

Business Dispute Resolution: Insight from Indonesia and Saudi Arabia

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Abstract

In legal disputes, the crucial aspect lies in the execution of a decision. A decision holds no value if it cannot be effectively enforced, even if it possesses permanent legal force. To settle civil cases, two prominent institutions are employed: the court and arbitration. In the context of international business agreements, parties turn to international arbitration as a means of resolving disputes, employing neutral third parties. This paper delves into the process of international arbitration, particularly focusing on its application within the business sector. Various arbitration clauses in international business agreements establish international arbitration, with the objective of impartially addressing disputes between parties involved. A notable institution that facilitates such resolution is the Saudi Center for Commercial Arbitration (SCCA) in Saudi Arabia. However, the effectiveness of arbitration rests on the implementation of arbitration awards, which is influenced by the type of arbitration undertaken, whether national or international. Hence, this paper aims to draw a comparative analysis between the Indonesian National Arbitration Board (BANI) and the Saudi Center for Commercial Arbitration (SCCA), examining the legal basis



employed and the processes involved in resolving arbitration disputes. By understanding the contrasting practices of these arbitration institutions, stakeholders can gain insights into optimizing dispute resolution mechanisms. The study holds practical significance for businesses and individuals engaged in international trade, emphasizing the importance of selecting the appropriate arbitration institution to ensure enforceability and expeditious resolution of disputes. Ultimately, the findings of this research contribute to fostering a more efficient and reliable international arbitration framework.

KEYWORDS

Arbitration Dispute Resolution Process, Indonesia, Saudi Arabia

Introduction

Arbitration has endured for centuries and earned widespread recognition in Indonesia as a practical alternative to traditional litigation for resolving disputes. Although differing opinions on its precise definition exist, the fundamental essence of arbitration as a method to settle conflicts remains unaltered.¹ The term "*arbitrage*" finds its roots in the Latin word "*arbitrary*," which denotes the power to resolve matters with wisdom. Although contemporary scholars may offer varying interpretations, the underlying meaning of arbitration remains consistent. Subekti characterizes arbitration as the resolution or termination of disputes by a judge or a panel of judges, acting in accordance with an agreement voluntarily accepted by the involved parties to abide by the decision rendered.²

¹ Anik Entriani, "Arbitrase dalam Sistem Hukum di Indonesia," *An-Nisbah: Jurnal Ekonomi Syariah* 3, no. 2 (2017), <https://doi.org/10.21274/an.2017.3.2.277-293>.

² R. Subekti, *Arbitrase Perdagangan*. (Jakarta: Badan Pembinaan Hukum Nasional, 1981). See also Nyoman Adi Astiti. "Penyelesaian Sengketa Bisnis Melalui Lembaga Arbitrase." *Jurnal Al-Qardh* 3, No. 2 (2018): 110-122; Muhammad Shidqon Prabowo, "Aspek Hukum Bisnis Tentang Penyelesaian Sengketa Bisnis." *QISTIE* 10, No. 1 (2017).

The existence of differing opinions concerning the precise nature of arbitration does not undermine its significance as an alternative dispute resolution method. Rather, these divergent viewpoints enrich the overall understanding of arbitration, presenting various conceptual angles that contribute to its effectiveness and adaptability.

Arbitration also recognized as a voluntary and straightforward process selected by parties who seek to have their case resolved by an impartial mediator of their choice. The arbitrator bases their decisions on the presented arguments in the case. By mutually agreeing beforehand, the parties willingly accept the arbitrator's final and binding decision.³

Arbitration, as an out-of-court dispute resolution mechanism, has a historical development dating back to the 18th century and has evolved to play a crucial role in resolving various types of conflicts, extending beyond trade disputes to encompass civil disputes as well. In Indonesia, the practice of arbitration as a dispute resolution method has roots dating back to the Dutch colonial era and was regulated under various legal provisions, including Articles 615 to 651 of *Reglement op de Rechtverordering Staatsblad 1847* Number 52, Article 377 of *Het Herziene Indonesisch Reglement Staatsblad 1941* Number 44, and Article 705 of *Rechtsreglement Buiten Gewesten Staatsblad 1927* Number 705.

