia (Indonesian National Board of Arbitration or BANI Arbitration Centre) is a national

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[28] Vania Shafira Yuniar and Florentiana Yuwono, "The Comparison Of Arbitration Dispute Resolution Process Between Indonesian National Arbitration Board (BANI) And London Court of International Arbitration (LCIA)," *Journal of Private and Commercial Law* 6, no. 1 (2022): 77–99.

arbitration body based in Jakarta and in a number of regions in Indonesia (Regional BANI). BANI is not an institution which settles the disputes, but as an independent institution administering the process of the settlement of disputes through arbitration by the arbitration tribunal, based on the BANI Arbitration Rules. "Tribunal" or "Arbitration Tribunal" printed in capital or small letters, is the sole arbitrator or the arbitration tribunal consisting of three or more arbitrators.

If the Tribunal is to comprise only a sole arbitrator, the Claimant may, in the request for arbitration, propose to Chairperson of BANI one or more individuals meeting the requirements as a recommendation to act as sole arbitrator. If the Respondent accepts one of the candidates nominated by the Claimant, with the approval of Chairperson of BANI, the individual may be designated as sole arbitrator. However, if there is no candidate nominated by the Claimant that is acceptable to the Respondent, unless both parties agree on a Tribunal comprising three arbitrators, Chairman of BANI shall immediately designate an individual who shall act as sole arbitrator, which designation may not be rejected or objection may not be lodged by either party except on demonstrable grounds of lack of independence or impartiality. If the parties do not accept a sole arbitrator, and/or Chairman of BANI considers that the dispute in question is of a complex nature and/or the scale of the dispute in question or the quantum in dispute is such that a Tribunal comprising three arbitrators is clearly warranted, then Chairman of BANI shall inform the parties of the matter and a period of 7 (seven) days shall be given to them each to designate an arbitrator chosen by them and if this is not complied with then the stipulations in Article 11 paragraph (3) below *shall apply.*

If the Tribunal is to consist of three arbitrators, in case both parties have appointed their respective arbitrators, Chairperson of BANI will appoint an arbitrator to preside the Arbitration Tribunal.

If Number of Arbitrator(s) is not Fixed. If the parties have not agreed earlier regarding the number of arbitrators (such as one or three arbitrators), Chairman of BANI shall be empowered to rule, based on the nature, complexity, and scale of the dispute in question, whether the case in question requires one or three arbitrators and, in such case, the stipulations in the previous paragraphs of Article 11 shall apply.

Chairperson of BANI may, at the request of a party, consolidate two or more arbitrations under the Rules into a single arbitration, where: a). the parties have agreed to consolidation and the arbitration dispute arises from the same legal relationships; or; b. the request of arbitrations are made under a number of agreements whose parties are the same and the choice of arbitration institution is BANI ; or c). The request of arbitrations are made under a number of agreements where one of parties are the same and the choice of arbitration institution is BANI.

BANI, including the Board, the Secretariat, including the Board of BANI's Representatives and BANI's arbitrators, shall not be liable to any person for any negligence, act, or omission in connection with any arbitration governed by these Rules. (Article 37). Arbitrator (s) listed at BANI Arbitration Center (in 2023). There are ninety-five arbitrators from Indonesia and seventy-three arbitrators from outside Indonesia.

D. Choice of Arbitrator (s) According to Russia Federation

In December 2015, the President of Russia signed two laws, and these laws entered into force on September 1, 2016. In general, these laws have changed the legal framework of arbitration in the Russian Federation. These are the Federal Law on Arbitration and the Federal Law on Amendments to Certain Legislative Acts, which introduce amendments to various laws including the International Commercial Arbitration Law, the Arbitrazh (Commercial) Procedure Code, and the Civil Procedure Code[29].

Most arbitrations in Russia are institutional. Ad hoc arbitration is not popular in Russia. There are about five hundred arbitration institutions in Russia and only 7–10 of them can be considered significant, with their own set of rules and cross-border dispute options. The leading institution is the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in Moscow [hereinafter ICAC]. Its history began in 1932 when the Soviet Union established the Foreign Trade Arbitration

[29] Lorenzo Sasso, "The Russian Arbitration Reform: Between Lights and Shadows," *Russian Law Journal* 8, no. 2 (2020): 79–103, https://doi.org/10.17589/2309-8678-2020-8-2-79-103.

Commission. It is the most frequently used court for international arbitration in Russia and oversees an average of 200 to 250 cases per year. In 2013, the national Russian Arbitration Association was created as an independent and alternative arbitration institution to ICAC[30].