In contemporary times, the significance of arbitration has grown further, particularly following the enactment of laws by the Indonesian government to formalize and regulate the arbitration process. One such key legislation is Law Number 39 of 1999 concerning Arbitration and Alternative Settlements Dispute. This legal framework has facilitated the development and recognition of arbitration as a preferred and effective method for resolving disputes in the country.⁴

³ M. Husseyn Umar, A. Supriyani Kardono. *Hukum dan Lembaga Arbitrase di Indonesia*. (Jakarta: Kantor Menteri Negara koordinator Bidang Ekonomi Keuangan dan Pengawasan Pembangunan, 1995),

⁴ Mosgan Situmorang, "Measuring the Effectiveness of Consumer Dispute Resolution on Small Value E-Commerce Transaction." *Jurnal Penelitian Hukum De Jure* 22, No. 4 (2022): 537-550; Mosgan Situmorang, "The Power of Pacta Sunt Servanda Principle in

In these social interactions, sometimes there are conflicts and disputes due to differences of opinion or differences in interests owned by the various social groups concerned.⁵ So that, to resolve conflicts and disputes that occur, it is necessary to have an effective and efficient dispute resolution process as a resolution solution.⁶ On the other hand, the conflicts and disputes that occur have undergone a very complex development following the development of human life. Thus, there is a need for a law that can resolve conflicts and disputes that occur fairly, effectively, efficiently, and appropriately.⁷

The appointment of the arbitrator in the arbitration procedure will be determined based on the agreement of the parties.⁸ The arbitrator will act under the arbitration agreement,⁹ if the arbitrator decides a case outside his/her authority, the decision will be ignored. things that are not requested by the parties to the dispute.¹⁰ The number of arbitrators varies, generally, the number is more than one person who is selected and determined based on the agreement of the parties.

Usually, permanent arbitration bodies have a list of names of persons who have qualified as arbitrators.¹¹ The process of dispute resolution through arbitration has several positive elements, namely:¹²

Arbitration Agreement." *Jurnal Penelitian Hukum De Jure* 21 (2020): 447-457; Mosgan Situmorang. "Pembatalan Putusan Arbitrase." *Jurnal Penelitian Hukum De Jure* 20, No. 4 (2020): 573-586.

⁵ Intan Setiyo Wibowo, and Zakki Adlhiyati. "Problematika Pelaksanaan Putusan Arbitrase Internasional di Indonesia." *Verstek* 8, No. 1 (2020): 168-173.

⁶ Rahmadi Indra Tektona, "Arbitrase Sebagai Alternatif Solusi Penyelesaian Sengketa Bisnis Di Luar Pengadilan," *Pandecta: Research Law Journal* 6, No. 1 (2013): 86-94.

⁷ Priyatna Abdurrasyid, *Arbitrase dan Alternatif Penyelesaian Sengketa: Suatu Pengantar* (Jakarta: Fikahati Aneska, 2002).

⁸ Aldo Rico Gerald, "Kompetensi Arbitrase Internasional dan Pengadilan Nasional Terkait Penyelesaian Sengketa Penanaman Modal Asing," *Jurnal Humani* 3, no. 2 (2017): 149-162.

⁹ Serlika Aprita and Rio Adhitya, *Hukum Perdagangan Internasional* (Jakarta: PT RajaGrafindo Persada, 2020).

¹⁰ Abdurrasyid, *Arbitrase dan Alternatif Penyelesaian Sengketa: Suatu Pengantar*.

¹¹ Huala Adolf, "The Urgency to Form Law on International Commercial Arbitration," *Fiat Justisia Journal of Law* 10, No. 2 (2016): 317-34.

¹² Nils Melzer, "Hukum Humaniter Internasional Sebuah Pengantar Komprehensif," *ICRC*, 2019.

1. The parties have the freedom to choose their judge (the arbitrator) either directly or indirectly (in this case with the help of a third party, for example, international tribunals) who appoint an arbitrator for one or both parties;
2. The parties have the freedom to determine the procedural law or the requirements on which a decision will be based, for example in determining the procedural law and law that will be applied to the subject of the dispute, etc.
3. In principle, the nature of the arbitration award is final and binding;
4. Arbitration hearings can be held in secret if the parties so wish;
5. The parties themselves determine the objectives or tasks in the arbitration;
6. The speed in the process due to an arbitration agreement must determine a time, that is, the length of time the dispute or dispute submitted to arbitration must be decided;
7. To examine and decide cases through arbitration, the parties are allowed to select experts who have deep knowledge and are very familiar with the matters in dispute.

Arbitration in the Kingdom of Saudi Arabia has undergone material changes in recent years and has had a positive impact in the field of dispute resolution. The new arbitration law, which was passed by Royal Decree No. M/34 issued in the Official Gazette of 8 June 2012 ("*New Arbitration Law*") has facilitated the Kingdom in adopting international norms and practices when promulgating new laws.¹³ This New Arbitration Law broadly mimics the UNCITRAL Legal Model and replaces the previous Arbitration Law issued by Royal Decree No. M/46 dated April 25, 1983, and supplemented by Executive Regulations dated June 22, 1987. The New Arbitration Act has paved the way for the application of 'arbitration friendly' provisions that

¹³ Saudi Arabia. "Law of Arbitration: Royal Decree No. M/34" (2012), available online at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106647/130941/F850258061/arbitration.pdf>

facilitate dispute resolution in the Kingdom and complement recent arbitration progress.

Historically arbitration is not a known dispute resolution in the Kingdom of Saudi Arabia. The parties' past trust issues in using arbitration to resolve their disputes are not helped by court intervention in arbitration proceedings and uncertainty surrounding enforcement of arbitral awards.

The same thing has happened to other countries. In the past, Arab countries may have felt disadvantaged as participants in international arbitration proceedings. They often view arbitration proceedings as requiring the application of the rules formulated by developed countries. However, gradually they realized that arbitration is a very important thing, especially since it is deeply embedded in their legal tradition, as it is will be explained thoroughly below. Hence, they have taken several steps years to strengthen the role that arbitrations can play in their international commercial and investment relationships. This includes the adoption of liberal laws concerning arbitration, accession to international conventions on arbitration, and the establishment.

This study seeks to analyze and compare the legal frameworks employed by the Indonesian National Arbitration Board (BANI) and the Saudi Center for Commercial Arbitration (SCCA) in their respective arbitration processes. Additionally, it aims to compare the arbitration dispute resolution procedures specifically within the business sector, as conducted by BANI and SCCA.

The main objectives of this research are to examine the differences and similarities in the legal underpinnings utilized by these two arbitration institutions and to understand the variations and commonalities in the actual arbitration dispute resolution processes they implement for business-related cases. By conducting this analysis, the study aims to provide valuable insights into the distinct approaches taken by BANI and SCCA in handling arbitration matters, as well as their effectiveness in resolving disputes in the business domain.

Method

In writing this paper, the author uses a research method in the form from normative-juridical which means that a research method that is carried out using various legal values, various legal norms, various laws and regulations, and various sources of the legal library in the field of Alternative Dispute Resolution, especially in the field of an Alternative Dispute Resolution process used by Indonesian National Arbitration Board (BANI) and an Alternative Dispute Resolution process used by and Saudi Center for Commercial Arbitration (SCCA). Besides, the author also uses various primary legal sources and various secondary legal sources related to an Alternative Dispute Resolution process used by Indonesian National Arbitration Board (BANI) and an Alternative Dispute Resolution process used by and Saudi Center for Commercial Arbitration (SCCA). The various primary legal sources are used such as Law Number 30 from the Year 1999 about Arbitration and Alternative Dispute Resolution and Arbitration Rules from Singapore International Arbitration Center from the Year 2010. Meanwhile, various secondary legal sources are used such as various books and various related scientific articles in the field of an Alternative Dispute Resolution process used by Indonesian National Arbitration Board (BANI) and an Alternative Dispute Resolution process used by and Saudi Center for Commercial Arbitration (SCCA). The various legal sources used are then reviewed normatively-juridically to provide general descriptions and conclusions regarding various problems that will be resolved in this scientific article.