The two most used arbitration institution in Russia are the ICAC (the International Commercial Arbitration Court) and the MAC (the Maritime Arbitration Commission), both of which operate under the aegis of RF Chamber (Russian Federation Chamber).

The ICAC is one of the institutions of choice for resolution of commercial disputes between Western and Russian companies and companies from other Commonwealth of Independent State ("CIS") countries. The ICAC is in Moscow.

The ICAC administers the arbitration disputes arising from contractual or civil-law relationships during foreign trade and others forms of international economic interaction, provided that at least one of the parties has its place of business abroad. It also administrates in dispute arising between enterprises with foreign investments, international associations and organisations set up in the Russian Federation and disputes between its members and others subject to the laws of Russian Federation.

In recent years, the ICAC has heard some 150-200 arbitration cases annually, the overwhelming majority of which have been between foreign and Russian parties. During 2008 the ICAC received 158 claims from companies from thirty-eight countries. Parties in ICAC proceeding included companies from Ukraine (16 cases); Germany (12 cases), Turkey (12 cases); Belarus (8 cases); China (8 cases) Kazakhstan (8 cases), Italy (7 cases) and Austria (7 cases). The most prevalent group of foreign parties came from the European Union, a total of sixty-three companies[31].

E. Selection of Arbitrator (s) in Russian Federation

Indonesian rule about electing an arbitrator is not as complicated as Russian Federation. It is because of a few differences of Russian Federation provisions on electing an arbitrator or forming arbitrator

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30 Maleshin, "Chief Editor's Note on Arbitration Reform in Russia."

31 Roman Khodykin, *Arbitration Law of Russia: Practice and Procedure* (NY USA: JuristNet, LLC, 2013).

committee in national and international arbitration process. Moreover, there is another different factor from these countries that is significant role of judicial institution in this process. Enacting arbitrator procedure will be explained in following ways based on Russian Federation prevail statute.

The parties have autonomy in selecting the arbitrator based on the parties' expertise and interests, and this process is confidential (not to be known to the public)[32]. This provision is not much different from the provisions in Indonesian legal regulations. This is a general standard for determining the arbitrator made by the parties.

According to Federal Law on Arbitration (Arbitral Proceedings) in The Russian Federation N 382-FZ dated 29 December 2015 article 11 .1 (with alteration 27 December 2018), the parties may determine arbitrator on their own discretion in choice of forum:

> "1. *No person may be deprived of the right to function as an arbitrator due to his/her nationality unless the parties to the arbitration agreed otherwise. The parties to the arbitration may agree on additional requirements for arbitrators, including their qualifications, or on the settlement of the dispute by a specific arbitrator (arbitrators)."*
> *"2. "The parties to the arbitration may, at their discretion, agree on the procedure for electing (appointing) the arbitrator(s) subject to compliance with the provisions of parts 4 to 11 of this article." On part 3 to 11 of this article, general provisions are given on electing the arbitrator (s) whether in national or international arbitration process. These are following provisions:*
> *"3. Failing an agreement referred to in section 2 of this article:*
> *1) In arbitration with three arbitrators, each party shall appoint one arbitrator, and two arbitrators thus appointed shall elect the third arbitrator. Where a party fails to elect an arbitrator within one month from the request to do so from the other party, or where two arbitrators fail to agree on the election of the third arbitrator within a month from their own election, upon the request by*

[32] Zlatan Meskic and Almir Gagula, "Why the Applicable Law in International Commercial Arbitration Does Not Matter and Why It Should," *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 16, no. 1 (2024): 1–9, https://doi.org/10.1061/jladah.ladr-990.

either of the parties, the appointment shall be effected by a competent court;

In this article, it is determined that if an obstacle in arbitration procedure occurs which is arbitrator (s) election harms the arbitration process, the government may involve. That is enormous difference prevailed in Indonesia. The term of "competent court" refers to in article 2 section 7 Law on Arbitration: "competent court is a court in Russian Federation judicature system which is determined based on Russian Federation procedural law". Practically, the authority is given to the state arbitration court in certain regions.

A similar provision defined in article 11 section 3 sub section 2 on Arbitration about sole arbitrator election. Unless the parties have not agreed with the sole arbitrator, the right is executed by authorized court in accordance with one of disputing party's request.