Result and Discussions

The Comparison of the Legal Basis Used by Indonesian National Arbitration Board (BANI) and Saudi Center for Commercial Arbitration (SCCA) in The Arbitration Dispute Resolution Process

The Indonesian arbitration institution's existence is grounded in a strong juridical and legal foundation integrated into the national legal system. M. Yahya Harahap identifies some legal bases: the Point of Arbitration basis, outlined in Article 377 HIR and Article 705 RBg, which obliges parties, Indonesian or foreign, to comply with the rules of court applicable to the European nation if they choose arbitration for dispute resolution. The General Basis for Arbitration, encompassed in Book Three of the Regulations on Procedural Law Civil (Rv) from Article 615 to Article 651, provides a comprehensive framework for arbitration procedures. However, the existing Rv regulations do not explicitly address foreign arbitration, necessitating additional measures to bridge this gap. The government seeks to fill this void by ratifying international conventions like the International Centre for Settlement of Investment Dispute (ICSID), demonstrating its commitment to establish a robust arbitration system that caters to both domestic and international disputes while fostering harmonious global arbitration relations.

Indonesian National Arbitration Board (BANI) uses a legal basis in the form of Law Number 30 of 1999 about Arbitration and Alternative Dispute Resolution.¹⁴ It is based on the New York Convention from the Year 1958 which has been ratified by Indonesia through Presidential Decree Number

¹⁴ Huala Adolf, "Hukum International Sebagai Lex Causae oleh Badan Arbitrase Komersial Internasional," *Indonesian Journal of International Law* 1, No. 4 (2021).

34 from the Year 1981 about Ratification from Convention on Recognition and Enforcement from Foreign Arbitral Awards.¹⁵

Law Number 30 of 1999 about Arbitration and Alternative Dispute Resolution explained that arbitration dispute resolution process can be carried out if in an agreement there is a standard clause governing arbitration that has been agreed upon by the parties concerned. So that, in the agreement the parties have agreed to resolve disputes that occur through arbitration, not through the District Court, and promise to carry out and obey the resulting arbitration decisions in good faith. In the process of resolving arbitration disputes, the procedural law used is the Arbitration Procedure Rules that have been made by Indonesian National Arbitration Board (BANI).¹⁶

Several series of laws and regulations have become the juridical basis for arbitration in Indonesia are: Law No. 14 of 1970 concerning the Principles Judicial Authority, as explained in article 3; Civil Code, in article 1338 paragraph (1); Article 377 HIR or article 705 RBg; Articles 615-651 Rv; and Law Number 30 of 1999 concerning Arbitration and APS.¹⁷

Meanwhile, with the passing of the new Arbitration regulations (new Arbitration Law), together with the new Enforcement Law (new Enforcement Law) in 2012, there is reason to believe that the arbitration landscape in Saudi Arabia is changing for the better. The opening of the Saudi Center for Commercial Arbitration (SCCA) in Riyadh in 2016, together with the issuance of the SCCA Arbitration Rules (SCCA Rules) which are largely based on the UNCITRAL Arbitration Rules also brought joy. Furthermore, on June 9, 2017, the new Implementing Rules of

¹⁵ Arsenius, "Pengakuan Dan Pelaksanaan Keputusan Arbitrase Asing Menurut Keppres No 34 Tahun 1981 Tentang Ratifikasi Convention on The Recogniti On And Enforcement of Foreign Arbitral Awards 1958 di Negara Indonesia," *Jurnal Varia Bina Civika*, No. 34 (2009): 9.

¹⁶ Luh Putu Sudini and Desak Gde Dwi Arini, "Eksistensi Badan Arbitrase Nasional Indonesia (BANI) dalam Penyelesaian Sengketa Perusahaan," *Jurnal Notariil 2*, No. 2 (2017): 141–148.

¹⁷ I Made Dwi Dimas Mahendrayana, "Mekanisme Penyelesaian Sengketa Pelanggaran Hak Cipta Melalui Arbitrase," *Acta Comitatus 5*, No. 1 (2020).

Arbitration Law were published in the Official Gazette, clarifying certain provisions that were previously unclear in the new Arbitration Law.