Based on analysis, the state court role in arbitration implementation process in Russian Federation referred to article 11 section 4 on Arbitration, limits the arbitration competency dan status more than that in Indonesia. In this section 4: "Where the procedure for the election (appointment) of arbitrators was agreed upon by the parties, but one of the parties is not complying with that procedure, or the parties, or the two arbitrators are unable to reach an agreement in accordance with such a procedure, or a third party including the permanent arbitral institution fails to fulfil any of the functions in accordance with the arbitration rules, entrusted to it by such a procedure, any party may ask a competent court to take the necessary measures, subject to the procedure for the election (appointment) agreed upon by the parties, unless the agreement on the election (appointment) procedure provides for other ways to ensure appointment. The parties, whose arbitration agreement provides for the administration of arbitration by a permanent arbitral institution, may rule out the possibility of this matter being resolved by a court by their direct agreement (where the parties have ruled out such a possibility by their direct agreement, in the said cases the arbitration shall terminate, and the dispute may not be referred to a competent court for resolution)."

Thus, based on article 11 section 4, the parties have the right to agree other arbitrator election or determination procedures without

court involvement. However, whether constraint occurs, or another problem exist, settlement of dispute may be stopped in this arbitration entity and redirected to the authorized court. One point of view, this provision harms absolute competency of arbitration because government can be involved in dispute settlement alternative. Other point of view, the parties still have a way to solve their dispute at state instance due to legal certainty. Thus, any mistake from the parties on arbitration procedural law, in accordance with arbitration clause or institutional arbitration entity regulation may not a fatal error to delete his rights to settlement of dispute and legal certainty.

According to article 11 section 5 on Arbitration, competent court that elects arbitrator in certain condition is required to ensure the appointment of an independent / impartial and competence arbitrator. Article 11 Section 5 said: "When appointing an arbitrator, the competent court shall take into account any requirements to the arbitrator set forth by the agreement between the parties, as well as such considerations that would ensure appointment of independent and justice arbitrator".

Referred to article 11 on Arbitration titled "Electing (Appointing) Arbitrator" section (6) to (11), there are provisions about arbitrator competency. Following provisions are:

Article 11 Section 6: *"Unless the parties agreed otherwise, the arbitrator resolving the dispute as a sole arbitrator (in case of collective dispute settlement subject to compliance with the provisions of part (7) of this Article – the Chair of the arbitral tribunal) shall meet one of the following requirements: (1) have a higher legal education confirmed by a standard diploma issued in the territory of the Russian Federation; (2) have a higher legal education confirmed by documents of foreign states recognized in the territory of the Russian Federation."*

Article 11 Section 7: *"In case of dispute settlement by arbitral tribunal, the parties to arbitration may agree that the Chair of the arbitral tribunal need not meet the requirements set forth in part (6) of this Article, provided that a member of the arbitral tribunal as an arbitrator according to the said requirements."* Article 11 Section 8: *"A person who has not reached the age of 25 (twenty-five), an incapable person or a person, whose legal capacity has been limited, cannot act as an arbitrator."*

Article 11 Section 9: "An individual with an unspent or an outstanding previous conviction cannot function as an arbitrator."

Article 11 Section 10: "*An individual, whose powers as a judge, advocate, notary, investigator, prosecutor, or other enforcement officer were Chapter 3. Composition of the Arbitral Tribunal 21 terminated in the Russian Federation in accordance with the procedure set forth by the federal law for offenses incompatible with his/her professional occupation, cannot function as an arbitrator.*"

Article 11 Section 11: *"An individual, who cannot be elected (appointed) as an arbitrator in view of his/her status determined by the federal law, cannot function as an arbitrator."*

Similar rule concerning election (appointing) arbitrator and arbitrator competency in Russian Federation is described in Russian Federation Law Number 5338-I dated 07 July 1993 (with amendment) on International Commercial Arbitration. (further called Commercial Arbitration Law). According to article 11 condition rules state institution involvement, formed as state arbitration court, may be used on election (appointing) arbitrator procedures on international dispute and whether legal certainty harmed by the action of the parties or arbitration institution.

From legal logic perspective, the involvement of state instance in the form of state arbitration courts in commercial arbitration process (or private) is an emergency tool that can only be used in certain circumstances. If the possibility of arbitration process failure becomes apparent due to the actions of the parties or specific arbitration instance, or due to errors or incompatibilities found in the arbitration clause, the state party may intervene in the process to achieve legal certainty in this case. In other cases, government instance cannot interfere or be involved in commercial arbitration processes. This provision is also stated in article 5 of the Commercial Arbitration Law which states "Limits of court involvement" - "5. In all matters regulated by this law, no involvement of any court instance is allowed, except in cases directly determined by this law."

This article is the Russian legal version regarding the principle of absolute competence of arbitration, however, compared to the provisions regulating the same matter in Indonesia, the absolute competence of arbitration in Russia still appears to be more limited, although the core involvement of the state in the arbitration process can be considered as a good matter - assisting the parties in resolving disputes and achieving legal certainty.