The new Arbitration Act is based largely on the UNCITRAL Model Law. However, the drafters also attempted to promote the essential values of Sharia, thereby creating a mixed set of laws which, in some cases, departed from the UNCITRAL Legal Model. The Implementing Rules for the new Arbitration Law are also an important source because they clarify several provisions that were previously unclear in the new Arbitration Law. For example, the Implementing Rules clarify that the "*competent court*" referred to in the new Arbitration Act (other than in Articles 9 (1), 12, and 40 (3) (final)) is a reference to the Court of Appeal. This describes possible confusion or disagreement between the parties as to which court should oversee their arbitration.¹⁸

The Comparison of the Arbitration Dispute Resolution Process by Indonesian National Arbitration Board (BANI) and Saudi Center for Commercial Arbitration (SCCA)

The arbitration dispute resolution process conducted by Indonesian National Arbitration Board (BANI) has been regulated in Article 27 until Article 51 from Law Number 30 from the Year 1999 about Arbitration and Alternative Dispute Resolution and Article 13 until Article 19 from the Arbitration Procedure Rules, are as follows:¹⁹

¹⁸ Jean-Benoît Zegers, "Recognition and Enforcement of Foreign Arbitral Awards in Saudi Arabia," *BCDR International Arbitration Review* 1, No. 1 (2014).

¹⁹ Grasia Kurniati, "Studi Perbandingan Penyelesaian Sengketa Bisnis dan Implementasinya antara Lembaga Badan Arbitrase Nasional Indonesia dan Singapore International Arbitration Centre," *Jurnal Ilmu Hukum De'Jure: Kajian Ilmiah Hukum* 1, No. 2 (2016).

1. The process of examining arbitration disputes is carried out by the arbiter or arbiter council in private.²⁰ This is the absolute authority of the arbiter council concerned. The law used in the process of examining arbitration disputes is the law that has been agreed upon by the disputing parties in the arbitration agreement and which does not conflict with the Statutory Regulations. The language used in the process of examining arbitration disputes is Indonesian or other languages that have been agreed upon by the disputing parties. The place used in the process of examining arbitration disputes is a place that has been agreed upon by the disputing parties in an arbitration agreement with the arbiter council. The process of examining this arbitration dispute can be accompanied or represented by a legal advisor from Indonesia or a foreign legal advisor by bringing a power of attorney explaining the assistance or representation.
2. A third party can intervene in the process of examining an arbitration dispute if it has been agreed by the disputing parties, has been approved by the arbiter council, and has an interest that is still related to the dispute. The intervening arbitration dispute examination process is carried out in writing, but can also be carried out orally if it has been agreed upon by the disputing parties and is deemed necessary by the arbiter council. The arbiter council gives the applicant party a certain period to submit a letter of the claimant. The letter of the claimant contains the names of the disputing parties, the places where the disputing parties live, a brief story from the dispute, and the claims submitted to the parties in dispute. After that, the arbiter council will give a maximum period from 30 days from the receipt from the letter of the claimant by the disputing parties to attend the arbitration hearing. After that, the arbiter council will give a maximum period of 30 days from the time the first hearing was held by the respondent party to

²⁰ Gideon Hendrik Sulat, "Tata Cara Pemeriksaan Sengketa Arbitrase Menurut Undang-Undang Nomor 30 Tahun 1999," *Lex Crimen* 5, No. 7 (2016): 58–64.

submit a letter of counterclaim or a letter of reconciliation. If the respondent party submits a letter of counterclaim or a letter of reconciliation, then the respondent party will be summoned to attend the same arbitration hearing within a maximum period of 14 days. However, if the responsible party does not submit a letter of counterclaim or a letter of reconciliation, then the respondent party will still be summoned to attend the same arbitration hearing within a maximum period of 14 days.²¹ If the respondent party does not attend the arbitration hearing without clear reasons, then the intervening arbitration dispute hearing process will be carried out in the absence of the respondent party. However, if the applicant party does not attend the arbitration hearing without clear reasons, then the request letter is deemed null and the task of the arbiter council to examine the dispute is deemed to have been resolved.

3. The process of proving an arbitration dispute can be carried out against all the facts contained in the letter of the claimant and the letter of response. Besides, the process of proving arbitration disputes can be carried out against witnesses who are presented at the arbitration trial.²² All witnesses can testify orally or in writing with an oath beforehand. The proof system used by Indonesian National Arbitration Board (BANI) uses the principle and consequence that the applicant party must prove the arguments of his or her letter of the claimant and the respondent party must prove the arguments of his or her letter of response. The process of proving an arbitration dispute ends when the arbiter council considers that the testimony of the witnesses, all evidence, and the trial process are deemed sufficient. After the process of proving the arbitration dispute ends, a final decision can be made.

²¹ Grace Henni Tampongongoy, "Arbitrase Merupakan Upaya Hukum dalam Penyelesaian Sengketa Dagang Internasional," *Lex et Societatis* 3, No. 1 (2015).

²² Ida Primayanthi and Kadek Sarna, "Mekanisme Penyelesaian Sengketa Internasional (Studi Kasus Nikaragua-Amerika Serikat)," *Journal Ilmu Hukum* 3, No. 2 (2015).

There are 3 types of final decisions, such as final decisions, peace approval decisions, and interim decisions.²³

The arbitration dispute resolution process conducted by Saudi Arabia has been regulated in Article 16 Arbitration Rules from Saudi Center for Commercial Arbitration (SCCA), are as follows:

1. The two parties to the arbitration shall agree on the appointment of arbitrators. If they fail to reach an agreement, the following shall apply
 - a. If the arbitration tribunal is composed of one arbitrator, the competent court shall appoint that arbitrator.
 - b. If the arbitration tribunal is composed of three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the umpire. If a party fails to appoint his arbitrator within fifteen (15) days from receipt of a petition to this effect from the other party, or if the two appointed arbitrators fail to agree on appointment of the umpire within fifteen (15) days from the date of appointment of the last arbitrator, the competent court, under a petition filed by the party seeking to expedite the arbitration, shall appoint the umpire within fifteen (15) days from date of submission of the petition. The umpire, whether selected by the two appointed arbitrators or appointed by the competent court, shall preside over the arbitration tribunal. These provisions shall apply to cases where the arbitration tribunal is composed of more than three arbitrators.
2. If the two parties to the arbitration fail to agree on the procedures for the appointment of arbitrators, or if one party thereof fails to adhere to such procedures, or if the two appointed arbitrators fail to agree on a matter that requires their agreement, or if a third party fails to perform a function entrusted thereto under such procedure, the competent court shall, under a petition filed by the party seeking to expedite the arbitration, take the necessary measure or action unless

²³ Andre G. Mawey, "Dasar Pertimbangan Hakim dalam Menjatuhkan Putusan Lepas Dari Segala Tuntutan Hukum (Onslag Van Alle Rechtsvervolging)," *Lex Crimen* 5, No. 2 (2016).

the agreement provides for other means for completing such measure or action.

3. In appointing an arbitrator, the competent court shall observe the conditions stipulated in the arbitration agreement as well as the conditions required under this Law, and shall issue its decision appointing the arbitrator within thirty (30) days from the petition submission date.
4. Without prejudice to the provisions of Articles 49 and 50 of this Law, the decision of the competent court appointing the arbitrator shall not be independently subject to any form of appeal.

Conclusion

This study, finally highlighted that, the legal foundation utilized by the Indonesian National Arbitration Board (BANI) for resolving arbitration disputes, such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, differs from that of the Saudi Center for Commercial Arbitration (SCCA), which primarily relies on the UNCITRAL Model Law. Despite these legal disparities, there are several similarities in the arbitration dispute settlement processes of both BANI and SCCA, particularly in the business sector. Initially, the process begins with an agreement between the involved parties to resolve their disputes through arbitration. Subsequently, the plaintiff submits a letter form to BANI or a claim statement to SCCA, commencing the arbitration proceedings. The arbitration dispute is then examined behind closed doors by an arbitrator or a panel of arbitrators. During the arbitration trial process, evidence is presented, including statements from expert witnesses and fact witnesses, which are crucial in substantiating the claims and counterclaims. The presentation of all relevant facts, expert opinions, and witness testimonies is diligently carried out during the trial. Finally, the arbitration process

concludes with a final decision made by the arbitral council, where they assess the sufficiency of all the presented evidence and testimonies before reaching a resolution.

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“An ounce of mediation is
worth a pound of arbitration
and a ton of litigation!”

Joseph Grynbaum

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