As an annex one to this Commercial Arbitration Law, there is a regulation regarding the International Commercial Arbitration Court (ICAC) under the Chamber of Commerce and Industry of the Russian Federation which officially announce the institution as one of the institutional arbitration boards in the Russian Federation that can handle international trade disputes. The institution has its own regulations that organize all arbitration processes and functions. Although in general, the regulations of this institution follow the legal norms stipulated in the Russian Federation Law, there are several specific elements related to the implementation of the arbitration process. The procedure for electing (appointing) arbitrators in international cases is applied in the regulation (*Reglamen*) on international commercial arbitration, which is Annex 2 to the Order of the Chamber of Commerce and Industry of the Russian Federation No. 6 dated 11 January 2017. According to paragraph 16 of this Regulation (*Reglamen*), usually, if determined otherwise by the agreement of the parties, arbitration is executed by an arbitral tribunal consisting of three arbitrators.

If the parties do not agree otherwise, in accordance with article 16 section 2 of this Regulation (*Reglamen*), the arbitral tribunal consists of three arbitrators if the disputed amount stated in the arbitration application does not exceed $50,000, fifty thousand US dollars or the same amount in another currency. This amount does not include interest on the disputed amount and arbitration costs. One part of ICAC named the Arbitration Determination Committee for international trade disputes is responsible for supervising and determining arbitrators for international disputes and may assess the value of the dispute and other specific dispute matters, and if not otherwise determined by the parties, may decide that a particular case can be handled by a sole arbitrator.

According to Article 16 (3) ICAC *Reglement* provide detail appointment of arbitrator. For example, The Claimant in 15 days starting receive announcement from Secretariat to choose candidate arbitrator of the Claimant, if the candidate un-appointed before stage. If the Claimant does not choose the candidate arbitrator in 15 days, the candidate arbitrator by the Committee for international commercial disputes ("The Committee") by himself mind.

Then, after appointment arbitrator from Claimant side is successful, The Secretariat inform to the Respondent. The Respondent is mandatory to choose an arbitration in 15 days and if Respondent refuse or void to choose his candidate arbitrator of the Respondent, so appointment member of arbitrator from the Respondent side by the Committee.

After two members of arbitrators appointed or selected, regarding Article 16 (7) ICAC *Reglement*, The Committee appoint the third arbitrator as the Chair of the arbitration Tribunal. If in the event of appointment of three arbitrator, if Claimant or Respondent or both of arbitrator not from the parties (Claimants or Respondents), parties (Claimant or Respondent) has the right to propose just one candidate of arbitrator. The candidate of arbitrator must be elected based on internal agreement among all parties (Claimant and Respondent). If the parties (Claimants and Respondent are dis-agreed and propose joint candidate together in the time, The Committee has the right to appoint arbitrator by himself mind from the existing listed arbitrator of ICAC.

If one of Claimant or Respondent more of parties, candidate of arbitrator proposed by decision of only one party and not agreed by other one party, the Committee has the right to recuse the candidate and appoint new candidate of arbitrator by The Committee himself mind in that case to resolve by sole arbitrator. (Article 16 (9) ICAC *Reglement*). Interesting in choice of arbitrator provide in Article 16 (10) *Reglement* ICAC that selection arbitrator process is selected one arbitrator to replace the main arbitrator in certain situation, i.e., the death of main arbitrator or right of recusal. (Article 16 (10) ICAC *Reglement*).

While, The Committee Selection has the authority of arbiter selection, The Committee Selection has the right to render to the Chair of ICAC or The Vice Chair on international commercial disputes area. The Authorities and functions of commercial arbitration, including the function of The Chairman of Tribunal applicable to both of arbitration tribunal or sole arbitrator.

Conclusion

In conclusion, the process of selecting and appointing arbitrators varies depending on the legal framework governing arbitration, such as the

laws in Indonesia and Russia. In Indonesia, arbitrators may be chosen by the disputing parties themselves or appointed by the District Court or arbitration institutions like BANI. BANI's rules stipulate a specific procedure where each party selects an arbitrator, who then jointly appoint a third arbitrator as chairperson. Conversely, Russian law allows the arbitrators selected by the disputing parties to appoint the chief arbitrator. Notably, recent changes in BANI's rules highlight a shift in the appointment of the chairperson, with the chair being determined by BANI's chair rather than proposed by the arbitrators chosen by the parties. These variations underscore the importance of understanding the specific requirements and procedures governing arbitrator selection in each jurisdiction to ensure a fair and effective dispute resolution process.

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